

**Called 1990**  
**Silk 2015**

## Francis Fitzpatrick KC



Francis is an exceptional advocate and adviser, recognised for his outstanding legal skills coupled with commercial awareness. He is focused on his clients' aims and finds practical solutions, frequently resolving the most difficult and intractable cases in the best possible manner. He is a formidable and determined advocate with a strategic grasp of both procedural and substantive issues.

Francis Fitzpatrick KC is a silk with a strong litigation and advisory practice. He acts for financial institutions, blue-chip companies and private individuals. He also acts for the Revenue.

"A brilliant advocate, who is calm under pressure and excellent with clients." (Chambers and Partners)

"I think Francis is actually the perfect silk" (a client).

## Background

Francis Fitzpatrick advises corporates, multi-nationals, partnerships, HNWIs, HMRC and government departments on all areas of direct and indirect tax. He has wide experience of commercial and 'City' transactions and litigation including: corporate finance, loan relationships, structured finance, partnerships, leasing, private equity, employment remuneration, infrastructure project funding, asset management, trusts, land development, shipping, cryptoassets, insurance, energy and energy infrastructure, intellectual property, cross-border transactions, transfer pricing and the operation of general and targeted anti-avoidance regimes (such as the unallowable purpose loan relationship rules and the GAAR). He also has especial expertise in international tax work, including exchange of information laws, double tax treaties, bi-lateral investment treaties and the implementation of the BEPS project. He regularly works with international firms, including US firms, on cross-border issues.

Francis is an exceptional advocate appearing both for taxpayers and the government before Tax Tribunals and the appeal Courts.

Francis has an impressive track record in settling seemingly intractable disputes with HMRC without the need for litigation by focused and powerful written submissions made at an early stage in disputes. If matters proceed to litigate, he is a hugely experienced, determined and strategic advocate dedicated to the best possible outcome for his clients.

He has extensive litigation experience, including cases on: direct tax (income tax, CGT, corporation tax); indirect tax (VAT, SDLT, SDRT, IPT, APD); judicial review of HMRC for abuse of power and breach of legitimate expectation; double tax treaties; HNWIs (IHT, residence and remittance basis); leasing; the loan relationship rules; intangible assets and intellectual property; R&D; transfer pricing; partnerships; FX issues; and private equity.

He advises on all areas of direct/indirect tax and international tax, including:

- **corporate tax**, including: the loan relationship rules; the implementation of the BEPS project; treatment of hybrid entities; diverted profits tax; transfer pricing; the profit fragmentation rules; the intangible assets regime and the banking levy;
- **international tax issues**, including: double tax treaties (in particular the US/UK, Germany/UK and Netherlands/UK DTCs); permanent establishments; bi-lateral investment treaties, free trade agreements and GATT; and cross-border taxation issues;
- **environmental taxes, oil and gas taxation and renewable energy**;

- **shipping** and the tonnage tax regime;
- **the fiscal and legal analysis of cryptoassets**, both cryptocurrency and other assets such as NFTs, in the light of the analysis set out in the UK Jurisdictional Taskforce's legal statement on 'cryptoassets and smart contracts' and recent caselaw
- **the Research and Development regime**;
- **VAT**;
- **stamp taxes**;
- **taxation issues for the asset management industry**, such as the tax treatment of carry and the disguised investment management fees rules ('DIMF' rules) and salaried member rules;
- **taxation of entertainers and sports performers**;
- **professional negligence**, he frequently works with professional negligence lawyers on claims involving tax;
- **personal tax for HNWIs**, including: resident and non-resident trusts; domicile; residence;. the non-resident CGT rules (the NRCGT rules); the taxation of land developments and inheritance tax.
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## Legal Information

Francis Fitzpatrick KC has professional liability insurance provided by the Bar Mutual Indemnity Fund Limited (of 90 Fenchurch Street, London EC3M 4ST) on a world-wide basis and subject to the terms of cover: see <http://www.barmutual.co.uk/>.  
VAT number: 524 4292 57

## Notable Cases

- **Syngenta Holdings Limited v HMRC** [2024] UKFTT 998 concerned the application of the loan relationship unallowable purpose rules to intra-group borrowing. Francis was lead counsel for HMRC. This decision is potentially material to many intra-group borrowing arrangements.
- **Stage One Creative Services Limited v HMRC** [2024] UKFTT 1059 - Francis acted as lead

Counsel for HMRC in a case concerning eligibility for R&D tax relief in the creative industry.

- **Muller UK and Ireland Group LLP and others v HMRC** [2024] UKUT 27, an important decision of the Upper Tribunal on the application of the corporation tax intangible assets regime to the computation of the profits of corporate partners.

- **Collins Construction Limited v HMRC** [2024] UKFTT 951 - Francis was lead Counsel for HMRC in a case which addressed eligibility for R&D tax relief in the construction industry.

- [Muller UK & Ireland Group v HMRC \[2023\] UKFTT 221 \(TC\)](#), this important case addresses the taxation of LLPs, and more particularly deals with the interaction of the code governing the taxation of corporate members of LLPs with the intangible assets rules. Francis acted for the taxpayer

- **Quinn (London) Limited v HMRC** [2021] TC/2020/01846, in which Francis acted for HMRC on the meaning of 'subsidised expenditure' in the R&D regime

- **Unicorn Tankships (428) Limited v HMRC** [2019] UKFTT 0689 and [\[2021\] UKUT 0109](#), in which Francis acted for the successful taxpayer in the first case to reach the FTT concerning the relationship between the tonnage tax rules for shipping and the capital allowances regime, in particular whether a balancing charge arises on a company leaving the tonnage tax regime and on the taxpayer's successful appeal to the UT

- **Amalgamated Metals Corporation PLC v Revenue and Customs Commissioners** [2018] SFTD 410 (on the tax treatment of damages for professional negligence and the loan relationship regime)

- **R(on the application of Veolia ES Landfill Ltd) v HMRC** [2016] EWHC 1880 (judicial review claim for breach of legitimate expectation arising from statements made by HMRC)

- **Viridor Waste Management v Veolia ES Limited** Comm Court QBD [2015] 22/05/15 (strike out application arising in a commercial dispute related to input tax)

- [Brunel Motor Company Limited v HMRC \[2013\] STC 1426](#) (VAT and liquidation)

- [Greenbank Holidays Ltd v HMRC \[2011\] STC 1582](#) (tax treatment of goodwill under the intangible assets regime and intellectual property)

- [Bayfine UK Products v HMRC \[2011\] STC 717](#) (structured finance and the US-UK Double Tax Treaty)

- **DSG Retail Ltd v HMRC** [2009] STC (SCD) 397 (first transfer pricing case to go to trial in the UK relating to captive insurance companies and extended warranties, regarded as a landmark case on transfer pricing)
- [BMW AG v HMRC](#) [2009] [EWCA Civ 77](#) (judicial review relating to a change of accounting periods for VAT of an associated manufacturer and exporter of vehicles)
- **Europcar UK Ltd v HMRC** [2009] STC 2751 (pleading and limitation issues arising from overpaid tax)
- [Sempra Metals Ltd v HMRC](#) [2007] [STC 1599](#) (compound interest on overpayments of tax)
- [Deutsche Morgan Grenfell Group plc v IRC](#) [2007] [STC 1](#) (mistake of law claim for overpaid tax)
- [Société Internationale de Télécommunications Aéronautiques v HMRC](#) [2004] STC 950 (the VAT treatment of telecommunications services in the airline industry)
- [R \(on the application of Federation of Technological Industries and others\)](#) v HMRC [2004] STC 1424 (judicial review of VAT anti-avoidance provisions aimed at preventing missing trader intra-community VAT fraud)
- **R (on the application of British Aggregates Association) v HMRC** [2002] AER D 161 (judicial review of environmental taxes)
- [Metallgesellschaft v IRC](#) [2001] [Ch 620](#) (before the European Court of Justice on the compatibility of aspects of UK corporation tax with European law)
- **Freemans v Customs & Excise** [2001] STC 960 (before the European Court of Justice on the VAT treatment of mail order traders)