

**Called 1990**  
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## Francis Fitzpatrick QC



Francis is an experienced adviser and advocate, recognised for his exceptional legal skills coupled with real commercial awareness. He is well known for his ability to understand clients' concerns and to find practical solutions.

### **Background**

***"First-rate tax lawyer. Approachable, popular with clients and trusted by the courts"***

*( from Chambers and Partners)*

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Francis grew up on a council estate in Birmingham and attended the local state grammar school. Volunteering at a Citizen's Advice Bureau during a school summer break and working with outstanding lawyers on employment, immigration and criminal compensation cases sparked an

interest in law and the potential of good legal advice to make a positive difference to individual's lives. He went on to study law as an undergraduate and post-graduate at Oxford.

He advises corporates, multi-nationals and individuals on all areas of direct and indirect tax and has particular experience and expertise in corporate finance, structured finance, employment remuneration, asset management, trusts, land development, shipping, insurance, energy, intellectual property, cross-border transactions, transfer pricing and damages and restitutionary claims against HMRC.

He appears regularly in Courts and Tribunals as an advocate for taxpayers and has appeared in the First-Tier Tribunal, the Upper Tier Tribunal, the Commercial Court, the Court of Appeal and the House of Lords (now the Supreme Court) and in the Court of Justice of the European Community. He has extensive experience of litigation concerning claims against the UK government based on breaches of European law and has appeared in seminal cases establishing the liability of Member States to repay taxes levied in breach of European law and to pay compound interest on such repayments.

He also 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.

## **Education and academic career**

Worcester College, Oxford University (1985-1989): Scholar in law; Law Moderations - Distinction; Finals - First Class Honours; Oxford post-graduate Bachelor in Civil Law degree; BA(Hons), MA and BCL (Oxon).

Tutor in law at Merton College, Oxford (1989-1991).

Inns of Court Scholarship, Inner Temple Duke of Edinburgh Award and Inner Temple Examination Scholarship.

## **Publications**

Francis is a regular contributor to professional journals and has contributed to Equipment Leasing (with Clifford Chance) and to books on the impact of human rights law on tax.

## Areas of practice

**European law involving repayment claims against the government**, where he featured in the ground breaking advanced corporation tax litigation that led to new developments both in tax law and in the common law, see for example [Deutsche Morgan Grenfell Group plc v IRC \[2007\] STC 1](#) (mistake of law claims for overpaid tax and reliance on the extended limitation period for mistake which led to successful claims for overpaid tax being made back to 1972), [Sempra Metals Ltd v HMRC \[2007\] STC 1559](#) (compound interest on overpayments of tax going back to 1972); *Hoechst UK Limited v IRC* [2004] STC 1486 and [Europcar UK Ltd v HMRC \[2009\] STC 2751](#) (both concerned with pleading and limitation issues arising from claims for mistake of law for overpaid tax).

**Group Litigation Orders**, he played a large part in drafting the first tax Group Litigation Order ("GLO") for the ACT Group Litigation and worked on other GLOs including the Stamp Duty and Stamp Duty Reserve Tax GLO (concerning the compatibility with European law of UK rules levying stamp duty and stamp duty reserve tax on the issue and transfer of shares into clearance services)

**Judicial review** including: the motor industry and VAT [BMW AG v HMRC \[2009\] EWCA Civ 77](#) (judicial review of HMRC in relation to a change of accounting periods of an associated manufacturer and exporter of vehicles); and judicial reviews of aggregates tax (*R (on the application of British Aggregates Association) v C & E* [2002] AER (D) 161 (Apr); landfill tax (*R (on the application of Veolia Es Landfill Ltd) v HMRC*[2014] EWHC 1712, [\[2015\] EWCA Civ 747](#) and [\[2016\] EWHC 1880](#)); VAT anti-avoidance provisions aimed at MTIC fraud (missing trader inter community fraud) (*R (on the application of Federation of Technological Industries and others) v C & E* [2004] STC 1424) ; and airport passenger duty

### Taxation of employment incentivisation arrangements

#### Commercial disputes relating to tax

He frequently acts in commercial disputes relating to tax, e.g. *Viridor Waste Management v Veolia ES Limited* Commercial Court QBD [2015] 22/05/2015 (a strike out application arising in a commercial dispute relating to landfill tax). Acting for the Claimant where the Particulars of Claim had been served late and the Defendant applied to strike out. The case concerned the application of the *Mitchell* and *Denton* principles on relief from sanction. The Court refused the strike out application and awarded indemnity costs to the Claimant.

## **Corporation tax and structured financing**

**Insurance premium tax** *DSG International Insurance Services Limited v HMRC* IPT 0013 (whether an insurance contract was a taxable contract)

**Landfill tax**, especially claims arising from the overpayment of landfill tax

## **Oil and gas taxation and renewable energy**

**Shipping and the tonnage tax regime**, in particular on the relationship between the regime and corporation tax

**Telecommunications** *Societe Internationale de Telecommunications Aeronautiques v C & E* [2004] STC 950 (whether telecommunications services provided to the airline industry were subject to VAT)

**Construction industry**, both direct and indirect tax issues affecting the industry

**Double tax treaties** (especially the UK/US double tax treaty), see for example [Bayfine UK Products v HMRC \[2011\] STC 717](#)

**Transfer pricing**, he was instructed in the first substantive transfer pricing case in the UK ? [DSG Retail Ltd v HMRC \[2009\] STC \(SCD\) 397](#)

**The relationship of accountancy principles to tax**, see for example [Greenbank Holidays Ltd v HMRC \[2011\] STC 1582](#) (tax treatment of goodwill under the intangible assets regime)

**The tax structuring of complex land developments** involving multiple owners including the use of bare trust pooling arrangements, cross-options and conditional contracts and the impact of anti-avoidance provisions applying to "quasi-trading" in land (Chapter 3 Part 13 of the Income Tax Act 2007)

## **Taxation of entertainers and performers**

**Trusts and personal tax planning**, especially for landed estates, non-domiciliaries, entertainers, artists and musicians. He has particular experience of dealing with high net worth non-domiciled resident remittance based individuals with property and assets in the UK and elsewhere.

**Tax aspects of leasing structures** (Francis worked with Clifford Chance on the looseleaf edition of ?Equipment Leasing?)

## **Professional negligence claims involving tax**

VAT - including issues affecting the motor trade, see for example [\*Brunel Motor Company Limited \(in administrative receivership\) v HMRC \[2012\] FTC/03 &04/2012\*](#) (instructed by Ford Motor Company in relation to the VAT treatment of car dealerships in receivership) and [\*BMW AG v HMRC \[2009\] EWCA Civ 77\*](#) (judicial review of HMRC in relation to a change of accounting periods of an associated manufacturer and exporter of vehicles). He appeared in the European Court of Justice in *Freemans v Customs & Excise* [2001] STC 960 concerning the VAT treatment of mail order traders.

### **Tax implications of Britain's exit from the European Union**

Brexit raises many complex issues, opportunities and great uncertainty in the fields of both direct and indirect tax. Francis has given lectures and has advised on the likely implications for UK tax.

### **Recent articles**

["Transfer Pricing and Shareholders - is there a market value rule for equity transactions?"](#)

["Equivalent foreign tax rules" under the new procurement regime"](#) -

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### **Legal Information**

Francis Fitzpatrick 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