

Called 1968

Silk 1982

John Gardiner KC



John has an unrivalled experience of the most substantial tax matters that have engaged consideration over the last fifty years in the UK and abroad. He is still the person sought out to advise on the same and, if ever required, to litigate the consequences but his track record is such that very rarely if ever is that required after his advice.

Background

John has appeared in and argued most of the seriously important commercial tax cases of the last forty years. Starting with the basis of Schedule E expenditure in [*Taylor v Provan* \[1975\] 1 AC 194 \(HL\)](#) and [*Edwards v Clinch* \[1982\] AC 845 \(HL\)](#) and Schedule D in [*Ransom v Higgs* \[1974\] 1 WCR 1594 \(CA\)](#) and [*Taylor v Good* \[1974\] 1 WLR 556 \(CA\)](#), and moving on to his forte - serious financial transactions for large corporate bodies: banking and accounting - [*Willingale v International Commercial Bank* \[1978\] 1 AC 834 \(HL\)](#), VAT characterisation - [*British Railways*](#)

[*Board v Customs* \[1977\] 1 WLR 588 \(CA\)](#) and [*National Coal Board v Customs* \[1982\] STC 863 \(QBD\)](#), banking currency transaction - [*Pattison v Marine Midland* \[1984\] 1 AC 362 \(HL\)](#), oil field abandonment costs - [*R.T.Z. Oil and Gas v Ellis* \[1987\] 1 WLR 1442 \(ChD\)](#); judicial review, validity of subordinate legislation and restitution - the two [*Woolwich cases* \[1990\] 1 WLR 1400 \(HL\)](#) and [\[1993\] AC 70 \(HL\)](#), which fundamentally changed the law on restitution, and [*National and Provincial Building Society v UK* \[1997\] ECHR 87 \(ECHR\)](#); fiscal recharacterisation - [*Ensign Tankers v Stokes* \[1992\] 1 AC 655 \(HL\)](#); building societies and banks - [*Halifax etc.* \[2000\] STC \(SCD\) 251 \(SpC\)](#); UK legislation in breach of the EU Treaty - [*Metallgesellschaft* \[2001\] Ch 620, \[2001\] ECR I-1727 \(ECJ\)](#); "share buy backs" - [*Sema Group Pension Fund v IRC* \[2003\] STC 95 \(CA\)](#); and international repo financing - [*HMRC v Bank of Ireland Britain Holdings* \[2008\] STC 398 \(CA\)](#).

As well as practising in the UK he has advised upon tax in many foreign countries particularly Hong Kong, Malaysia, India and Singapore and for over thirty five years has argued innumerable cases in Hong Kong, many of which also have a bearing on UK tax law (e.g. [*CIR v HIT Finance Ltd and Hong Kong International Terminals* \[2008\] 10 HKCFAR 717](#) and [*Beautiland Co Ltd v CIR* \[1991\] STC 467 \(PC\)](#)). He acts as an arbitrator and also as an expert witness in UK and foreign litigation, most recently in a significant investment treaty arbitration in The Hague on retrospective legislation [*Cairn Energy PLC and Cairn UK Holdings v Republic of India* PCA Case No 2016-7 Decision 21 December 2020] .

Notable Cases

- [*HMRC v Payne and others* \[2019\] UKUT 90 \(UT\)](#) - employee benefits for cars/vans
- [*Lomas and others v HMRC* \[2017\] EWCA Civ 2124 \(CA\)](#) - liability for withholding tax on £1.2bn of interest payments - before both the HC and the CA.
- [*Greene King v HMRC* \[2016\] EWCA Civ 782 \(CA\)](#) - corporate loan relationships, accounting and tax;
- [*HMRC v FCE Bank* \[2013\] STC 14 \(CA\)](#) - treaty non-discrimination;
- [*Land Securities v HMRC* \[2013\] UKUT 124](#) - corporate funding and capital gains;
- [*Scottish Widows plc v HMRC* \[2012\] All ER 379 \(SC\)](#) - insurance taxation;

- [HMRC v First Nationwide \[2012\] EWCA Civ 278 \(CA\)](#) - foreign dividends;
- [HMRC v Lansdowne Partners Limited Partnership \[2012\] STC 544](#) - hedge fund partner rebates;
- [HMRC v DCC Holdings \[2011\] STC 326 \(SC\)](#) - repo financing.