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## Julian Ghosh KC

Barrister

Call 1993 Silk 2006



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## Scope of Practice

• Administrative & Public Law • Commercial Dispute Resolution • EU Tax Issues • International Tax • Offshore • Tax and Revenue • State Aid

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## Overview

Julian Ghosh KC is well known and admired for his great intellect, encyclopaedic knowledge and powerful appearances in court that have enabled him to rise to the top of the field in so many spheres. Particularly well known for his corporate work and that involving European taxation issues, he also specialises in Judicial Review and administrative Law and is co-writing the next edition of *Wade & Forsyth*, a leading textbook on JR. He also teaches administrative Law at Cambridge.

Julian was called to the Bar in 1993 (Lincoln's Inn) and called to the Scots Bar in 1999 and the Bar of Ireland in 2018. He became a KC in 2006 (and in Scotland in 2010) and is a Judge of the First-Tier and Deputy Judge of the Upper-Tier Tax Tribunals. He is a Senior Fellow, International Tax Centre, Leiden; and a Bye-fellow, Peterhouse, Cambridge, and is a Visiting Professor at King's College London where he teaches on the Law of Personal Taxation. In the 2021 UK Chambers Bar Awards Julian won Tax Silk of the Year.

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## Examples of Recent Cases

### Recent cases

- *FC Shipping & Anr. v. HMRC (FTT)*
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The case involved ship leasing and the UK tonnage tax regime under Schedule 22, Finance Act 2000. The core issue was whether the taxpayers were entitled to capital allowances on ship acquisition costs, or whether those allowances were precluded under para 90 due to the leases being "de-risked." The First-tier Tribunal (FTT) agreed with HMRC, concluding the leases had indeed been de-risked, and denied capital allowances. Julian appeared for the taxpayers. Permission to appeal to the UT has been given.

- **Syngenta Holdings Ltd v. HMRC (FTT)**

Julian represented Syngenta in an appeal concerning the denial of relief under the "unallowable purpose" provisions in the loan relationship rules. The FTT upheld HMRC's decision, finding that the interest on a loan used to fund a share acquisition was incurred for an "unallowable purpose [to secure tax relief]" Permission to appeal to the UT has been sought on a number of different bases, including a complaint that the FTT misunderstood relevant rules of evidence.

- **Kwik-Fit Group Ltd & Ors. v. HMRC (Court of Appeal)**

Julian appeared for Kwik Fit. The case concerned the application of the "unallowable purpose" rules under sections 441/442 of the Corporation Tax Act 2009. The Court of Appeal upheld the decisions of the FTT and UT, affirming that the loans in question were used, at least in part, to secure a tax advantage—an unallowable purpose. The Court clarified the meaning of "tax advantage", agreeing with Kwik Fit that to locate income in a company which has commercial losses is not "tax avoidance" but agreed with HMRC that a case in which there is a "net tax deduction" attracts the application of the unallowable purpose rules

- **HMRC v. Marlborough DP Ltd (UT)**

Julian appeared for HMRC. The UT allowed HMRC's appeal in part against an FTT decision. The UT found in HMRCs' favour that monies paid by a company to a Remuneration Trust, which were lent to a director, were taxable as disguised remuneration. HMRC succeeded on two out of three grounds, enabling a successful challenge to the tax avoidance scheme. The case is shortly to be heard in the Court of Appeal.

- **HMRC v. Vermilion Holdings Ltd (UKSC)**

Julian represented HMRC in this appeal concerning the taxation of share option gains. The Supreme Court held that section 471 of ITEPA 2003 imposes income tax liability where options are made available "by reason of employment." In particular the Court gave guidance to the application of deeming provisions (section 471(3)) and found in HMRCs' favour that the deeming in this case meant that the particular option gains were taxable as employment income whether or not the recipient was an employee at the time of grant of the option.

- **R (on the application of Refinitiv Ltd & Ors.) v. HMRC (UT)**

The taxpayer group sought judicial review of £167 million in Diverted Profits Tax notices, claiming HMRC had breached an existing Advance Pricing Agreement (APA). The UT dismissed the claim, accepting HMRC's position that its actions were consistent with the APA. The case has subsequently been heard by the Court of Appeal.

- **DCM (Optical Holdings) Ltd v. HMRC (UKSC)**

DCM, trading as Optical Express, challenged HMRC decisions on VAT recovery and time limits. The Supreme Court unanimously dismissed DCM's appeal, upholding earlier findings that rejected both the time bar and vires challenges.

- **NCL Investments Ltd & Anr. v. HMRC (UKSC)**

Julian appeared for HMRC. The Supreme Court dismissed the appeal, holding that accounting debits for share options issued via an Employee Benefit Trust were deductible for corporation tax purposes, despite no company having paid any monies or incurred any cost. The ruling confirmed that the relevant accounting treatment applied despite intra-group recharges.

- **HMRC v. Tooth (UKSC)**

The Supreme Court held that a "deliberate inaccuracy" requires an intention to mislead. It rejected HMRC's "tunnel vision" approach of reading tax return entries in isolation. Although the Court dismissed HMRC's appeal, it offered critical obiter comments on the (discredited) concept of "staleness" in discovery assessments. Julian appeared for the taxpayer.

- **The Union Castle Mail Steamship Co. Ltd. v. HMRC (Court of Appeal)**

Julian represented HMRC in a case involving derivative contracts generating losses exceeding £100 million. The Court found for HMRC and clarified the meaning of "loss," "arising from," and the "fairly represents" test. The UT had earlier extended transfer pricing rules to certain shareholder transactions, such as bonus share issues.

- **Ladbroke's Group Finance PLC v. HMRC (Court of Appeal)**

The Court found for HMRC and dismissed the taxpayer's appeal concerning the use of bonus shares in a derivative contracts scheme. Although it disagreed with the UT's reasoning on the "fairly represent" test, it upheld HMRC's position that the test was not met. Julian appeared for HMRC.

- **HMRC v. Smith & Nephew Overseas Ltd (Court of Appeal)**

Members of the Smith & Nephew group successfully claimed corporation tax deductions for c£675 million in foreign exchange losses arising from a change in functional currency. The Court rejected HMRC's argument that the losses failed the "fairly represents" test, finding that:

- (a) Regulation 13 required the exchange losses to be brought into account; and
- (b) In any event, the losses fairly represented the actual economic loss. Julian represented Smith & Nephew.

## Appellate Work

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- **William Archer v. HMRC (Court of Appeal)**

Acting for HMRC, Julian successfully resisted the taxpayer's appeal against late payment surcharges exceeding £1.4 million. The Court held that while there was a reasonable excuse during judicial review proceedings, this excuse did not extend throughout the period of default. The delay in payment was ultimately deemed unreasonable.

- **The Union Castle Mail Steamship Co. Ltd. v. HMRC (Court of Appeal)**

Julian represented HMRC in a case involving derivative contracts generating losses exceeding £100 million. The Court found for HMRC and clarified the meaning of "loss," "arising from," and the "fairly represents" test. The UT had earlier extended transfer pricing rules to certain shareholder transactions, such as bonus share issues.

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## What the Directories Say

*"Brilliant to work with, he cuts to the point, tells you how it is and then helps your client put their best foot forward. You always know where you are with him as he plays it straight."* (Chambers UK Bar 2024 - Tax)

*"A more than accomplished tax silk with very strong advocacy skills."* (Chambers UK Bar 2024 - Tax: Indirect)

*"Julian is reassuringly clever and experienced."* (Chambers UK Bar 2024 - Tax: Private Client)

*"Julian's incredible knowledge and understanding of tax law and also HMRC's approach make him an invaluable member of the team when advice is required on complex matters."* (Chambers UK Bar 2024 - Tax: Private Client)

*"A stellar advocate with a huge intellect, who is technically excellent."* (Chambers UK Bar 2024 - Tax)

*"A fine technical thinker and a good courtroom advocate," "he provides incisive, precise and crystal-clear advice."* (Chambers UK Bar 2020 - Tax)

*"A very thorough advocate" who is "very, very bright."* (Chambers UK Bar 2020 - Tax: Indirect Tax)

*"A technically exceptional barrister who clients like because he is always very confident. He is very balanced in his views and is someone who listens to and engages with those that instruct him."* (Chambers UK Bar 2020 - Tax: Private Client)

*"A go-to expert for issues involving the interaction of tax rules that turn on accounting treatment."* (Legal 500 2020 - Tax: VAT; Tax: Corporate)

*"A formidable intellect combined with his own style of forthright and succinct advocacy has generated a reputation as one of the leading tax silks."* (Legal 500 2020 - Private Client: Personal Tax)

*"Incredibly clear and helpful to clients." "His powers of analysis are formidable and he inspires confidence in clients."* (Chambers UK Bar 2019 - Corporate Tax)

*"He's very clever, very hard-working and very knowledgeable. I'm sure he's very capable at anything he turns his hand to. He's a very able person to have on your team."* (Chambers UK Bar 2019 - Private Client)

*"Technically unsurpassed. He has a formidable intellect and never equivocates. Clients appreciate his well-considered views and he has an incredibly succinct but formidable presence in oral advocacy."* (Chambers UK Bar 2019 - Tax: Indirect Tax)

*"Matters under consideration benefit from his fresh perspective."* (Legal 500 2019 - Tax: VAT)

*"One of the sharpest minds at the Tax Bar."* (Legal 500 2019 - Tax: Corporate)

*"He is exceptionally bright."* (Legal 500 2019 - Private Client: Personal Tax)

*"He is a technically exceptional barrister and always very confident, which is very suitable for the clients," says an instructing solicitor, who adds: "I like working with him because he listens and engages with you, and recognises that we have expertise and skills too."* (Chambers and Partners HNW 2019 - Tax: Private Client)

*"Knowledgeable, thorough and skilled at both advocacy and specific advice."* *"He has a very sharp and agile mind and is very good at shining a bright light on convoluted legislation. He is a great practitioner."* (Chambers UK Bar 2018 - Corporate Tax)

*"He is phenomenal. He has a brain the size of a planet but is also very personable."* *"We were very impressed with the speed of his response and the advice he gave."* (Chambers UK Bar 2018 - Tax: Scotland)

*"Of all the barristers we've worked with, he's the standout."* *"Renowned for being technical and solid in his approach. He is a high-quality performer."* (Chambers UK Bar 2018 - Private Client)

*"He is very clever, a brilliant litigator and fantastic at cross examination."* (Chambers UK Bar 2018 - Tax: Indirect Tax)

*"Combines strong, technical analysis with good client skills."* (Legal 500 2018 - Tax: VAT)

*"He thoroughly understands the line HMRC will take in court."* (Legal 500 2018 - Tax: Corporate)

*"Always up to date on HMRC practices and attitudes."* (Legal 500 2018 - Private Client: Personal Tax)

*"He's very clever, very hard-working and very knowledgeable," comments a fellow barrister, adding: "I'm sure he's very capable at anything he turns his hand to. He's a very able person to have on your team."* (Chambers and Partners HNW 2018 - Tax: Private Client)

*"Incredibly sharp. He's client-friendly, switched on and practical."* (Chambers UK Bar 2017 - Corporate Tax)

*"He really is excellent, superb."* (Chambers UK Bar 2017 - Private Client)

*"He is exceptionally bright."* *"He brings an invaluable perspective to any case."* (Chambers UK Bar 2017 - Tax: Indirect Tax )

*"His technical skills are absolutely first-class."* (Chambers UK Bar 2017 - Tax: Scotland)

*"Absolutely excellent. A fine advocate as well as being strong technically."* (Chambers UK Bar 2016 - Tax: Scotland)

*"HMRC dread to see him on the other side of cases"* (Legal 500 2016 - Tax, Trusts & Pensions)

The Legal 500 UK Silk of the Year 2015

# Publications

Author (up to December 2016) (with I L Johnson & Paul Miller): *The Taxation of Loan Relationships and Derivatives*

Author: *Principles of the Internal Market and Direct Taxation* (2007, Key Haven)

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# Memberships

Revenue Bar Association

Chancery Bar Association

VAT Practitioners Group

London Common Law & Commercial Bar Association

Bar European Group

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# Education

Harris Academy, Dundee

University of Edinburgh

St Edmund Hall, Oxford

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# Awards





# Contact Clerks



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