



Joshua Carey

Year of Call: 2015

Joshua has a significant practice, predominantly in the areas of Tax, Public and Administrative Law (including Judicial Review), Commercial Litigation, Civil and Criminal Fraud and Business Crime. His wide range of clients include large multi-nationals, and central and local government.

Before joining the Bar, Joshua was a solicitor advocate in a “Big Six” Australian law firm specialising particularly in the areas of Judicial Review, Commercial Litigation, Constitutional Law and Freedom of Information Litigation. After relocating to London, he became the Lead Solicitor for the Missing Trader-Intra Community (MTIC) Litigation team for HMRC in London.

He is a member of the Attorney General’s C Panel of counsel, and has experience of drafting policy guidance for government departments for implementation and use by departmental officers as well as of statutory interpretation and construction of financial legislative instruments.

He is called to the Bar of Queensland, Australia.

Tax

Joshua is a specialist in direct and indirect tax litigation both for HMRC and the taxpayer. He gives pragmatic advice and is highly regarded for his advocacy skills.

Prior to private practice at the Bar, Joshua was a member of the HMRC VAT Litigation Team. He has appeared in the First-tier Tribunal (Tax Chamber) on a variety of issues and was the lead lawyer for HMRC in London in respect of a significant number of Missing Trader Intra-Community Tax (MTIC) cases. Cumulatively, Joshua has defended in excess of £650 million worth of VAT in litigation on behalf of HMRC. He is also very experienced in matters involving the use of Schedule 36 Finance Act 2008 powers by Revenue and Customs officers as well as issues involving HMRC’s use of Schedule 24 Finance Act 2007 penalties, Schedule 55 Finance Act 2009 and s63 Value Added Tax Act 1994 misdeclaration penalties.

Some example of the types of work that he has been instructed in include:

- AWRS and WOWGR refusal decisions
- Excise assessments and penalties
- VAT registration appeals
- VAT assessments and associated penalties
- Self-assessment penalties
- Top slicing relief
- Avoidance litigation (including DOTAS, s74A – D Income Tax Act 2007 and Ramsay abuse)

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- Damages litigation in the High Court arising out of alleged Revenue officer's negligent performance of their duties

He is a leading barrister in respect of tax penalties having been instructed in the three key authorities relating to the test to be applied, the impact of proportionality on penalties, and what might amount to "special circumstances". More recently Joshua has been instructed in direct tax cases arising out of damages settlements and the tax treatment of such sums of money (i.e. are they emoluments for tax purposes).

Off-payroll working (IR35)

Joshua accepts instructions in IR35 matters for both HMRC and the taxpayer.

His most recent matter relates to the tax treatment of the earnings of a sports broadcaster and their production company.

Commercial Litigation

Joshua has extensive experience in Commercial Litigation, predominantly during his practice as a solicitor in Australia.

Amongst his notable instructions are an international joint venture dispute for one of the leading mining companies in the world and a \$8m AUD (£4.6m) breach of contract case where the allegation was, amongst other things, that there were breaches of an implied term of the contract and whether the damages that were claimed were too remote.

Business Crime

Joshua's white collar criminal practice encompasses financial crime, criminal tax, and proceeds of crime matters (including account freezing orders and cash forfeiture orders).

He has been separately instructed to defend alleged frauds on both the Ministry of Defence and the Home Office where there were millions of pounds said to have been defrauded.

He has recently accepted instructions in a money laundering matter where the Defendant was accused of converting criminal property.

He brings experience as an accomplished tax practitioner to the criminal sphere to aid his clients. He is often called on to deploy his tax experience to counter allegations made by the Crown that someone has evaded VAT or somehow cheated the revenue. As part of his robust defence of his clients in tax cases he has been able to raise arguments about the manner in which VAT assessments have been made, both in terms of time limits within which they ought to have been made and the value of the assessments.

Notable cases

Court of Appeal

- *The Commissioners for HM Revenue and Customs -v- Ian Charles t/a Boston Computer Group Europe [2019] EWCA Civ 2176* (Lewison LJ, Newey and Asplin LJ) The Revenue successfully appealed against a refusal to strike out a Claim in the Queen's Bench Division where it was originally held by a High Court Judge that a narrow duty of care may exist on the Revenue to verify the factual accuracy of both its own evidence and its opponents evidence because a taxpayer was exercising a statutory right of appeal. The

Court of Appeal unanimously allowed the Appeal and opined that there was clearly no such duty of care that could arise in adversarial litigation between parties, even where one of the parties was a statutory authority.

High Court (Reported decisions)

- *R (On the Application of Thames Wines Limited) -v- HM Revenue and Customs* [2017] EWHC 452 (Admin) which was a case about whether HMRC could deregister a taxable person in the absence of domestic authority.

Upper Tribunal (Tax and Chancery Chamber)

- *Nicholas and Charlotte Sandham t/a/ Premier Metals Leeds* [2020] UKUT 193 (TCC) (Miles J and UTJ Richards) The Appellants claimed that the Kittel principle did not apply to a partnership where a dishonest agent was carrying out the transactions. It was suggested that because a partnership is comprised of natural persons, if they did not know or have the means of knowing of knowing then dishonest knowledge of an agent could not be attributed to them. The Upper Tribunal rejected this on the basis that the ordinary principles of agency applied so as to make a principal liable.
- *HM Revenue and Customs v. Nigel Rogers and Craig Shaw* [2019] UKUT 0406 (TC) a successful appeal by HMRC against an FTT decision on the papers in relation to late filing penalties. HMRC appealed on four grounds. Whether the FTT had jurisdiction to consider whether a valid Notice to File pursuant to s8 Taxes Management Act 1970 had been issued to them for the purposes of a Schedule 55 Penalty; whether the FTT wrongly applied a literal interpretation of s8 of the TMA by concluding that it required an officer to be identified when a s8 Notice to File was issued; whether the FTT was wrong to conclude that s8(1) of the TMA required a s8 Notice to File to be issued by a “flesh and blood” officer rather than a computer, and whether the FTT had denied the Revenue procedural fairness in arriving at its decision. Joshua was led by Aparna Nathan QC.
- *Wiesenfeld and Anor -v- The Commissioners for HM Revenue and Customs* [2019] UKUT 301 (TCC) (UTJ Richards and UTJ Greenbank) The Appellants appealed against the decision to refuse to permit evidence to be adduced by and through their representative in a Polish Loss Relief appeal in the Tribunal. The FTT refused to permit the representative to say what he had heard as this was not contained within the witness evidence, and in any event was said to be hearsay. Joshua’s advocacy was praised by the Upper Tribunal as both being “fair” and “valiant”. The Upper Tribunal determined that the FTT had been wrong to exclude the evidence on the basis that it was hearsay but that this did not make any difference to the overall outcome of the Appeal which turned on whether the careless penalty that had been imposed (the Appellants wrongly having claimed loss relief) was proper. The Upper Tribunal said that it was and the Appeals were dismissed.
- *Elbrook Cash and Carry Limited -v- The Commissioners for HM Revenue and Customs* [2019] UKUT 201 (TCC) (Zacaroli J and UTJ Scott) This case considered whether witness statements needed to have opinion redacted from them or whether the Tribunal had power to consider opinion evidence and simply give what weight it wished to that evidence. It also revised the so-called Fairford direction so as to permit cross-examination where there was no positive case advanced, but a challenge to the evidence was sought to be made by an Appellant. This represents an amendment to the guidance originally provided in Fairford but the Upper Tribunal refused to go so far as to say the Fairford direction was wrong in principle. Joshua was led by Howard Watkinson.
- *Barry Edwards -v- The Commissioners for HM Revenue and Customs* [2019] UKUT 131 (TCC) (Nugee J and UTJ Herrington) This case examined whether the Schedule 55 Penalty regime was proportionate and the fact that even if no tax was due, this did not amount to a “special circumstance” for the purposes of reducing a tax penalty to nil.
- *Christine Perrin -v- The Commissioners for HM Revenue and Customs* [2018] UKUT 0128 (TCC) (UTJ Herrington and UTJ Poole) This case marks the first opportunity the Upper Tribunal has had to consider the test for “reasonable excuse”. It is the now the leading authority applied by the First-tier Tribunal when considering whether what the taxpayer did was objectively reasonable when compared against what a

reasonable taxpayer would have done.

- *Timothy Raggatt QC -v- The Commissioners for HM Revenue and Customs [2018] UKUT 412 (TCC)* (UTJ Herrington and UTJ Greenbank) This case dealt with the application, and confirmation, of the principles relating to “reasonable excuse” espoused in *Perrin -v- HMRC*. It confirmed that for an appeal against a penalty decision of the FTT, the test was one of perversity.

First-tier Tribunal (Tax Chamber)

- *Euro Beer Distribution Ltd -v- The Commissioners for HM Revenue and Customs [2019] UKFTT 566 (TC)* (Judge Staker) This was an appeal against a VAT deregistration on the basis that it ceased to make or have the intention of making taxable supplies as well as a revocation of a WOWGR. The Tribunal found that its jurisdiction when considering deregistration from VAT in this context was both appellate and supervisory. Relying upon Judge Robin Vos’ decision of *David Lowe -v- HMRC* it was said that the Tribunal has a full appellate jurisdiction in relation to the question whether the Appellate has ceased to be registerable, and once that is established the Tribunal has supervisory jurisdiction in respect of the discretion that has been exercised. The Tribunal arrived at the orthodox position in respect of the WOWGR appeal (namely the Gora jurisdiction). The Tribunal dismissed the Appellant’s appeals.
- *The Commissioners for HM Revenue and Customs -v- EDF Tax Ltd (in creditors’ voluntary liquidation)* (Judge Mosedale) This was only the third appeal to be considered by the Tribunal when assessing whether an tax arrangement was “notifiable” or should be “treated as notifiable” for the purposes of the *Finance Act 2004* (i.e. the DOTAS provisions). The Tribunal found that the Delta Arrangement at the heart of the Application were notifiable arrangements as they had three hallmarks present (premium fee, standardised tax products and employment income through third parties). It also found that EDF Tax was a promoter within the meaning of ss307 of the *Finance Act 2004*.
- *Field Opportunities Limited -v- The Commissioners for HM Revenue and Customs [2019] UKFTT 531 (TC)* (Judge Beare and Ms Hunter) This was the first PPI Data case to come before the Tribunal wherein the allegation was that the taxpayer knew or should have known that its transactions were connected with fraudulent default. This case involved considering of data protection laws from the time of the transactions and required the Revenue to obtain multiple expert statements dealing with how the market operated at the time including what the reasonable business in the market should have known. The Revenue were successful in persuading the Tribunal that the taxpayer should have known its transactions were connected with fraudulent default.
- *Sandhamtrading (t/a Premier Metals Leeds) -v- The Commissioners for HM Revenue and Customs [2019] UKFTT 218 (TC)* (Judge Rupert Jones and Mr Farooq) This was an MTIC case where the sole question was whether an agent of a partnership could have their knowledge imputed to the partnership for the purposes of the Kittel test.
- *Michael Gold and Anne Elizabeth Gold t/a Goldhill Associates -v- The Commissioners for HM Revenue and Customs [2019] UKFTT 186 (TC)* (Judge Allatt and Mrs Farquharson) This was an MTIC case where the Appellant trader was one of the largest sellers of cheat game ware and was the sole authorised distributor in the United Kingdom for similar products.
- *Tower Bridge GP Limited -v- The Commissioners for HM Revenue and Customs [2019] UKFTT 176 (TC)* (Judge Rupert Jones) This was the first case which dealt with the obligations to retain valid invoices, alternative evidence which could be accepted by an officer and the impact of the Court of Appeal decision of *Zipvit Limited -v- HMRC [2018] EWCA Civ 1515*. There was also an associated MTIC. This decision also marks one of the first financial institutions to come before the Tribunal following the carbon credit trading in 2009 which saw carousel fraud spike across the entire European Union.
- *Arthur & Ors -v- The Commissioners for HM Revenue and Customs [2018] UKFTT 703 (TC)* (Judge Short and Mr Bird) This was a Schedule 36 Information Notice case in respect of 4 Appellants. The Tribunal also considered, in part, what was necessary to bring a valid appeal before the Tribunal.
- *Goldshine Trade Limited -v- The Commissioners for HM Revenue and Customs [2018] UKFTT 601 (TC)*

(Judge Rupert Jones) This was an Application by the taxpayer to extend the time for filing its Notice of Appeal on the basis that the Revenue were said to have assessed out of time. The Judge found that it was arguable that the Revenue had assessed out of time, but dismissed the Application.

- *Fameface Import Limited -v- The Commissioners for HM Revenue and Customs [2018] UKFTT 565 (TC)* (Judge Beare) This was an Application to extend time to bring an appeal. Judge Beare determined that time should not be extended.
- *Brian Giles -v- The Commissioners for HM Revenue and Customs [2018] UKFTT 536 (TC)* (Judge Popplewell and Mrs Akhtar) which was a case involving tobacco that was being held by the taxpayer without duty having been paid. The tribunal found that it could not go behind the condemnation proceedings which were not challenged and that there was no reasonable excuse when judging what the Appellant did against the reasonable taxpayer in the position of the Appellant.
- *CF Booth Limited -v- The Commissioners for HM Revenue and Customs [2017] UKFTT 813 (TC)* (Judge Brooks and Mrs Hunter) This was a denial of zero rating appeal, the first Mecsek appeal and a Kittel appeal. The Tribunal found that the Appellant knew its transactions were connected with fraudulent evasion of VAT.
- *Elbrook (Cash and Carry) Limited -v- The Commissioners for HM Revenue and Customs [2017] UKFTT 650 (TC)* (Judge Brooks) This was an Application for further and better particulars made unsuccessfully by the Appellant.
- *Unicorn Shipping Limited -v- The Commissioners for HM Revenue and Customs [2017] UKFTT 464 (TC)* (Judge Mosedale) This was a case in which the Commissioners sought, and were granted, further and better particulars.
- *JTC Environment Limited -v- The Commissioners for HM Revenue and Customs [2017] UKFTT 155 (TC)* (Judge Hyde) This was a case in which the Commissioners were, and did, successfully resist permission to appeal being granted out of time.
- *CF Booth Limited -v- The Commissioners for HM Revenue and Customs [2016] 261 (TC)* (Judge Berner) This was a case about the appropriateness of “Fairford Directions” being applied to the case.
- *CF Booth Limited -v- The Commissioners for HM Revenue and Customs [2015] UKFTT 407 (TC)* (Judge Berner) This was a case about whether it was appropriate to consolidate two appeals together.
- *Foneshops Limited -v- The Commissioners for HM Revenue and Customs [2015] UKFTT 410 (TC)* (Judge Mosedale) This was a case about whether it was an abuse to relitigate an issue that ought to have been run in earlier proceedings.

Publications

Contributor to the Revenue Volume of Atkins Court Forms.