

**Reprinted from British Tax
Review
Issue 1, 2015**

Sweet & Maxwell
**Friars House
160 Blackfriars Road
London
SE1 8EZ
(Law Publishers)**

To subscribe, please go to
<http://www.sweetandmaxwell.co.uk/catalogue/productdetails.aspx?recordid=338&productid=6614>.

Full text articles from the British Tax Review are also available via subscription to www.westlaw.co.uk, or <https://www.checkpointworld.com>.

SWEET & MAXWELL

Introduction to Special Issue in Honour of John Tiley

Professor John Tiley CBE QC (Hon) FBA 1941–2013: appreciations

John Tiley was not only a major figure in the UK tax community throughout his career. He was the pre-eminent tax law academic in the UK, leading the way for others and keeping alive a flame that was often threatened. Without John, many of those writing in this issue, including myself, probably would not be working on tax law now. Far greater numbers in academia, practice, the judiciary and the revenue authorities, both in the UK and around the world, also owe to him aspects of their approach to legal reasoning and argument, as well as an understanding of taxation issues. The numerous expressions of loss, as well as great affection and respect, on the sad occasion of John's death, were testament to the large number and variety of people John had advised, befriended, assisted, inspired and cajoled into doing more than they thought was possible. John had the ability to make many believe he was a very special friend to them, and he was.

Several obituaries and appreciations of John have been written. The reader is commended especially to the wonderful tributes paid by Lord Falconer of Thornton PC, QC, the former Lord Chancellor, and by Professor Eilis Ferran FBA, Chair of the Faculty Board of Law at Cambridge at the packed Memorial Service held in the Chapel at Queen's College Cambridge.¹ John had been a Fellow at Queen's since 1967 and played a very full part in college and law faculty life, making significant contributions to both, but here I shall focus on his contribution to tax scholarship and the revenue law community.

John started his legal career as a student at Lincoln College, Oxford, where he was a Winter Williams law scholar. He was a lecturer at Oxford and Birmingham universities, before moving to Cambridge in 1967. The publication of *Revenue Law*,² his seminal text book on the subject, in 1976, established him as the leading UK academic tax law writer at that time and also spread his fame abroad. In 1990, Cambridge University recognised his major achievements with the title of Professor of Tax Law. In 2000 he set up and became director of the Cambridge Law Faculty's Centre for Tax Law, established with support from the Chartered Institute of Taxation, the International Fiscal Association Congress Trustees and KPMG. Of particular note were the Tax History Conferences he devised and organised, attended by scholars from around the world, and the public seminar programme he ran, which brought together participants from HMRC, HM Treasury, academia and practice in the best tradition of tax policy debate in the UK, as pioneered by GSA Wheatcroft, who founded the *British Tax Review* for a similar purpose.³

¹Published in the *Queen's College Record* (2014), available at: http://issuu.com/jw463/docs/queens__college_record_2014 [Accessed February 13, 2015].

²J. Tiley, *Revenue Law* (London: Butterworths, 1976).

³The seminars are referred to by D. Hartnett in his forward to J. Avery Jones, P. Harris and D. Oliver (eds), *Comparative Perspectives on Revenue Law Essays in Honour of John Tiley* (Cambridge: CUP, 2008), xi.

2 British Tax Review

Revenue Law is in its 7th edition, now so extensive that part of it has had to be hived off to a second book, *Advanced Topics in Revenue Law*.⁴ The book was rescued by Richard Hart in 2000, following the insistence of its previous publisher that it had to be turned into a practitioner book. Typically of John, he did not fall out with the original publisher, but continued the book with them in its practitioner form (now *Tiley & Collison's UK Tax Guide*),⁵ enlisting co-author, David Collison, whilst rescuing the student version by taking it to its new home. The latest version of *Revenue Law*, now in two volumes, was co-authored with my colleague at Oxford, Dr Glen Loutzenhiser, John's ex-student (who also worked with John on the 5th and 6th editions). *Revenue Law* continues to be the key work of reference for tax law students throughout the UK and John made sure to leave it in very good hands as a legacy for the UK tax community.

In addition to his book, John was the author of many fine tax articles, not least those he wrote for this *Review*, though he also spread the work on tax to a non tax audience, in particular through his writing for the *Cambridge Law Journal*.⁶ His multi-part contributions on tax avoidance are well known.⁷ His detailed consideration of US judicial anti-avoidance doctrines deepened our understanding of the then very recent UK developments and put them into the kind of comparative perspective that careful academic research can provide. John's own journey shows him resisting radical new doctrines and unthinking importation of US law into the UK and supporting the UK judges in their "typical common law method of experimentation" but deciding, in 2004, that foreign experience showed "that a GAAR just might be better—for the Revenue" than relying on case law.⁸ This made John a natural choice for membership of Graham Aaronson's study group advising on whether the UK should adopt a general anti-abuse rule.⁹ John played his usual role as a member of this group, making comments that were witty, sometimes enigmatic and always well informed. So, for example, John insisted that the final report should refer not to "straining" of legislation by the courts, which would be unconstitutional, but to "stretching" it, which was acceptable because it had been recognised by Lord Walker in *DCC Holdings (UK) Ltd v HMRC*¹⁰—an apparently small point, but one that turned out to be important in light of the

⁴ Both books are published by Hart Publishing as J. Tiley and G. Loutzenhiser, *Revenue Law: Introduction to UK Tax Law; Income Tax; Capital Gains Tax; Inheritance Tax*, 7th edn (Oxford: Hart Publishing, 2012) and J. Tiley and G. Loutzenhiser, *Advanced Topics in Revenue Law: Corporation Tax; International and European Tax; Savings; Charities* (Oxford: Hart Publishing 2013). Glen Loutzenhiser joined John as a named co-author in 2012, having assisted with the previous edition.

⁵ K.M. Gordon, X. Montes-Manzano, J. Tiley (eds), *Tiley & Collison's UK Tax Guide 2014–15*, 32nd Revised edn (Tolley, 2014), now with a team of authors.

⁶ See, for example, J. Tiley, "Tax, marriage and the family" (2006) 65(2) *The Cambridge Law Journal* 289.

⁷ J. Tiley, "Judicial anti-avoidance doctrines: the US alternatives—Part 1" [1987] BTR 180; J. Tiley, "Judicial anti-avoidance doctrines: the US alternatives—Part 2" [1987] BTR 220; J. Tiley, "Judicial anti-avoidance doctrines: some problem areas" [1988] BTR 63; J. Tiley, "Judicial anti-avoidance doctrines: Corporations and Conclusions" [1988] BTR 108. See also E. Jensen and J. Tiley, "The Control of Avoidance: the United States Experience" [1998] BTR 162.

⁸ J. Tiley, "Tax Avoidance Jurisprudence as Normal Law" [2004] BTR 304.

⁹ G. Aaronson, *GAAR Study: A study to consider whether a general anti-avoidance rule should be introduced into the UK tax system* (November 11, 2011), available at: http://webarchive.nationalarchives.gov.uk/20130321041222/http://www.hm-treasury.gov.uk/d/gaar_final_report_111111.pdf [Accessed February 13, 2015]. This editor was also a member.

¹⁰ *DCC Holdings (UK) Ltd v HMRC* [2010] UKSC 58; [2011] STC 326. Lord Walker, delivering the judgment of the Court, at [25] noted—"argument has focused, in particular, on whether and how far the words in section 84(1) [FA

number of times that paragraph of the report has been cited. John played a similar role on the Tax Law Review Committee of the Institute for Fiscal Studies, often asking a question that came from left field but that threw real light on the issue under discussion.

In 1998, rather belatedly given how much refereeing he had been doing for the *Review* and how much he had written for it, John became a member of the *Review's* editorial advisory panel. In this capacity he continued to referee articles, giving anonymous advice to many young authors through this medium, and also providing wise counsel about upcoming issues that should be covered.

Throughout his career, John strived to improve tax teaching and research in UK universities and to ensure that the UK was playing its part in international tax scholarship. His writing, particularly his text book, would have been contribution enough to this and he also travelled extensively, lecturing in many universities across the world. In addition he was a founding member of the European Association of Tax Law Professors.¹¹ He spent some considerable time persuading this group that the title of “Professor” should not be a prerequisite for membership by a UK academic of this group, given how rarely that title was bestowed in the UK compared with the position in other European countries. Characteristically, he did not want to be a member of a tiny elite group of UK representatives but preferred to make the Association one that could assist and engage his more junior UK colleagues. He succeeded in opening membership up so that the UK could be fully represented in this European setting. John and his wife Jillinda made many friends on their various travels and at the EATLP conferences and they also offered wonderful hospitality to many of these contacts when these academics visited Cambridge. Both John and Jillinda were true ambassadors for tax law in the UK in the academic world.

John was determined to increase the number of tax academics in the UK, and in 2001 he raised funding from KPMG to enable tax posts to be created in Cambridge (where Peter Harris was employed) and in Oxford, creating a Chair to which I was appointed.¹² John was pleased, but at times felt that it was one step forwards, two steps back, as other advances in tax teaching were lost. In 2006, in the 50th anniversary special issue of this *Review*, he wrote that “There is much that is good and successful but also much that could be better; we must avoid complacency ...”.¹³ He wrote of the need for more tax posts and above all for funding for doctoral students who would be the tax academics of the future. That the Chartered Institute of Taxation gives some support for this purpose was to a great extent due to John’s efforts, but he considered that more was needed and this is something that we, his successors, must keep working on. Like John we must most certainly avoid complacency and there is much more to be achieved, but we must also recognise his great successes, which gave us a much better basis for our work than John had when starting out.

Tax law is still not taught in enough universities in the UK and where it is taught, resources are often stretched (or maybe it should be “strained” in this case!). I shall not try to mention all

1996] ... can be stretched (or need to be stretched) in order to avoid the absurd result of ...”, cited in Aaronson, above fn.9, para.3.13.

¹¹ As set out in the constitution of the European Association of Tax Law Professors, available at: <http://www.eatlp.org/index.php/about-the-eatlp/constitution> [Accessed February 13, 2015].

¹² In Oxford KPMG has now been replaced by Pinsent Masons LLP, who are generous donors to the Oxford Law Faculty, supporting this editor’s Chair.

¹³ J. Tiley “50 years: Tax, Law and Academia” [2006] BTR 229, 229.

the notable exceptions, where tax law is taught well in UK universities, as I may make an inadvertent omission, but suffice it to note here that tax teaching in Cambridge continues, ably conducted by Professor Peter Harris and Dr Dominic de Cogan, both of whom were students of John's and both of whom have contributed to this special issue in his honour.¹⁴ In addition, I am fortunate to have John's ex student Glen Loutzenhiser, also an author in this issue,¹⁵ as a colleague at Oxford University (as well as other excellent colleagues in the Oxford Centre for Business Taxation). These developments should give us hope and much to build on, but as John would be the first to point out, we have some way to go when compared with other jurisdictions. This needs the academics concerned to make a strong intellectual contribution to tax law and policy and to show, through their work, the interactions between tax law and other areas of legal study in order to ensure a place in the legal academy. Interdisciplinary work is very important, but the independent contribution that tax law can make to that needs to be recognised and respected. Support from the wider tax community remains vital and much appreciated.¹⁶

The esteem and affection in which John was held shines through the writings in this special issue, as it did in the contributions to the excellent book of essays, *Comparative Perspectives on Revenue Law* edited in John's honour by John Avery Jones, Peter Harris and David Oliver.¹⁷ The *Comparative Perspectives* book contains essays from distinguished tax academics around the world and is a superb tribute. In this special issue we have focussed on collecting together some fascinating contributions from John's colleagues, ex students and tax history and policy enthusiasts, all also of great distinction and with a personal link to John. John's love of tax history has influenced several of the contributors, as has his interest in comparative law, statutory interpretation and anti-avoidance and in tax and the family. Each author explains his or her reason for their choice of topic in their piece. Unusually for this *Review*, we have left these pieces in the first person where that is what the author chose, because they were very personal pieces. This in itself is a tribute to John, who was a wonderful scholar and also a true friend to so many.

Judith Freedman

An additional appreciation

I should like to add a short comment on behalf of the many students that John introduced to the study of revenue law. I was very fortunate in the mid-1970s to be one of those students who took John's tax policy class at Cambridge. The course followed an unusual format, but one that lent itself particularly well to final year undergraduates. The first term was given over to a series of introductory lectures on tax law by John; meanwhile, the participants began researching papers on aspects of the UK tax system. During the second and final term, students delivered short presentations of their papers, and then submitted the final dissertation for assessment. The format

¹⁴ P. Harris, "Income Tax in South Africa and Australia Turn 100: A Letter from the Queen for the Dizygotic Twins?" [2015] BTR 93; D. de Cogan, "Purposive Interpretation in the Age of Horse Trams" [2015] BTR 80.

¹⁵ G. Loutzenhiser, "Transferable Personal Allowances: A Small Step in the Wrong Direction" [2015] BTR 110.

¹⁶ J. Freedman, "Epilogue: Establishing the foundations of tax law in UK universities" in Avery Jones, Harris and Oliver (eds), above fn.3.

¹⁷ Avery Jones, Harris and Oliver (eds), above fn.3.

not only meant that we learnt some revenue law, but that we also were introduced for the first time to independent research and writing in tax. I do not think I should have gone on to write a doctorate or to teach (and become an editor of this *Review*) were it not for that course.

Many of those who took John's policy course over the years ended up in tax practice. I am not certain how the tax profession in this country (and sometimes elsewhere) would have fared were it not for the introduction we received in John's rooms in Queen's. We all owe him an immense debt of gratitude.

Philip Baker 