

Comparative Perspectives on Revenue Law

Essays in Honour of John Tiley

EDITED BY JOHN AVERY JONES, PETER HARRIS AND DAVID OLIVER

CAMBRIDGE

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REVENUE LAW

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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521887779

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First published 2008

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Comparative perspectives on revenue law : essays in honour of John Tiley / edited by
John Avery Jones, Peter Harris, and David Oliver.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-88777-9 (hardback)

1. Taxation – Law and legislation – Great Britain. 2. Tax evasion – Great Britain.
3. Family – Taxation – Law and legislation – Great Britain. I. Tiley, John. II. Jones, John Avery,
1940– III. Harris, Peter, 1964– IV. Oliver, David (J. David B.)

KD5359.A2C66 2008

345.41'0233 – dc22 2008003212

ISBN 978-0-521-88777-9 hardback

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COMPARATIVE PERSPECTIVES ON REVENUE LAW

Dedicated to the work of John Tiley, the premier tax academic in the UK for more than two decades, this volume of essays focuses on two themes that, among others, inspire the writings of Tiley. The first of these themes, tax avoidance, involves using tax law in a manner that is contrary to legislative intent. The second theme, taxation of the family, involves proper identification of the tax subject and is therefore one of the fundamental structural features of income tax. Drawing on historical precedent, academic excellence and personal experience, the importance of Tiley's contribution to the tax field is identified through contributions by some of the world's most influential tax writers.

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FOREWORD

DAVE HARTNETT

It is a real pleasure and a privilege to have prepared this foreword to a collection of essays honouring John Tiley as he nears retirement from the chair in Taxation Law at Cambridge University. The essays have been prepared by some of the most insightful writers on tax of recent times, all of them friends of John and some of them former students. In the paragraphs that follow I have described my personal experience of John, set out to say something about his achievements as one of the leading tax thinkers of modern times and then attempted to reveal something of the man that may not be readily apparent from his writings.

I first met John in the foyer of the Cambridge Law Faculty. As I walked in, he recognised me immediately – I still do not know how – and I realised that I was with the person who had been influencing my understanding of tax from the very first days of my career in the Inland Revenue.

In the second half of the 1970s, the Inland Revenue training regime for graduate entry tax inspectors was demanding, with a pass mark in internal examinations of 70 per cent. Tax cases had to be learnt by rote, which came hard after several years spent in research and university teaching. For a while, tax seemed a lot less stimulating than Cicero's speeches or letters. John's *Revenue Law* – essential reading for anyone with a serious interest in tax – changed all that. His ability to bring out the crucial importance of decided cases by reviewing their fit with precedent and his insights into the thinking of judges and the arguments of counsel, brought tax to life for me. Then there was his strong sense that tax should have a discernible structure and rationale, with his expectation that policy development should take that into account or risk creating a tax system without order. (More than once in recent years John has told me of his disappointment that tax policy changes in the UK and elsewhere have not always seemed to him to fit well with the established policy and legal framework and that they were supported by an inadequate explanation of why that should be so.)

I also discovered in *Revenue Law* a gentle irreverence and a sense of mischief when John wanted to suggest that judges, leading counsel, and even the UK's tax administration, were misguided in their arguments or conclusions. As I found my way in tax, and built up card indexes of cases – the nearest thing then to modern databases – I had three sections for each case: what the Inland Revenue told me to make of it, what I made of it for myself, and what *Revenue Law* taught me. Making sense of the three comments was rarely easy, but the *Revenue Law* element was often provocative and sometimes made me smile.

As I got to know John well and our friendship developed, I found there was a prescience in his suggestions and advice. He has long been concerned that tax administrations would get themselves into difficulty by becoming too dependent on sophisticated IT – his principal fear being that the IT would fail or that the confidentiality of taxpayers would be put at risk in ways that could not be immediately foreseen. The difficulties that arose with the IT supporting the implementation of tax credits in the UK and the growing global threat from identity fraud, often involving organised crime, have shown how right he was. His concerns about tax law research and teaching in universities in the UK have also been well founded and his imminent retirement is a timely reminder to all of us interested in tax law that we need to generate investment in tax in our universities. And his advice that tax law academics should play a greater part in the production of tax legislation – now happily addressed through his membership of the steering group overseeing the re-write of tax law in the UK – is being heard around the world.

John has not been alone in seeing the importance of tax academics, lawyers and practitioners (in the public and private sectors) getting together to share ideas and compare how taxes and their administration work. However, the seminar programmes he has organised in Cambridge in recent years have made a huge contribution to ensuring this happens. It is a mark of the esteem in which he is held that scholars, practitioners and tax officials of the highest standing from near and far have eagerly made their way to Queens' College to deliver stimulating and sometimes controversial seminars to audiences every bit as eager to be there.

The son of a distinguished tax inspector (who appears in *Revenue Law* through the decided case of *Grey v Tiley*), John was a scholar at Winchester and a student in Lincoln College, Oxford, where his tutor was Brian Simpson, a legal historian whose boundless curiosity and determination to establish not what a rule was but why it existed had a profound influence on him. This approach will be immediately recognised by those who

know John in his teaching and public speaking. Academic posts at Oxford and Birmingham followed. In 1964 he published his first article – on the ‘Rescue Principle’ – arguing that a tortfeasor could owe a duty of care not just to the immediate victim but also to foreseeable rescuers. The courts have long adopted this principle and it led to John being known to his friends as ‘the original two cake man’.

In 1967 John was awarded a fellowship at Queens’ College, Cambridge, having been appointed to an assistant lectureship in the University. News of the fellowship reached Jillinda, John’s wife, before he learnt of the lectureship, and when asked if she would arrange for him to telephone the College President the next day to say whether he would accept the fellowship, she explained that would not be easy as he was due to play cricket all day. Fortunately, nothing amiss came of this, not least because the President of Queens’ was taken with the idea of John playing cricket, and for almost 41 years Queens’ has been John’s academic home and the place where *Revenue Law* and so much else that has informed and inspired the tax world has been produced.

Few could doubt that Queens’ and John Tiley were made for each other. He has served in almost every college role and will be remembered by some as the ‘grand inquisitor’ in a BBC television programme about Cambridge life when he was admissions tutor. When he was Director of Studies in Law, he and Jillinda would entertain huge numbers of young men with voracious appetites – there were no young women in Queens’ at the time. (He was a delighted admissions tutor when Queens’ admitted women for the first time.) As Acting Bursar, he made some judicious purchases of land which in time generated a lot of money for the college. And at various times he has been both Vice-President and Acting President of Queens’. But perhaps most typical of the man, he has always been particularly caring of the college staff.

Famously, during a royal visit to Cambridge, the Duke of Edinburgh, passing the window of a room in the Old Schools where John was teaching, commented on the degree of hilarity being enjoyed by a class and queried what was happening inside. It was, of course, John bringing tax law to life for his students. Within the Law Faculty, John has been Director of the LLM course with particular responsibility for recruitment and care of the many overseas students and he has been Chairman of the Faculty. He was awarded his chair in 1991.

It is perhaps as a teacher of tax law that John has felt most fulfilled. He has influenced and shaped generations of students, many of them now in very senior positions in their firms or practices, members of the judiciary

or government ministers, in the UK and all over the world. This collection of essays clearly demonstrates his influence as a writer and no more needs to be said here, though on a personal note I have been greatly heartened when he has mentioned with approval something he thought I had got right. And I have thought very carefully about issues he has said I have got wrong.

As Chairman of the Faculty, he introduced social events to bring people together where there had been none before. It was also John who led the Faculty as plans were laid for its new Norman Foster building. At the time, lectures mostly took place in the Old Schools and dons taught and worked from their college rooms. The Faculty had to raise the funds for the building to be erected on land given by Caius in exchange for the Old Squire Library behind the Senate House. There was much opposition to plans for centralisation of the Faculty and at times it appeared that the Faculty members really did not know what they wanted to do. John was very much in the middle of all this, steering the project to successful delivery while fronting to good effect the fundraising and handling some of the negotiations with the architects. Those who have used the building will know how well equipped it is and that it has the support staff needed to make it a special place to work.

The sense of a unified Faculty is widely credited to John, whose greatest achievement is seen by some as having ensured decent catering on site through a branch of Nadia's, the Cambridge bun and sandwich shop much beloved of students. When the Foster building was being planned and erected, most Faculty members said they did not want an office there. Today, the Faculty has a real focus and has grown to have a number of Centres which enable different groups to share ideas, host visitors and mount conferences. None of this would have been possible without the vision and team building which John masterminded. He is very proud to be the Director for the Centre for Tax Law and to be bringing to Cambridge in 2008 the conference of the European Association of Tax Law Professors.

John is very much a family man. Married to Jillinda, who is also a barrister and academic lawyer, they have three children of whom they are immensely proud. Interestingly, none of their children has followed them into law: the eldest is a chartered accountant and finance director in industry, the second a medical practitioner and the third an archaeologist. They have travelled the world together, making many friends, in connection with John's sabbatical posts and lecturing engagements – first to Dalhousie University in Nova Scotia, and later to universities in the US,

New Zealand and Australia. John has a passion for boats and trains, once taking the family across Canada by train to Vancouver, then by plane to Auckland and then home by ship from Melbourne so that he could sail through the Panama Canal.

John is also passionate about most sports and is famed for watching any sport that involves a ball, whatever the time of day or night. He endeared himself to students at Case Western Reserve University in Cleveland with his knowledge of baseball and American football and confounded colleagues at Berkeley, California, where he was a visiting Professor, by making students laugh with his references to baseball and football in law lectures.

Music runs in the Tiley family. His tax inspector father was a gifted conductor and as a child John played the oboe, an instrument taken up later by his second son. As part of his preparation for retirement he has taken up the piano again and bought himself a new piano – a Steinway, because it sounds better. John also has a love of walking and in his youth walked all over Switzerland and Austria with his father and, more recently, has trekked in the Himalayas with his younger son. But it is Scotland and the island of Colonsay in the Hebrides for which he has a special fondness. Having read about the role of the forbears of the island's owner, Lord Strathcona, in building the Canadian Pacific railroad, John could not resist an advertisement placed in *The Times* for holiday cottages on Colonsay which said that most people would not like the place, because there was no entertainment and nothing to do. John just had to go, and he and Jillinda have been back nearly twenty times since.

The award of a CBE in the 2003 New Year's Honours List was fitting public recognition for John Tiley's service to tax law over many years. His family, friends and colleagues were delighted for him. What few may know, however, is that John attended the investiture ceremony carrying in his pocket the insignia of OBE awarded to his father, who would have been very proud of him.

It would be all too easy to conclude that John Tiley's abiding passion is for tax law but that does not quite capture the man. Like many fans of ball games, John will remember the description of football attributed to Bill Shankly, the former Liverpool manager:

Some people believe football is a matter of life and death. I am very disappointed with that attitude. I can assure you it is much more important than that.

A more enigmatic comment on tax law can be found in *Revenue Law*:

Tax law provides us with a sharp instance of what some think life is all about – money, sex and power.

With a loving family, friends and colleagues who worship him, a huge range of interests and a global reputation in tax, life seems a bit more complex for John whose interests demonstrate a curiosity that knows no bounds.

Dave Hartnett CB
Acting Chairman,
HM Revenue & Customs, UK

FOREWORD

HUGH AULT

I was pleased and honoured to be asked to write a foreword to this collection of essays in honour of John Tiley, an old friend and respected colleague. Both the substance of the contributions in the collection and the status of the authors show the esteem in which the international tax community holds John.

It is appropriate that the title of the collection involves *comparative* perspectives on revenue law, as John's scholarship and academic activities were centred on comparative interests. He has been a visiting scholar at many foreign institutions, particularly in the US and France, and that experience gave a depth and substance to his comparative writing. In the other direction, he was the point of reference for all comparative work which deals with UK law. He was a welcoming host to many visiting scholars who made Cambridge a necessary stopping point in their scholarly travels. (And further he endeared himself to his international colleagues by writing a very useful essay on the double tax problems faced by travelling academics.)

John brought a unique style and approach to writing about tax law. As Brian Arnold puts it in the culinary metaphor with which he introduces his contribution to this collection, John Tiley is a 'master chef' when it comes to tax law scholarship. His offerings are many and varied and always have a special flavour. As an example, I can quote from his essay on the UK tax system in *Comparative Income Taxation*:

History is all-important in the UK tax system. Thus since the UK tax system has been around since the Middle Ages, the tax year starts not at some arbitrary date in mid winter (such as January 1) but in the spring (April 6). As will be seen however in the later sections there are indications that some of the old pillars of the system (though not yet the start of the tax year) are under review or even redesign . . .

(Tiley, 2004b, p. 115)

As the quoted passage shows, John's work combines wit, insight and a deep understanding of the historical roots of the tax system in its present manifestations.

John was fascinated with the problems of tax avoidance and the interpretation of tax statutes and several of the contributions in this volume reflect this interest, which goes back nearly 25 years. His works chronicle the twists and turns of the legal developments in this area, both in the UK and in other jurisdictions. The development of John's conclusions that, for the UK, there is 'no general overriding judicial anti-avoidance principle' and his general scepticism about the (undisciplined) use of the 'substance over form' doctrine in certain other jurisdictions make fascinating reading.

While I understand that John is retiring from his position in Cambridge, I am sure that he will not be 'retiring' from the intellectual conversation in the tax area to which he has contributed so much.

Hugh J. Ault,
Professor of Law, Boston College, US;
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CONTENTS

<i>Contributors and affiliations</i>	page viii
<i>Foreword by Dave Hartnett</i>	x
<i>Foreword by Hugh Ault</i>	xvi
1 A comparison of statutory general anti-avoidance rules and judicial general anti-avoidance doctrines as a means of controlling tax avoidance: Which is better? (What would John Tiley think?)	1
BRIAN ARNOLD	
Introduction	1
1.1 Background – preliminary matters	2
1.2 Statutory general anti-avoidance rules	11
1.3 Judicial anti-avoidance doctrines	15
1.4 Assessment of judicial anti-avoidance doctrines and statutory GAARs	17
1.5 Similarity between the UK judicial anti-avoidance doctrines and the Canadian GAAR	20
2 The judicial approach to avoidance: some reflections on <i>BMBF</i> and <i>SPI</i>	25
MALCOLM GAMMIE	
Introduction	25
2.1 The <i>BMBF</i> decision	26
2.2 The <i>SPI</i> decision	33
Conclusion	38
3 Comparing the application of judicial interpretative doctrines to revenue statutes on opposite sides of the pond	40
MARTIN McMAHON	
Introduction	40
3.1 Interpretative doctrines	42
3.2 Anti-abuse doctrines	55
Conclusion	71

4	Abuse of rights and European tax law	75
	WOLFGANG SCHÖN	
	Introduction	75
4.1	The two levels of legislation	76
4.2	Principles of 'abuse of rights' under EC law	79
4.3	Abuse of rights in the field of the fundamental freedoms	84
4.4	Abuse of rights in the field of tax directives	93
	Conclusion	98
5	The US legislative and regulatory approach to tax avoidance	99
	ERIK M. JENSEN	
	Introduction	99
5.1	The tax shelter problem	100
5.2	Targeted legislation	105
5.3	Outcomes-oriented legislation	107
5.4	Codifying anti-avoidance doctrines	110
5.5	Anti-avoidance doctrines and administrative action	117
5.6	Disclosure	119
5.7	Improving advisors' behaviour	124
	Conclusion: beyond the rules and a few final thoughts	129
6	The law of taxation and unjust enrichment	132
	GRAHAM VIRGO	
	Introduction	132
6.1	The relevance of the law of restitution	133
6.2	Restitutionary claims for the use of money	144
	Conclusion	164
7	The history of royalties in tax treaties 1921–61: Why?	166
	RICHARD VANN	
	Introduction	166
7.1	Early League of Nations models and treaty practice	167
7.2	Mexico and London models and treaty practice	179
7.3	OEEC work and treaty practice	184
	Conclusion	196
8	Land taxation, economy and society in Britain and its colonies	197
	MARTIN DAUNTON	
	Introduction	197
8.1	Nature of land taxation in Britain resting on the land tax	198
8.2	Nature of land taxation: the case of India	209

8.3 Nature of land taxation: the case of New Zealand	212
Conclusion	218
9 Meade and inheritance tax	219
JOHN AVERY JONES	
Introduction	219
9.1 Summary of Meade's transfer tax proposals	221
9.2 Adopting LAWAT	225
9.3 Trusts	227
9.4 Combining the legacy and succession duty approach to trusts with Meade's LAWAT	229
10 Taxation, human rights and the family	232
PHILIP BAKER	
Introduction	232
10.1 The bases in the Convention for challenging tax rules based upon personal status	233
10.2 Discrimination on grounds of marital status	234
10.3 Discrimination on grounds of sex	236
10.4 The Widower's Bereavement Allowance cases	238
10.5 Discrimination on grounds of former marital status	240
10.6 Discrimination on grounds of existence of a family unit	242
Conclusion	243
11 Family connections and the corporate entity: income splitting through the family company	244
DAVID OLIVER AND PETER HARRIS	
Introduction	244
11.1 Relevance of the tax subject	245
11.2 Working for the family company	254
11.3 Distributions of the family company	263
11.4 Retained profits of the family company	268
11.5 Disposal of shares in the family company	277
Conclusion	283
Epilogue: Establishing the foundations of tax law in UK universities	
	288
JUDITH FREEDMAN	
References	296
Table of cases	309
Table of abbreviations	322
Index	323