TILEY'S REVENUE LAW, 8th edition
2018 SUPPLEMENT

This supplement draws attention to new developments, principally statutory and case law, since the publication of Revenue Law, 8th ed in 2016.

I also would like to draw readers' attention to a wonderfully-written memorial piece on the late Professor John Tiley by Professor Chantal Stebbings, available on the British Academy website and reproduced in issue 4 of the British Tax Review 2017.

Glen Loutzenhiser, October 2018

PART I: INTRODUCTION TO UK TAX LAW

Chapter 2 – Jurisdiction: The Taxing Power

2.1 The Power to Tax: The UK, the Tax Year and the Annual Tax. Under the revised timetable introduced in 2016, policy changes now are announced at the Budget in the autumn and consulted on in winter and over the spring. Draft legislation is then published in July for technical consultation ahead of the Finance Bill being introduced in the autumn and enacted the following spring. An annual Spring Statement from the Chancellor accompanies an updated economic and fiscal forecast from the Office for Budget Responsibility. The Chancellor is not expected to make significant tax or spending announcements at the Spring Statement unless the economic circumstances require it. For more on the timetable see Sanger [2018] BTR 168.

2.5 Qualification (4): Federalism. Recent years have seen a dramatic shift towards devolution of taxing powers from Westminster. Under the terms of the Scotland Act 2016 the Scottish Parliament now has the power to set income tax rates and bands for Scottish residents, may vary the basic rate of income tax by up to 3 pence in the pound and is permitted to keep all the money raised from taxing Scottish residents in Scotland. From April 2019, under the terms of the Wales Act 2014, the Welsh Assembly will have the power to set income tax rates payable by Welsh taxpayers and will receive directly a portion of the income tax collected from Welsh taxpayers.

Chapter 3 – Sources

3.3.5 Legitimate Expectation. In *R (oao Hely Hutchinson) v HMRC* [2017] EWCA Civ 1075, the taxpayer unsuccessfully raised an argument of legitimate expectations when HMRC changed its mind on the application of *Mansworth v Jelly* (see §38.4.3) after six years of allowing many other taxpayers to claim capital losses. The CA held that HMRC's level of unfairness in this case was not that of 'conspicuous unfairness'. For commentary see Small [2018] BTR 176 and Sherry, Tax Journal (22 Sept 2017).

Chapter 4 – The Setting of the Tax System

4.2.2 Scrutiny. From 2016-17, the annual report of the Tax Assurance Commissioner is no longer published separately but rather is included within HMRC's Annual Report and Accounts available here:
https://www.gov.uk/government/collections/hmrcs-annual-report-and-accounts

In the Public Accounts Committee review of HMRC's performance in 2015-16, the PAC warned that HMRC may be painting 'too rosy a picture' of its success in reducing the tax gap. For more see the full PAC report: https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/inquiries/parliament-2015/hmrc-performance-16-17/

Readers are also directed to an article by Freedman in the Tax Journal (17 Feb 2017) on trust and HMRC, including recommendations for better policymaking steps.

In commenting on HMRC's Performance in 2016-17, the PAC warned of potentially catastrophic consequences from trying to do too much including digital and organisation transformational programmes, dealing with Brexit, and targeting tax gap.

4.2.4 Confidentiality/Secrecy. The SC reversed the CA in *R (on the application of Ingenious Media Holdings and another) v HMRC* [2016] UKSC 54, finding that HMRC had breached its duty of confidentiality when discussing film partnerships with the press and that such a breach could not be justified. For commentary see Daly [2017] BTR 10 and Sanitt, Tax Journal (28 Oct 2016).

4.3 Establishing Liability to Tax—Self-Assessment and Revenue Assessment. The Government finally agreed to slow the implementation of its Making Tax Digital (MTD) programme. MTD will become mandatory from April 2019, but only for VAT and for businesses over the VAT threshold. MTD for other taxes will remain optional until at least 2020. For more information on MTD see: https://www.gov.uk/government/publications/making-tax-digital/overview-of-making-tax-digital

4.3.1.3 The 12-Month Enquiry Window. F(No2)Act 2017 s 63 and Sch 15 provide new rules for to allow HMRC either voluntarily, or under a direction made by the First-tier Tribunal on an application by a taxpayer, to issue a partial closure notice during the course of an enquiry into that taxpayer's self-assessment. For commentary see Popplewell [2017] BTR 612.

4.3.2 Discovery Assessments. FB 2019 introduces an extended 12 year time limit for underpayment of income tax, inheritance tax and capital gains tax relating to an offshore matter.

4.4.4 When Can the Court Reverse the Tribunals? Readers are directed to an interesting article by Hui Lin McCarthy on the increased importance of the Upper Tribunal in light of measures implemented to reduce appeals to the Court of Appeal and also the *Jones* and *Pendragon* cases, which gives the UT more jurisdiction to intrusively review the FTT's evaluation of evidence: see Tax Journal (2 Dec 2016).

4.4.5.1 Judicial Review. In *R (on the application of Rowe) v Revenue and Customs Commissioners* [2017] EWCA Civ 2105, the taxpayers were unsuccessful in their judicial review challenges against accelerated payment notices (APNs) and the equivalent Partner Payment Notices (PPNs). For commentary see Fitzpatrick [2018] BTR 25. For another article on failed judicial review challenges to (APNs) see Cannon, Tax Journal (9 Sept 2016). For an interesting article on the "margin of

appreciation" afforded in the tax tribunals and judicial deference see Peacock [2017] BTR 404. For an unsuccessful judicial review attempt related to a charging notice to diverted profits tax see *The Queen on the application of Glencore Energy UK Ltd v HMRC* [2017] EWCA Civ 1716.

Readers are also directed to the article 'Public Law in the Tax Tribunals and the Case for Reform' by Daly, [2018] BTR 94, in which Daly argues (1) that the jurisdiction of the First-tier Tax Tribunal to deal with typical public law complaints is limited; and (2), the jurisdiction of the Tribunal should be broadened, as this would be more efficient and because the Tribunal judges have the requisite experience and ability.

4.4.5.4 Restitution. *Test Claimants in FII GLO* reached the CA: see [2016] EWCA Civ 1180 on quantum of tax and remedies and case note in Tax Journal (2 Dec 2016).

The Supreme Court held in *Littlewoods and others v HMRC* [2017] UKSC 70 that the taxpayer was not entitled to compound interest on the repayment of VAT wrongly paid. For commentary see Visser [2018] BTR 184. In *Prudential Assurance Company v HMRC* [2018] UKSC 39, the Supreme Court, relying on *Littlewood*, similarly held that Prudential was not entitled to compound interest on advance corporation tax wrongfully levied.

4.5.3.2 Tax Law and Criminal Law. The Criminal Finances Act with new corporate offences of failure to prevent facilitation of tax evasion (UK taxes and foreign taxes) was given Royal Assent. For more on these new corporate criminal offence see articles by Collins and by Grimes and Napley, Tax Journal (26 May 2017).

4.7 The Professional's Role: Ethics. Readers are directed to a note on the professional bodies' five new standards for tax planning: Tax Journal (4 Nov 2016) and also the dramatic and arguably misunderstood (in places) warning notice on tax matters released by the UK Solicitors' Regulation Authority on 21 September 2017: see http://www.sra.org.uk/sra/news/press/tax-avoidance-warning-notice-2017.page

Chapter 5 – Tax Avoidance

5.3.2 Disclosure, High-Risk Promoters, Follower Notices and Accelerated Payments. HMRC apparently has withdrawn some Accelerated Payment Notices (APNs) on employee benefit trust arrangements rather than await judicial review. Chris Davidson stated in the Tax Journal: 'It would appear that HMRC has been taking an unsustainably broad view of the APN legislation…' (3 June 2016).

In *R (on the application of Rowe) v Revenue and Customs Commissioners* [2017] EWCA Civ 2105, the taxpayers were unsuccessful in their judicial review challenges against APNs and the equivalent Partner Payment Notices (PPNs). For commentary see Fitzpatrick [2018] BTR 25.

For an analysis of the new penalties for enablers of defeated tax avoidance ultimately enacted in F(No 2)A 2017 s 65 and Sch 16, and HMRC's' concerns over marketed tax schemes, see Vaines, Tax Journal (9 Sept 2016). See also critical comments on the enablers legislation by Gammie [2017] BTR 619. For an analysis of the new penalties in respect of a requirement to correct certain offshore tax non-compliance in F(No 2)A 2017 s 67 and Sch 18 see Baker [2017] BTR 623.

For a case on litigation privilege in tax disputes (concerning documents generated during an internal investigation after receiving HMRC communication) see *Bilta (UK) Ltd (in liquidation) (Bilta) & Ors v Royal Bank of Scotland plc (RBS) and Mercuria Energy Europe Trading Ltd* [2017] EWHC 3535.

5.5 Precedents, Proposals and the GAAR. The GAAR advisory panel has released seven opinions at the time of writing, all in favour of HMRC. As an example, in its first opinion, the panel concluded that a gold bullion EBT scheme failed the double reasonableness test: see https://www.gov.uk/government/publications/gaar-advisory-panel-opinion-employee-rewards-using-gold-bullion. In a Tax Journal article (8 Sept 2017), Self argues that using the GAAR committee route allows HMRC to quickly get a clear message of 'keep off the grass' out there, particularly on mass-marketed schemes, rather than wait for a final litigation decision which can take years and is much costlier. Self expects more GAAR panel opinions to come out on the 'boutique' type of case rather than bespoke arrangements involving a large corporate which she thinks HMRC will prefer to litigate rather than risk losing in front of the GAAR panel. She also notes that more opinions will be necessary under the new enabler of defeated tax avoidance rules.

HMRC has revised its GAAR guidance regularly, eg reflecting amendments to the GAAR in FA 2015 and FA 2016 bringing diverted profits tax and apprenticeship levy within the GAAR, introducing powers for HMRC to make provisional counteractions and specific GAAR penalties: for the latest version see https://www.gov.uk/government/publications/tax-avoidance-general-anti-abuse-rules

5.6.6 The Cases Since BMBF. HMRC has published a list of 24 cases decided during 2017-18 in which tax avoidance was involved. HMRC won 23 of those 24 cases, with one producing a mixed result. See https://www.gov.uk/government/publications/tax-avoidance-litigation-decisions

PART II. INCOME TAX

Chapter 7 – Income Tax: Basic Concepts

7.1.3 Rate Structure for Income Tax. For 2018-19, the income tax rate structure in England and Wales is as follows:

Taxable Income (£)	Rate
0 - 34,500 (basic rate)	20%
34,501 - 150,000 (higher rate)	40%
Over 150,000 (additional rate)	45%

Different bands and rates for income tax apply to Scottish residents, with rates ranging from 19% to 46% for 2018-19.

The £5,000 dividend allowance dropped to £2,000 from 6 April 2018.

Chapter 9 – Taxation and Social Security

9.3 Impact of NICs. For 2018-19, the Class 1 (employees) primary threshold for NICs per week is £162, the upper earnings limit is £892 and the lower earnings limit is £116. At Spring Budget 2017, the Chancellor proposed—but then quickly withdrew—very modest increases in self-employed NICs in a short-lived attempt to stem the estimated £5.1bn a year the Exchequer is losing from the lower rates of NICs paid by the self-employed (expected to rise to £6.1 bn by 2021-22). In 2018 the Chancellor withdrew previously announced plans to abolish Class 2 NICs.

9.6 [NEW]. Apprenticeship Levy. An 'Apprenticeship Levy' applies from 6 April 2017, at a rate of 0.5% of an employer's paybill. The charge is offset by a £15,000 'levy allowance', which means that only employers with paybills in excess of £3 million will pay it. Just another tax on labour income? Is this putting yet more pressure on the employee vs self-employed distinction in tax (see §13.2.2.1 and §13.2.3.2)?

Chapter 11 – Personal Reliefs and Tax Reductions
11.2 The Reliefs. The basic personal allowance in 2018-19 is £11,850. The income limit for the married couple's allowance is £28,900.

Chapter 13 – Employment Income: Scope and PAYE
13.1.1 Scope. The Government is consulting on tax and employment issues surrounding tips, gratuities, cover and service charges: see https://www.gov.uk/government/consultations/tips-gratuities-cover-and-service-charges-proposals-for-further-action

13.2.2.1 Case Law Tests for Employment. In 2018 HMRC launched a new online tool for checking employment status, replacing the Employment Status Indicator: see https://www.gov.uk/guidance/check-employment-status-for-tax.

Readers are directed to the Office of Tax Simplification's (OTS) work on the implications of the gig economy, available at: https://www.gov.uk/government/publications/the-gig-economy-an-updated-ots-focus-paper

See also M Taylor and others (eds), Good Work: The Taylor Review of Modern Working Practices (July 2017), especially Ch 9 on Incentives (pp 66-73), available at https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices

Although tax was explicitly excluded from its remit, the Taylor Review nonetheless expressed support for the principles behind the short-lived Spring Budget 2017 proposals to raise NICs on the self-employed (see §9.3 above) and was critical of taxes on employment such as the Apprenticeship Levy (see §9.6 above) for increasing the 'employment wedge'-- the additional, largely non-wage, costs associated with taking someone on as an employee. Both the OTS and the Taylor Review also proposed ways to address the problems with the challenging case law on employee vs self-employed status. The Taylor Review recommended the development of 'legislation and guidance that adequately sets out the tests that need to be met to establish employee or dependent contractor status', backed up by sophisticated online

help tools—both of which strike this writer as positive and practical suggestions. Readers interested in this topic are also directed to Loutzenhiser [2016] BTR 674.

13.2.3.2 Arrangements Made by Intermediaries: The IR35 legislation. FA 2017 section 15 and Schedule 6 introduced a separate IR35 regime for public sector engagers, the main feature of which is to shift the responsibility for determining if IR35 applies in a particular situation from the service provider to the public sector engager. In addition, the 5% tax-free allowance for general business expenses is removed under this new public sector regime. According to a survey by contracting industry website ContractorCalculator, the public sector has lost 27% of its skilled contractors since the IR 35 changes, delaying 71% of projects (Tax Journal, 8 Sept 2017). See note by Loutzenhiser [2017] BTR 518. The Chancellor also announced in Autumn Budget 2017 a review of the rules for off-payroll workers, which potentially could extend the new public sector engager obligations to private sector engagers.

HMRC, HMT, BEIS are consulting jointly on how to define more clearly the employment status rules – employee, worker, self-employed. Options under consideration include codification of the case law test for employment, and/or introducing a more precise test based on eg percentage of income from one engager and length of time worked for a specific engager.

In *Christa Ackroyd Media v HMRC* [2018] UKFTT 69. the FTT found that a BBC presenter providing her services through a personal services company should be treated as employed by the BBC under IR35. However, in *MDCM v HMRC* [2018] UKFTT 147, the FTT held that an employee of MDCM, Mr Daniels, was not to be treated as an employee of the ultimate contracting company under IR 35.

In the first case under the MSC legislation in ITEPA 2003 Part 2 Ch 9, *Christianuyi and others v HMRC* [2018] UKUT 10, the appellants were all found to be managed service companies for the purpose of ITEPA 2003 s 61B(1).

Chapter 14 - Employment Income: Emoluments/Earnings

14.4.6 The Redirection Principle. In the employee benefit trust scheme case *Rangers FC and others v Advocate General for Scotland* [2017] UKSC 45, the Supreme Court upheld the Court of Session's finding in favour of HMRC but on different grounds. Per Lord Hodge (at paras 49 and 59) it is not necessary for the employee to receive the earnings; remuneration in the form of money which the employee agrees should be paid to a third party, or where he arranges or acquiesces in a transaction to that effect, is within the scope of earnings 'from' employment. Lord Hodge also confirmed (at para 35) that in ITEPA 2003, section 62, the reference to 'emolument' catches anything that was formerly taxable under the old wording in ICTA 1988, Schedule E but might not otherwise be caught by the rewritten definition of earnings. See commentary by Blackwell [2017] BTR 398 and Goldberg, Tax Journal (14 July 2017).

14.5 Termination of Contracts: Compensation Payments. The taxation of termination payments changed significantly from 5 April 2018. Under the new rules, the amounts of a termination award which are equal to the basic pay an employee would have received if he or she had worked the full notice period are treated as income from the employment. There are also changes to payments for 'injury', to the

foreign service exemption, and to the NICs treatment of termination payments: see https://www.gov.uk/government/news/new-rules-for-taxation-of-termination-payments and article by Friend, Tax Journal (17 Jan 2018).

14.6 Disguised Remuneration. Further amendments to these rules in ITEPA 2003, Part 7A were introduced by FA 2017, including a new tax charge on all existing loans which remain outstanding as of 5 April 2019 and new powers for HMRC to pursue employees for unpaid disguised remuneration liabilities.

Chapter 16 – The Benefits Code and Exemptions
16.4.3.1 Exclusions. FA 2017 introduced some relatively minor wording changes to the definition of 'cash equivalent' in response to a narrow issue raised by the *Apollo Fuels* case [2016] EWCA Civ 157.

16.4.1.1 Car Available for Private Use. For updated rates and bands see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/532303/TC2b.pdf

Chapter 19 – Business Income-Part I: Scope
19.3 Adventures in the Nature of Trade-Scope and in particular the Purpose of Profit (19.3.2). HMRC's use of the trading concept in the fight against tax avoidance successfully continues, especially with regards to film schemes. In *Samarkand Film Partnership and others v HMRC* [2017] EWCA Civ 77, the CA found that the tax scheme failed because the two film partnerships had not been trading. See also *P. Degorce v HMRC* [2017] EWCA Civ 1427—another HMRC win.

Chapter 20 – Business Income-Part II: Basis of Assessment and Loss Relief
20.9.2 Taxation of Partnerships. In *R King and others v HMRC* [2016] UKFTT 409, the UT accepted that amounts recorded in a partner's tax return could be inconsistent with the partnership's return where the partner disagrees with partnership return.

FA 2018 s 18 and Schedule 6 introduce clarifications to the partnership rules and information requirements: see note in Tax Journal 22 Sept 2017. The main change is aimed at ensuring allocation of partners' profits for tax purposes are in proportion to the partner's percentage of the profits. See also article by McCredie, Tax Journal (3 Nov 2017).

Chapter 21 – Business Income-Part III: Principles and Receipts
21.1.1 Current Principles. FA 2013, section 17 and Schedule 4 introduced the option of cash basis accounting for tax for small, unincorporated businesses. The cash basis entry point rises from £83,000 to £150,000 and also exit point rises to £300,000 (TJ 10 March 2017).

21.1.1.1 Law and Accounting. The relationship between law and accounting in the computing of profit continues to develop. The OTS has proposed aligning corporation tax more closely with accounts in the UK in its work on simplifying the corporate tax computation: see https://www.gov.uk/government/publications/ots-review-on-simplifying-the-ct-computation

In an interesting case on approaching accounting disputes, *Ball UK Holdings v HMRC* [2017] UKFTT 457, the FTT declined to follow the expert advice of some Big 4 accountants stating: 'the fact a number of accountants have misapplied an accounting standard does not mean that the accounts are in accordance with UK generally accepted accounting practice, because generally accepted accounting practice is to apply the standard'. See also note on this case by Yorke in Tax Journal (14 July 2017).

In other developments, HMRC consulted on the new lease accounting standards (IFRS 16) and the consequential effect on tax treatment. IFRS 16 fundamentally changes the previous accounting standard for leases, eg for lessees the concept of 'operating lease' disappears. The government eventually opted to retain the current system of taxation notwithstanding the new standard, thereby providing another area of divergence between tax and accounting. The necessary provisions are in FB 2019. Readers are directed to an article by Everett and Casey in Tax Journal (9 Sept 2016).

On the CCCTB, the European Commission relaunched this project, aiming to make it mandatory for large MNEs, but focusing on the common tax base first before tackling consolidation aspect (so CCTB). See: https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

As of January 2017 seven Member States have indicated their opposition to the CCTB – Ireland, Sweden, Denmark, the Netherlands, the UK, Malta and Luxembourg

Chapter 22 – Business Income – Part IV: Trading Expenses
22.2.1 Four Rules from Three Cases. In *G Daniels v HMRC* [2018] UKFTT 462, a self-employed exotic dancer was allowed to deduct clothing, makeup, hairdressing etc expenses but not travel. In allowing the deduction the First-Tier Tribunal observed: 'The dresses worn by Ms Daniels could not be described as providing "warmth and decency", the mantra used in *Mallalieu*. Indeed, we are satisfied that the objective of Ms Daniels in acquiring the dresses was the reverse of the objective of the provision of "warmth and decency".'

22.4.2.1 Fixed and Circulating Capital. In *Ingenious Film Partners 2 LLP* [2016] UKFTT 521 (TC) the FTT held that investors' claims for loss relief in defeated film schemes (see §19.3) were further reduced to close to, if not, zero on the basis that the right to income in the films was capital and not revenue. In a note on the case, Ellis is critical of the tribunal's focus on fixed versus circulating capital rather than the *Atherton* 'enduring benefit' test; see Tax Journal (23 June 2017).

Chapter 26 – Savings Income: Interest and Premium, Bond and Discount
26.3 Yearly Interest. In *HMRC v A V Lomas and others* [2017] EWCA Civ 2124, the Court of Appeal held that statutory interest was yearly interest for the purpose of ITA 2007 s 874.

Chapter 27 – Miscellaneous Income Including Annual Payments
27.4.2 Recurrence. In *Hargreaves Lansdown Asset Management v HMRC* [2018] UKFTT 127, the FTT held that loyalty bonus payments made to investors were not annual payments under ITTOIA 2005 s 683.

PART III: CAPITAL GAINS TAX

Chapter 33 – Structures and Elements
33.4 Annual Exempt Amount. The annual capital gains exemption for individuals for 2018-19 is £11,700.

Chapter 34 – Assets
34.2 Identifying the Asset. For an interesting article on whether pay-outs under buy-side warranty & indemnity insurance policies are capital or income and, if capital, if the asset from which the capital sum arose was the shares see Miles in Tax Journal (2 Dec 2016). We still await the government's response to its consultation on ESC D33. For a case on damages for failure to receive interest from HMRC and the application of ESC D33 see *Amalgamated Metal Corporation v HMRC* [2017] UKFTT 705.

34.7.2 Residence. On the meaning of 'residence' for purposes of the only or main residence CGT relief, in *S Bailey v HMRC* [2017] UKFTT 658, the taxpayer lived in his house for two short periods but the FTT accepted he was eligible for CGT relief because he intended to make it his home. According to the FTT, the quality of his occupation trumped the quantity.

Chapter 35 - Disposals: (1) General
35.1 Meaning of Disposal. *A Hardy v HMRC* [2016] UKUT 332 is an interesting case on whether the loss of deposit to buy residential property was an allowable loss for CGT purposes, which could be set off against gains realised on other properties. The UT said it was not a disposal, and was more akin to the abandonment of an option (governed by TCGA 1992 s.144).

Chapter 39 – Death
39.6.1.2 Annual Exemption. The annual capital gains exemption for personal representatives for 2018-19 is £11,700.

Chapter 40 – Trusts
40.1.2.1 Annual Exempt Amount. The annual capital gains exemption for trustees for 2018-19 is £5,850. The full individual amount that applies to trusts for certain types of disability is £11,700.

The Chancellor announced in his Autumn Budget 2017 that the government would publish a consultation in 2018 on how to make the taxation of trusts simpler, fairer and more transparent.

Chapter 41 – Shares, Securities and Other Fungible Assets
41.5.1.2 Exchanges Involving Qualifying Corporate Bonds. In *N Trigg v HMRC* [2018] EWCA 17 Civ, the CA found that bonds denominated in sterling but which could be converted into euros in the event that the UK joined the monetary union, were qualifying corporate bonds (QCBs) for the purpose of TCGA 1992 s 117.

Chapter 42 – Capital Gains Tax and Business
42.2.1 Appropriation to Trade. Following remarkably concise amendments introduced in F(No 2)A 2017 s 26, the election in TCGA 1992, s 161(3) can be made

on appropriation of capital asset to stock at other than market value only where market value would result in crystallisation of a capital gain and not if it gives rise to capital loss. This change will prevent the tax result seen in *New Angel Court*. For commentary see Peacock [2017] BTR 563.

42.3 Incorporation: Transfer of a Business to a Company. The rarely-used disincorporation relief came to an end on 31 March 2018.

42.5 Entrepreneurs' Relief. FA 2016 introduced the new capital gains tax relief called investors' relief or IR (TCGA 1992, ss 169VA-VY). IR works similar to ER and provides a 10% CGT rate for certain non-employed individual shareholders and certain trustee shareholders in unlisted companies. IR has a (separate) £10 million lifetime limit. Essentially IR applies to gains accruing on the disposal of ordinary shares in an unlisted trading company, that were:

- newly issued to the relief claimant
- acquired for new consideration on or after 17 March 2016
- held for a period of at least three years starting from 6 April 2016.

FB 2019 will amend the ER rules to permit ER to be retained following a dilution in the taxpayer's shareholding below 5% in certain circumstances.

Chapter 43 – Computation of Gains.
43.2.1 Seven Categories of Allowable Expenditure. In *J Blackwell v HMRC* [2017] EWCA Civ 232, the CA upheld the UT's view that the taxpayer's personal agreement did not affect the state or nature of his shares for purposes of TCGA 1992, s 38(1). For commentary see Eden [2017] BTR 290.

43.4. Indexation Allowance. The indexation allowance for companies was frozen effective from 1 January 2018 pursuant to FA 2018 s 26, amending ss 53,54,110 and 114 of the TCGA 1992. For commentary see Richards [2018] BTR 291.

PART IV: INHERITANCE TAX

Chapter 44 – Inheritance Tax: Introduction
44.4.1 Progression. The nil rate band for 2018-19 remains unchanged at £325,000.

Chapter 47 – Gifts with Reservation
47.2 FA 1986, Section 102: Rules (i) and (ii). In *V Hood v HMRC* [2017] UKUT 276 the UT found that the creation of a sub-lease subject to covenants was a gift with reservation of benefits. The gift of the sub-lease was a gift of the whole sub-lease estate and the benefit of the covenants to repair and maintain given by the donees under the sub-lease was a benefit the donor received back from them. Further, the donees' enjoyment of the property was not exclusive of any benefit to the donor by contract or otherwise.

Chapter 58 – International
58.3 Domicile and Deemed Domicile. F(No 2)A 2017 ss 29-30 and Schedule 8 contains the new provisions reforming the IHT (and income tax and CGT) treatment of non-doms. The new rules restrict the availability of non-dom status for income tax,

CGT and IHT, reform the tax treatment of non-resident trusts, and extend the application of IHT to all UK residential property. For a summary of the changes see article by Murphy and Weeks, Tax Journal (5 Oct 2017) and also the commentary by Vos [2017] BTR 572.

Note also *Stuart Gulliver v HMRC* [2017] UKFTT 0222 (TC), a case which seems to suggest that taxpayers may have to keep proving non dom status: see 'One minute with … Stephen Hignett' in Tax Journal (1 Sept 2017).

PART V: CORPORATION TAX

Chapter 59—Corporation Tax: Introduction, History and Policy
59.2.5 2010—Coalition Politics. For more on the accomplishments and future of the Office of Tax Simplification see Morton, Tax Journal (30 June 2017) and Sherwood, Evans and Tran-Nam [2017] BTR 249.

Chapter 60 – Corporation Tax Computation (1): General Rules
60.5 Rates. The main rate of corporation tax for the financial year 2018 is 19%.

60.6.1 Quarterly instalments. For accounting periods beginning on or after 1 April 2019 'very large companies' with annual taxable profits exceeding £20m will have to make earlier instalment payments— in months 3, 6, 9 and 12 of the accounting period to which the liability relates: The Corporation Tax (Instalment Payments) (Amendment) Regulations, SI 2016/1072.

Chapter 62 – Corporation Tax Computation (1): General Rules
62.3.3 Substantial Shareholding Exemption. F(No 2)A 2017 ss 27-28 relaxed some of the requirements for claiming the SSE. The investor requirement was repealed altogether, the continuous 12-month holding period within the 2 years prior to disposal was extended to within 6 years, and the post-disposal trading requirement for the investee company was repealed for non-connected disposals. For more see Walker and Pibworth [2017] BTR 1 and 566, Ludor and O'Sullivan article in Tax Journal (20 Oct 2017) and Miller, Tax Journal (13 April 2018)

62.5.1.1 Set-off Against Future Trading Income from the Trade. F(No 2)A 2017 s 18 and Schedule 4 contain the new carryforward of losses relief rules. Losses arising post 1 April 2017 can be carried forward and set against the taxable profits of different activities within a company, or surrendered to other group members. However, the amount of profit that can be relieved by carried forward losses is limited to 50% from 1 April 2017, subject to an allowance of £5m per group. Essentially the reform creates two separate carried forward loss regimes (losses pre 1 April 2017 and losses post 1 April 2017). In addition, the existing loss carryforward restriction on banks with respect to certain 'BLR' losses accruing before 1 April 2015 was further tightened by reducing the limit from 50% to 25%, with the general 50% restriction applying to other losses. Importantly, the distinct treatment of capital losses remains. For an interesting discussion of the draft rules see article by Jones in Tax Journal (24 Feb 2017). For commentary on the rules as implemented see Greenbank and Moncrieff [2017] BTR 547.

Further technical changes to the loss carryforward provisions are included in FB 2019.

62.5.2.1 Conditions. In *Leekes v HMRC* [2018] EWCA Civ 118, the Court of Appeal upheld the UT, which had reversed the FTT, finding that s 343 relief was only available against profits of the predecessor's trade which was deemed to have been continued by the successor, and not in relation to the enlarged successor's trade.

Chapter 63 – Computation (2): Accounting-based Rules for Specific Transactions
63.2.7 Anti-avoidance. In *Travel Document Service and Ladbroke Group International v HMRC* [2015] UKFTT 582, the FTT held that the unallowable purpose test in now CTA 2009 s 441 applied to defeat a tax-driven financing scheme involving a deemed loan. For commentary see Self, Tax Journal (20 April 2018).

63.2.9 BEPS and Restrictions on Interest Deductibility. F(No 2)A 2017 and s 20 and Schedule 5 contains the new interest deductibility restrictions. From 1 April 2017, the tax relief that large MNEs can claim for interest expense is subject to either (1) a fixed-ratio rule capping deductions for net interest expense at 30% of taxable earnings before EBITDA in the UK, or (2) if higher, a group-ratio rule allowing a proportionate share of the worldwide group's net interest to worldwide EBITDA. The new rules include a de minimas threshold of £2m net UK interest expense per annum plus provisions for public benefit infrastructure. For commentary see Collier, Devereux, and Lepoev [2017] BTR 60, Hume and Stewart, Tax Journal (3 Feb 2017), Ludor and O'Sullivan, Tax Journal (27 Oct 2017) and Collier [2017] BTR 555.

The corporate interest restriction rules were tweaked by FA 2018 s 24 and Schedule 8, with further technical changes included in FB 2019.

Chapter 64 – Groups and Consortium Companies: General
64.6.2 The Group. In *Farnborough Airport Properties Ltd and others v HMRC* [2016] UKFTT 431, the FTT held that the appointment of a receiver had the effect of degrouping a company for group relief purposes. This case is discussed further in an article by Bhogal in Tax Journal (22 July 2016).

PART VI: INTERNATIONAL AND EUROPEAN UNION TAX

Chapter 69 – International Tax: Introduction and Connecting Factors
69.5 Domicile. F(No 2)A 2017 ss 29-30 and Schedule 8 contains the new provisions reforming the income tax, IHT, and CGT treatment of non-doms. The new rules restrict the availability of non-dom status, reform the tax treatment of non-resident trusts, and extend the application of IHT to all UK residential property. For a concise summary of the changes see article by Murphy and Weeks, Tax Journal (5 Oct 2017). See also Vos [2017] BTR 572.

69.6.4.1 What Sort of Control/Level of Management is Needed? The tribunals continue to test the boundaries of corporate residence. In *Development Securities (No 9) and others v HMRC* [2017] UKFTT 565 the FTT found that Jersey subsidiaries set up to take a single uncommercial decision as part of a scheme were UK resident on the basis that the Jersey directors were acting on the instructions of the UK parent

company. See article by Feiner in Tax Journal (1 Sept 2017) and by Sannit in Tax Journal (15 Sept 2017).

69.11 Base Erosion and Profit Shifting (BEPS). The G20/OECD BEPS project has moved into the implementation stage. In July 2017 the OECD updated the G20 on work on four themes: tax transparency, inclusive framework on BEPS, tax policy and tax development. The OECD report includes a plan to issue a preliminary report on the taxation of the digital economy in 2018 and final report in 2020. The full report is available here: http://www.oecd.org/ctp/oecd-secretary-general-tax-report-g20-leaders-july-2017.pdf

For a good article on the then progress of BEPS implementation see Greenfield, Tax Journal (4 August 2017). Readers are also directed to an interesting article by Forester on Oxfam's allegations of tax avoidance against Reckitt Benckiser in Tax Journal (28 July 2017).

On 7 June 2017, over 70 Ministers and other high-level representatives participated in the signing ceremony of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI"): see http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm

For a good discussion of the MLI and substantive provisions-hybrid mismatches, treaty abuse, avoidance of PE status, and dispute resolution—plus UK reservations see Tax Journal articles by Bhogal and Swanson (20 Jan 2017) and Self (27 Jan 2017). For an interesting discussion of how to apply the MLI to a Double Tax Convention, using OECD online tools see Webster and Robson, Tax Journal (1 Sept 2017). For a comprehensive examination of the MLI see John Avery Jones, Philip Baker, Richard Vann and others [2016] BTR 454, [2017] BTR 295 and also Baker [2017] BTR 281.

The UK signed the MLI in June 2017 and introduced implementing legislation in FA 2018. Mel Stride, financial secretary to the Treasury, has confirmed that HMRC will prepare consolidated versions of the UK's tax treaties to incorporate changes introduced by the MLI.

Finally readers are directed to the work of the International Business Tax Group for their developing insights on the problems with the current international tax framework, their views on BEPS and their suggestions for more fundamental reform: see https://www.sbs.ox.ac.uk/faculty-research/tax/research/international-business-tax-group

Chapter 72 – Source: The Non-resident and the UK Tax System
72.4 Computation of Profits—Transfer Pricing. The OECD released the 2017 edition of its Transfer Pricing Guidelines, including revisions introduced by BEPS Actions 8-10 and 13 and revised guidance on safe harbours: see article by Steeds and Iyerrticle, Tax Journal (1 Dec 2017).

72.7 Diverted Profits Tax. The judicial review case *Glencore Energy UK Ltd* [2017] EWHC 1587 concerned a narrow procedural point related to DPT but provides some indication that HMRC sees DPT as a real weapon not merely a deterrent: see case

notes in Tax Journal (7 July 2017 and 14 July 2017). It is worth mentioning that in an interview in the Tax Journal (16 June 2017), D Neidle describes the DPT thusly: 'It's a car crash of a tax, and will keep academics entertained and litigators well fed for many years.'

A position paper released at Spring Statement 2018 outlines the UK view on corporate tax and the digital economy, indicating in the absence of international co-operation the UK is considering interim measures such as revenue-based taxes. Readers are also directed to the OECD interim report on the digital economy and the European Commission's two main legislative proposals for taxing digital business activities in the UK. See also Clayson, Tax Journal (16 April 2018)

Chapter 73 – Controlled Foreign Companies
73.1 Introduction. The European Commission has opened a state aid investigation into the UK CFC's regime finance company exemption: see article by Blatchford and Whitehead, Tax Journal (12 Jan 2018).

FB 2019 contains technical changes to the CFC rules.

Chapter 74 – International Tax: Capital Gains
74.4 Trading Non-Residents [to be relabelled 'Non-Residents']. In a continuing trend CGT has been further extended to non-resident investors in UK real estate by removing the exemption for widely held vehicles and targeting disposals of property rich entities plus moving to harmonise with ATED related CGT: see articles by Prichard Jones and Kinghall Were, Tax Journal (17 Jan 2018), and Jackson and Revington, Tax Journal (27 July 2018).

FB 2019 contains yet further measures aimed at taxing non-resident individuals on gains on UK immovable property (directly or indirectly) under CGT, taxing non-resident corporations on real estate income and gains under corporation tax (not income tax) and abolition of ATED-related capital gains charge.

74.5.2 Deemed Disposal on Trustees Becoming Non-resident: Section 80. In *The Trustees of the P Panayi Accumulation & Maintenance Settlements v HMRC* (Case C-646/15), the CJEU held that TCGA 1992 s.80 (exit charges for trusts) was incompatible with the EU freedom of establishment insofar as immediate payment of tax was required. See case note by Lyons [2017] BTR 631. FB 2019 introduces a deferral option on CGT exit charge arising under TCGA ss 25 or 80 in response to the *Panayi* case.

Chapter 76 – Double Taxation: UK Treaty Relief
76.1.2 EU Aspects and the Role of the OECD. The OECD published a 2017 update to its Model Tax Convention. The 2017 version contains treaty-related measures resulting from the work on the OECD/G20 BEPS Project under Action 2 (Neutralising the Effects of Hybrid Mismatch Arrangements), Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances), Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) and Action 14 (Making Dispute Resolution More Effective).

Chapter 77 – European Union Tax Law

77.1 EU Law Restraints on Member States Fiscal Sovereignty: The Basic Position. The Brexit negotiations continue at the time of writing this update, and readers are directed to the special issue on Brexit in the British Tax Review (Issue 4, 2016) and also Yates [2017] BTR 151.

77.2.1 Positive Harmonisation. Note CCCTB developments discussed above (21.1.1.1). In addition, on 29 May 2017 the Council of the EU unanimously adopted a Council Directive amending Directive (EU) 2016/1164 to extend the Anti-Tax Avoidance Directive (ATAD) hybrid mismatch rules to third countries (ATAD 2).

77.3.4 Cross Border Loss Relief. The CJEU in *A/S Bevola and Jens W Trock ApS v Skatteministeriet* (Case C-650/16) found that the reasoning in *Marks & Spencer* (Case C-446/03) applies to the losses of a foreign permanent establishment.

77.4.2 The Role of the Commission—and its Views. The EC has been busy pushing its own version of the BEPS agenda, principally through the Anti-Tax Avoidance Package: for the latest see: https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en.

For commentary on ATAD from the UK perspective see Cédelle [2016] BTR 490. For the UK's emerging response to ATAD, including proposed changes to the CFC rules see Taylor, Tax Journal (27 July 2018)

On 21 September 2017 the Commission adopted a Communication on 'A Fair and Efficient Tax System in the European Union for the Digital Single Market': The CCCTB is seen as offering a basis to address the key challenges arising from a digital single market. Alternative approaches for shorter-term solutions include an equalisation tax on cross-border activities of large digital businesses with minimal physical presence in a particular jurisdiction, withholding tax on digital transactions, and a levy on revenues generated from the provision of digital services or advertising activity. See:
https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_taxation_digital_single_market_en.pdf

The Commission has also outlined plans to pursue fairer taxation of the digital economy, including considering a 'virtual PE' and a temporary tax on certain revenue from digital activities:
https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en

Another important development is a new EU directive on double taxation dispute mechanisms—Council Directive (EU) 2017/1852 of 10 October 2017—which provides for an arbitration process if a dispute lasts more than 2 years. This replaces the existing EU Arbitration Convention. The relevant UK implementing measures are in FB 2019. Further provisions in FB 2019 enable the making of regulations to transpose into UK law the disclosure regimes under the EU's directive on administrative cooperation 2018/822 (DAC 6) and the OECD's 'model' mandatory disclosure rules (MMDR).

On 9 July 2018 the EU's Fifth Anti-Money Laundering Directive came into force, requiring member states to ensure broader access to information on beneficial ownership of companies and trusts, etc. For commentary on the UK's Trust Registration Service (TRS), which came into force to implement the EU Fourth Anti-Money Laundering Directive, see Morton [2018] BTR 146.

78 Favoured Methods (heading to be changed to 'Favoured Methods of Savings')
78.3. Individual Savings Accounts. The main ISA limit remains at £20,000 for 2018-19. The Junior ISA and child trust funds subscription limit increased to £4,260 for 2018-19.

81 Charities
81.3.2.4 Disqualifying Benefits. FB 2019 simplifies the gift aid donor benefit rules governing the benefits that charitable donors can receive as a result of making donations eligible for gift aid