The Wartime Origins of the Irish Corporation Tax

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The development of corporate taxation in Britain and Ireland followed in most respects an identical path between 1853 and 1922. By 1925, however, the Irish Free State and the United Kingdom had become radically different in approach, with Ireland taking the more recognisably modern path. This article traces the early history of this divergence and locates its origins in a peculiar mixture of doctrine, politics and accident.

I – Introduction

The independent T.D. John Good\(^1\) described the Corporation Profits Tax (C.P.T.) in the following, highly unflattering terms, in the process of debating the Irish Finance Act 1927:

> I know of no tax that is more inequitable than that particular tax. It is one of the relics we have of the war taxes. It only existed for a short time in the sister island and each Chancellor of the Exchequer, when his attention was drawn to the incidence of the tax, agreed, without a moment’s hesitation, that it was one of the first taxes that should be removed. That tax, I am sorry to say, still remains, in part, in this country. It is true the burden of it has been lightened by raising the level, but that does not make the tax one bit more acceptable or one whit more justifiable.\(^2\)

This short quotation makes clear the depth of opposition to the tax in some quarters,\(^3\) but it raises more questions than it answers. Good describes the C.P.T. as a “relic … of the war taxes” but it was introduced in 1920, two years after the Second World War.

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\(^1\) John Good was the representative of the Dublin County constituency in Dáil Éireann, the Irish national parliament. He was initially affiliated with the Businessmen’s Party but was later an independent. See generally the entry in the Dáil Éireann Members Database: <http://www.oireachtas.ie/membershist/default.asp?housetype=0&HouseNum=4&MemberID=469&_ConstID=77> (date accessed: 4 June 2012).

\(^2\) 18 Dáil Deb. col. 1706 (10 March 1927).

\(^3\) Note that even the Minister of Finance subscribed in part to these misgivings: see infra note 51.
Besides, the statement that the C.P.T. was abolished in the “sister island” in 1924 but continued in the Irish Free State (Saorstát Éireann) also overlooks the possibility of political or technical reasons for this divergence.¹

Further explanation is merited, and the primary aim of this article is accordingly to examine the emergence of the C.P.T., its abolition in Britain and its continuation in Ireland. In order to contextualise some of the problems facing policymakers in the 1920s, though, it is necessary to go further back into history and to look at the relationship of C.P.T. with pre-existing forms of company taxation. This in turn raises a series of interesting issues. First, it transpires that the C.P.T. was not the first corporation tax in the U.K. or Ireland, an accolade earned rather by two wartime taxes of 1915, the Munitions Levy and the more significant Excess Profits Duty (E.P.D.).² Second, even these taxes were not revolutionary, because they built upon developments in the income tax. Third, it should not be overlooked that company shareholders could be taxed on their death in respect of the value of their holdings. This final consideration, as we shall see, had a surprisingly major influence on the development of C.P.T. in Ireland in the 1920s.

These matters are examined below in broadly chronological order. Part II begins with an outline of the possible structures for corporate taxation, which is used in Part III to analyse the Income Tax Acts of 1842 and 1853. Part IV looks at certain important evolutionary changes in the years preceding the First World War, which in some ways anticipated the revolutionary 1915 taxes that are discussed in Part V. The influence of these taxes on the income tax and the Corporation Profits Tax of 1920 are covered in Parts VI and VII respectively, and the different journeys of this tax in Britain and the Irish Free State are explained in Parts VIII and IX. Part X concludes and reflects on the modern reputation of the Irish Corporation Tax. It should be reiterated that the British and Irish tax systems were identical in most relevant respects between

¹ As we know now, the differences between the two jurisdictions persisted not just throughout the 1920s but for decades afterwards, with Britain only enacting a permanent corporation tax in 1965: see Part IV of the U.K. Finance Act 1965.
² See s. 4 of the Munitions of War Act 1915 and s. 38 of the Finance (No. 2) Act 1915.
1853 and 1922, but diverged rapidly once the wide scope of fiscal competences enjoyed by the new Free State became fully apparent.\(^6\)

**II - Taxation of Corporate Income and Gains**

It is useful to analyse briefly the basic methods by which income taxation can be applied to companies. These may be divided into three categories. Firstly, individual shareholders may incur a *personal tax* on the activities or distributed profits of the company. In some circumstances this can have the effect of taxing the shareholders as if they were carrying on the relevant activities themselves rather than through a company. This is commonly explained by analogy to a window, stating that the company is “transparent” for tax purposes, or that it can be “looked through”. Secondly, a tax charge might be imposed on the company in its own right. This tax charge is usually described as a *corporation tax*. Thirdly, personal and corporation taxes might be applied cumulatively in respect of the same income and gains. In this latter case, a further judgement needs to be made on whether to allow double taxation – that is, at the corporate and personal level – or perhaps to impute some of the corporation tax to the individuals in order to reduce their personal tax liabilities. There are various other ways of mitigating this particular type of double taxation of company profits, which are discussed elsewhere.\(^7\) An important point for present purposes is that these different conceptual approaches should not be confused with the administration and collection of tax. It is perfectly possible, for example, for income to be imposed as a personal tax on the shareholders but to be assessed upon and collected from the company.

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\(^6\) See Seán Réamonn, *History of the Revenue Commissioners* (Dublin: Institute of Public Administration, 1981) at 43 et seq. for a discussion of certain matters initially intended to be “reserved” to the British authorities [hereinafter Réamonn].

III - The Income Tax Act 1842

The principal direct tax applicable to corporate income before 1915 was the income tax. This was introduced in Great Britain in the Income Tax Act 1842 (1842 Act) (or rather reintroduced twenty-six years after its abolition at the end of the Napoleonic Wars in 1816) and was extended to the island of Ireland by the Income Tax Act 1853. The law was later consolidated into the Income Tax Act 1918 (1918 Act), which in turn was the main source of income tax legislation applicable to Ireland immediately before the events of 1922.

The basic scope of income taxation on corporate profits was set out in section 100 of the 1842 Act as follows:

> The said duty shall extend to every person, body politic or corporate, fraternity, fellowship, company or society, and to every art, mystery, adventure or concern carried on by them respectively in Great Britain or elsewhere.  

Further detailed obligations on company officials were contained within section 54:

> And be it enacted, that every such officer before described of any corporation, fraternity, fellowship, company or society, shall also, within the like period, prepare and deliver in like form and manner a true and correct statement of the profits and gains to be charged on such corporation; and such estimate shall be made on the amount of the annual profits and gains of such corporation before any dividend shall have been made thereof to any other persons, corporations or companies; and all such other persons shall allow out of such dividends a proportionate deduction in respect of the duty so charged.

The effect of this was to place the burden of administering income tax on the officers of the company, so that shareholders received dividends net of tax. The precise analysis of this position was not of immediate importance, as Avery Jones relates.

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8 See S. Northcote, Twenty Years of Financial Policy: A Summary of the Chief Financial Measures Passed Between 1842 and 1861 (California: General Books, 2009) at 18, 108, 178, 193, 194 and 202. In particular, Northcote notes at 202 that “some of the Irish members opposed the extension of the tax to Ireland, and very warm language was used upon this point; but the proposal of the Government was carried by a large majority.”

9 1842 Act, s. 100, Schedule D Case I rule 2.

10 Ibid., s. 54, Schedule D Case I rule 2.

possible as a matter of course to transfer trades and businesses into companies prior to the Jones Stock Companies Act 1844, and even after this date there was no need to over-analyse corporate taxation. The same tax rates applied to all income, whether retained within the company or distributed by dividend, subject only to an exemption for low-earning shareholders. It therefore sufficed that the income was taxed at least once, whatever the underlying theory. Nevertheless, under the scheme introduced in Part II above, it may not be too misleading to describe the position under the 1842 Act as a personal tax on the shareholders in respect of the activities of the company, but with an important element of administration at the corporate level.\textsuperscript{12}

\textbf{IV - Strains in the Early 1900s}

Although developing strains in the application of the income tax to corporate income have been related elsewhere\textsuperscript{13} it is worth highlighting a few points for present purposes. The famous People’s Budget of 1909 introduced “progressive” income taxation, which in particular involved the imposition of a higher-rate income tax known as Super-tax to certain income of higher earners.\textsuperscript{14} This meant that the income tax withheld automatically by company officials under section 54 of the 1842 Act might be significantly less than the liability of wealthy shareholders to combined income tax and super-tax.\textsuperscript{15} Naturally this was difficult to reconcile with the transparency analysis preferred above,\textsuperscript{16} whereby income tax payments by a company could be analysed as satisfying the personal tax liabilities of its shareholders, the two sums being the same. This problem was exacerbated by a change in judicial approach that had the effect of imposing shareholders tax at the rate prevailing on the date of distribution, even if the company had accrued the profits in a previous period and paid tax at an entirely different rate.\textsuperscript{17} The analytical effect of this evolving practice was to create a two-tier

\textsuperscript{12}Admittedly, the relative absence of contemporary analysis makes categorisation rather difficult.

\textsuperscript{13}See generally Avery Jones, supra note 11.

\textsuperscript{14}See Part IV of the Finance (1909-1910) Act 1910.

\textsuperscript{15}Refer to text accompanying notes 10 and 11 of this article, supra.

\textsuperscript{16}See Part III of this article, supra.

\textsuperscript{17}Section 7 of the Finance Act 1931; Avery Jones, supra note 111 at footnote 144; House of Commons Parliamentary Papers, Report of the Income Tax Codification Committee, Volume I: Report and Appendices (Cmd. 5131: 1935-36) at 65; Inland Revenue, Notes on the Finance Bill 1931 (C.T.L.) at 13. Note that this article relies in part on Archives of the Inland Revenue on various Finance Bills, which are in the
system under which companies suffered standard-rate income tax on profits as they accrued. On distribution shareholders suffered standard-rate income tax and Super-tax but effectively enjoyed an imputation of corporate taxes already paid, depending on the rates of tax applicable in the periods of accrual and distribution.\textsuperscript{18}

The detail of this is perhaps less important than the observation that steps had been taken, even prior to 1915, towards the creation of a distinctive doctrine of corporate taxation. Interestingly, it seems that a similar direction was being pursued in the United States, where the first corporation tax was enacted in 1909.\textsuperscript{19} Whilst the exact reasons for the American reforms are disputed, the indications are certainly that the pressures experienced in Great Britain and Ireland were not unique.\textsuperscript{20}

\textbf{V - Developments in 1915}

Even in 1914 income tax was imposed at relatively low rates, and exempted large parts of the working population, particularly within the waged working classes. The amounts of revenue that it raised were considerable, but entirely insufficient for the continuation of a large-scale ground war. From 1915 onwards, a number of important initiatives were introduced in order rapidly to raise large revenues,\textsuperscript{21} including sharp increases in income tax and super-tax rates as well as the lowering of exemption thresholds. The most significant reforms for present purposes, though, were the introduction of the Munitions Levy and the Excess Profits Duty in the \textit{Munitions of War}

\textsuperscript{18}See generally J. Tiley, “Away from a Virtuous Tax System” [1998] B.T.R. 317 at 323. Even though dividend income was not listed in a specific charging provision in the \textit{I.T.A.} 1842, it was certainly part of “total income” for the purposes of super-tax: see the discussion of \textit{Gimson v. I.R.C.}, (1930) 15 T.C. 595 H.C. in Avery Jones, \textit{supra} note 11 at footnote 132.


\textsuperscript{20}The difficulties in taxing corporations as discussed in S. A. Bank, “Entity Theory as Myth in the US Corporate Excise Tax of 1909” in J. Tiley, ed., \textit{Studies in the History of Tax Law Volume 2} (Oxford: Hart Publishing, 2007) at 395-400, are rather familiar. However, it is important to note the very different context of the absence in the U.S. of a federal income tax.

\textsuperscript{21}The First World War was also heavily debt-funded. For further commentary on this point see M. Daunton, \textit{Just Taxes} (Cambridge: Cambridge University Press, 2002) at Chapter 3 [hereinafter Daunton]. See also House of Commons Parliamentary Papers, \textit{Report of the Committee on National Debt and Taxation} (Cmd. 2800: 1927).
Act 1915 and the Finance (No.2) Act 1915 (1915 Act) respectively. These were taxes on business income that were also designed to demonstrate the sincerity of the government in tackling “war profiteering” and thence the wider problem of allocating high tax burdens equitably between different classes of taxpayer. E.P.D. was by far the longer lasting and the greater in scope and significance, and thus forms the focus of the following discussion.

The principal charging provision of the 1915 Act relating to the E.P.D. was as follows:

s.38(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this Part of this Act applies … exceeded, by more than two hundred pounds, the pre-war standard of profits as defined for the purposes of this Part of this Act, a duty … of an amount equal to fifty per cent. of that excess.

This basic structure is interesting in itself. A “pre-war standard” was to be calculated, representing the profits expected in a normal peacetime period. If the profits of a war period exceeded this amount, the difference would be divided equally between the business and the Exchequer. The type of businesses affected by the duty was set out in section 39 as follows:

The trades and businesses to which this Part of this Act applies are all trades or businesses … of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, excepting—

(a) husbandry in the United Kingdom; and
(b) offices or employments; and
(c) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount … .

It is interesting to note that the tax charge attached to the profits of the trade or business as such, rather than to the income derived therefrom by the owners, as

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22 That is, the abrupt and on some opinions disreputable raising of prices by traders in response to wartime conditions.
23 Although note that these proportions changed constantly during the war.
appeared to be the effect of the 1842 Act in its early years. The distinction is subtle in the context of sole-traders and partnerships. However, in respect of companies, the implication was that they were taxed in their own right. In other words, the E.P.D. was a prototype corporation tax in line with the definition above.\textsuperscript{24}

To summarise the position so far, the 1915 Act imposed E.P.D. charges on companies. This represented the first British or Irish corporation tax of general application.\textsuperscript{25} Companies were also subject to an income tax charge that initially resembled a shareholder tax administered at the corporate level, but which by 1915 had become rather difficult to categorise. Corporate E.P.D. payments could probably be deducted from income tax calculations as an expense\textsuperscript{26} but the reverse did not hold.\textsuperscript{27}

**VI - A Limited Return Influence on the Income Tax**

This change in the structure of taxation brought about by the 1915 taxes was not of purely theoretical interest. In particular, the imposition of tax on companies in their own right meant that a slightly different approach was needed to certain tax treatments in the E.P.D. than had obtained in the income tax context. As the E.P.D. treatments on occasion appeared to be more liberal than their income tax equivalents, there was predictable pressure for them to be transposed back into the older tax.

A good example of this process relates to the transfer of loss relief between companies within a corporate group. To summarise, the position in income tax was that the trading losses of a parent company could be offset against trading profits of its

\textsuperscript{24} Refer to Part II of this article, supra. For confirmation that the term "person" could include a company, see E. Spicer and E. Pegler, *Excess Profits Duty and Profits of Controlled Establishments*, 5th ed. (London: H.F. Lynch, 1920) at 21.

\textsuperscript{25} The Munitions Levy was slightly earlier but, under s. 4 of the *Munitions of War Act 1915*, could only apply to an "establishment in which munitions work is carried on" which had been declared a "controlled establishment" by order of the Minister of Munitions.

\textsuperscript{26} Section 35(1) of the 1915 Act provided that "[w]here any person has paid excess profits duty under this Act the amount so paid shall be allowed as a deduction for the purpose of income tax in computing the profits and gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid … ." There might be some difficulty here if, on a proper analysis, the persons subject to E.P.D. and income tax were different, that is, the company and the shareholders respectively. However, the textbooks seem to be silent on the matter. This in turn suggests that no great problems were experienced in practice.

\textsuperscript{27} 1915 Act, Schedule 4, Part. I, para. 4.
subsidiary, but not the reverse.\textsuperscript{28} This relief worked in part precisely because the income tax liability of a company could be regarded as in reality an imposition on its shareholders.\textsuperscript{29} It therefore followed that the shareholder of a subsidiary company – in this context a parent company – could offset its own trading losses against its own tax liabilities in respect of subsidiary trading activities.\textsuperscript{30} As by contrast, E.P.D. on companies was analysed as an imposition on those companies in their own right, the question of a parent company relieving its own trading deficiencies\textsuperscript{31} against its subsidiary’s E.P.D. liabilities could not be sidestepped.

Equally, it would have been controversial to provide an inferior standard of offset, or to deny relief altogether, for the new tax, in view of its high rates and unpopularity.\textsuperscript{32} The solution ultimately reached by Parliament was as follows:

[w]here any company, - either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business or so much of that capital as under the general law a single shareholder can legally own, the provisions of Part III of this Act as to excess profits duty and the pre-war standard of profits shall apply as if that other company were a branch of the first-named company, and the profits of the two companies shall not be separately assessed.\textsuperscript{33}

This effectively provided a modern loss relief between group companies where the subsidiary was 100% owned by the parent. As this operated to relieve both parent and subsidiary losses, it was to this extent more generous than the income tax, and consequently there was political pressure to liberalise the latter. This proposal did not gain traction and was disapproved comprehensively in an Inland Revenue note of

\textsuperscript{28} Customs and Inland Revenue Act 1890, s. 23; English Crown Spelter v. Baker (1908) 5 T.C. 327 H.C. [hereinafter English Crown Spelter].

\textsuperscript{29} Refer to analysis in Parts II and III of this article, supra.

\textsuperscript{30} The income tax liabilities of the parent company could, in turn, be seen as paid on behalf of its shareholders, but this does not affect the present analysis.

\textsuperscript{31} The difference in terminology between an income tax “loss” and an E.P.D. “deficiency” reflects the fact that the latter described the amount by which wartime profits failed to reach the pre-war standard rather than an outright excess of allowable expenditure over taxable income. The present analysis is not otherwise affected by this distinction.

\textsuperscript{32} See, for example George Terrell, 128 Parl. Deb., H.C. 1281 (28 April 1920): “[t]o pay a large sum in Income Tax, I suppose, is regarded as being meritorious, but to pay a large sum in Excess Profits Duty, I should imagine as a rule people would prefer to say nothing about it. At any rate, a great deal of hostility is felt to the tax, and it is safe to say that there never was a more unpopular tax.”

\textsuperscript{33} 1915 Act, Schedule 4, Part. I, para. 6.
1924.\textsuperscript{34} Indeed, further U.K. income tax reform on this point had to wait until 1953.\textsuperscript{35} Certain other provisions of the E.P.D., typically those designed to catch tax avoidance through companies, did cross over into the income tax,\textsuperscript{36} but in general the influence of the wartime taxes was surprisingly limited.

\textbf{VII - The Corporation Profits Tax of 1920}

The ideas inherent in the E.P.D. had much more impact when it was substituted at the end of the First World War by the new C.P.T. The reason for this substitution was that the excess profits mechanism\textsuperscript{37} only made sense on the basis that the exceptional profits of wartime could be compared against a pre-war baseline. By definition there were no such war profits once hostilities had ceased, yet the acute need for revenues persisted.\textsuperscript{38} The charging provisions of the C.P.T. were much more straightforward than the E.P.D., as may be seen from section 52 of the \textit{Finance Act 1920 (1920 Act)} which provides that:

\begin{quote}
(1) … there shall be charged, levied, and paid on all profits being profits to which this Part of this Act applies … a duty … of an amount equal to five per cent. of those profits.
\end{quote}

The section then proceeded to explain the scope of profits to which this 5% charge applied:\textsuperscript{39}

\begin{quote}
(2) The profits to which this Part of this Act applies are, subject as hereinafter provided, the following, that is to say:—

(a) the profits of a British company carrying on any trade or business, or any undertaking of a similar character, including the holding of investments;
(b) the profits of a foreign company carrying on in the United Kingdom any trade or business, or any undertaking of a similar character, so far as those profits arise in the United Kingdom …
\end{quote}

\textsuperscript{34} Inland Revenue, \textit{Notes on the Finance Bill 1924}, Committee Stage (C.T.L.) at 96.
\textsuperscript{35} See s. 53 of the \textit{Finance Act 1953}, which effectively reversed the effect of the judgment in the \textit{English Crown Spelter}, supra note 28 and similar subsequent cases.
\textsuperscript{36} Compare s. 49 of the \textit{Finance Act 1916} with the well-known super-tax apportionment provision of the \textit{Finance Act 1922}, s. 21.
\textsuperscript{37} See Part V of this article, supra.
\textsuperscript{38} Daunton, supra note 21 at 89-95.
\textsuperscript{39} Subject to certain technical exceptions that are not immediately relevant.
The C.P.T., like the E.P.D., applied to companies in respect of their own profits, but unlike the E.P.D. it only so applied and did not extend to unincorporated businesses. The Inland Revenue Notes to the 1920 Act offer various justifications for this. Limited liability was a privilege granted by the law that was to be paid for in taxes; profits retained in companies were not subject to super-tax immediately but were subjected to C.P.T. instead; and the C.P.T. would raise revenue from companies that had enjoyed relatively high pre-war standards and had thus largely escaped E.P.D.

As with income tax, there was some resistance on the part of the Inland Revenue towards importing E.P.D. ideas into the C.P.T. To return to our earlier example, it was argued that group loss relief would be unnecessary and administratively awkward in the new tax, in view of the different structure of E.P.D. and C.P.T., the limited liability rationale of C.P.T. and the low rates of tax that made relief somewhat academic. Nevertheless, these views did not prevail, and section 53(3) of the 1920 Act gave the taxpayer the option of grouping treatment for 100% subsidiaries – incidentally a more flexible provision than that applying to E.P.D. In conclusion, the C.P.T. was indeed a corporation tax that was influenced heavily by the earlier E.P.D. It is now necessary to examine how this new tax fared after 1920.

VIII - Unpopularity and British Repeal

Despite some indications from the Inland Revenue that the C.P.T. was intended to be permanent, the prevailing view was that it was a temporary expedient and would be repealed in more normal times. The tax was deeply criticised from its inception. In particular, Chancellor Stanley Baldwin noted in 1923 that “everyone admits it is not a good tax” and “many think that it bears exceptionally heavily on enterprise and

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41 But note that this position was changed substantially by the Super-tax apportionment provisions in s. 21 of the Finance Act 1922.
42 Inland Revenue, Notes on the Finance Bill 1920 (C.T.L.) at 141D and 151.
43 Ibid. at 141D.
44 Inland Revenue, Notes on the Finance Bill 1921, “Notes on Inland Revenue points which may be raised” (C.T.L.) at 2, in which the C.P.T. is described as a “second-rate expedient”.
45 See, for example, Inland Revenue, Notes on the Finance Bill 1920, Notes on Clauses, s.36; Committee Stage (C.T.L.) at 14.
industry.” 46 Even more colourful comments are attributed to Philip Snowden, the Labour Chancellor of 1924 who oversaw the removal of the tax in the U.K.: “[i]t was unloved by its parents, it was reviled by its subsequent guardians, it was condemned by every party, not least by the Labour Party.”47 One might well wonder what Baldwin or Snowden would have thought of the twenty-first century system of corporate taxation, in which even Irish rates are significantly in excess of 5%. In any case, section 34 of the F.A. 1924 repealed the C.P.T. in the U.K., and there the matter stood until Neville Chamberlain reintroduced the strikingly similar National Defence Contribution in 1937 in anticipation of yet another European war.

Although the rather different story of C.P.T. in Ireland is discussed below, it is worth noting here that the tax also had its Irish detractors, one of the most prominent being the Dublin T.D. John Good. He repeatedly argued that the C.P.T. made the Free State less attractive for capital investment than its neighbours. Good also noted that C.P.T. depressed industrial activity, retarded development, placed an unduly harsh burden on holders of ordinary shares and perhaps even reduced overall revenues.48 These arguments gained additional support from the relative underdevelopment of the Free State and the perceived importance of attracting industrial investment.49 Even the Minister of Finance Ernest Blythe was forced to admit that the C.P.T. would perhaps not become a permanent fixture of the Irish tax system.50

IX - The Persistence of C.P.T. in Saorstát Éireann

The Irish Free State was established in December 1922 following a sustained period of hostilities between the British armed forces and the Irish Republican Army, the signing of the Anglo-Irish Treaty in December 1921 and the drafting of a national

47 Reported by J. O'Mara T.D. in 7 Dáil Deb. col. 814 (15 May 1924); Mallet and George, ibid. at 106.
48 J. Good T.D., 7 Dáil Deb. col. 804 (15 May 1924); 7 Dáil Deb. col. 947 (20 May 1924); 10 Dáil Deb. col. 1612 (27 March 1925); 11 Dáil Deb. col. 322 (24 April 1925); 12 Dáil Deb. col. 775 (11 June 1925); 18 Dáil Deb. col. 1706 (10 March 1927).
50 E. Blythe T.D., 19 Dáil Deb. col. 1351 (21 April 1927); even stronger comments are reported at 12 Seanad Deb. col. 1274 (10 July 1929).
constitution by the short-lived Provisional Government of January 1922. In the context of widespread social and administrative disruption it was decided not to pursue large immediate changes to the structure of taxation. Section 15 (1) of the Irish Finance Act 1923 (1923 Act) accordingly provided as follows:

> [t]he several taxes and duties specified in the Schedule to this Act shall, until the Oireachtas shall enact to the contrary, and subject to the existing statutory provisions as to drawbacks, repayments and allowances, continue to be charged, levied, raised, imposed and paid in Saorstát Éireann.


With all of the foregoing in mind, it may seem surprising that the Free State did not follow the British example and repeal the C.P.T. as quickly as possible. There appear to be two closely connected reasons why this did not occur. The first is simply that the total number of C.P.T. taxpayers in the Free State was initially low, and became quite trifling once the threshold for exemption from the tax was raised in 1926. As Ernest Blythe stated in the following year, “by the concessions made last year the number of companies paying this tax has been reduced from about 600 to 60.”

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52 W.T. Cosgrave, 3 Dáil Deb. col. 76 (13 April 1923):

> [t]he general principle on which our taxing proposals are based is that existing taxes should be continued as far as possible for 1923-24, according to the same [77] rates and conditions as have applied in 1922-23. We have taken over as from the beginning of this month an elaborate fiscal system and a complex code of law that governs it, and, in undertaking the heavy burden which this involves, are necessarily precluded from making that full investigation of all the details of the system which would be an essential preliminary to any reform of policy such as the special circumstances of Saorstát Éireann might, perhaps, require.

53 Note that minor adaptations to existing British legislation could be made under the Adaptation of Enactments Act 1922 and the Inland Revenue (Adaptation of Taxing Acts) Order 1923 (No. O.S. 4 of 1923).
54 [Emphasis added].
55 Section 30 of the Irish Finance Act 1926.
The plight of such a small group of taxpayers may simply not have justified the outright removal of the tax notwithstanding the wider economic ramifications of it.

A much more significant issue related to the arrangements for the relief of double taxation between Great Britain and the Free State and to the continued dominance of Irish industry by British investors. The most well-known double taxation agreement was concluded in 1926 and related to income taxation. However, an earlier settlement of 1923 continued to apply to estate duties and provided as follows:

(a) Where the Commissioners of Inland Revenue are satisfied that Estate Duty is payable in the Irish Free State by reason of a death of a person dying on or after the first day of April, nineteen hundred and twenty-three in respect of any property situate in the Irish Free State and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in Great Britain in respect of that property on the same death.

(b) Where the Revenue Commissioners of the Irish Free State are satisfied that Estate Duty is payable in Great Britain by reason of a death of a person dying on or after the said first day of April in respect of any property situate in Great Britain and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in the Irish Free State in respect of that property on the same death.

(c) Any question as to whether any property is to be treated for the purpose of this arrangement as situated in Great Britain or in the Irish Free State, shall be determined according to the laws in force in England and Ireland on the sixth day of December, nineteen hundred and twenty-two.

The problem was that “property situate in Great Britain” included any shareholdings in respect of which the register was maintained in the U.K. This was the case even if the


58 Incorporated into British law by the Double Taxation (Irish Free State) Declaration 1923 (SR&O 1923 no. 406) and into Free State law by the Double Taxation (Relief) (Order No. 1) 1923 (No. O.S.2 of 1923), Schedule 1 Part II <http://www.irishstatutebook.ie/1923/en/si/v10pg829.html> (date accessed: 9 June 2012). See also Réamonn, supra note 6 at 70-75 where the author describes in particular detail the replacement of the 1923 income tax arrangements following the well-known report of the Financial Committee of the League of Nations.

companies owned substantial property that would clearly have been “situate in the Irish Free State” if held directly by the deceased. Where companies had established a “Colonial Register” in Ireland, this would at least allow the Free State authorities to collect death duties in respect of Irish shareholders. However, there appears to have been no compulsion do this even by 1928. The position was explained by Blythe as follows:

At present, if a Saorstát shareholder in a British company dies, we get our share of the duty. If the company has assets here we can get the whole of the duty payable on the death of a Saorstát shareholder, provided the company has established, or has been obliged to establish a Colonial register here. But we would get no duty on the death of a British shareholder, even though the company in question had all its assets in Ireland and the shareholder who died had held ninety-nine per cent. of its shares. In such a case, property situated in the Saorstát would actually, though not technically, pass on a death, but the British Exchequer would get the tax and we should get nothing. There are nearly four hundred British companies carrying on business here and some of them own property of enormous value. As we are continually losing duty which would be paid if such property were owned by British residents individually, it should be clear that a case could be made for retaining some form of Corporation Profits Tax permanently, and that in any case the whole matter merits full consideration.

The income tax arrangements of 1926 were slightly different but did not compensate Saorstát Éireann for the perceived injustice in the Estate Duty context. The effect of the 1926 rules was to allocate income tax to Britain in respect of dividends to British shareholders; to the Free State in respect of dividends to Free State shareholders; and to the country of corporate residence in respect of retained profits. The country of residence, in turn, was defined as “that country only in which its

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60 See generally Companies (Colonial Registers) Act 1883, s. 129 of the British Companies Act 2006 and Austen-Cartmell, ibid. at xxi.
62 E. Blythe T.D., 11 Dáil Deb. col. 26 (22 April 1925) [emphasis added].
63 This was still thought by Blythe to be substantially more generous to the Free State than the estate duty rules: see 23 Dál Deb. col. 932 (2 May 1928).
The following exchange sets out the position in simple terms:

Hugo Flinn: Would it be correct to say that from any foreign company, all of whose shareholders are resident outside the shores of the Saorstát, the Saorstát gets no income-tax and no estate duties? Would that be correct?

Ernest Blythe: That would be correct.65

In direct contrast, there were no bilateral arrangements specifically dealing with C.P.T. until 1949, and the applicable provisions of national law were relatively generous to the Free State. Under the 1920 Act66 C.P.T. was applied both to the profits of Irish resident companies and to Irish branch profits of foreign resident companies.67 Furthermore, the domestic Irish rules providing relief unilaterally for certain profits charged to British and Irish C.P.T.68 would have reduced substantially in importance following the repeal of the former in 1924. This meant in broad terms that the Free State was able to retain the C.P.T. collected in connection with the Irish branch profits of British companies. It is unsurprising that the Minister of Finance was reluctant to surrender this advantageous position lightly. Instead, he regarded it as compensating the reverse state of affairs under the Estate Duty, even if the unilateral retention of a corporation tax did have some of the side-effects highlighted by John Good.

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64 Double Income Tax Agreement, above note 58, Art. 4. If these retained profits were later distributed, the ultimate income tax treatment would depend on the residence of the shareholders, exactly as noted in the text to the previous footnote. See further J. Avery Jones, “The Definition of Company Residence in Early U.K. Tax Treaties” [2008] B.T.R. 556 at 558-559 [hereinafter Avery Jones, “The Definition”].

65 23 Dáil Deb. col. 932 (3 May 1928).

66 Section 52 of the Finance Act 1920, as amended by the Irish Inland Revenue (Adaptation of Taxing Acts) Order 1923 (No. O.S. 4 of 1923). See supra note 54 regarding the continuation of old British legislation in the Irish Free State, and the means by which this old law could be amended by secondary legislation.

67 Somewhat unusually C.P.T. residence was defined by reference to the place of incorporation (1920 Act, s.52(3)) rather than the more usual “managed and controlled” test used for the purposes of the 1926 income tax agreement and indeed the later British Profits Tax of 1947 (British Finance Act 1947, Part IV). This led to some interesting complexities in the 1949 agreement on double taxation to Irish C.P.T. and British Profits Tax that have been discussed elsewhere: see further Avery Jones, “The Definition,” supra note 65 at 581; Agreement for reciprocal relief of double taxation in respect of Corporation Profits Tax and United Kingdom Profits Tax and provisions as to relief from Corporation Profits Tax by way of credit in respect of United Kingdom Profits Tax, contained in Irish Finance Act 1949, Schedule 5, <http://www.irishstatutebook.ie/1949/en/act/pub/0013/sched5.html> (date accessed: 10 June 2012).

68 See ss. 35 and 36 of the Irish Finance Act 1924.
X - Conclusion

The retention of the C.P.T. in the Saorstát Éireann can therefore be seen to rest on a balance between the perceived ill-effects of the tax and its useful role as a means of extracting revenues from British companies and shareholders who might otherwise have fallen entirely outside the Irish tax net. It is also a helpful reminder, if any is needed, that the technical intricacy of tax reform often conceals important political controversies. Indeed the questions at stake in the present case, the birth and financing of a new nation, and its ongoing relationship with the British Empire, could hardly be more profound.

In the context of such momentous events, the accidental nature of much of the history related above might seem a little incongruous. The 1842 Act had the unfortunate coincidence of being enacted only shortly before the Joint Stock Companies Act 1844 made incorporation much more common, and its application to company profits was left more to Revenue practice and judicial precedent than to any considered Parliamentary scheme. The E.P.D. of 1915, which comprised the first corporate tax of general application in Britain and Ireland, was imposed as a result of wartime exigency. The C.P.T. of 1920 was only regarded as a temporary replacement for E.P.D. by most commentators. It was widely agreed to be a bad tax, and could easily have been repealed in Ireland as it was in Britain.

Yet in the event the C.P.T. was not removed from the Irish statute-book, and there is substantial continuity between this tax and the present-day Irish Corporation Tax.69 The subsequent British history indeed looks rather untidy by comparison: the repeal of C.P.T. in 1924, the reinstatement of the National Defence Contribution in 1937 and the Excess Profits Tax in 1939, the former of which was converted into the Profits Tax in 1947, and finally the creation of a permanent Corporation Tax in 1965.

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69 Note major changes in 1976: see s. 1 of the Irish Finance Act 1976; Réamonn, supra note 6 at Chapter 18.
There is surely some irony in this. At a time when the Republic of Ireland is censured routinely for its abnormally low rates of corporation tax,70 we can observe that criticisms of the Free State centred on its refusal to repeal the predecessor tax altogether. Perhaps the Irish experience in this area has been rather more continuous and consistent than is usually recognised.

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70 See, for example, “Germany Must Make Clear That its Capacity to Fund Bailouts is Limited” Spiegel Online International (25 November 2010), <http://www.spiegel.de/international/europe/the-world-from-berlin-germany-must-make-clear-that-its-capacity-to-fund-bailouts-is-limited-a-730701.html> (date accessed: 9 June 2012).