THE CLAIM TO THE TAX DOMAIN: EXAMINING THE ACTIVITIES OF ACCOUNTANTS IN THE LATE NINETEENTH AND EARLY TWENTIETH CENTURIES

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ABSTRACT

This paper examines the activities of UK accountants in the late nineteenth and early twentieth centuries. Its aim is to determine the nature of their work in relation to taxation, by looking chiefly at the contemporary evidence provided by The Accountant*, the accountants' professional journal. First published in 1874, this journal provides information on tax and other activities at a time when accountants were establishing their credentials as a new profession. The paper considers issues surrounding income tax in this period, as the complexities associated with it provide the wider context and backdrop for accountants' activities. It then specifically considers why and how accountants met the increasing need for tax advice and claimed this work domain as part of their professional jurisdiction. The paper then goes on to consider the role of lawyers in taxation during the same period.*

INTRODUCTION

To determine the nature of their work in relation to taxation, this paper examines the activities of UK accountants in the late nineteenth and early twentieth centuries by looking chiefly at the contemporary evidence provided by *The Accountant*, the accountants' professional journal. This journal was first published in 1874 and is a very useful source of information on tax and other activities at a time when accountants were establishing their credentials as a new profession. During much of the period covered by this paper (up to 1922), Ireland was part of the United Kingdom (UK) as a result of the Acts of Union 1800 (sometimes referred to as the

Acts of Union 1801, as 1 January 1801 was the date they came into force). Both countries thus had the same fiscal code for this period in terms of income tax (the latter being extended to Ireland in 1853 after its reintroduction in England in 1842), and professionals dealing with this tax throughout the UK would be beset by the same issues. It is acknowledged that the use of *The Accountant* does privilege to a degree the views and perspectives of accounting professionals, but this 'insider's view' nonetheless provides valuable insights. The paper develops in depth ideas briefly mentioned in earlier papers (see, for example, Frecknall-Hughes, 2012; Frecknall-Hughes and McKerchar, 2013a, 2013b).

This paper first looks at the issues surrounding income tax in this period, as the complexities associated with it provide the wider context and backdrop for accountants' activities. It then specifically considers why and how accountants met the increasing need for tax advice and claimed this work domain as part of their professional jurisdiction. The paper then goes on to consider the role of lawyers in taxation during the same period, with conclusions set out in the final section.

RELEVANT TAX ISSUES

The background to the development and establishment of a profession may often be driven by various social, economic, political and legal events (Stacey, 1954; Wilmott, 1986; Walker, 1995; Maltby, 1999). Indeed, it is difficult to provide a definition of a profession which is capable of universal agreement. Furthermore, there is no one theory that can explain the development of professions (West, 1996). Willmott (1986) discusses three perspectives on professional development: critical, functional and interactionist. The critical perspective sees the 'emergence of professional bodies … as a means of achieving collective social mobility by securing control over a niche within the market for skilled labour', and is a 'strategy for controlling an occupation, involving solidarity and closure, which regulates the supply of professional workers to the market', also allowing a basis for domination of other bodies and associations operating in the same or a similar work domain (Willmott, 1986, p. 558). Willmott (1986, p. 557) suggests that 'before the early 1970s "functionalist" and "interactionist" perspectives were dominant', but since then a '"more critical approach" has developed which draws heavily upon the work of Weber and Marx'. The functionalist perspective 'attends to professions as integrated communities whose members undertake highly skilled tasks that are crucial for the integration and smooth operation of society' (Willmott, 1986, p. 557), which is very much the approach taken in the seminal work of Carr-Saunders and Wilson (1933), whereas interactionism studies professions 'as interest groups that strive to convince others of the legitimacy of their claim to professional recognition' (Willmott, 1986, p. 557). It is, however, quite possible to see these perspectives as successive phases in professional development. For example, striving to claim professional status and recognition (interactionism) might be followed by a critical and then a functional phase or, indeed, they might be synchronous.

In terms of taxation, for example, the growth in the complexity, volume and importance of taxation legislation, especially income tax legislation in the latter half

of the nineteenth and early part of the twentieth centuries, was extremely significant and resulted in a requirement for tax specialists. This was a domain which accountants were claiming as legitimate work, at a time when there were also attempts to control who should do work that was deemed legitimate and to exclude the *soi-disant* accountants who were regarded as disreputable (see, for example, Edwards, Anderson and Chandler, 2005, 2007; Anderson, Edwards and Chandler, 2005, 2007).

A key issue, arguably, was when it was realised that income tax, though still bearing the trappings of a temporary imposition, had become permanent, and people needed help to either cope with it or find a legitimate way of not paying it. Income tax had been regarded initially as a temporary tax, which was indicated by it having to be imposed annually, but it seemed apparent after the Crimean War that it would never be abolished, although Gladstone's government had intended that it should expire in 1860 – an intention indicated in the 1853 Budget. Gladstone retained it (with a schedule of reduced rates), with the awareness that such a reversal of policy would need considerable justification, which he provided by abolishing the vast majority of remaining import tariffs and the excise on paper (Stebbings, 2009, p. 62; St John, 2010, p. 96). It was the price paid for tax reform in these other areas (Sabine, 1966, p. 90; Daunton, 2001, p. 167). Over the next few years, despite the fiction of annual imposition being maintained (which is still retained to this day in the UK), the permanency of income tax became more generally accepted, although Gladstone again proposed its abolition as late as 1874 (Sabine, 1966, p. 116). Increasing numbers of companies and persons were affected by it, the latter now including 'skilled workers and senior clerks who would be earning over the exemption limit' (Sabine, 1966, p. 96). It was not always easy to administer or collect, as the income tax rules were full of anomalies, loopholes and opportunities for avoidance, as the 1851 Hume Committee[1] had revealed. Also, the rules were not always consistently applied. It may well be the case that over a period of years people had become conditioned to the idea that income tax was a temporary measure, and as it would (they thought) be abolished, there was no need to do anything much about it – an attitude which changed with the realisation that it was effectively permanent. Gladstone was explicit in 1860 about retaining it indefinitely (although he did subsequently call for its abolition), which is likely to have created a shift in the way society at large viewed the tax and reacted to it. Thus the years immediately following 1860 are the crucial context for this paper, with 1874 being particularly significant as it was in this year that it became obvious the tax would become permanent (Stebbings, 2009, p. 213), as that was Gladstone's last call for its abolition. He was also defeated in the general election on that year and retired as the Liberal party leader, which may also have resulted in less prominence being given to the idea of abolition.

THE NEED FOR TAX ADVICE – THE ACCOUNTANTS

The founders of the Institute of Taxation in the UK, established in 1930,[2] were lawyers, accountants and ex-Inland Revenue men (see Jeffrey-Cook, 1990, 1991a, 1991b), so it is reasonable to examine the accounting and legal professions in preceding years as being the likely providers of the first tax specialists. The question

is how far to go back, as law is a much older professional group than accounting, which in the late nineteenth century was only about 100 years old.[3] Arguably, lawyers had been involved in taxation matters for centuries, as tax was enshrined in law, but the newer professionals were not slow to colonise this area and appeared to be at the forefront of meeting the need for tax expertise, as demanded by 'the magnitude and complication … necessary to meet the growing wants of the age' (*The Accountant*, 1874, No. 1, p. 5) in the period after 1860. Contemporary professional material provides considerable evidence for this.

The earliest issues of *The Accountant* (1874) are very useful in providing this evidence.[4] A comment in the journal in 1875 (No. 38, p. 14[5]) remarks on the parliamentary return for 1873 in terms of income tax raised: nearly one half of the total collected in England was paid by trades and professions, with more than half of the total collected in Scotland being paid by trades and professions. One of the earliest references to taxation in the journal is in 1878 (No. 185, p. 3), in the matter of the Crown's prior claim to payment of income tax in a liquidation – *Re Henley & Co.* – with this being disputed, as the Income Tax Act of 1842 prescribed treatment of claims on an equal footing, which a prior claim by the Crown would violate. The key question here was which had priority where two different statutes appeared to be in conflict, causing considerable debate, although in due course the Crown would come to have priority in such instances.

A recurrent theme in numerous issues of *The Accountant* proved to be the correct deductions of income tax from dividends or interest (the treatment differed). Letters to the journal reveal uncertainties about whether interest should be taxed on an accrual basis or a paid basis, and whether dividends should be taxed when paid or payable, the latter case being further complicated by uncertainty as to the tax rate to apply if there had been a change of rate between the date of a dividend being declared payable and the date it was actually paid. Difficulties surfaced very early on in 1878 (No. 189, p. 5), in an article reporting on apparent discrepancies between how English railway companies, as opposed to Indian railway companies, dealt with a difference in the applicable tax rate where two different fiscal years were involved. A letter in the London press from Fred B. Garnett, Secretary of the Board of the Inland Revenue, was quoted in confirmation of the correct treatment.[6]

In 1880, a letter was printed (No. 279, pp. 5–6), under the title of 'Income Tax', which summarised a wealth of bitter sentiment against income tax and the way it was collected, which is worth citing in full. The writer puts forward the view:

1. That this is a tax on labour, and that no distinction is made in the rate charged to the man who does not work at all, and to him who has to work.
2. That it is an inquisitorial tax.
3. That it is assessed on a most unfair principle, and is not a correct way of ascertaining a man's real profit.
4. That the conditions imposed, whereby a mortgagor or borrower is deemed to act as agent for the collector, are unjust.
5. That it is unjust to assess on an average of 3 years.

The writer, an auditor of various companies and firms (who at that time did not need to be a qualified accountant), cites examples from his clients and his own personal experience as well as hypothetical examples in support of his complaints. The chief issues are that no distinction is drawn between unearned and earned income; that if there is a difference of opinion between the taxpayer and the authorities, the taxpayer is compelled to open his books up to Revenue inspection, which was resented as an intrusion of the grossest kind; a perception that the tax does not take account of legitimate expenses which should be deducted to arrive at net profits; that the collection of income tax on interest paid is done by an unfair means; and that assessment, in the case of (5) above, which refers to persons commencing trade after being employed, should be on an annual basis.

This type of complaint is made similarly by the National Traders' League (*The Accountant*, 1883, No. 470, pp. 4–5), particularly emphasising point (2) above:

1. Surveyors of taxes[7] regularly increase sole traders' assessments without cause and aggrieved parties cannot appeal without closing their shops.
2. Victims submit rather than expose books to district commissioners.
3. District commissioners habitually ignore accounts submitted to them.

The traders complained that district commissioners did not allow deductions from profit and were generally high-handed in their dealings, 'cutting about' the profit and loss account so that the true profit was unrecognisable (1883, No. 466, pp. 6–7; No. 467, p. 6; No. 468, pp. 5–6). The traders wanted accounts certified by a chartered accountant to be conclusive evidence in respect of assessment. This suggests that accounts were being regarded as reliable and should thus be deemed valid by parties other than those for whom they were prepared – and further, that they had been prepared by reputable professionals. This occasioned a response from one W.H. Cousins on behalf of the commissioners (1883, No. 470, p. 12), which stated that the charge of increased assessment was too general, but that the commissioners would investigate if particulars of specific cases could be provided; that Schedule D traders need not be assessed by district commissioners, they could elect to be assessed by Commissioners for Special Purposes appointed by the Crown; and that the charge of ignoring accounts was too general for them to provide a response. In regard to the idea that certified accounts should be conclusive evidence of liability, Mr Cousins comments that the district commissioners are gentlemen selected by the Land Tax Commissioners to administer income tax in an 'independent and unbiased manner' and are not under the control of the Board of the Inland Revenue or any other government department. Moreover, he says the district commissioners do accept accounts. Robinson (1964, p. 219; 1984, p. 219), however, makes the point that, in Ireland at least, taxpayers had resisted tax authorities' requests for certified accounts in support of profit calculations, but acceded as such accounts most easily refuted the assessments the authorities issued that were so high that taxpayers were forced to appeal and incur additional costs (implicit also in the citation above from *The Accountant*, 1883, No. 470, pp. 4–5). If then tax authorities were not accepting figures in accounts that they themselves had requested, the grievance underlying the complaint in *The Accountant* is more easily understood.

Different kinds of material included in *The Accountant* confirm that the calculation of taxable income was of considerable professional concern. An issue in 1880 (No. 306, p. 8) reported on a paper read by David Chadwick (the first president of the Institute of Chartered Accountants in England and Wales (ICAEW)) at the Social Science Congress in Edinburgh, entitled 'For Purposes of Taxation What Is the Most Scientific and Practical Definition of the Word "Income"?' Income should be a:

> … clear annual amount after deducting all necessary outgoings received from any property or investment of capital, or from any trade, profession or occupation, or from any annuity or other source leaving at the end of each year the capital of source intact.

In 1882 (No. 412, p. 8), there is a request to the editor, as follows.

> Sir, – As Accountants are frequently consulted by their clients on questions of income-tax returns, perhaps some of your readers can inform me if there is any work published serving as a guide or reference, and, if so, where such can be cheaply procured.
>
> Yours, &c.
>
> D.E.L.
>
> October 19th, 1882

This produced several recommendations, for example, of works by Dowell and Senior respectively (1882, No. 413, p. 6), but also included a stern rejoinder (1882, No. 416, p. 7) from 'S.D.N.' to 'study carefully the various Acts of Parliament authorising the imposition of the tax' as there is no reliable guide.

Various letters and articles in early issues of *The Accountant* indicate a great deal of uncertainty as to what was permitted by law and what exact role the Revenue Commissioners was supposed to play in administering and applying the law, particularly in the context of trade. An article entitled 'Income Tax' in 1884 (No. 480, pp. 8–9) stated that the commissioners 'overstep the bounds between duty and tyranny' (p. 8) and that by their refusal to accept estimates of income, which then led to examination of a person's private affairs, people were made to appear dishonest. The same article cites the case of *Knowles and Sons v McAdam*, in which the commissioners disallowed 'depreciation' charged in respect of extracting coal from the ground, which had been calculated as the difference between the value of the relevant asset at the beginning and end of the company's financial year. The company appealed and won, with the court allowing a reference to McCulloch's *Principles of Political Economy* fourth edition, p. 530. The article goes on to comment (*The Accountant*, 1884, No. 480, p. 9) that:

> … even so powerful a body as the Income Tax Commissioners are not permitted to make their own law, but their duty is simply to administer it, and to do so in the interest, and not to the detriment, of Her Majesty's subjects.

The Income Tax Commissioners did not let this matter rest.[8] In the same year, there was a further article (1884, No. 482, pp. 6–7) reporting on their attempt to reverse

the decision in the *Knowles and Sons* case in the (Scottish) Court of Session case, *Coltness Iron Company v Black*, which ultimately went before the House of Lords. The point at issue was whether the costs of sinking/boring new pits to replace worn-out ones were permissible deductions from profits. The House of Lords gave judgment for the Commissioners, finding that the cases were not analogous, so the later one did not overrule the earlier one. The costs of working a mine (as in *Knowles*) could be deducted, but not the cost of making it (*Coltness Iron*), though doubts were cast over the decision on the *Knowles* case, especially in terms of depreciation and what it actually meant. These cases are early examples of attempts to distinguish revenue expenditure from capital, thus helping to define what constitutes income, and are significant in the development of both accounting and taxation principles, but they derive at root from accounting issues (see especially Lamb, 2002, on the issue of depreciation). The same article (1884, No. 482, p. 7) also takes the opportunity to express considerable dissatisfaction with income tax in general.

> It is at once a tax upon honesty, industry, and perseverance, and being originally imposed for the purpose of carrying on the scourge of war, has since continued to be a scourge on those who employed it for that purpose.

The letters in *The Accountant* and the court cases indicate that the practical experience of accountants with the day-to-day affairs of companies and businesses helped them to become experts in the technicalities of translating the word of law into specific numbers, thus having an effect on taxable amounts. They were involved in business processes and possessed the specialist knowledge that allowed them validly and credibly to challenge tax officials. Such involvement would put them on a different footing from legal professionals, which the following discussion makes clear.

The journal frequently printed queries and/or letters on other tax topics, giving an indication of the types of issues accountants encountered, such as areas of legal uncertainty or ambiguity and other problematic issues, for example, whether income tax is payable on capital borrowed from bankers as distinct from private lenders (1884, No. 481, p. 6), on the apparent different treatments of depreciation (1884, No. 482, p. 8), on how tax should be levied on agents of foreign 'houses' (1885, No. 556, p. 9), and how building societies should deal with income tax in respect of interest on mortgages (1884, No. 523, pp. 13–14). This last matter was raised in the House of Commons, with the Chancellor of the Exchequer replying that the Board of the Inland Revenue was looking into the matter, concluding that (1884, No. 523, p. 14) 'the question is one of a highly technical character and surrounded with practical difficulties'. It might be inferred from this that the authorities likewise were unclear how to deal with it, a view that is reinforced by the result in another case, *Last v The London Assurance Corporation*, being queried in the House of Commons in its application of the law (whether income tax was assessable on profits returned to members of the aforementioned company (1885, No. 555, pp. 4–5)) to the Financial Secretary of the Treasury, Sir H. Holland, who replied that he could not say anything until he had considered the 'shorthand writer's notes' (1885, No. 555, p. 9). Even the judiciary had problems in applying income tax rules, the current

difficulties being so great that '… judges in the highest judicial tribunal in the realm hold and express the most diametrically opposite views', undoubtedly because of '[t]he inquisitorial nature of the Income Tax, the unfairness with which it is levied, the numberless ways in which it may be, and is, evaded [which] furnish strong argument to those who advocate its abolition' (1885, No. 555, pp. 4–5).

Attempts to dispel at least some of the cloud of uncertainty were provided by lectures on income tax to accounting students, such as that by Mr A. Murray, Fellow Chartered Accountant (FCA), to the Manchester Accountants' Students' Society (1885, No. 474, pp. 8–11); by Mr. W.L. Gough, Surveyor of Taxes, to the Nottingham and Midland Counties Accountants' Students' Association (1885, No. 537, pp. 10–11 and No. 538, pp. 8–10); and by Mr R.R. Daly, Associate Chartered Accountant (ACA), to the Liverpool Chartered Accountants Students' Society (1894, No. 999, pp. 93–98), who admits that, in regard to the importance of income tax, 'we ought to be more fully masters of it than, I may as well confess, I for one was' (p. 93).

The issues referred to above are typical of the tax content in early issues of *The Accountant* – and this continued with a similar degree of frequency in subsequent years. Hence it is not surprising that one of the very early specialist tax firms was the Income Tax Adjustment Agency, which began to offer its services in 1890, shortly followed by the Income Tax Repayment Agency in 1901. By 1914 'there were fourteen rivals' offering similar types of advice (Jeffrey-Cook, 2002).

The material already cited from *The Accountant* suggests that there were considerable technical difficulties posed by taxation. These continued into World War I and beyond. Stopforth (1990, p. 238) cites the comments of Sir Josiah Stamp (considered to be the leading tax authority of his day), writing in 1919, after income tax rates had risen significantly in the war:

> 'Taxation is now rapidly developing from a merely unpleasant incident into a dominating feature of daily life, and those features which hitherto have been of little interest, because they have been too small to matter, now become of great importance; the blemishes which were insignificant may now be intolerable because in the magnitude of the burden they have become sufficiently magnified or intensified to be within the range of ordinary human feeling.'

The situation was exacerbated by the introduction of the Excess Profits Tax (see also Plehn, 1920), and the greater demand by authorities for accurate figures to ensure that liabilities were calculated correctly (see Farmar, 2013, pp. 62–63) – all providing work for accountants. Stopforth (1990) also comments on the growth of professional expertise in respect of avoidance schemes, from about 1910, which clearly gave domain to accountants. This had also been increased by the Finance Act 1903, which allowed accountants (as well as solicitors and barristers) to appear before the Income Tax Commissioners, something which was resented by the legal profession (see also Walker, 2011). *The Accountant* established a regular advice column, because of the increasing importance of income tax, as taxpayers needed '"the advantages of professional assistance in a subject of such intricacy"' (Stopforth, 1990, p. 243, citing *The Accountant*, 6 June 1914). In 1922, the journal increased its fees as a consequence of the increased cost of providing its readers with such advice.

Another indication of the increased need for tax advice to meet the requirements of an increasingly complex environment is seen in the establishment in 1927 of the professional journal *Taxation* (Jeffrey-Cook, 2002). Significantly, it was begun by Ronald Staples, who was one of the founder members of the Institute of Taxation. In 1931, *Taxation* carried an article on the formation of the Institute:

> 'Before the war [World War I] there was little to learn about taxation law and practice but as the burden has increased with its ever-growing "ill-digested mass of legislation", it has become a highly specialised subject and every accountant and solicitor in the country realises the importance of studying it.
>
> Learned judges and eminent lawyers are constantly admitting that the subject is one of the most intricate in their experiences, and as the years go by the Finance Act provisions relating to taxation seem to become more obscure and official publications more exacting.
>
> The recent announcement of the formation of the Institute of Taxation, therefore, came as no surprise to our readers who will realise that the need for such a body has long been felt' (Anon. (1931), reproduced in *Taxation*, October 1987, p. 34).

Although the above article must be read in the light of justifying the establishment of a professional body, it clearly indicates that tax difficulties continued.

The material in *The Accountant* shows that accountants had quickly become involved in income tax issues. That they had done this so swiftly may be a result of their engagement in commercial accounting and financial statements, as income tax on company profits, dividends, interest, etc., is a natural corollary to that engagement. They were already involved and prepared to acquire the technical knowledge as an extension to what they were already doing. This expansion of their 'cognitive dominion by using abstract knowledge to annex new areas, to define them as their own proper work' (Abbott, 1988, p. 102) is one of the defining traits of a profession. Accountants were claiming the tax domain as part of their activities to help to establish professional validity by defining what was the 'proper' work of an accountant, contemporaneously with the issues surrounding the establishment of the various accounting professional bodies in the late nineteenth century (see, for example, Edwards et al., 2005, 2007; Anderson et al., 2005, 2007). Tax was part of that 'proper' work, and while accountants were not allowed to advertise their services, the fact that they could provide a tax service as an 'add on' to what they did would make their services overall more attractive to clients. Anderson et al. (2005, p. 43) note the 1894 case of 'Mr ACW Rogers, who enquired [of the ICAEW] whether he could add the words "Income Tax Adjustment Agency" to his sign' as a chartered accountant. The ICAEW denied his request, the concept of agency being one of many work areas it felt was not fitting for an accountant. It did not, however, comment on the unsuitability of taxation when it had a clear opportunity to do so.

This swift colonisation of an emerging or unclaimed area appears to be a recurrent feature of the accountancy profession and its willingness to develop, which continues in more modern times. For example, Dezalay (1991, p. 795) comments, in relation to tax law consultancy in Europe, that this was an area 'left fallow' by lawyers, although an area which theoretically fell into the legal domain, because it 'was

disdained by top European lawyers, and … as a consequence, was progressively appropriated by accountancy firms'. The reason for this was that this type of work was seen as not respectable, as it was on the fringes of what the higher levels of the continental legal profession deemed acceptable. Accounting, to which this area was seen as connected, had been viewed as a craft allied with trade, conferring no social status on the accounting practitioner, whereas the practice of law conferred considerable social prestige – what Dezalay (1991, pp. 792–793) inherently attributes to the superiority of 'the republic of letters' over 'the empire of numbers'.

An important characteristic historically associated with professions, as opposed to engagement in trade and commerce, has been the enhanced social standing that their members have enjoyed. From early times, professions were deemed fitting occupations for the well-educated 'spare' sons of the aristocracy and gentlefolk, who were unlikely to inherit family titles or land to provide them with an income. These 'spare' sons often became clergymen, army/navy officers, medical men or lawyers without any noticeable diminution in their social standing. Engagement in trade (and 'getting one's hands dirty'), involving profits and money, was regarded as degrading, unless immensely successful in financial terms. Rutterford and Maltby (2006, p. 175) make clear that the system of primogeniture, designed to ensure the intact transmission of landed estates from one generation to the next, often by means of an entail, 'penalized younger sons' (Rutterford and Maltby, 2006, p. 178). If a younger son failed to inherit money from another relative or to make an advantageous marriage:

> In order to maintain their status as gentlemen, they were restricted to employment in respectable professions such as the civil service, the law, the Church, and the armed forces (Rutterford and Maltby, 2006, p. 178).

This solution to the 'younger son problem' (Rutterford and Maltby, 2006, p. 178) had long been recognised but by the 1870s was no longer as widely available, owing to open competition (Rutterford and Maltby, 2006, p. 178, citing Brodrick, 1872).[9]

The emergence of the need for financial experts who could understand trade helped establish the various accounting institutes, but their members' social standing was regarded as tarnished because of the association with trade. The need to deal with the tax arising as a consequence of profit, giving rise to a need also for tax experts, meant that tax and tax activities were similarly regarded and thus taken up by accountants and not lawyers.

Similarly, albeit somewhat later in time, audit specialists in the 1960s took the offensive by appropriating greater responsibilities in the tax area, claiming a good knowledge of taxation practice which was supported by a 'long-standing familiarity with fiscal bureaucracies' (Dezalay, 1991, p. 797). Through:

> … their ability to construct tax devices, which make it possible to minimise tax demands by exploiting loopholes in the law, accountants have gradually succeeded in occupying the position of consultants to economic leaders. Their presence at the inception of a transaction, which they helped to structure, ensures that they are well-placed to sell other services (Dezalay, 1991, p. 797).

THE NEED FOR TAX ADVICE – THE LAWYERS

Given that taxation is imposed by law, there is a disputed 'border territory' between the professions of law and accountancy (Freedman and Power, 1992, p. 1) into which tax undoubtedly falls. The material cited from *The Accountant* suggests that accountants colonised the income tax area very thoroughly. What were the lawyers doing while this was happening? The research which examines the legal profession considers mostly its development (see, for example, Baker, 1981; Baker, 2002, pp. 155–172; Brooks, 1981; Duman, 1981; Levack, 1981; and Prest, 1981, 1987), but work which considers the particular type of work that lawyers actually did is distinguished by extreme scarcity.

One of the issues that affected the newer accountancy profession was an attempt, as has been discussed earlier, to define what Abbott (1988) refers to as the 'proper work' or jurisdiction of the profession in terms of what its members could and could not do, in a definite attempt to raise its status, professionally, socially and economically. By and large, there was never any debate in law as to what the work domain was, as this was automatically defined by the word 'law', though there might have been consideration as to which type of practitioner might deal with an issue at different stages, a process which was developed and refined over many years. In early times (see Baker, 1981; Baker, 2002, pp. 155–172; O'Day, 2000), distinctions between lawyers in terms of who carried out particular functions was much less clear. However:

> By the mid-sixteenth century there were two branches of the legal profession – barristers, and attorneys and solicitors. Traditionally solicitors dealt with landed estates and attorneys advised parties in lawsuits. Gradually, these two roles combined and the name 'solicitors' was adopted (Law Society, 2015).

Although there were many solicitors of impeccable reputation, the profession also had 'pettifoggers and vipers' (a term used by Brooks in the title of his 1986 book), which damaged its reputation. In 1825 'to raise the reputation of the profession by setting standards and ensuring good practice' (Law Society, 2015), the Law Society[10] was formally founded (obtaining its first royal charter in 1831, with a new charter in 1845). It is not often remarked that the formal organisation of the modern legal profession, in terms of its professional bodies, is so close in time to that of the accountants, and the ICAEW in particular. The Bar Council, as the regulatory body for barristers, was an even later development, in 1894 (Bar Council, 2011). However, it seems more the case that the setting up at these dates of professional bodies did not *per se* drive the establishment of the profession itself or determine its legitimacy, in the same way as establishing professional bodies validated the accounting profession. The law bodies were more a recognition of a status quo.

Although it was commented above that research into the type of work done by lawyers is scarce, in many ways it might be viewed as self-evident, as the tax cases referred to above (e.g. *Re Henley & Co.*) would require the appropriate involvement of lawyers. There is no doubt of that involvement, even in tax matters pre-dating income tax. For example, Ferrier (1981, pp. 303–304) reports on a 1783 scheme to

'get round' the payment of a two-pence scot duty payable in Glasgow on each pint of ale or beer brewed, brought in or sold in the city and suburbs, in the case of *Magistrates and Town Council of the City of Glasgow v Messrs Murdoch, Warren & Co*. The brewers, based at Anderston, then far enough away to be considered as not in the city or suburbs, announced that they would cease to supply the city, and made a contract with a Mr Munro, who bought the beer and supplied it to customers from the Anderston premises. The case was taken to the House of Lords. Lord Mansfield was the foremost judge, and had no qualms about judging this a tax avoidance scheme which should not be allowed, and ignoring the 'device of the intermediate contract with Munro' (Ferrier, 1981, p. 306). In general, however, there is still no academic insight into the 'behind the scenes' work of either solicitors or barristers.

Lawyers had been involved in tax work for many years, especially in terms of dealing with tax on death and so on (for example, probate duty had been introduced in 1694, with succession duty and estate duty appearing in the mid- to late 1880s). This was usually and clearly linked to the need for a solicitor when a will was made. The full extent to which the legal profession colonised the newer areas offered by income tax remains to be investigated.[11] Logically, lawyers might be expected to be less proactive than accountants, as their role is typically played at the end of a process, for example, when dealing with a person's estate or when a matter is referred to court, as already mentioned, and thus they absorbed the additional work as something akin to their existing role as advocates, 'strict defenders of their client's interests' (Dezaley, 1991, p. 794). Clients would thus seek them out, whereas accountants would seek out clients. It may be that income tax work offered sufficient scope for both accountants and lawyers to co-exist without rivalry, as both thus had different roles to play. Certainly, a brief look at the *Solicitors' Journal & Reporter*, one of the main professional journals for solicitors, would seem to confirm this. For example, Volume 6, 1861–1862, for 22 March (p. 381), carries a letter about 'Deed Stamps in the Colonies' and for 7 December (p. 89) a query from 'TYRO' about succession duty receipts. Early comments about income tax appear to relate to how it affects solicitors themselves as professionals, rather than how it affects their clients. In the *Solicitors' Journal & Reporter*, Volume 5, 1860–1861, for 18 May (p. 501) there is an untitled piece about a petition signed by 700 solicitors complaining about how they suffer 'grievous hardship', like many other professional men, because of the 'precarious' nature of the incomes. At this time, such rivalry as did exist between accountants and lawyers seems confined to insolvency and bankruptcy work (see Walker, 2004) and there is frequent sniping by one profession at the other in their professional journals. For example, *The Accountant* (1875, No. 20, pp. 3–4) refers to lawyers regarding accountants as 'poachers'. It may also be the case that lawyers in general considered the work derived from arenas such as company accounts as *infra dignitatem* – as tainted by an association with trade – which carried a certain social stigma, and therefore only became involved at a stage beyond this or when their services were deemed essential (i.e. when matters went to court). While this is speculation, given the comments of Dezalay (1991) referred to earlier and solicitors' history of dealing with the landed gentry, it is not wholly without foundation. It is, however, given some support by legal resentment over accountants (as well as solicitors and barristers) being allowed by the

Finance Act 1903 to appear before the Income Tax Commissioners, as mentioned previously.

CONCLUSION

This paper has put forward the case for accountants being very proactive in claiming tax work as 'proper' work falling into their domain, at a time when they were establishing themselves as credible and valid professionals and setting boundaries for their work in terms of what was and was not deemed suitable. It is argued that their association with trade made them well placed to follow up on the tax issues associated with expenses to be deducted in computing profits, dividends, interest, etc., for companies, and, indeed, for individuals associated with companies, such as directors (not to mention exploiting opportunities for avoidance – see Stopforth, 1990). This is supported by a wealth of contemporary material from *The Accountant*. However, while the evidence from this journal more than supports the case made here, it would be helpful also to look also at other contemporary, professional accounting journals to expand on this, as there were several published in this period, such as the *Incorporated Accountants' Journal* (first published as a quarterly journal in 1889, becoming a monthly publication in 1895) and *The Circular*, launched in 1905, which became the *Certified Accountants' Journal* in 1909. Similarly, it would be useful to look in greater details at the *Solicitors' Journal & Reporter* and other professional law journals, but these are projects for further research.

ENDNOTES

1 The Select Committee on Income and Property Tax was its official title.

2 This became the Chartered Institute of Taxation in 1994, when a royal charter was granted.

3 *The Accountant*, 1882, Vol. 8, No. 400, pp. 4–5, refers to the profession at this date as not going back 'more than a century'.

4 Robinson (1964, pp. 217–218 and 1984, pp. 217–218) comments that *The Accountant* did not devote 'any space to tax affairs prior to 1900'. However, as this paper proves, issues relating to income tax are evident in terms of the problems it created.

5 References from here onwards in the form of year, issue number and page reference(s) relate to issues of *The Accountant*. The majority of items are not attributed to any named author, and many do not have specific titles.

6 See also 1880, No. 292, pp. 4–5; 1880, No. 314, p. 12; 1884, No. 523, p. 13.

7 These were the forerunners of inspectors of taxes.

8 It may be that this is the result of a higher quality of surveyor now becoming involved in tax cases. Open, competitive examinations for the post of surveyor were introduced in 1881 (Sabine, 1966, p. 122).

9 See further Frecknall-Hughes and McKerchar (forthcoming 2015/2016).

10 It was originally called the London Law Society at its more informal inception in 1823, but 'the term "London" was dropped from the title to reflect the Institution's national aspirations' (Law Society, 2015). The first formal title was 'The Society of Attorneys, Solicitors, Proctors and Others Not Being Barristers, practising in the Courts of Law and Equity of the United Kingdom'. In 1903 the official name was changed to 'The Law Society' (Law Society, 2015).

11 This will require extensive study of, for example, case law reports and the legal professional journals during this period.

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