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Fletcher, Marie M.

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Death and Taxes: Estate Duty – a Neglected Factor in Changes to British Business Structure after World War Two

Marie M Fletcher

School of Business and Enterprise, University of the West of Scotland, Paisley, Scotland

Corresponding author: marie.fletcher@uws.ac.uk
ABSTRACT

This paper will examine Estate Duty (ED) and its impact on the structure of smaller British businesses. ED was one of the most controversial and wide-ranging taxes ever imposed in the UK. It was the first substantive tax on capital. It was partly responsible for the reconfiguration of British business in the 1940s-1950s as businesses sought to avoid the Duty with measures which could result in the loss of a family firm to the “corporate economy”. Examining this phenomenon adds a hitherto unexplored dimension to the arguments of business historians surrounding the structure of British business and its relative performance after World War II.

Keywords Estate Duty, death duties, corporate economy, business structure, anticipatory action

Introduction

In 1894 a new tax was introduced to the United Kingdom; this tax was called Estate Duty and became part of a range of taxes which were known collectively as Death Duties. The Duty had two purposes, to tax and redistribute the wealth of deceased individuals. However, there was an unintended consequence when it was applied to estates which included family shareholdings in private companies; the share valuation method used by the Government created large tax bills prompting avoidance measures to be sought by affected businesses to minimise these sums. It is difficult to quantify the effect of these avoidance methods in monetary terms, but it seems likely that they had some impact on the economy. As the Duty’s range of bands continued to increase, its top rate moving from 8% at its inception to 65% post World War II, rising to 80% by 1949, it had a damaging effect on small businesses as a result of the Inland Revenue’s unrealistically high valuations of unlisted shares. Consequently, businesses sought to avoid the Duty through various measures which will be outlined in this paper.

Estate Duty was the controversial precedent tax to Inheritance tax, yet it has not been fully researched before. Earlier research into the Duty revealed that the changes made to Estate Duty during its lifespan went on to have a major impact on the structure of British business. The same study found that there was little mention of this tax in business history literature and existing work on Estate Duty tended to be restricted to exploring the technical nature of the tax rather than its impact.

This study will provide details of how the tax came into existence, what it was intended to do and how it impacted British business. It is anticipated that this work will contribute to the literature on family businesses by offering another explanation as to why private limited companies and family firms may have chosen to either alter their legal structure, merge with
another business or simply changed the way they operated to avoid the tax. It is not disputing the work carried out by other business historians, rather it offers an alternate reason why small businesses may have changed their structure.

**Methodology**

In order to assess whether Estate Duty did have an impact on private limited companies, extensive archival research was undertaken. It was necessary to understand the tax itself so its pathway to legislation and the changes made to it during its lifespan were scrutinised to understand whether the impact of the Duty had been considered. Archival material from a range of primary sources such as Glasgow University Business Archives, Hansard parliamentary debates, political correspondence, Inland Revenue and Treasury documents, along with digitised materials from The Times and The Economist were analysed; the timespan of these sources extended over 50 years. Professional and trade reports were also studied and whilst it is appreciated that professional bodies were not agenda neutral, they existed to provide their practitioners with information which may have impacted their behaviour and thus offer an understanding of the concerns at that time. The professional reports were selected because these provide insights into the consensus of opinion on the potential harm being caused by Estate Duty to smaller entities, and offer an explanation of what may have caused some businesses to alter their legal structure as a means of avoiding the Duty. The corporate archives of two businesses, where Estate Duty was known to be a factor when a substantial change was made to a firm’s structure, were also examined. These changes were analysed and the subsequent impact of the change on each business clarified.

**Consideration of the impact of Taxation in literature**

A selection of literature which discussed business structure was explored to identify whether Estate Duty had been considered. It was established that the Duty had been relatively overlooked in previous literature, especially for smaller entities. The editorial of a special issue of Business History in 2013, edited by Colli, Howorth and Rose indicated that there was still much to be discovered in the study of business enterprise, specifically its organisational forms and structures. It is anticipated that this research will add to the continuing discussion by suggesting a different motivation for structural change. There is continued interest in the family firm and this study will demonstrate that Estate Duty may have been a consideration in the choice of business structure for smaller entities such as private limited companies.
(many of whom were family businesses). If this is the case, then it is contended that these structural changes may have contributed to the rise of the corporate economy. More importantly, this paper offers an explanation as to why the performance of businesses may have been limited as a result of taking anticipatory action to avoid Estate Duty.

Chandler is widely credited as being the first business historian to discuss organisational evolution when he looked at the role of management practices and their impact on the success of organisations. He focused on the relationship between management structure and the organisational form the business subsequently took. He was one of a number of academics who looked at business structures and postulated why these structures might change, a small selection being Chandler (1962, 1981, 1990), Hannah (1981, 1983, 2007), Church (1993), Dintenfass (1992), Wilson (1995) and Wilson and Thomson (2006), yet, none of these authors considered smaller entities and so the objective of this research is to draw attention to the relatively neglected area of private limited companies whose structure may have altered through avoidance measures adopted.

The literature can be separated into a number of strands, for example, those historians who identify the potential impact of Death Duties but do not explore it in detail, such as Cheffins and Bank (2007) who briefly commented on, for example, flotation of shares as a means to avoid Death Duties but they were clear that the main focus of their paper was on larger business enterprises already listed on the Stock Exchange. The authors did recognise that valuation methods were an issue but their study did not set out to explore this. Colli (2003) suggested that there were instances where structural changes were made as a result of Estate Duty in the UK when he noted that “in the British case…a sharp rise in death duties at the beginning of the 1950’s has been one of the main forces in the transformation of British’ industrial capitalism.” He does not explore the impact beyond showing an awareness of its existence as his book examined weaknesses in family firm business structures, such as short sightedness. He cited Lancia and Olivetti as having this flaw, but he noted that the studies were inconclusive.

Hannah (1983) recognised that Death Duties may have played a small part in share ownership patterns and might have caused some difficulties in passing on control of a family firm. However, he did not examine Estate Duty per se, nor its impact. Instead, he appears to have accepted the findings of the 1927 Colwyn Committee Report which suggested that Estate Duty could be avoided through tax planning and would not impact on businesses. The
Colwyn Report remit was to establish whether Estate Duty could be paid without having to sell business assets; it concluded that there were generally enough non business assets to pay any Duty which arose, however, the rate of Estate Duty was considerably lower when the report was prepared, with a maximum rate set at 40%, and the valuation methods in place were more favourable. The government produced a further report in 1951v which was heavily criticised (Federation of British Industries, 1953; Ilersic, 1954) as a result of the statistics used and the simplistic analysis performed. However, Hannah does not mention either this report or the debates surrounding the changes to valuation for Estate Duty purposes. In his 2007 paper he discusses share ownership more thoroughly but his focus was on larger corporations. This study will ensure that the impact of Estate Duty is assessed in relation to smaller businesses.

Some researchers discussed the impact of other aspects of taxation but do not address Death Duties, for example Mollan and Tennent (2015) who provided historiographical evidence that the impact of taxation on British business has been considered and who adopted a similar methodology to this paper through the use of government (Inland Revenue, Treasury) and other (trade, industry) archival research as well as press and industry publications; their focus remained on international taxation. They do note, that “tax minimisation strategies became observable. Through innovation in structure… international firms adapted and changed as the environment changed around them...” vi and importantly, they refer to “defensive countermeasures” vii Historians such as Billings and Oats (2014) and Rutterford and Walton (2014) analysed the effect of a particular tax Excess Profits Duty (EPD). These studies successfully draw attention to the fact that government intervention and manipulation of taxation was common during war time.

Wilson (1995) and Mackie (2001) recognised the potential impact of taxation but did not explore this further; Wilson (1995) identified that there was a disparity in the rates of company tax applied to distributed profits with retained profits being taxed very lightly compared to a dividend distribution. In terms of Estate Duty, this method of distribution is relevant as this would affect the way the shares were valued but Wilson’s book does not explore this particular impact. Mackie (2001) looked at family ownership and business survival and although he mentions the use of limited liability status being used to overcome problems of inheritance, he did not consider the impact of high valuations on unlisted shares.
Research that focused on strategy and structural form of small businesses was also explored but there did not appear to be any indication that taxation was a factor. For example Alford (1977) considered that external factors would have an impact on entrepreneurship and business performance though he does not define external factors nor explore this point further. Chandler (1990) argued that there was a lack of three-pronged investment in production, distribution and management in British family-owned firms, which resulted in the UK’s economic performance lagging behind the US, and he also believed that the reliance on family businesses weakened the UK’s growth. He argued that managers could be regarded as effective if they were capable of coping with external factors whilst continuing to prosper. Chandler did not consider that governmental factors could have had an impact on development. This research is not disputing Chandler’s argument that the sale of family businesses, in some instances, might have been beneficial; instead it is offering an alternative insight. It is suggesting that there are cases where anticipatory action taken to avoid Estate Duty weakened not just the business but may also have had a negative impact more generally on the British economy.

Hannah disputed Chandler’s findings in relation to family businesses, noting that Chandler’s key error was, “not in diagnosing personal ownerships on some British industrial boards….but in creatively imagining that it was not more prevalent in the contemporary USA and Germany”viii Hannah also commented on the fact that patterns of share ownership were quite different due to the market differences between the US and the UK, but his selection of businesses focused on listed companies, which meant that he did not consider the impact of Estate Duty. Hannah noted that the US was dominated by plutocratic family owners whilst Britain offered a wider share ownership but his work focused on the “divorce of ownership from control”ix but neither he nor Chandler took into account the impact of external factors such as Estate Duty. Wilson (1995) also believed Chandler did not take account of government influence through policy decisions, which could affect management strategy. Taxation is a singularly important element of government policy but Wilson did not develop this point at the time. Tomlinson (1994) also looked at government economic policy to see if it supported improving business efficiency and whilst he found that policy had a major impact on the structure of organisations, his focus was on larger entities. He stated that it was not his intention to provide a definitive conclusion on the causes of British relative economic decline.
Church (1993) looked at family firms and particularly the idea of ownership and control but did not consider the impact of taxation in his work. Elbaum and Lazonick (1986) attributed the decline of the British economy to rigidities in economic and social institutions and asserted that the family business structure prevented them from taking the business forward. Higgins et al (2011) examined strategies and structural forms of successful firms by analysing their financial performance but they did not acknowledge that the choice of structure may have been influenced by the potential impact of Estate Duty. Toms & Wright (2002) examined the relationships between changes to corporate governance and the structure of the business but did not take into account that changes to structure may have been influenced by other factors, such as Death Duties. Toms, Wilson and Wright (2015) also analysed the role of private equity in restructuring the corporate economy but Estate Duty was not regarded as a potential factor here either. Dintenfass (1992) noted that small firms were disappearing but offered no explanation for this other than their lack of innovation and resistance to entrepreneurial updating of tooling and production techniques. He noted that those “critical of British entrepreneurship found signs of technological conservatism in a disturbingly broad array of industries.” and whilst there may well be evidence to support this view, there is an alternative explanation. Unlisted businesses had no access to an agreed list price for their shares, thus a valuation was required for Estate Duty purposes; these valuations tended to be high and businesses sought to minimise the value placed on their shares. In some instances, they refrained from growing their businesses in order to avoid the potentially high Estate Duty Office valuation of unlisted shares. There is certainly evidence to support this theory in the analysis undertaken by the Economist Intelligence Unit (EIU) which will be discussed fully later and will be used to illustrate the impact of Estate Duty on business.

There is also a range of literature which focused on the technical details of the tax but does not reflect on the potential impact it may have had on business structures such as Rees(1921) and Daunton (2001, 2002), the latter produced two specialised works on taxation which helped provide a context for the Duty. He highlighted the complex state of the tax system and how this complexity was reflected in the fiscal policy of the time. It became clear that long term tax planning was being overlooked by governments in favour of short-term solutions and voter friendly policies. Whilst he showed that he was aware of the protestations in the 1950s that surrounded Estate Duty, Daunton did not explore this point as it was not relevant to his work. Sandford (1971), an economist and academic, wrote several relevant texts which
offered a comprehensive history of the duties and showed awareness of potential issues concerning valuation of shares in unlisted companies but the timing of Sandford’s book is relevant as it was published towards the end of the life of Estate Duty, when governments were actively looking for a replacement (Capital Transfer Tax), thus the impact of the Duty on business was not fully analysed.

Later authors such as Bracewell-Milnes (2002) would continue the scathing attack on Inheritance Tax which replaced the short lived Capital Transfer Tax but did not review its predecessor taxes so showed no recognition of Estate Duty and its impact.

This focused review of the literature indicated that the impact of Estate Duty on the structure of private companies has been overlooked. This study will offer an alternative explanation into why some business structural changes were undertaken.

In order to achieve this aim, the paper will focus on the 1940 Finance Act changes and consider why the Conservative government of the day did little to prevent the impact.

In summary, this paper will examine Estate Duty and its impact, focusing on its effect on unlisted private firms, many of which were family businesses. It will offer another reason why some British firms changed their organisational structure, and more crucially, it will suggest that relative economic performance may have been affected by other kinds of avoidance measures.

**Introduction to Estate Duty**

Estate Duty was the main Death Duty from 1894 and was the forerunner to today’s Inheritance Tax. It existed for some 80 years and was intended to rationalise what had become an unwieldy, complex system of death taxes.

Estate Duty was widely recognised as a problematic tax and whilst there is literature that documents what the tax was and how it came into existence, in general, the information on Estate Duty tended to be factual and did not consider any impact the tax might have had.

Estate Duty faced a difficult path into legislation as it was changing the way that tax affected real property (effectively immovable assets such as land and buildings) and aligning it with the way that personal property (moveable items such as jewellery, paintings, furniture etc.) was taxed. It was a substantial change, which will be discussed more fully in the next section, and one which would result in tax bills becoming significantly higher. Previous
governments had already tried to invoke change, without success, over forty years earlier so the debates surrounding Estate Duty’s introduction into parliament were protracted. Relatively underhand tactics were employed by the government, such as debates held at short notice or without supporting paperwork, to ensure that the Duty would become part of legislation. (Hansard 1894)

The next section explores Estate Duty’s development and focuses on changes made to the tax some thirty years after it was created. These changes caused anticipatory action to be taken to avoid the tax which had consequences for the way businesses operated. It will be shown that whilst some of the actions have left no paper trail, there is enough evidence from other sources to suggest that the tax may have had an impact on the British economy.

**Estate Duty’s Journey through parliament**

Initially the Duty had bipartisan support, however, serious concerns were expressed when the Duty became law and were ignored at the time. These concerns will be outlined where they relate to the impact on small businesses.

The Duty was initially intended to be dual purpose, firstly to find new revenue to meet the increased expenditure needs of the country, including the expansion of the naval fleet under the Naval Defence Act of 1889, and secondly to redress the perceived inequalities of the existing Death Duty system. The system had been created in a piecemeal way with amendments bolted on with little thought given to the overall structure of the tax.

The new tax would come up against a wall of criticism as Harcourt, the Chancellor who introduced Estate Duty, proposed that real property would be taxed at its capital value for the first time; previously it had been taxed on the substantially lower annual rental value. The proposed move would increase the overall tax burden. This was a real blow to the landowners who still dominated both parliamentary Houses but it would not have been a surprise as the idea of equalising taxes had been debated for some time in both the House of Commons and the press. Thus, when the new Duty came into existence, equalisation was one element of three embodied in Estate Duty, the other elements being simplification and graduation.

The protracted parliamentary debates, which took place around the introduction of the new Duty, aid the modern reader in understanding a complex system of taxes that had grown up over a period of almost 200 years. The precedent taxes of Probate, Account and Legacy Duties were related to personal property whereas Succession and Estate Duty, subsequently
renamed Temporary Estate Duty to avoid confusion with the new Act, taxed both personal and real property. In order to illustrate the inequality, numerical examples were produced which showed the differential. One such example, an estate of £15,000 which, if it was made up of personal property, would be taxed at £600 (£450 Probate Duty and £150 Estate Duty); the same estate if it was real property, would only be required to pay £270 (£139. 10s in Succession Duty and £130. 10s in Estate Duty] (Hansard, 1894). Harcourt was aware of the arguments which had surrounded the introduction of Succession Duty in 1853 thus was able to pre-empt the inevitable disagreements which would surface during the debates. He noted that it was “far better to place both taxes on a fair and equal basis than to attempt to counter-balance one inequality by the creation of another.” This was in reference to the contention that real property already bore a heavier burden in the form of land and local taxes during the lifetime of the owner.

Graduation had been partially created by Temporary Estate Duty so Adam Smith’s first principle had already been adopted. Harcourt put forward his scale of graduation as follows:

**Table 1 – Graduated Scale of Estate Duty**

Where the principal value: -

<table>
<thead>
<tr>
<th>Exceeds</th>
<th>Does not exceed</th>
<th>For every £100</th>
</tr>
</thead>
<tbody>
<tr>
<td>£100</td>
<td>£500</td>
<td>1 pound</td>
</tr>
<tr>
<td>£500</td>
<td>£1,000</td>
<td>2 pounds</td>
</tr>
<tr>
<td>£1,000</td>
<td>£10,000</td>
<td>3 pounds</td>
</tr>
<tr>
<td>£10,000</td>
<td>£25,000</td>
<td>4 pounds</td>
</tr>
<tr>
<td>£25,000</td>
<td>£50,000</td>
<td>4 pounds and ten shillings</td>
</tr>
<tr>
<td>£50,000</td>
<td>£75,000</td>
<td>5 pounds</td>
</tr>
<tr>
<td>£75,000</td>
<td>£100,000</td>
<td>5 pounds and ten shillings</td>
</tr>
<tr>
<td>£100,000</td>
<td>£150,000</td>
<td>Six pounds</td>
</tr>
<tr>
<td>£150,000</td>
<td>£250,000</td>
<td>Six pounds and ten shillings</td>
</tr>
<tr>
<td>£250,000</td>
<td>£500,000</td>
<td>7 pounds</td>
</tr>
<tr>
<td>£500,000</td>
<td>£1,000,000</td>
<td>7 pounds and ten shillings</td>
</tr>
<tr>
<td>£1,000,000</td>
<td>---------------</td>
<td>8 pounds</td>
</tr>
</tbody>
</table>

(Hansard, 1894)

The Finance Bill was presented as a whole and this necessitated either rejecting or accepting it as such. Many agreed with the majority of the Bill but there were naturally aspects which
were not acceptable to some. This is neatly summed up by the Conservative member of parliament, William Bousfield who stated that “the various proposals were bracketed one against another... this Bill was likely to do more harm than good.”

He also commented on the difficulty of following the normal process of approval for a Bill, which would include introducing amendments at the Committee Stage, as the structure of the Bill meant that it had to be taken as a whole, and “they could not disturb one part without disturbing and overthrowing the whole scheme.”

The critics of the tax voiced concerns on valuations; members stressed that this was an area likely to cause disputes given that those responsible for the valuations were also those who collected the tax. The concept of market valuation necessitated some kind of judgement which many feared would cause estimates to be on the high side and the falling values of land were a concern for many. There was certainly some disquiet around the timing of the debates which seemed, deliberately, to be at awkward times or undertaken without access to the appropriate paperwork. There was also the accusation that the Duty was intended to redistribute wealth as noted by Conservative member, Mr Gibson Bowles, when he questioned the true purpose of the tax, “The Chancellor of the Exchequer had gone about, not to levy a tax, but to oppress a class.”

The shrewder members, such as the previous conservative Chancellor Goschen, noted that once the Duty became law there was nothing to stop future chancellors altering the rates as they saw fit.

The biggest criticism concerned the methods of valuation of estates and much of the debate focused on this subject. It is also where subsequent changes in legislation were centred.

**Changes to Estate Duty**

Estate Duty originally did not have a great impact on business, as the initial valuation method in the 1894 Act was to use the *principal* value, which was defined as the price that the estate (which included shares) would fetch if sold on the open market. There were of course difficulties in establishing a market value for shares which, by their nature, were relatively unmarketable and there are numerous tax cases showing that valuations were disputed. However, the government believed that using the *principal* value for private company shares in businesses which were controlled companies, i.e. under the control of less than five individuals, resulted in low valuations. They sought to alter the valuation methods for this type of business, whilst at the same time, retaining the market value method for other assets and shares not controlled by a limited number of individuals. (Hansard, 1930)
Changes to share valuation methods were initially suggested in 1930 and amendments were put in place via the 1930 Finance Act. However, the real damage was done by the Finance Act 1940 where significant changes were put in place, specifically concerning the valuation of unlisted shares. Section 55(1) of the Finance Act 1940 introduced changes to the valuation of shares in companies under the control of fewer than five individuals. Control would be deemed to exist if the deceased had, at the time of his death or at any time within the previous five years:

a) A controlling interest in the company (control of voting or right of veto)

b) An interest in more than one-half of the dividends or interest payable by the company;

c) Owned one-half or more of the aggregate nominal value of shares or debentures in the company.

If one of these conditions existed, the valuation of the shares was to be on an assets basis, i.e. the proportion of the shares held compared to the net assets of the company. The rationale behind this change was that the individual who controlled the company had the power to choose which form any income extracted would take. For example, if the director took a salary or director’s fees instead of dividends, this might mean that the company could be very profitable yet the dividend yield might not reflect this and subsequently the principal value, as calculated under the 1894 Act, would give a lower valuation. (Johns, 1965)

The consequence of this change was that unlisted shares, which had previously enjoyed the principal value method (otherwise known as market valuation basis), were now subject to a valuation based on their underlying net asset value. In most cases, this resulted in a figure that bore no resemblance to what could be achieved by a sale of those shares; due to the relative unmarketability of shares in a private limited company. The backlash to this change was immense, with representations from diverse bodies such as the Federation of British Industries (hereafter FBI) and the National Union of Manufacturers (hereafter NUM) calling for changes as they warned of the impact on British business. These warnings came in the form of evidence backed reports illustrating the harm being done and the “anticipatory action” being undertaken by business to avoid the Duty. The nature of these actions could perhaps suggest that there may have been a wider adverse effect on the economy as a whole.

Over the lifespan of Estate Duty, governments altered the applicable tax bands; certain changes to the rates can be clearly linked to the economic situation of the time, thus the changes surrounding both the First and Second World Wars need no explanation. However,
whilst other taxes such as income tax reverted to a lower level when the Wars had ended, Estate Duty did not and, in fact, continued to increase. At the same time mid-range Estate Duty bands were also increasing, in a way that could perhaps be seen as manipulation by the government of the day. If this is coupled with the relatively high rate of inflation which pushed some estates into higher tax bands then, for those being taxed, the impact could be severe. For example, Table 2 below illustrates how an estate with a value of £500,000 was taxed at 27% between 1925-1930, 44.2% between 1940 and 1946 and 70% between 1949 and 1954. A similar impact can be illustrated based on a smaller estate of £250,000 with percentages of 25%, 36.4% and 60% respectively. It is these increased rates, coupled with high share valuations which caused issues for some individuals who owned shares in unlisted companies.

Table 2 – Estate Duty bands: Selected years

<table>
<thead>
<tr>
<th>Principal Value</th>
<th>Rate</th>
<th>Principal Value</th>
<th>Rate</th>
<th>Principal Value</th>
<th>Rate</th>
<th>Principal Value</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>£250k&lt;£350k</td>
<td>25%</td>
<td>£250k&lt;£300k</td>
<td>28%</td>
<td>£250k&lt;£300k</td>
<td>36.4%</td>
<td>£200k&lt;£300k</td>
<td>60%</td>
</tr>
<tr>
<td>£350k&lt;£450k</td>
<td>26%</td>
<td>£300k&lt;£400k</td>
<td>30%</td>
<td>£300k&lt;£400k</td>
<td>39%</td>
<td>£300k&lt;£500k</td>
<td>65%</td>
</tr>
<tr>
<td>£450k&lt;£550k</td>
<td>27%</td>
<td>£400k&lt;£500k</td>
<td>32%</td>
<td>£400k&lt;£500k</td>
<td>41.6%</td>
<td>£500k&lt;£750k</td>
<td>70%</td>
</tr>
<tr>
<td>£550k&lt;£750k</td>
<td>28%</td>
<td>£500k&lt;£600k</td>
<td>34%</td>
<td>£500k&lt;£600k</td>
<td>44.2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>£750k&lt;£950k</td>
<td>29%</td>
<td>£600k&lt;£800k</td>
<td>36%</td>
<td>£600k&lt;£800k</td>
<td>46.8%</td>
<td>£750k&lt;£1m</td>
<td>75%</td>
</tr>
<tr>
<td>£950k&lt;£1.2m</td>
<td>30%</td>
<td>£800k&lt;£1m</td>
<td>38%</td>
<td>£800k&lt;£1m</td>
<td>49.4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>£1.2m&lt;£1.45m</td>
<td>32%</td>
<td>£1m&lt;£1.25</td>
<td>40%</td>
<td>£1m&lt;£1.25</td>
<td>52%</td>
<td>Exceeds £1m</td>
<td>80%</td>
</tr>
<tr>
<td>£1.45m&lt;£1.95m</td>
<td>35%</td>
<td>£1.25&lt;£1.5</td>
<td>42%</td>
<td>£1.25&lt;£1.5</td>
<td>54.6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exceeds £1.95m</td>
<td>40%</td>
<td>£1.5&lt;£2m</td>
<td>45%</td>
<td>£1.5&lt;£2m</td>
<td>58.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where k=£000</td>
<td></td>
<td>Exceeding £2m</td>
<td>50%</td>
<td>Exceeding £2m</td>
<td>65%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Extracted from HMRC Scale of Estate Duty rates (ex. inf. HMRC)

Daunton (2002) offered explanations which go a long way to justifying why a business oriented government could make decisions which ultimately impacted on smaller concerns. He notes that “changes in the fiscal system were influenced by shifts in the social and economic structure.”xvii Whilst the governments were listening to larger bodies such as the FBI and the Trade Unions Congress (TUC), they focused mainly on the interests of larger entities, effectively meaning that they did not take account of the impact of changes on small firms and partnerships.xviii There was still a demand for redistributing wealth and the government targeted unearned wealth which ensured that the Death Duties remained at a high level.
Government Action

As shown in Table 3 below, the amount of revenue raised by Death Duties was relatively small in percentage terms, but the yield was still substantial. Given that Legacy and Succession Duties were abolished in 1949, there is a natural drop in Death Duties collected but the effect of inflation makes the comparison slightly more complex as the percentage of Death Duties to total tax increases. In addition, the levels of Death Duties vary from year to year with the number and size of the estates affected differing widely. Despite inflation increasing the relative value of estates, the tax bands themselves were not altered. This failure to uplift tax bands, or fiscal drag, may potentially have increased the number of estates liable for the tax and allowed the government to increase its tax take without increasing tax rates. If consideration is given to the effect of anticipatory action taken by businesses, in order to avoid the tax, it may be surmised that without this evasive action, the amounts collected may have been higher still.

The valuation methods for unlisted shares changed for Estate Duty in 1940 and Table 3 specifically highlights the years affected prior to, and immediately after the valuation change:

Table 3 – Death Duties Revenues

<table>
<thead>
<tr>
<th>Year</th>
<th>Death Duties £million</th>
<th>Total Tax £million</th>
<th>Death Duty as a % of Total Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1938/39</td>
<td>77.4</td>
<td>520.3</td>
<td>14.9%</td>
</tr>
<tr>
<td>1942/43</td>
<td>93.3</td>
<td>1569.3</td>
<td>5.9%</td>
</tr>
<tr>
<td>1944/45</td>
<td>110.9</td>
<td>2029.4</td>
<td>5.5%</td>
</tr>
<tr>
<td>1945/46</td>
<td>120.3</td>
<td>2042.9</td>
<td>5.9%</td>
</tr>
<tr>
<td>1946/47</td>
<td>148.0</td>
<td>1776.4</td>
<td>8.3%</td>
</tr>
<tr>
<td>1947/48</td>
<td>172.0</td>
<td>1798.6</td>
<td>9.6%</td>
</tr>
<tr>
<td>1948/49</td>
<td>177.1</td>
<td>2058.0</td>
<td>8.6%</td>
</tr>
<tr>
<td>1949/50</td>
<td>189.6</td>
<td>2111.4</td>
<td>9.0%</td>
</tr>
<tr>
<td>1951/52</td>
<td>183.0</td>
<td>2361.9</td>
<td>7.7%</td>
</tr>
<tr>
<td>1954/55</td>
<td>187.9</td>
<td>2541.3</td>
<td>7.4%</td>
</tr>
<tr>
<td>1955/56</td>
<td>175.7</td>
<td>2539.6</td>
<td>6.9%</td>
</tr>
<tr>
<td>1958/59</td>
<td>186.9</td>
<td>3016.0</td>
<td>6.2%</td>
</tr>
</tbody>
</table>

Adapted from Central Statistical Office: Annual Abstract of Statistics London HMSO
In the post-war fiscal context revenues from Death Duties were significant and this explains the reluctance of the government to lower the Duty. This same concern was apparent in discussions relating to EPD during the first World War outlined in the Billings and Oats (2014) paper. The top rate of Estate Duty in Table 3 ranged from 55%-80%, yet earlier government reports such as the Colwyn Committee’s 1927 Report commented on how the rate of Duty on large estates was “already dangerously high” in a section concerning avoidance of Estate Duty. The authors of the Report noted that whilst they were not asked to examine avoidance, it was impossible not to do so with this Duty as many witnesses mentioned this point. The Report gave an example of a £200,000 estate which would have had a Estate Duty bill of £28,116 bill in 1918/19 and £55,372 in 1923/24; a 97% increase in five years. The top rate at the time of the Report was 40%. Despite the fact that the Colwyn Committee findings appeared to show that businesses were not adversely affected by Estate Duty, there were glimmers of warnings from other parties who had commented within this document. One such party was the Association of British Chambers of Commerce, who noted that “death duties dissipate and divert capital from business channels often at a critical moment in the life of a concern……businesses and undertakings passing at death…have in some cases been seriously crippled and have actually ceased to be sources of income at all.”

So why did the Government not react? Firstly, it should be noted that when the Finance Act 1940 clauses were brought in they were barely discussed as the debates occurred during the week of the Dunkirk evacuation. The rationale behind the change to valuation methods under section 55 was discussed at parliament and was offered as a preventative measure for the avoidance of Estate Duty where it related to the valuation of shares in a private company. As Hansard provided no answers to the question, the records of the Cabinet Office were examined and in relation to the 1940 budget it was noted that whilst the war cabinet were verbally apprised of the financial proposals of the budget, it was important not to have these details recorded as secrecy was required.

Once the 1940 Act took effect, its impact became more measurable and commentary can be tracked through The Times. The use of newspaper articles is an established business history research technique and these publications were used as industry journals for finance related items for the period being reviewed. In 1942, a solicitor expressed his concerns through this medium and contrasted the old and new valuations. The original 1894 provisions on an estate
of £10,000 (£5,000 of which was shares) produced an Estate Duty bill of £400 whereas the bill under section 55 would amount to over £9,574xii

**Anticipatory Action taken by Businesses**

Not unsurprisingly, owners of shares in businesses which would fall under the 1940 Act rules were concerned with the changes to valuation methods and undertook various measures to mitigate the harm that the tax might inflict. These measures are referred to as *anticipatory action*.

Sandford (1971) introduced the umbrella term *anticipatory action* in his book *Taxing Personal Wealth*; the actions he refers to were taken from the December 1952 EIU commissioned report for the NUM that will be discussed below. Sandford highlighted three categories (although the NUM Report actually contains four) which Sandford terms gift, partial sale or complete sale. They all refer to the disposal of some or all of the shares, with the first category referring to when shares were gifted in advance of death to make use of the *inter vivos* (gifts made during lifetime) provisions. If the benefactor survived the requisite number of years the gift would not form part of the death estate, however, it would mean that control of the business would be lost earlier. This might well impact the development or direction of the business. Partial sale of shares would eliminate the control (and thus the 1940 Act valuation) but again could lead to the driving influence within the business losing power, resulting in similar consequences to those outlined above. The complete sale of the business, which might also refer to a merger or takeover, would affect the entire business.

The 1952 EIU Reportxiii followed on from three previous reports sent to the Chancellor of the Exchequer by the NUM, in fact, the earlier reports were appended to the EIU document. The first was in April 1950, written in response to the increase in rates to their maximum level post 1949 Finance Act. The NUM warn that “it is no exaggeration to say that these rates threaten what is a substantial and distinct part of British industry with extinction.”xxiv They note that Death Duties had little effect on public companies but could impact on smaller concerns. They cited two possible outcomes where the owner may try to raise capital in advance of meeting the duties or selling the business outright. They explained their reason for sending the Memorandum was to request that the preferential treatment of agricultural property (in the form of a lower scale of Duty) was extended to manufacturing concerns. To contextualise the request, estates with a principal value of between £50,000-£60,000 would
have a general scale of 35% applied, compared to 19.25% for agricultural property and for estates of between £300,000-£500,000 the comparative rates were 65% and 35.75% respectively. The NUM wanted the scale to change immediately and for the government to review the impact of the tax, reminding the Chancellor that today’s small businesses would be tomorrow’s larger concerns.

The next report was only seven months later in November 1950, a renewed request for an investigation into the impact of Death Duties on manufacturing businesses. This report referenced the government’s own statistics from a Ministry of Labour June 1950 Gazette which stated that seven million employees were in the manufacturing industries with 56% employed in establishments of less than fifty employees; in other words the likely business size being affected by Estate Duty valuation. The final memorandum was in December 1951 and followed a spate of public debates via The Times newspaper. It is here that the idea of anticipatory action was broached and the inherent weaknesses in the Command Paper were outlined. They commented on the fact that the Report failed to take account of businesses which had altered prior to the death of a significant shareholder in order to pre-empt paying the death duty. It was suggested that the alteration to the business could have taken the form of liquid assets outside the business being realised to prepare for a future tax bill; or more worryingly, a slowing down of the development of the business to try and minimise the valuation and so reduce a future liability. They also commented that non-trade assets falling outside the estate on death would potentially include the family home and the impact on the grieving family if this were at risk. As the Chancellor the Exchequer had changed, the NUM had taken the opportunity to append the two earlier reports to the 1951 Memorandum too and reiterated their request for an independent enquiry to look into the impact of Estate Duty on business. These reports had previously been ignored by the government and, in an attempt to provide more weight to the piece, the NUM explained the rationale for this collaboration with the EIU when they stated that the “best course was to invite independent examination of the evidence available by a competent professional authority”.

The EIU, an offshoot from The Economist, was set up to meet the demand for economic and statistical information and routinely offered their services in adverts in the publication. They were made up of a team of economists, industry experts, policy analysts and consultants and were committed to providing independent, impartial research.
The Report was written by the EIU, thus giving the sought after independence, but used examples provided by the NUM, who had collated case studies from among their members. These case studies had been obtained through a call for businesses to come forward via The Times newspaper. In fact, the call was part of what might be described as an on-going “discussion forum” of its time, with many comments on the damage being caused by Death Duties and their subsequent impact being received. This “forum” was also a useful window onto professional opinion, some of which predated this EIU report and will be discussed more fully in due course.

**Significant Reports**

The EIU report was broken down into three main areas; a critical analysis of the government Command Paper\textsuperscript{xxvi}, the second section looked at the NUM case studies and finally there were conclusions. The overall view was that Death Duties were doing a great deal of harm and they reiterated the request made by earlier NUM reports for an enquiry to be set up to look into this assertion. They also asked for some form of immediate relief in the form of reduced rates of Estate Duty to apply to plant, machinery and factories (in line with the separate rates that applied to agriculture). This latter request for relief was heard and appears to have been a factor in the changes incorporated into the 1954 Finance Act.

In their analysis of Command Paper 8295, entitled *Estate Duty and Family Businesses*, the EIU asserted that in order to assess the impact of Estate Duty, any analysis would need to consider three scenarios:

1. Small businesses which have already been impacted by Death Duties
2. Those businesses which had taken steps to avoid the Duty, the cohort which the EIU believed to be greatest number
3. Businesses which had not yet been affected but who were likely to be if they did nothing.

The EIU were critical of the Command Paper, as they had only considered the first group (i.e. those who had already been impacted) and this was likely to be the smallest proportion. In their words, the government results were of “just so little relevance to the subject in hand as have the number of men in the moon…”\textsuperscript{xxvii} The EIU were also highly critical of the statistics used. The 1951Command paper was intended as a follow up to the 1927 Colywn Committee Report\textsuperscript{xxviii} but given the time lag between the two and the subsequent changes to
Estate Duty, it is difficult to see how this claim could be justified. The Command Paper had the remit of illustrating to what extent, on the death of a private business owner, the non-trade assets were insufficient to pay the duty and whether some trade assets would need to be realised too. It was of limited use as its data had been contrived to ensure that it accorded with government expectations. It concluded, using a very limited sample, that there was only a slight increase in cases where non-trade assets were not sufficient to pay the Duty (0.9% in 1922 and 1.6% in 1948). The samples were adjusted, using constraints, until the sample size was considerably decreased from 86 to 22. They did not provide a definition of non-trade assets and critically this could have included the family home thus rendering the analysis redundant if the widow and dependents outlived the business owner.

The EIU/NUM Report’s greatest contribution was its case studies analysis; the EIU referred to this element as The Small Business in Limbo, as it was those businesses which had not yet been affected by Death Duties but who “are considering what steps they must take to avoid being destroyed when their present owners die.”

This section of their Report contained results from fifty members who had voluntarily provided confidential case histories following a NUM request in The Times newspaper seeking real life manufacturing business examples from those facing the prospect of Estate Duty. The NUM archives and those of the EIU were examined and only the report itself survives, thus the case histories are no longer available. The respondents had been asked to detail whether their business had been, or would be, affected by Death Duties. The sample was found to have 8 businesses that had put measures in place to alleviate the burden with implications for the on-going development of the business; 36 cases that had not yet reacted and 4 cases where the major shareholder had died and the consequences of this could not be fully assessed. The eight businesses which had taken anticipatory action were categorised as follows:

i. Complete sale of the business (1)
ii. Partial sale (4)
iii. Distribution of shares inter vivos (3)
iv. Purchase of life assurance policy (2)

Evidently some firms adopted a combination of measures but it is clear that, regardless of the choice made by the firm, economic growth may have been adversely affected.
Although the largest part of the EIU/NUM sample contained businesses which had not yet taken action, they are still worthy of consideration as the EIU extrapolated their data to see what proportion of the business would need to be sold and this table is reproduced below:

**Table 4 - Reproduction of Table 1 from EIU Report for NUM**

Minimum proportion of business to be sold

<table>
<thead>
<tr>
<th>Net Value of Business As a going concern</th>
<th>0-9%</th>
<th>10-19%</th>
<th>20-29%</th>
<th>30-49%</th>
<th>50-69%</th>
<th>70-100%</th>
<th>Total no</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under £50k</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Between £50k-£100k</td>
<td>-</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td>Between £100k-£250k</td>
<td>-</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>Over £250k</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1</strong></td>
<td><strong>9</strong></td>
<td><strong>9</strong></td>
<td><strong>8</strong></td>
<td><strong>3</strong></td>
<td>-</td>
<td><strong>30</strong></td>
</tr>
</tbody>
</table>

Where k= thousand

1. The Economist Intelligence Unit, 1952, p15

They used the same basis as the earlier government command paper and applied the amount required when all other resources (non-trade assets) had been used up. This would have included the family home so it must be assumed that a greater percentage would require to be found than those displayed above if this particular asset was to be preserved. The percentages shown assumed only the minimum proportion will be sold, however, this pre-supposed that a willing buyer could be found who will pay the price asked. In reality, it might well have been necessary to sell more shares than the minimum noted in order to achieve the required amounts. In all cases, some level of control would be forfeited. The EIU’s report noted that those who retained control might face a heavy financial burden through a loan or an on-going encumbrance to the business that in turn could restrict development in some way. This restriction could take the form of postponing development plans, limiting growth (in the form of not making capital investments); any one of which would result in business growth being stunted.

There was a negative effect on all four businesses where death had already taken place. One business had to be sold after an *inter vivos* gift failed, i.e. the shareholder had not survived the requisite five years resulting in a substantial Estate Duty bill. In the second example, the business was only saved after selling the entire personal estate other than the family home. Even after this, Duty was still owed and interest was still accruing, thus the future liquidity of the business was weakened as a result. The third business survived but the management had to
curtail business activities and borrow via an expensive bank overdraft. The final business was still negotiating with the Inland Revenue. It should be borne in mind that throughout these negotiations, interest would have been accruing and would be added to the eventual Estate Duty bill.

The NUM was not the only body concerned about the impact of Estate Duty and the press of the day contained references to other Reports from those such as the Association of British Chambers of Commerce who had also written a Memorandum to the Chancellor in February 1952 urging change because they believed that family businesses were being negatively impacted by Death Duties. They expressed concern that, without remedial action, medium sized family business would be seriously undermined and, more specifically, they warned that the valuation methods being employed were causing the damage. They made recommendations that rates of Estate Duty should be lowered and that there should be a return to a market value basis or at least allow an adjustment to be made to give effect to the overriding principle of realizable value and a right of appeal if the share valuation was disputed. The suggestion of an appeal system was to mitigate the lengthy and drawn out correspondence between the deceased’s representatives and the Estate Duty Office to reach an agreement.

This was followed by concerns expressed by other bodies such as the Society of Incorporated Accountants and Auditors who believed that not only were extra burdens being created which would impact on family businesses but also that anticipatory action was impacting on the economy. They suggested a decrease in Estate Duty as a whole rather than any special concessions for family businesses.

The FBI produced a Memorandum in 1953 entitled Estate Duty and the Family Business, at the request of the Chancellor, as he sought comment as part of an enquiry into the impact of Estate Duty. It was not clear whether this invite was extended because of the NUM reports but it is reasonable to assume that they would have had some bearing as the on-going conversation in The Times ensured that the concerns remained in the public domain. The FBI report categorically stated that serious damage was being done to family businesses. They highlighted two particular aspects; firstly the rate of Estate Duty was simply too high, it had now reached its maximum of 80% by this date, and secondly, in their view, the valuation methods contained in Section 55 of the Finance Act 1940 were causing most harm. Under this section, the shares had to be valued, not on the market value as previously, but on the
proportion they represented of the net assets of the company. The FBI suggested that holdings in private companies should be valued in the same way as other forms of wealth, i.e. open market value because other factors might need to be considered which could impact valuation of these shares. They cited factors such as loss of knowledge or expertise through the death of the shareholder which might, in turn, reduce the overall value of the business. More importantly, they queried the legality of the valuation method that was being applied. The assumption under Section 55 was that control of the company gave the right to realise the assets, i.e. a break up basis, however, the provisions of Section 278 of the 1948 Companies Act required a 75% holding before the break up basis could be applied. It is important to note that the FA 1940 predated the Companies Act and clearly, the implication of this had not been considered. The FBI further advocated the introduction of an appeals system and a method of payment through instalments in order to minimise the damage to companies who might be required to find large sums of money in a relatively short period. The consequences of the impact of Estate Duty were outlined by the FBI and can be summarised as follows:

1. Forced disposal of businesses to pay Estate Duty bill
2. Conversion to a public limited company
3. Serious reduction in working capital after the Estate Duty bill has been paid having a detrimental effect on the business (Fletcher 2016)

Ilersic (1954), part of the Incorporated Accountant’s Research Committee, wrote specifically about the impact of Estate Duty on private companies. He reiterated the points raised by the FBI in terms of valuation issues in relation to the 1940 Finance Act.

Despite the serious concerns being highlighted by these professional bodies, the government did nothing. There were some minor amendments in the Finance Act 1954 but otherwise the difficulties faced by those businesses were ignored. The lack of immediate action cannot be explained, the Conservative government were slow to react but it may be that Churchill was simply defaulting to his position in 1924 when he became Chancellor. He was known for targeting the idle rich and saw Death Duties as a way of directing them, he had, in fact, stated that “the existing system of death duties is a certain corrective against the development of a race of idle rich….,” and the 1951 government report (published just three months before the Conservatives resumed power) suggested that there was no issue, thus contradicting the findings of the various external reports.
It could be argued that Estate Duty was a tax that stopped some businesses growing, as illustrated above in the NUM examples. It seems clear that businesses were aware of the concerns relating to valuation through the on-going discussion forum in The Times newspaper. For example, the Chair and Vice Chair of the Institute of Directors noted that during their conference “several speakers pointed out that the medium and smaller private enterprises are being crushed by estate duty.”xxxiii Directly below this letter, the Conservative member of parliament Mr Gomme-Duncan also took the opportunity to bring concerns into the public domain using this forum He stated that an earlier letter “drawing attention to the harm being done to our national economy by the impact of death duties on family firms….does not fully reveal the enormity of the injustice. By the joint operation of section 55 of the Finance Act of 1940 and the high rate of death duties, it can happen that the estate of the head of a large family business…..may be rendered insolvent when he dies….”xxxiv The letter he referred to had warned that “the rates of death duty as increased in 1949 threaten the family manufacturing business with extinction…” and that “the loss to the national economy will be incalculable”xxxv; it had been written by two members of parliament who were also on the Executive Council of the NUM.

Businesses that were aware of the impact of the Duty so plainly documented in the press, may have limited the growth of the business in order to avoid the potentially heavy valuation that could be placed on it. It was also clear from reports in the financial press from lawyers, accountants and trade bodies that the valuations were invariably far higher than could reasonably be expected; the original market valuation was no longer available to those who fell under the new rules embedded in the 1940 Finance Act. A 1949 article in The Times entitled, Effect of Estate Duty on Family companies, commented on the increased burden when they noted that the “staggering increase in estate duty liabilities on holdings of shares in controlled companies…coupled with the sharp increases in the rate of duty during the past 10 years, there can be little wonder that many holders of shares in family companies are refraining from expanding their companies and are seeking to conserve their present estates.”xxxvi It can also be contended that the form this limitation to the business took would vary and this was evidenced by the EIU report for the NUM with their case studies showing the impact on the manufacturing industry.

There were also businesses that did not document their plans but merely chose not to expand the business because they were aware of the potential effect of Estate Duty. These businesses are difficult to identify, let alone quantify, as decisions would likely have been made in a
private environment. Any evidence which may have existed, such as correspondence files, are likely to be long gone other than for those few whose business histories are safely archived.

The banking industry also commented on the effect of Estate Duty and the Midland Bank produced a review in 1954 entitled *Sixty Years of Death Duties*. They had a unique window onto business that allowed them to see the impact of the Duty, thus, it was no surprise that they mentioned the economic consequences of the tax, as well as commenting specifically on the effect on private companies. In fact, the review contains a section entitled *Private Companies*. They reiterated the concerns about share valuation methods which had already been mentioned by the NUM/FBI etc. and they noted that, “The process[of conversion to publicly listed shares] is therefore widely regarded as undesirable so far as it tends towards standardization and over-integration of industrial structures may discourage private initiative and perhaps force a premature change upon enterprise of the type from which many of the most successful and progressive businesses have originated.”

The review showed awareness of publicity surrounding the effect of Estate Duty on private companies. It also mentioned the special problems for those businesses which were not quoted on the Stock Exchange and which were affected by the valuation changes put in place via the 1940 Finance Act. These measures were intended to prevent the transfer of personal assets to a private company to avoid the Duty but effectively meant that those who retained control of their company had to value their shares differently from their other assets. This involved using the assets basis for shares rather than the market value that would be used for all other assets. This valuation may have been significantly higher in some cases. They also mentioned the coping mechanisms or anticipatory action put in place by businesses; such as conversion to public limited status ostensibly to gain a share valuation, but which risked some loss of control.

There was some attempt at a solution from the Estate Duty Investment Trust (EDITH) which was created in 1952 specifically to offer help to private limited companies who may have been impacted by the death of a major shareholder. Shares purchased by EDITH were considered to be arm’s length transactions and provided a valuation price to the remaining shares too. This meant that the 1940 valuation clauses would not apply. However, it was reported that by May 1954, EDITH had still not invested in a controlled company.

**Businesses impacted by Estate Duty**
Whilst the EIU/NUM report is invaluable at illustrating the anticipatory effect of Estate Duty, the businesses contained in the document are anonymous making it difficult to understand the true impact of the tax and to follow its impact. This section of the paper will highlight two businesses which clearly stated that their fear of the Death Duties burden had an impact on their business structure choices, contributing to their decisions to make public issues of shares. Both businesses publicised the share offering through The Times and clearly noted that the rationale for the public issue was in relation to Death Duties.

**Teacher (Distillers) Ltd**

Teacher (Distillers) Ltd (Teacher’s) had been a privately owned company for 118 years and stated that the “shareholders’ only reason for parting with a portion of their interest in the business is to create a marketable security thus enabling them to make provision for possible future taxation and the death duties without creating financial embarrassment to the business”\(^{xxd}\)

This statement was reproduced within their prospectus for selling the shares, as well as in The Times press announcement accompanying the sale. An analysis of their financial and correspondence records showed that they were very aware of the implications of Estate Duty and had researched the impact thoroughly. Indeed, their correspondence files showed almost two years of preparation dating back to 21\(^{st}\) January 1947 and included meetings with lawyers and accountants to discuss the impact of a public share issue before any changes were made. They created a private holding company in December 1948, in advance of conversion to a public limited company on 4 January 1949 and an issuing house offered one million cumulative preference shares and 400,000 ordinary shares to the public 6 days later. This left 60\% of the ordinary shares in the hands of the directors but represented 30\% of the authorised share capital, thus satisfying the listing rules of the time.

The nature and volume of the correspondence suggests that Teacher’s had taken a methodical approach to a public issue and were very aware of the impact that Estate Duty might have; they also took into consideration the impact of other taxes, such as surtax. Approval by the Capital Issues Committee \(^{xli}\) had been successfully achieved prior to the share offer. This approval had been necessary as debentures were being converted into ordinary shares, thus increasing the overall capital.
One of the directors had retained a newspaper cutting of a March 1947 Scottish Sunday Express article entitled; *The Great Family Businesses are Passing out of Families*. The article offers evidence of the on-going dialogue in the public domain about the impact of Estate Duty on businesses. The content of this article attempted to categorise the reasons for family businesses becoming part of the corporate economy, one of the three reasons put forward was that some businesses were forced down this path due to the Estate Duty tax burden left behind on the death of the founder. This is corroborated by Teacher’s accountancy advisors when they noted, “… it is almost becoming a necessity for prosperous private companies to become public and obtain a stock exchange quotation to avoid difficulties for Executors when death duties become payable.” xlii

Whilst the accountancy firm may have based this view on their own experiences, it is difficult to prove without having more information. Chambers and Dimson (2009) produced a table showing the number of IPOs (initial public offerings) for 1940-45 as 14 rising to 59 for 1946 and 96 for 1947 but without further analysis, it is impossible to say how many of these listings were as a result of Estate Duty.

Teacher’s unquoted shares would have been subject to the 1940 Finance Act valuation rules as it would have been deemed a controlled company, thus, obtaining a share valuation was extremely important to the directors. Teacher’s provides an example of a company who clearly stated that their rationale for moving away from private ownership through a public issue of shares was to avoid potential future Estate Duty. It might be assumed that the preoccupation with avoiding Estate Duty might have taken the directors’ focus away from the business as well as having financial implications of paying for lawyers and other advisors.

**Templeton Carpets**

Templeton Carpets (Templeton’s) presents a second example of a business forced to change their structure. In a similar statement to the one produced by Teacher’s in their share prospectus, the directors of Templeton’s noted, with some resignation, that the capital structure was changing and stated, “The reasons for the changes which have taken place—from a Partnership to an Incorporated company in 1938 and to a Public Limited Company in 1947 – are solely due to the effects of increasing taxation…..The magnitude of present day taxation makes it impossible for the policy to be continued as younger employees promoted to the directorate are quite unable to accumulate sufficient Capital to acquire an adequate interest in
the business. The question of Death Duties coupled with the problem of repayments to deceased partners has made inevitable the sale to the public of part of the capital.”

The records for Templeton’s were not as detailed as those of Teacher’s and no correspondence files, if such a thing ever existed, were found in the archives. Instead, the minutes of the directors’ meetings were used to ascertain whether there had been a discussion prior to or after the share issue to the public. No evidence was found, however, the original auditors offer to step down to be replaced by a larger concern might indicate that a public flotation had been discussed and this step had been deemed necessary.

Both businesses clearly stated that they had changed their structure due to Estate Duty, both had started off as family firms and so the impact of this change was far reaching, as both businesses were now partially owned by the public. This meant that, due to the dispersal of share ownership over time, they were unable to avoid a future takeover as they now had public shares in issue, and, indeed, Teacher’s were taken over by Allied Distillers and Templeton’s by Stoddard Carpets, eventually resulting in a cessation of trade along with the rest of the group.

Whilst it cannot be proven that these two businesses may have survived as private limited companies, a comparison might be drawn by looking at what was happening elsewhere in Europe, where taxes on inheritance did not appear to be problematic. This was achieved by analysing Colli’s specially commissioned book which examined the nature of family businesses over a lengthy period 1850-2000. As noted earlier, he identifies short sightedness as a weakness in family firm business structures. If the case of Teacher’s is examined, it is clear that they were anything but short sighted and meticulously planned their public issue of shares. Whilst examining Britain, Colli presented a case showing the contradictions surrounding the success or otherwise of family firms. It could be argued that the small number of directors in private limited companies mimicked the nature of family firms with people coming through the ranks and earning their place on the Board. Colli cited examples of British trading companies where managers who were not family, served their entire working life within the business and were given some control in the form of shares. This might suggest that those who work in family businesses are subsumed into them and become part of the trading family.

Colli does show an awareness of the issues which the UK was facing because of Estate Duty, but does not explore the impact further. He also highlighted how a country’s institutional
framework, which of course includes their legal and tax system, can impact on family firms. Colli noted that the ability to raise capital on the stock market whilst retaining overall control is an important factor.

**Conclusion and further research**

Despite the warnings from industry and professions, Estate Duty remained at its high rate until it was replaced with Capital Transfer Tax in 1974. Some amendments were effected, such as those in the 1954 Act, which allowed relief for business assets, but the basic system remained in place until it was replaced, and the problems highlighted by those such as the FBI continued to occur.

It is not possible to quantify the effect that Estate Duty had on the wider economy but it seems reasonable to assume that it was substantial. The evidence from the professional bodies of the time, the anonymous case studies by the NUM, evidence from the public domain from those affected, found in *The Times* newspaper, showed clearly that there was a real impact on businesses. This could be explored further in future research identifying and tracking other firms who may have changed either their structure or the way they carried out their business as a result of Estate Duty.

Business historians have sought to defend British businesses from Chandler’s charge that they failed because they did not take a three pronged approach in production, distribution and management and that this stopped them developing. This paper presents another reason for their lack of development that has not been previously explored. There is evidence to suggest that businesses made the decision not to invest in production in order to keep the asset values down and avoid a potentially higher share valuation under Estate Duty rules. This also goes some way to provide an explanation for the lack of investment in technology, another frequent criticism levelled at Britain. This study has found that the *anticipatory action* taken by
businesses to avoid Estate Duty resulted in less funds being available to re-invest in the business; diverted attention from the running of the business, sometimes at a crucial point in their development, and may potentially have affected the British economy whilst the business owners sought ways to minimise their potential Estate Duty tax bill.

In conclusion, this research has attempted to draw attention to a now forgotten but very significant British tax. It has started to examine the structural changes that were made by businesspeople to the legal and financial structures of their firms, in order to mitigate the effects. It has also illustrated that, as a result of decisions made, some firms moved from personal capitalism to becoming part of the corporate economy, a decision that may have subsequently affected the relative performance of the UK economy.

The Duty itself may since have been superseded, but elements of its replacement, inheritance tax, are currently being reviewed. The legacy of Estate Duty, in the form of reliefs which still exist today, is under review and, as business historians, we have a duty to draw attention to concerns formerly raised to try and ensure that the mistakes of the past are not repeated.

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1 Ongoing discussions by professionals and trade associations in public domain, Times newspaper 1942 onwards
ii Fletcher 2016
iii For example, Daunton (2001), Rees (1921), Sandford (1971).
iv Colli 2003, p38
v Command Paper 8295, HMSO 1951
vi Mollan & Tennent 2015,p1069
vii Ibid
viii Hannah 2007, p423
ix Hannah 2007, p404
x Dintenfass, 1992, p 13
xi Sandford, 1971.
xii Hansard 1894(16 April)
xiii Hansard 1894(10May)
xiv Ibid
xv Ibid
xvi Coined by Sandford in Taxing Personal Wealth 1971 but from NUM 1952 Report
xvii Daunton, Just Taxes, 2002, p27
xviii For example, Economist Intelligence Unit 1952
xix Colwyn, 1927, p184
xx Ibid
xxi CAB65/6
xxii The Times, Feb 19, 1942, Letter to Editor
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