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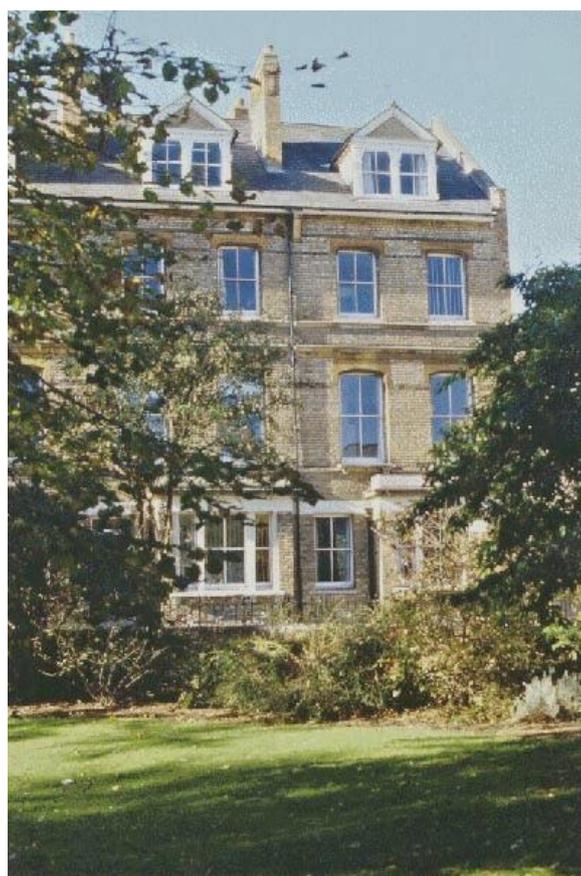


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**A Taxing Issue: Married Women and Income Tax  
in Ireland**

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**Abstract:**

The taxing of income began in 1799 in Britain. To date historical accounts of the development of the tax code have ignored differences in its application for women. By women what is specifically meant is married women, as the same rules that govern the taxing of men's income have always applied to single women in the United Kingdom and Ireland. This paper seeks to address this neglected field. It charts developments in income tax policy directly relating to Irish women when living with a man in marriage. It shows how income tax legislation, until recently, financially penalised and administratively discriminated against 'working wives' (married women with earned income) and that change was slow to come and often regressive. It also shows how male breadwinners (men with spouses working in the home) were increasingly privileged and that this continued unchallenged until 2000, from when it has increasingly become no longer the case.

Income tax was introduced to the world and into Great Britain following the 1799 Budget, in which Pitt the Younger announced that: ‘a general tax shall be imposed on all leading branches of income’ as a ‘temporary measure’ to finance the Napoleonic war<sup>1</sup>. Annual incomes under £60 were exempt. Those between £60 and £200p.a. were taxed at (one of twenty-nine) reduced tax rates. A flat ten percent was levied on all incomes exceeding £200p.a.<sup>2</sup>. Abatements (reductions) were given to arrive at the assessable income. In addition to a lowly income, intra family dependency was recognised to impact on the individual’s ability to bear the burden of taxation. All maintaining: ‘a child or children born in wedlock’ were entitled to relief from the tax, on a scale varying with the size of the income and the number and age of the children<sup>3</sup>. After the signing of the Treaty of Amiens 1802, Henry Addington (Pitt’s successor) discontinued the unpopular and unsuccessful tax only to reintroduce it a year later when fighting recommenced<sup>4</sup>. Incomes under £60p.a. continued to be exempt and those of between £60 and £150p.a. were taxed at lower rates. All incomes exceeding £150 were now taxed at a uniform five percent<sup>5</sup>. The 1803 Act is most notable for introducing the practice of deducting the tax at source and the schedular system for assessment, both of which remain features of today’s tax system<sup>6</sup>. The Income Tax Act of 1806 ‘simplified’ and: ‘settled the final shape of the tax for the next decade’ and in the process revoked the relief for child maintenance<sup>7</sup>. War with France and the tax on income ceased following the Battle of Waterloo, 1815.

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<sup>1</sup> *Hansard* (Mr William Pitt) Debate on Mr Pitt’s proposition for a tax upon Income, December 3 1798, Vol. XXXIV Col.5

<sup>2</sup> An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament for granting an Aid and Contribution for the Prosecution of the War; and to make more effectual Provision for the like Purpose, by granting certain Duties upon Income, in lieu of the said Duties, 39 Geo. III. c. XIII, s. II.

<sup>3</sup> *ibid*: s. III

<sup>4</sup> The expected return was £10 million in the first year but in the event it yielded less than £6 million, James Coffield (1970) *A Popular History of Taxation* London: Longman p.95

<sup>5</sup> An Act for granting to his Majesty, until the sixth Day of May next after the Ratification of a Definitive Treaty of Peace, a contribution on the Profits arising from Property, Professions, Trades and Offices, 43 Geo. III c.122 Note, the words income tax were deliberately omitted to avoid the hostility that greeted its predecessor, Viscount Simon (1948) *Simon’s Income Tax Vol. 1* London: Butterworth & Co. p.10

<sup>6</sup> For example, government officials’ salaries and pensions were taxed at source and the Bank of England deducted income tax when paying interest. Meanwhile, Addington’s schedular system allowed for returns to be made under 5 headings (A-E) according to the income source - A) land; B) commercial use of land; C) public annuities; D) trading, professions and vocations (self-employment), interest, rents; E) salaries, annuities and pensions. Despite Addington’s tax rate being half that of Pitt’s, these changes ensured that revenue to the Exchequer rose by half and the number of taxpayers doubled, Coffield (1970) *op. cit.* p. 98

<sup>7</sup> An Act for granting His Majesty, during the present War, and until the Sixth Day of April next after the Ratification of a Definitive Treaty of Peace, further additional Rates and Duties in Great Britain on the

In 1842 income tax was once again imposed, this time by Sir Robert Peel to compensate the Exchequer for losses from a series of bad harvests and the remission of other taxes to promote the new policy of free trade<sup>8</sup>. The Act of 1842 was, with minor modifications, a reprint of the 1806 Act. Yearly incomes under £150 were exempt while all incomes exceeding the exemption limit were taxed at a flat three percent<sup>9</sup>. It was a further eleven years (1853) before Chancellor William Gladstone extended the tax into Ireland<sup>10</sup>. In 1863 he reintroduced abatements for small incomes<sup>11</sup>. Peel and succeeding Prime Ministers continued to consider income taxation a temporary measure. Indeed, it was only in 1972 that the Dáil (Irish parliament) gave statutory recognition to the tax, which was by then over a century in operation, thus making it a permanent feature of the tax system and ending the need for each annual Finance Act to renew it for a further year.

To date the history of women in income tax legislation has not been written<sup>12</sup>. By women what is specifically meant is married women, as the same rules that govern the taxing of men's income have always applied to single women in the United Kingdom and Ireland. This paper takes a step towards rectifying this omission in the historical records. Based on the Finance Acts 1799 to 2007, parliamentary debates, government documents, commissions' reports, court proceedings and media archives it provides an account of developments in income tax policy directly relating to Irish women when living with a man in marriage. It will be shown *how* the income tax code, until very recently, financially pe-

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Rates and Duties on Profits arising from Property, Professions, Trades and Offices; and for repealing an Act passed on the Forty-fifth Year of His present Majesty, for repealing certain Parts of an Act made in the Forty-third Year of His present Majesty, for granting a Contribution on the Profits arising from Professions Trades and Offices; and to consolidate and render more effectual and Provisions for collecting the said Duties, 46 Geo. III. c.65; B.E.V. Sabine (1980) *A Short History of Taxation* London: Butterworths p.118.

<sup>8</sup> *Hansard* (Sir Robert Peel) Financial Statement, 11 March 1842, Vol. LXI Col. 439

<sup>9</sup> An Act for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices, until the Sixth Day of April One thousand eight hundred and forty five, 5 & 6 Vict. c.35, s. CLXIII Office clerks, the largest group of salaried men, earned £150, on average, Christopher Hibbert (2008) *The English: A Social History 1066-1945* London: Guild Publishing p.609

<sup>10</sup> Simon claims income tax had been not extended to Ireland earlier because the administrative machinery to assess and collect the tax was not in place, Viscount Simon *op. cit.* p. 18. For an account of the reaction to the subsequent imposition of income tax on Ireland see Thomas Kennedy (1897) *A History of the Irish Protest Against Over-Taxation* Dublin: Hodges, Figgis & Co

<sup>11</sup> An Act for granting Her Majesty Duties on Profits arising from the Property, Professions, Trades and Offices, 16 & 17 Vict. c.34, s. V and s. XXVIII

<sup>12</sup> For non-gendered but accessible accounts of income tax history see Viscount Simon (1948) *Simon's Income Tax Vol. I* London: Butterworth & Co.; James Coffield (1970) *A Popular History of Taxation* London: Longman; B.E.V. Sabine (1980) *A Short History of Taxation* London: Butterworths; Samuel Blackson (2007) *A Brief History of Taxation* Lulu Inc.

nalised and administratively discriminated against ‘working wives’ (married women with earned income) and that change was slow to come and often *regressive*. It will also be shown *how* male breadwinners (men with spouses working in the home) were increasingly privileged and that this continued unchallenged until 2000, from when it ceased to be the case. The factors responsible for working wives eventually gaining tax equity with their husbands, then single persons and now a tax advantage over housewives are highlighted here and are explored in greater detail in a forthcoming paper.

In setting out the regulations for the assessment, charge and recovery of personal income tax, the Act of 1799 included provisions for the individual: ‘Infant, Idiot, Lunatick (*sic*), married Woman’ (later extended to criminals) in possession of an income to have others act on their behalf<sup>13</sup>. It was not the fact of being female that caused a woman’s inability to declare her income and settle her tax bill but the status of wife. Before she took a husband and if she parted from him her treatment under the Act was identical to that of a man. However, for the duration of her marriage the Act directed that:

the Income of Any Married Woman living with her Husband shall be stated and accounted for by her Husband at the Time of delivering his own Statement<sup>14</sup>.

In 1805 the rules regarding assessment were amended. Prior to this the individual was in all cases the unit of assessment for income tax. The 1805 Act included an exception to this rule. The exception applied to married persons. Hereafter a husband and wife, together, were to be treated as one unit for income tax purposes. The Act directing that:

the Profits of any married Woman living with her Husband shall be deemed to be the Profits of the Husband, and the same shall be charged in the Name of the Husband, and not in her Name<sup>15</sup>.

And in so doing it introduced the practice of Joint Assessment (also known as aggregation) - adding a wife’s income to her husband’s income and assessing liability for tax on the total, as if it were one income, his. Sex discrimination was not the only consequence

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<sup>13</sup> An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament for granting an Aid and Contribution for the Prosecution of the War, 39 Geo. III. c. XIII, s. XXXVIII

<sup>14</sup> *ibid* s. XLI.

<sup>15</sup> An Act to repeal certain Parts of an Act, made in the Forty-third Year of His present Majesty, for granting a Contribution on the Profits arising from Property, Professions, Trades and Offices; and to consolidate, and render more effectual, the Provisions for collecting the said Duties, 45 Geo III. c. 49, s. CI.

of this provision. Married women with a small income were deprived the benefit of an exemption and abatement the Tax Acts conferred upon married men and single persons. Single men entitled to an exemption or abatement by marrying a woman with an income would lose their tax relief if the sum of the two incomes exceeded the limit for entitlement. This heavier tax burden on all married women with a small income and some of their husbands in two-income households relative to single persons is called a Marriage Tax.

When viewed in the context of the then Common Law early tax legislation is unsurprising. In his renowned eighteenth century account of English Common Law, *Commentaries*, Sir William Blackstone states that:

By marriage the husband and wife are one person in law, that is the very being or legal existence of women is suspended during the marriage or at least is incorporated and consolidated into that of the husband<sup>16</sup>.

To give effect to this principle, Common Law denied a married woman the right to hold property, which included any income she owned at the time of marrying and any she acquired after marrying<sup>17</sup>. Everything, with the limited exception of paraphernalia (clothing and jewellery<sup>18</sup>) and pin-money (an allowance to keep her appearance in line with her husband's social position<sup>19</sup>) passed to her husband on their marriage. He could use and dispose of her personal property in whatever way he pleased during his lifetime and by will after his death<sup>20</sup>. With privilege came responsibility. Common Law bound married

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<sup>16</sup> Sir William Blackstone *Commentaries on the Laws of England* Vol. I London: Maxwell & Son p.442

<sup>17</sup> For an overview see Erna Reiss (1934) *The Rights and Duties of Englishwomen* Manchester: Sherratt and Hughes, chp. II. Women from wealthy families had access to separate property through 'marriage settlements', since the eighteenth century. A woman's property was by this means 'settled on herself', but she had *no* control over her property, it was vested in trustees for her use, thus the principal on the estate was protected. Nevertheless, the whole interest or rental could be taken by her husband the moment she received it, Besant *op. cit.*, p.13

<sup>18</sup> The husband could sell or give these away in his lifetime, but he could not bequeath them in his will, although upon his death his creditors could seize them to cover his debts. Sir Frederick Pollock and F.W. Maitland (1911) *The History of English Law* Cambridge: Cambridge University Press, c.VII p.405

<sup>19</sup> Any money she saved from her pin-money or housekeeping allowance belonged to her husband. This remained the case until 1976 when the Family Law (Maintenance of Spouse and Child) Act established joint ownership.

<sup>20</sup> Common Law recognised four different categories of property. Real property (land), personal property, also called chattels personal (tangible objects capable of physical possession other than land), chattels real (land held under a lease) and chattels incorporeal (shares, bonds, patents, copyrights etc), and applied dif-

men to maintain their wife<sup>21</sup>, pay her debts (including any taxes) and if she committed a civil or private wrong he was liable. It was only when the Married Women's Property (MPW) Act of 1870 came into operation women gained the right to retain the wages, investment income and bequests not exceeding £200 they acquired *after* marrying<sup>22</sup>. Twelve years later, the Act was amended to give women unlimited ownership of their pre- and post-nuptial property<sup>23</sup>. The MWP Act of 1882 is lauded as landmark in equality legislation. With its passing, Erna Reiss enthuses:

The old doctrine as to the legal unity of man and wife as far as it affected property received its death blow. The law henceforth recognised two distinct entities, each one owning and having control over his and her own property<sup>24</sup>.

Such recognition did not, however, extend into Income Tax Law, which continued to regard a married woman's income to be her husband's property for little short of another century in both the United Kingdom and Ireland.

The first change in the taxing of married persons' income subsequent to the MWP Acts came in 1894 when a provision inserted in the Finance Act permitted a married woman claim an exemption and abatement on her income, without reference to her husband's income, and vice versa (i.e. Individual Assessment)<sup>25</sup>. Albeit this was progress it was limited. Her right to tax relief was conditional on the sum of her and her husband's incomes not exceeding £500p.a. £500 was the small income limit for entitlement to abatements (reductions). The limit was not double for two-income married couples. In effect the principle of viewing husband and wife as one person remained intact. If the aggregate

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ferent rules to a wife's and husband's rights over each. For an overview see Lee Holcombe (1983) *Wives and Property* Toronto: Toronto University Press pp 19-25.

<sup>21</sup> In practice the law lacked the machinery to compel a husband to meet his financial duty to his wife. She could pledge his credit for necessities but traders were reluctant to do business when recovery of cost might necessitate a lawsuit. From 1868, however, the Poor Law Guardians could apply to the magistrates to order the husband to pay for his wife maintenance. Widows, at least those in the upper classes in medieval times, fared better, see Susan Staves (1990) *Married Women's Separate Property in England, 1660-1833* London: Harvard University Press.

<sup>22</sup> Prior to the 1870 Act five Married Women's Property Bills had failed, 1857-1870.

<sup>23</sup> An Act to consolidate and amend the Acts relating to the Property of Married Women 1882, 45 & 46 Vict. c.75. Acts in 1893, 1907-08 and Married Women's Status Act 1957 completed the process. Interestingly, one of the main reasons why the 1882 Act came so long after the Act of 1870 was that the 'Irish problem' came to dominate Westminster politics, Holcombe, *op. cit.* p. 145

<sup>24</sup> Reiss (1934) *op. cit.* p.152

<sup>25</sup> Finance Act 1894, 57 & 58 Vict. c. 30, s. 34 (2)

was below the limit a married woman could *not* make an application for an exemption or abatement on her income. The claim had to be made through her husband and if it was granted, even in cases where the husband had no income of his own, any rebate was paid to him and she had no recourse for recovery other than appealing to his goodwill. Moreover, married women with unearned income (generated from rents, investments, etc.) were not covered by the Act. Her income had to derive from: ‘her own personal labour’. At the time abatements were only available for earned income to everyone. The provision was repealed and re-enacted with some modifications in the Finance Act of 1897<sup>26</sup>. Hereafter to be eligible a married woman’s income had to be earned in a business ‘unconnected’ with that of her husband. She could not be his employer, business partner or employee, so as to avoid married men dishonestly using the provision as a means of minimising their tax liability. However, the most far reaching impediment of this provision was that by removing the heavier tax burden on married persons in households with total earnings *not* exceeding the small income limit it was argued that Joint Assessment impinged only on couples with the capacity to pay and as such it served to delay further progress in the taxing of married persons’ income.

It was in the early years of the twentieth century that Joint Assessment first began to financially impact on higher income couples. From the time of its reintroduction in 1842 income tax had been charged at a flat rate<sup>27</sup>. Compulsory aggregation of a wife’s income with her husband’s, therefore, did not penalise married couples with two incomes above the exemption and abatement limits – as a proportional tax the total tax take extracted from the joint income was the same as the sum from the two incomes. This ceased to be the case in 1907 when the new Liberal government’s Chancellor, Herbert Asquith, announced that earned income would be taxed at 3.75 percent if the taxpayer’s total income from all sources did not exceed £2,000p.a. If the total exceeded this generous limit the entire earned income was taxed at the standard 5 percent<sup>28</sup>. The rationale for differentiating between sources of income is that earned income is acquired at a cost (travel, wear

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<sup>26</sup> Finance Act, 1897, 60 & 61 Vict. c. 24, s.5 See William Lawson (1898) *The Liability of Married Women to Income Tax* *Journal of the Statistical and Social Inquiry Society of Ireland* Vol. X Part LXXIX 1898/1899 pp: 432-436

<sup>27</sup> Except for a ten year period, 1853-1863, when small incomes were charged at a lower rate.

<sup>28</sup> Finance Act 1907, 7 Edw. VII c. 13, s.19

and tear on clothing, etc.) that scarcely arises with investment income and the burden of taxation should reflect this. Two years later, in 1909, Chancellor David Lloyd George, to help fund his social reform programme, imposed an additional Super-tax on incomes exceeding £5,000p.a. He also began to tax earned income at one of three rates – the higher the income the higher the tax rate applied<sup>29</sup>. Tax relief for child maintenance on incomes not exceeding £500p.a. was also reintroduced<sup>30</sup>. This was the first in a series of allowances for taxpayers of limited means with dependent family members (a wife, incapacitated relative, orphaned sibling, widowed mother and mother-in-law). Compulsory aggregation and single persons' income limits meant that two-income married couples had their earned income taxed at a higher rate, incurred the Super-tax and failed to qualify for Family Allowances sooner than had they been taxed as two tax units (i.e. Individual Assessment).

The operation of the new Super-tax required anyone served with a notice to make a return of their total income from all sources in order to determine liability. For the married taxpayer this included details of his wife's income. Several cases arose of men pleading ignorance of their wife's finances - her income tax being deducted at source and she refusing to disclose her details to him<sup>31</sup>. By virtue of section 45 of the 1842 Act<sup>32</sup>, the Revenue Commissioners could not compel a married woman to make a return or to pay any Super-tax owing – legally the income was *not* deemed to be hers but her husband's and he was accountable. To rectify this a clause was inserted in the Revenue Act of 1911 giving Commissioners the authority to call on a married woman to make a return of her income: 'as if she was not married' in incidents where a satisfactory return could not be obtained from her husband. In such cases, the Super-tax was assessed on the joint income (as de-

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<sup>29</sup> Finance Act 1909-10, 10 Edw. VII c. 8, s. 65, 66 and 67. The 1909 Budget came to be known as the 'People's Budget' for redistributing the burden of taxation and financing social provision such as non-contributory old-age pensions and labour exchanges. It provoked a constitutional crisis when it became the first Finance Bill to be rejected by the House of Lords. Conservatives fiercely denounced the introduction of land taxes, which were to be used to part fund social insurance, as: 'confiscation, robbery and socialism'. The result was the 1911 Parliament Act, which removed the House of Lords' power to veto Finance Bills. The Budget was reintroduced in 1910, George L. Fox (1910) 'The British Budget of 1909' *Yale Review* February 1910 p.358. See Frederick W. Powell (1992) *The Politics of Irish Social Policy* Lewiston: The Edwin Mellen Press pp. 148-49 for a brief overview of the intense campaign in Ireland against the Budget.

<sup>30</sup> Finance Act 1909-10, 10 Edw. VII c. 8, s. 68.

<sup>31</sup> *Hansard* (Mr. C.S. Goldman) Revenue Bill – Committee, 9 March 1911, Vol. XXII Col. 1521.

<sup>32</sup> 'the Profits of any married Woman living with her Husband shall be deemed to be the Profits of the Husband, and the same shall be charged in the Name of the Husband, and not in her Name'.

terminated by combining the information on the two returns) and recovered: ‘from the wife in lieu of the husband’ in proportion to her contribution to the aggregate<sup>33</sup>. For example, supposing she had an income of £500p.a. and her husband an income of £4,500p.a. Under this Act she would bear ten percent of the £120 Super-tax charge. This amendment conferred no financial benefit on married women or two-income couples. Had the couple in the example been assessed as individuals neither would be liable for Super-tax and she would be eligible for a £150 abatement on her taxable income and to have the balance taxed at the reduced rate for small earned incomes. Furthermore, this legislation did *not* relieve married men of their obligation in relation to the return and recovery of income tax attributable to monies generated by their wives.

In an effort to quell mounting public and political pressure (coming from feminists and the wealthier classes) to end the discriminatory treatment of married persons and introduce Individual Assessment for all<sup>34</sup>, Lloyd George granted them, both spouses equally, the right to elect for a Separate Assessment in the Finance Act of 1914<sup>35</sup>. This provision gave a married woman, for the first time, control over her income tax affairs. Hereafter

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<sup>33</sup> Revenue Act 1911, 1 & 2 Geo. V. c.2, s. 11 The Act was popularly known as the ‘Bernard Shaw Relief Act’ as the author was one of the first married men to publicly claim he had no knowledge of his wife’s income and, therefore, he could not complete the Super-tax assessment form. He told the authorities that all he knew was that his wife: ‘had money at her command, and [that he] frequently took advantage of that by borrowing it from her’, G.B. Shaw (27 September 1912) ‘Speech to the Women’s Tax Resistance League’ cited in ‘Suffragist’s Income Tax’ *London Times* p.6

<sup>34</sup>The Women’s Tax Resistance League was formed in 1909 with the slogan ‘No Vote, No Tax’. It was a sister organisation of the Women’s Social and Political Union (suffragettes). Its membership comprised of over 200, mostly professional, women. In September 1912, a League member, Dr. Elizabeth Wilkes’ husband, a schoolteacher, was jailed for failing to pay the taxes owing on his wife’s income. This was the first incident of a married man being imprisoned for the non-payment of taxes accruing from his wife’s income. Dr. Wilkes had refused to divulge the amount of her earnings to her husband to enable him make a return. The Revenue Commissioners estimated her earnings at £700p.a. and charged him £33 on the joint income. He claimed inability to pay. The Commissioners then proceeded to issue Dr. Wilkes with several claims for taxes and when they went unmet to issue a ‘distrain’ on *her* goods (seize them for auction). This, however, was found to be unlawful. Legally the income and accordingly the tax owing on it was not hers but his. The Commissioners then turned to the courts for the recovery of the tax. Mr. Wilkes was sentenced to remain in prison until *he* paid the outstanding tax. However, he was released after a month, days before Parliament reconvened and following a march by ‘several hundred’ suffragettes in protest against his imprisonment, (24 September 1912) ‘March on Brixton Prison’ *London Times* p.6 and (04 October 1912) and ‘Editorial: The Release of Mr. Wilkes’ *London Times* p.7. ‘The great injustice done to Mr. Wilkes’ was the subject of parliamentary comment on no less than fourteenth occasions up until the passing of the 1914 Finance Bill, see *Hansard* Vol. XLII Col. 340-41; Vol. LII Col. 2108; Vol. LVI Col. 2055; Vol. LVI Col. 2112; Vol. LVI Col. 2116; Vol. LVI Col. 2118; Vol. LVI Col. 2120; Vol. LVI Col. 2125; Vol. LXII Col. 816; Vol. LXII Col. 1333, LLXIV Col.2026.

<sup>35</sup> Finance Act 1914, 4 & 5 Geo. V. c.10, s. 9

she could *opt* to make a return, receive directly an exemption, abatement and rebate, have the tax assessed, charged and recovered on her income, and to be accountable for her tax debts. If she elected for a Separate Assessment but did not pay her taxes, liability and the consequences for failing to do so passed back to her husband. Moreover, a Separate Assessment did *not* alter the total amount of tax borne by the couple. Liability for income tax and the Super-tax continued to be determined on the total of the two incomes. The amount owing was thereafter levied on each spouse in proportion to their respective incomes. Also, the sum of their separate tax relief was *not* permitted exceed what would have been received under Joint Assessment and it too was divided proportionately between husband and wife. Substantially it was a separate assessment of tax. In financial terms (for the couple) it was not.

With the outbreak of the Great War fiscal policy remained at a near standstill for the next four years. Large increases in the level and number of tax rates on income were the most noteworthy development. Consequently, the Marriage Tax intensified and with the growth in married women's wartime employment so too did its scope. In 1918 Chancellor Andrew Bonar Law announced that he planned: 'to make the children allowance apply to a wife also' in recognition of the single man's greater ability to bear the burden of taxation over the married man (the latter assumed to be supporting a wife) and as a more palatable alternative to Individual Assessment for married persons<sup>36</sup>. Married men with a total income not exceeding £800p.a. qualified for the Wife Allowance, i.e. an additional £25 in tax-free income, irrespective of their wife having an income or not<sup>37</sup>. This increase in married men's net income is known as a Marriage Premium. Male breadwinner married couples benefit most (they pay less tax than one-income cohabittees with an equivalent income) whereas, at a lowly £25 it was poor compensation for two-income married couples who continued to lose out on exemptions, abatements, family allowances, reduced rates on earned income or incurred a Super-tax.

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<sup>36</sup> *Hansard* (Mr. Andrew Bonar Law) Financial Statement, 22 April 1918, Vol. 105 Col.708

<sup>37</sup> Finance Act 1918, 8 & 9 Geo. V. c.15, s. 27 When announcing the Wife Allowance the Chancellor noted that: 'much to my surprise, I have had no representations from any women's suffrage societies suggesting the impropriety of proceeding on that basis', 22 April 1918, Vol. 105 Col. 708. Indeed, within Westminster criticism of the proposal was with the lowliness of the amount granted: 'the least the mother of the family ought to be called is two children, and the allowance in her case ought to be doubled' *Hansard* (Sir Toulmin) Vol. 105 *ibid*: Col.794

In 1919 a Royal Commission was appointed to review and report on all aspects of the tax on income. The Commission recommended that a married woman's income should continue to be deemed her husband's income for tax purposes<sup>38</sup>. Their reasoning being that the demand for Individual Assessment by married woman was not a demand for equal citizenship rights but a demand to pay less tax<sup>39</sup>. Chancellor Austen Chamberlain agreed and no change was made to the legislation<sup>40</sup>. Its other recommendations regarding the taxing of married persons were adopted and incorporated in the Finance Act of 1920. Income limits on Family Allowances were removed<sup>41</sup>. Also, the Wife Allowance was discontinued as were abatements and merged into a Married Man Allowance, which entitled *all* men with a 'wife living with him' deduct £225 to ascertain his assessable income. It fell £45 short of double the Single Person Allowance, on the basis that a couple can live cheaper than two single persons<sup>42</sup>. A married woman qualified for the Allowance on condition her husband was incapacitated and she earned the whole income<sup>43</sup>. In total, these developments resulted in a substantial monetary improvement in the Marriage Premium for male breadwinner married couples and eased the Marriage Tax on two-income married couples<sup>44</sup>.

In a regressive move the 1920 Finance Act repealed the one instance in which a married woman had the right to Individual Assessment – the 1897 provision. It was replaced with a Wife's Earned Income Allowance, which permitted her to deduct nine tenths of her earnings up to a maximum of £45 to determine her taxable income<sup>45</sup>. Together the Married Man Allowance and the Wife's Earned Income Allowance provided two-income

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<sup>38</sup> (1920) *Report of the Royal Commission on the Income Tax* London: HMSO para.260 Eleven representations were made in relation to Joint Assessment. Out of which, three, all revenue officials, spoke in favour of retaining the practice and eight in favour of ending it, five of these from the point of women's citizenship rights para.248

<sup>39</sup> *ibid*: para.259

<sup>40</sup> *Hansard* (Mr. Austen Chamberlain) Financial Statement, 19 April 1920, Vol. 128 Col. 104 This did not go unopposed in Parliament. See, for example, the speech by Mr. Locker-Lampson, who spoke at length repeating his often made arguments for removing the: 'unfair and unjust tax on married women' *Hansard* (Mr. Locker-Lampson) Budget Resolutions, 27 April 1920 Vol. 128 Col. 1146

<sup>41</sup> Finance Act 1920, 10 & 11 Geo. V. c.18, s.21

<sup>42</sup> For example, couples living together are likely to share meals, thereby saving by bulk purchasing and on fuel costs, whereas flatmates are more likely to eat separate meals.

<sup>43</sup> (Finance Bill 1920, clause 17)

<sup>44</sup> *ibid*: s. 18

<sup>45</sup> *ibid*: s. 18

married couples with the same personal tax-free allowance permitted to two single persons. However, the imbalance in the distribution of the couple's allowance between husband and wife, £225 and £45 respectively, meant that under a Joint Assessment she was entitled to set less than seventeen percent of their total allowance against her earnings and a third of the amount permitted had she not married. If she took the unusual step and elected for Separate Assessment her share of their allowance continued to be determined by the size of her income relative to her husband's income<sup>46</sup>. In addition, the lower tax rates for earned income were abolished. Instead, Earned Income Relief was administered via a one-tenth deduction from gross earnings, up to a £200 maximum. In keeping with the principle of treating married couples as one tax unit, the maximum was *not* double for married persons. What is more, the Relief was first set against the husband's earnings. In effect, the tax penalty arising from differentiation (between earned and unearned income) no longer impacted on both spouses in two-income couples, just married women. In sum, married women were now liable for income tax sooner than had previously been the case and considerably sooner than their husbands and single persons.

Not only did a married woman enter the tax net sooner but when she did she was *not* guaranteed the benefit of the lower tax rates available to all other taxpayers. The rate applied to her income depended on her husband's income. For example, in 1920-21 if a married man (or single person) had no more than £225 above the exemption limit he was taxed at half the standard rate. All income exceeding this £225 Tax-Band, including any belonging to his wife, was taxed at the full rate. Again, Tax-Band widths were *not* double for two-income married couples and the lower rate was applied to the husband's income first. A married woman enjoyed the benefit of lower tax rates only if her husband's income did not exceed the Tax-Band limit. In light of all of these reforms, the Marriage Tax was now a Married Woman's Tax.

Although the Irish Free State came into existence in December 1922 the new government had no authority over taxation until April 1923 (the start of the new financial year), the

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<sup>46</sup> The Commission noted that: 'The option of separate assessment ... is rarely taken advantage of, either because of prevailing want of knowledge, or because its exercise is not in fact often desired', (1920) *Royal Commission on the Income Tax* London: HMSO para.250 They did not consider the fact that this form of assessment did nothing to alter the couple's total tax bill as a possible explanation for the low uptake.

British Taxing Acts being applicable until then<sup>47</sup>. When authority was gained the British system was adopted: ‘without any alteration’<sup>48</sup>. The suitability of a tax on income in a predominately small-scale agricultural economy, the tax base being small and the administration costs large, was questioned and campaigned against in the newly independent State<sup>49</sup>. Ernest Blythe, Minister for Finance, in 1924 recognised the shortcomings of wholesale policy transfer but considered it to be a lesser evil:

[The British] system of taxation had been devised without regard to the special needs and conditions of this country. We are now setting about adapting that system and altering it to suit the requirements of the [Free State]. We do not believe it is wise to make any sudden or sweeping changes, which would cause dislocation and probably a certain degree of economic instability<sup>50</sup>.

Neither sudden nor sweeping changes were made.

The legislation governing the tax treatment of married persons’ income went untouched for thirty-five years. In 1958, section 8 of the Finance Act re-enacted the existing provision that provided that a married woman’s income was deemed to be her husband’s income for tax purposes. Likewise section 9 was a near duplication of section 25 of the 1920 Finance Act, which set down the rules governing the (unequal) division of the tax relief between husband and wife electing for Separate Assessment. Section 10 was a new provision<sup>51</sup>. As the law stood, a married man was accountable for income tax owing on income generated by his wife, which section 8 deemed to be his. If he had insufficient means to meet this the Revenue Commissioners had no recourse to recover the tax from his wife. To rectify this section 10 enabled officials proceed against a married woman for income tax attributable to her income in incidents where having *first* assessed her hus-

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<sup>47</sup> Ronan Fanning (1978) *The Irish Department of Finance 1922-1958* Dublin: IPA p.3.

<sup>48</sup> *Dáil Debate* (Mr Ernest Blythe) Financial Statement, 25 April 1924, Vol. 7 Col. 49. Specifically, the income tax statutes of the Free State comprised of the 1918 Income Tax Act – an Act that consolidated the provisions in fifty-two previous Acts, and the Finance Acts of 1919-22. The Finance Acts of 1921 and 1922 made no changes to the enactments relating to the Income Tax and Super-tax as were in force in 1920. The standard rate of Income tax was, however, was reduced from six to five shillings in 1922.

<sup>49</sup> See Kieran Coleman and John Considine (2006) ‘The No Income Tax Campaign: Twenty-First Century Tax Philosophy in 1920s Ireland’ *Irish Economic and Social History* Vol. XXXIII pp. 1-17

<sup>50</sup> *Dáil Debate* (Mr Ernest Blythe) Financial Statement, 25 April 1924, Vol. 7 Col. 49.

<sup>51</sup> Section 11 was also new. It allowed a man disclaim responsibility for unpaid tax in respect to his deceased wife’s income and have the bill sent to the executors of her estate. This was intended to rectify an anomaly arising in cases where a wife died leaving an estate to which there was tax owing and which the husband was legally responsible for even though she bequeathed her estate to another.

band they found he was not in a position to pay<sup>52</sup>. She was now ultimately responsible for the tax on an income that the law continued to fail to recognise as hers. Some progress was, however, made by way of the 1958 Finance Act. Married women were at last removed from the collective of incapacitated persons, which, since 1799, had included them along with infants, criminals, lunatics, idiots and the insane. While this was undoubtedly an advance it was *not* the result of enlightened thinking but a mere practicality, as confirmed by the then Minister for Finance, Dr Jim Ryan, in the debate on the Bill:

The words “married woman” are being removed from this [group], because she will be dealt with in another place now<sup>53</sup>.

The next year, in 1959, the Wife’s Earned Income Allowance which permitted her deduct nine tenths of her earnings up to a maximum of £45 to ascertain her taxable income (having *never* been altered from the time of its inception in 1920) was *reduced* to three fourths of her earnings while retaining the £45 maximum<sup>54</sup>. The same Act also amended everyone else’s personal tax-free allowance, so as to facilitate the conversion to a Pay-As-You-Earn (PAYE) system of tax collection. However, married men, single and widowed persons had their allowance *increased* (by £84) and made deductible at the marginal rate<sup>55</sup>. Three years later, the Commission on Income Taxation, having been appointed in 1957 to examine all aspects of the tax, completed its review<sup>56</sup>. It did nothing to improve the tax position of the working wife.

The Commission recommended that the Wife’s Earned Income Allowance be discontinued on the basis of a threefold argument. First, as they understood it, the purpose of the Wife’s Earned Income Allowance was: ‘to take into account the reduction in taxable capacity because of the extra domestic expense incurred when [a married woman] had a business or employment to attend to’<sup>57</sup>. This they considered to be unfair, given that the tax code made no concession for the fact that:

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<sup>52</sup> While married women had two years previous become liable for their debts under The Married Women’s Status Act of 1956, which consolidated (26 separate enactments dating from 1834) and amended existing law relating to married women so as to put them: ‘in the same legal position as single women and men’, the Act did not cover Income Tax and Intestacy Law, *Dáil Debate* (Mr James Everett) Married Women’s Status Bill 1956 – Second Stage, 08 November 1956, Vol. 160 Col.832.

<sup>53</sup> *Dáil Debate* (Dr Jim Ryan) Finance Bill 1958 – Committee Stage, 02 July 1958, Vol. 169 Col. 1151.

<sup>54</sup> Finance (No. 2) Act 1952, s. 15 (3)

<sup>55</sup> *ibid*: s. 15 (1) and (2) A married women’s Allowance was not given at the marginal tax rate until 1974.

<sup>56</sup> The Commission submitted seven reports to the Minister of Finance between 1958 and 1962.

<sup>57</sup> (1962) *Commission on Income Taxation: Seventh Report* Dublin: Stationary Office para.82: para.75

... most unmarried female workers also incur some additional personal expense by reason of taking on a business or employment: they have frequently to pay for meals or personal services which they themselves could provide at less cost if they were not remuneratively occupied<sup>58</sup>.

That the Allowance gave married women (a fraction of) the benefit of a tax-free amount of income allowed to all other persons did not factor in the Commission's evaluation. Their second objection to the Allowance was that they suspected that 'many' of the 25,000 claims were being deducted, at the £45 maximum, from the taxable income of self-employed married men: 'even if the wife's services in a business are not large'<sup>59</sup>. Section 18 of the 1920 Finance Act had omitted the condition in the 1897 provision that a married woman's income be earned in business separate from her spouse. In effect, the Commission was prepared to deny all married women tax relief as a way of curtailing tax avoidance by some married men. Finally, it evoked 'the social arguments' for repealing the Allowance:

It is generally accepted that the wife's natural centre is the home, but in any event *the tax code should not encourage married women to take on work* outside while it can be as effectively performed by males or by unmarried female persons, especially in a country where there is a good deal of unemployment and continuous emigration (emphasis added)<sup>60</sup>.

The Government did not act on this recommendation<sup>61</sup>. Indeed, it was primarily because of the emigration of single women and an ensuing shortage of female labour that the Allowance, in 1970, got its first increase so as to encourage married women into employment<sup>62</sup>.

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<sup>58</sup> *ibid*: para.79. No reference was made to men. Employment was evidently not regarded by the Commission as creating an additional expense for men - an unemployed man would not be using his work free time to do his own cooking, laundry, etc.

<sup>59</sup> *ibid*: para.81.

<sup>60</sup> *ibid*: para.80.

<sup>61</sup> They did, however, state that the termination of the Allowance would be considered: 'either as a separate matter or in conjunction with any future review of the married allowance', (1963) *Second White Paper on Direct Taxation* Dublin: Stationery Office para.38. No action was taken until 1980.

<sup>62</sup> *Dáil Debate* (Mr. Charlie Haughey) Financial Statement, 22 April 1970, Vol. 245 Col.1735

Labour market considerations and a recommendation by a Commission on the Status of Women saw the Wife Earned Income Allowance increase again in 1973<sup>63</sup>. In 1974 it was renamed the Working Wife Allowance, set at half the value of the Single Person Allowance and, like all other tax-free allowances, given at the marginal rate. However, from now on if a woman was married to a farmer she was only entitled to half the Allowance<sup>64</sup>. The Married Man and Single Person Allowances for farmers were also halved. This was because farmers had recently, in practice if not in principle, successfully blocked an attempt to make farming profits liable for income tax<sup>65</sup>. With farm profits exempt the married farmer could offset the couple's total tax-free allowances against any non-farming income generated by him or his wife<sup>66</sup>. In justifying reduced allowances for the farming community the Minister for Finance, Richie Ryan, reasoned:

... we could not defend a system under which two married women working, say, at the one factory bench, would find themselves treated in a totally different way for tax purposes. If one married woman happened to be the wife of a labourer she had her wage packet salted for tax but if the married woman next to her happened to be the wife of a farmer she paid no tax at all<sup>67</sup>.

The extent of the tax penalty born by a working wife was now not only determined by her husband's income but also by his occupation.

In response to agitation by recently formed women's organisations, from 1976 a married woman was no longer required to disclose details of her income to her husband<sup>68</sup>. Prior to this a married man was obliged to include his wife's income on his tax return even if she

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<sup>63</sup> (1972) *Report of the Commission on the Status of Women* Dublin: Stationery Office

<sup>64</sup> Finance Act, 1974 s. 28

<sup>65</sup> It was estimated that the changes incorporated into the 1974 Finance Act would make only 8,820 of the 200,000 farmers liable to income taxation, Richie Ryan (August 1974) *Income Taxation of Farming Profits and Rates on Farm Land* para.1 National Archives of Ireland, Department of Taoiseach 2005/7/113

<sup>66</sup> An interdepartmental group reviewing the tax position of farmers had drawn the Minister's attention to this anomaly. In their Report they showed, using the example of: 'a married couple where the wife is a teacher with a salary of £1,500 and the husband a farmer their annual bill is *less* by £657 than it would be if the husband was a PAYE taxpayer earning £2,000'. That is, a schoolteacher married to a farmer would be liable for £184 on her £1,500 income while her colleague married to a PAYE taxpayer would pay £489 in income tax and her husband £352 (£841 in total), (February 1974) *Secret Report of Interdepartmental Study Group on Taxation of Farming Profits* National Archives of Ireland, Department of Taoiseach 2005/7/112 para.6 Notice the wife in the PAYE couple would pay £137 more in income tax than her husband despite earning £500 less than him. This was not commented upon in the review.

<sup>67</sup> *Dáil Debate* (Mr. Richie Ryan) Financial Statement, 08 May 1974, Vol.272 Col.1141

<sup>68</sup> Finance Act, 1976 s. 11

made a return under Separate Assessment, and even if he had no income of his own, again because her income was deemed to be his. From here on if *he* notified the tax authorities that his wife had an income they would accept declarations from each spouse and combined the information on the two returns to determine their tax liability. If the income was procured solely by the wife they would accept a return from her alone. Commissioners retained the right to request her husband to complete a return of his wife's income if she failed to do so, albeit the penalty for failing to make a return could hereafter be applied to married women. With the clamour for equality in taxation growing louder from interest groups, further and more significant reform came two years later. The Finance Act of 1978 provided married women with a statutory right to *half* the couples' tax relief, if she so wished<sup>69</sup>. Allowances and Tax-Bands were divided equally between a husband and wife electing for a Separate Assessment (no longer in proportion to their incomes). This ended the privileging of married men at the cost of married women in two-income households. The Married Women's Tax was no more. However, as the couple's total tax relief continued to be less than that of two single persons this reform did not end the tax penalty it merely distributed it equally between spouses. The Marriage Tax, in effect, had been restored.

In the same Act the Married Man Allowance was raised to twice the value of the Single Person Allowance. The combined tax-free personal allowance for two-income married couples now exceeded two single persons by £230 (the then value of the Working Wife Allowance). Also, back in 1974 Earned Income Relief (then set at a £500 maximum but not double for two-income married couples) was discontinued and merged into personal allowances<sup>70</sup>. This was done as part of a structural reform of tax rates but in so doing it ended one contributor to the tax penalty on two-income married couples. Nevertheless, their incomes continued to be aggregated and the taxable amount assessed on the same Tax-Band widths as single persons. Therefore, once a two-income married couple earned more than £2,460p.a. between them they became liable for more tax than two single persons in receipt of equivalent incomes.

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<sup>69</sup> Finance Act, 1978 s. 3

<sup>70</sup> Finance Act, 1974 s. 6

**Table 1: The Tax Treatment of Married Couples and Singles Persons on the average wage in transportable goods industries 1979/80<sup>71</sup>**

Two-income Married Couple		Single Man	Single Women
Husband's Earnings	5,230	5,230	3,020
Wife's Earnings	3,020	-	-
Total Earnings	8,250	5,230	3,020
Married Man/Single Persons Allowances*	2,230	1,115	1,115
Working Wife Allowance	230	-	-
Total Allowances	2,460	1,115	1,115
Taxable Income	5,790	4,115	1,905
Average Tax Rate Applied**	26	23	23
Tax Liability	2,175	1,332	532

\* Calculations ignore the effect of other allowances and deductions

\*\* Tax rates/bands were 25% on the first £1,000, 35% on the next £3,000 and 45% on the balance

Frustrated at politicians' unwillingness to reform the tax code as it related to married persons, two schoolteachers, Mr. Francis and Mrs. Mary Murphy, on behalf of the Married Persons Tax Reform Association<sup>72</sup>, resorted to the law to challenge the constitutionality of the 1967 Income Tax Act (the most recent consolidation Act). In July 1979 the case came before the High Court<sup>73</sup>. The Murphys' claim comprised of three separate parts:

1. Section 192, which required a married man to provide the Revenue Commissioners with information on his wife's income and authorised Commissioners to obtain a return from a married woman if the original return of their joint income by her husband was in question, infringed on married persons' right to privacy in his or her martial affairs, as guaranteed by Article 40.3.1 of the Constitution<sup>74</sup>.
2. Section 138, which provided a two-income married couple with a lower personal Allowance on their joint earnings than if they were not married to each other, held out a financial incentive to live 'in sin' and favoured single persons, thus, undermining the

<sup>71</sup> Geoffrey Cook and Tony McCashin (1995) *Gender Dependency in Tax and Social Welfare Systems* Comparative Research on Welfare State Reform Conference, Pavia, Italy p.8

<sup>72</sup> The Married Persons Tax Reform Association was formed by a group of professional women and men in June 1977 to extract a commitment from political parties that they would end the discriminatory treatment married couples of married persons if elected in the upcoming general election.

<sup>73</sup> Francis and Mary Murphy vs. The Attorney General [1982] IR 241

<sup>74</sup> 'The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen' Bunreacht na hÉireann Art. 40.3.1.

institution of marriage and violating married persons equality before the law in conflict with Article 41.3 and Article 40.1.1<sup>75</sup>.

3. Sections 192, 193, and 198, which provided *inter alia* that a married woman's income shall be deemed to be her husband's for the purpose of calculating and collecting taxes and the total relief given to a husband and wife under Separate Assessment would be no greater than if an application had not been made (i.e. less than two single persons) discriminated against married couples, undermined the institute of marriage and depleted parents' ability to provide for their children, were, therefore, contrary to Article 40.1, Article 41 and Article 42<sup>76</sup>.

In October 1979, the trial judge, Mr. Justice Hamilton, ruled that compelling one spouse to disclose particulars of his or her income to the other *did not* violate married persons' constitutional right to marital privacy: 'inasmuch as such right to privacy relates solely to the purely personal elements of their relationship with each other, and not to the elements of that relationship which form part of their joint relationship with society'<sup>77</sup>. It was further ruled that setting married couples' personal allowances at less than that for two single persons *did not* breach the Constitution. Section 138, he reasoned, provided a married man with a greater allowance than if he were single, albeit less than double but: 'the legislature was entitled to take into consideration the fact that when a husband and wife are living together certain expenditure is common to both'. Moreover, he held that while co-habitees would enjoy similar economies of scale: 'there is a difference of social function between a husband and wife living together and single people living together to which the legislature was entitled to have regard'<sup>78</sup>. However, Mr. Justice Hamilton ruled the Murphys' third and main challenge, that deeming a wife's earnings to be her husband's for tax purposes, *was* unconstitutional as this (1) imposed higher taxes on married persons than if they were unmarried and therefore conflicted with the State's pledge in Article 41

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<sup>75</sup> 'The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack' Art. 41.3.1; 'All Citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function' Art. 40.1.

<sup>76</sup> 'The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children' Art. 42.

<sup>77</sup> Francis and Mary Murphy vs. the Attorney General [1982] IR 241

<sup>78</sup> *ibid* pp. 267-68

to protect the institution of marriage and (2) as the provisions: ‘discriminate invidiously against married couples, the husband in particular’ (in the absence of a Separate Assessment he was liable for his wife’s tax), thus conflicting with the equality clause in Article 40.1. The State appealed the decision. On 25 January 1980 the Supreme Court *overruled* the High Court decision that sections 192-198 conflicted with the guarantee of equality before the law for all citizens but *upheld* the ruling that they breached the guarantee to protect the institution of marriage and were, therefore, invalid. As a result, married persons hereafter had the right to Individual Assessment with the same tax privileges as single persons. The Marriage Tax on two-income couples ended and the tax code, at last, acknowledged a working wife’s income as her own.

Going further than what was required by the Court, (to avoid risking upsetting the unions, a failed Budget and a general election) double and transferable personal Allowances and Tax-Bands were introduced for *all* married couples, irrespective of having one or two incomes. This was equivalent to introducing a system of ‘Income-Splitting’, whereby each spouse is regarded as entitled to and chargeable on one half the couple’s total income and receives the personal Allowance and Tax-Bands applicable to single persons. The Working Wife and Married Man’s Allowances were, consequently, discontinued. To give effect to the Murphy judgement (the right to Individual Assessment) and the Government’s decision to introduce Income-Splitting, sections 192-198 of the 1967 Act were rewritten. Hereafter married persons had three tax assessment options:

1. Individual Assessment: a married person’s tax liability is determined on their own income without any reference to their spouse’s income and by means of the personal Allowance and Tax-Bands due to them as a single person. They are responsible for paying their own tax and any unused tax relief is *non-transferable* between spouses.
2. Joint Assessment: the husband is assessed for tax with *double* the Allowance and Tax-Bands of a single person (whether or not each spouse has an income). However, if both spouses have a taxable income they can request the tax relief to be divided between them according to their wishes.
3. Separate Assessment: each spouse’s tax affairs are independent of the other. However, unlike Individual Assessment, any unused Allowance and lower rate Tax-Bands

by one spouse *is* transferred to the other, thus the tax liability of the couple never exceeds that which would apply under Joint Assessment.

Joint Assessment was the automatic option, the authorities having to be notified for the other forms of assessment to be put into effect. A married woman could equally make a request and the permission of both spouses was *not* required. Under these new arrangements there was *no* monetary advantage in opting for Individual Assessment. Under Joint and Separate Assessment the married couple paid the same tax as two single persons with the same total earnings. Significantly, there was also no difference in the tax liability between married couples with the same total income regardless of whether one or both spouses had an income. The Marriage Tax on two-income couples had been removed in such a way that the Marriage Premium for male breadwinners was made more lucrative.

Courtesy of the Murphy judgement section 28 of the 1974 Finance Act, which restricted farmers' and their spouses' personal Allowances, was also amended<sup>79</sup>. The amendment provided that where the non-farming income was generated by the farmer's wife she was entitled to the same tax relief as all single persons<sup>80</sup>. The 1980 Finance Act also introduced a small (£400p.a.) PAYE Allowance for taxed at source employees, who had taken to the streets some weeks earlier in protest against their unequal shouldering of the tax burden compared to farmers and other self-employed<sup>81</sup>. The Allowance is intended to make the tax more progressive for employees and to compensate them for the advantage the self-employed have in paying tax on a previous year basis (having the use for a longer period of money owing in taxes) as well as the more liberal tax relief on their expenses (the self-employed, but not PAYE workers, can deduct certain costs they incur in their businesses to determine their taxable income). The Allowance is paid on an individual basis. That is, one-income married couples do not qualify for two. Furthermore, persons employed by their spouse or married to a director of a company (i.e. a person in a posi-

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<sup>79</sup> Finance Act, 1980 s. 22

<sup>80</sup> *ibid*: s. 25

<sup>81</sup> *ibid*: s.3 By the late 1970s the PAYE sector, which made up two thirds of those at work, were paying almost 90 percent of the income tax yield, Peter Sweeney (1984) 'The PAYE Sectors' Perspective on Taxation and Trade Union Demand for Reform' *Journal of the Statistical and Social Inquiry Society of Ireland* XXV:1:27

tion to control their spouse's remuneration) are *not* eligible<sup>82</sup>, so as to remove the incentive to set up artificial employment in order to benefit from the Allowance, as was suspected to have been the case with the WEI Allowance. In effect, the legislators were and continue today to deny one group (predominantly married women) the right to a PAYE Allowance because of the potential for another group (predominantly married men) to commit a wrong.

In their 1981 general election manifesto Fine Gael (second largest party) promised an overhaul of the income tax system, which included a pledge to pay half the married couple's personal Allowances directly to housewives (equivalent to £9.60 per week), if they wished<sup>83</sup>. According to the *Irish Press*, a national daily newspaper, this proposal had: 'widespread public support among the country's housewives and was unquestionably one of the factors that helped bring Fine Gael to power'<sup>84</sup>. The £9.60 would not add to the couple's total income, it was: 'simply a transfer from the working partner to the spouse at home'<sup>85</sup>. The policy was stridently attacked by Fianna Fáil (largest party) during the election campaign<sup>86</sup> and subsequently from the opposition benches for the associated administrative costs and for being nothing more than a: 'policy of robbing Peter to pay Paula',

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<sup>82</sup> Non-entitlement to a PAYE Allowance originally included children employed by a parent but this bar was lifted in 1994

<sup>83</sup> As the Revenue Commissioners had no way of identifying 'eligible wives', advertisements were placed in the national press in November 1981 setting out the qualifying conditions and inviting those eligible who wished to *opt* into the scheme to complete and return an appended application form. In the main body of the text eligibility was stated to be restricted to: 'a wife working full-time in the family home', where she had an annual income below £1,040 and her husband's taxable income exceeded £2,000. A footnote however added that: 'In cases where the wife is the breadwinner and the husband works fulltime in the family home the husband may avail of the one half of the tax credit', (17 November 1981) 'Display Ad' *Irish Times* p.5

<sup>84</sup> Cited in *Dáil Debate* (Mr John Bruton) Adjournment Debate – Wives' Tax Allowance, 17 November 1981, Vol. 330 Col. 2257 Fine Gael subsequently joined with Labour to form a coalition government.

<sup>85</sup> *Dáil Debate* (Mr. John Burton) Financial Statement, 27 January 1982, Vol. 332 Col. 317. In negotiations between Fine Gael and Labour prior to their formation of the 'National Coalition', Labour pushed for the scheme to be extended to the wives of the low paid and unemployed – those outside the tax net. In turn, the minimum income level originally envisaged for entitlement to the benefit was substantially lowered – from £4,000 to £2,000. These households would, therefore, gain, on average, £4p.w. under this scheme, Paul Tansey (18 November 1981) 'Scheme to cost £24 million' *Irish Times* p.1

<sup>86</sup> A billboard campaign had been commissioned by Fianna Fáil during the election campaign aimed at married male voters: 'Men, Fine Gael are making advances on your wife and they are doing it with your monies', cited in Nuala Fennell (2009) *Political Woman: A Memoir* Dublin: Currach Press p.128

‘an insult to the integrity of husbands and wives’, and ‘the greatest gimmick in modern electioneering’<sup>87</sup>. But the Minister for Finance, John Burton, was resolute in his support:

I regard this scheme as one of the most important innovations in our tax system ... for the first time wives are seeing their work recognised directly by the State. ... In the past the work of the wife in the home was recognised indirectly. Either the husband got the tax allowance or additional [unemployment] money or additional disability benefit simply because he had a wife. She never got any money. He got the money. Alternatively, she got the money in respect of her children but she never got money in her own right on the basis of the State and the community recognising the contribution made by her in the home not only to her family but to the community at large<sup>88</sup>.

The scheme was due to come into operation in April 1982. However, the government fell prior to this and Fianna Fáil took office. The launch was stopped by the new Minister for Finance, Ray MacSharry, who claimed: ‘that the general public saw no merit in a cumbersome and complex scheme which merely transferred money from one spouse, via the Revenue Commissioners, to the other’<sup>89</sup>. The Commissioners had received 49,492 applications, approximately twenty percent of eligible spouses<sup>90</sup>. Replying to the Minister, Mrs Gemma Hussey TD pointed out that: ‘Given the campaign against this scheme waged from the day it was announced and given that it was a new and complex idea’ the response represented: ‘a real and genuine interest by women’<sup>91</sup>. The Minister remained unconvinced, the decision to abandon the scheme was followed through and the opportunity to provide married women working in the home with a direct income, rather than via their husbands, was lost.

Later that year, the First Report of the (O’Brien) Commission on Taxation, which had been appointed in response to the 1979 income tax marches, was published. In this it

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<sup>87</sup> *Dáil Debate* (Mrs Eileen Lemass) Oral Answers – Payment of Tax Credit, 23 July 1981, Vol. 329 Col. 1083; (Mr John Ellis) Adjournment Debate – Wives’ Tax Allowance, 18 November 1981, Vol. 330 Col. 2465; (Mr. Sean Keegan) Finance (No. 2) Bill - Second Stage, 28 October 1981, Vol. 330 Col. 691

<sup>88</sup> *Dáil Debate* (Mr John Burton) Adjournment Debate – Wives’ Tax Allowance, 18 November 1981, Vol. 330 Col. 2470-1. Interestingly, John Burton was the first Minister for Finance to be married to a working wife. Finola Burton is a social worker.

<sup>89</sup> *Dáil Debate* (Mr Ray MacSharry) Financial Statement, 25 March 1982, Vol. 333 Col. 602.

<sup>90</sup> *Dáil Debate* (Mr Sylvester Barret) Parliamentary Question – Tax Transfer Applications, 07 July 1982 Vol. 337 No.4

<sup>91</sup> *Dáil Debate* (Mrs Gemma Hussey) *ibid* Col. 1383. The then Taoiseach, Dr Garrett Fitzgerald explains the: ‘somewhat disappointing’ take-up to have resulted from the need to apply for the tax-credit, Garret Fitzgerald (1991) *All in a Life* Dublin: Gill and Macmillan p.393

made only one recommendation for a change to the taxing of married persons. It recommended that in the year of marriage couples should no longer receive a full year's double tax relief but instead a proportion in line with the proportion of the tax year they are married<sup>92</sup>. This was accepted and included in the Finance Act of 1983<sup>93</sup>. The Commission had considered but rejected a move to Individual Assessment for *all* married persons and instead endorsed continuing to regard a husband and wife living together as the basic unit for tax purposes, while retaining the option of Individual Assessment. The Commission gave three reasons for this. The family is recognised in the Constitution as the basic unit of society, the practice of aggregation was 'well established', and it was: 'particularly influenced by the need to ensure that families in the same circumstances with the same joint resources should be taxed equally'<sup>94</sup>. No mention was made of the argument that one-income couples enjoy cost benefits from the spouse working full-time in the home and arguably have a greater capacity to pay tax than two-income couples earning the same sum. Moreover, the growing international evidence on the employment disincentives Income-Splitting creates for married women was completely omitted from the Report. Rather the Commission's only criticism of double transferrable tax-relief for married couples was its failure to take into account the economies of scale both two- and one-income married couples enjoy over single persons<sup>95</sup>.

No policy change of note occurred for another decade. Then, in 1993, the Finance Act removed a series of discriminatory practices against married women in couples taxed under a Joint Assessment (the method of assessment automatically applied to couples on marriage). Prior to this legislation, the Commissioners issued details of couple's tax relief to the husband. The wife was *not* entitled to obtain such a breakdown. Furthermore, if she overpaid tax on her income the rebate was paid to *him*. And, in cases where she was the breadwinner she needed her husband's written consent to have their relief transferred to her. The genesis of this discrimination was that the husband was always the 'assessable

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<sup>92</sup> (1982) *First Report of Commission on Taxation: Direct Taxation* Dublin: Stationary Office para.16.8.

<sup>93</sup> Finance Act 1983, s.6

<sup>94</sup> (1982) *First Report of Commission on Taxation: Direct Taxation* Dublin: Stationary Office para.15.13.

<sup>95</sup> *ibid*: para.16.7

person' under Joint Assessment<sup>96</sup>. As of the 1993 Act coming into operation a married woman gained the right to be nominated as the couple's assessable person<sup>97</sup>. In cases of no preference being declared the higher earner in the year prior to marriage is taken<sup>98</sup>. And, tax refunds are now paid to the spouse they are due, but only if she is taxed at source<sup>99</sup>. To date, self-employed married women have *no* statutory guarantee they will receive directly any overpaid taxes, if they are not the assessable person<sup>100</sup>. The reform was in response to an appraisal of the tax system by the Second Commission on the Status of Women<sup>101</sup> and the efforts of a Minister for State (junior minister) at the Department of Finance, Eithne Fitzgerald.

The Commission's terms of reference had included that it: 'pay special attention to the needs of women in the home'<sup>102</sup>. For those married to taxpayers, the Commission was initially of the opinion that the aborted tax transfer scheme, from ten years back (paying half the value of the breadwinner's allowance directly to the housewife): 'had a lot of merit'<sup>103</sup>. However, Revenue and Finance officials advised them that: 'implementation of the proposal was fraught with difficulties'<sup>104</sup>. Namely, one third of one-income married couples were not in the tax system, thus the scheme would be of no benefit to these women. Uptake by a woman married to a medium or high income earner would result in a reduction in the total household income (the breadwinner becoming liable for tax sooner without his wife's personal Allowance). It would be 'extremely difficult' to calculate the entitlement of women in irregular employment. The Commission regarded these to be 'weighty' arguments, which left it unable to recommend an across-the-board tax transfer scheme. Instead, it recommended the scheme be limited to high income groups

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<sup>96</sup> Fine Gael tabled an amendment to the 1980 Finance Bill substituting the word 'husband' for 'spouse' in the section defining the assessable person. It was rejected because it would make the wording of the Bill 'too complex' *Dáil Debate* (Peter Barry) Finance Bill – Committee, 03 June 1980, Vol.321 Col.1455

<sup>97</sup> Finance Act 1993, s.195B. sub-s.(a).

<sup>98</sup> *ibid*: s.195B. sub-s.(b).

<sup>99</sup> *ibid*: 195C. sub-s.(2).

<sup>100</sup> The administrative systems to support the reform experienced some teething difficulties in delivering tax rebates to the appropriate spouse. Ironically, Eithne Fitzgerald, who as Minister initiated the change in law has herself subsequently experienced her tax refunds being paid to her husband on more than one occasion Eithne Fitzgerald in Interview 06 April 2009.

<sup>101</sup> (1993) *Report of the Second Commission on the Status of Women* Dublin: Stationary Office

<sup>102</sup> *ibid*: para.0.1.1.

<sup>103</sup> *ibid*: para.2.4.3

<sup>104</sup> *ibid*: para.2.4.3

because women in these households have no avenue for an independent income, unlike single women, wives of welfare recipients and the low paid who have access to individual or spilt social security payments<sup>105</sup>. The recommendation was *not* implemented. Another opportunity to provide married women working in the home with an independent income was again not taken. The Commission also highlighted the employment disincentives Joint Assessment creates for housewives married to taxpayers. They enter the tax net quickly and at high tax rates because their husbands' income is likely to consume all of the couple's Allowances and exceed the lower Tax-Band limits. It recommended Separate Assessment as the automatic option for married couples, rather than Joint Assessment<sup>106</sup>. The Government did *not* act on this recommendation either. At this time (1993) the Celtic Tiger economy was in its infancy, thus there was no urgency to encourage married women into the workforce. Indeed, prior to the 1997 general election Fianna Fáil and the Progressive Democrats issued a joint statement pledging additional tax relief for couples with a spouse caring in the home<sup>107</sup>. However, by the end of the decade the situation was very changed.

Buoyant economic growth continued year on year from 1993. Between 1993 and 1999 unemployment fell from 16 percent to an all time low of 5.1 percent. Concern that the country would soon 'run out of workers' was a popular talking point with the media and was being voiced in the Dáil with increasing regularity. In December 1999, the Minister for Finance, Charlie McCreevy, proposed doubling the width of the standard rate Tax-Band over this and his next two Budgets as a means of reducing the numbers liable for tax at the higher rate, thus increasing incentives to work longer hours. However, the most radical aspect of his proposal was that it was to be part financed by individualising Tax-Bands (making them *non*-transferable between spouses) over three years. Accordingly, he increased the standard rate Tax-Band by £3,000 to £17,000 for single persons, by £6,000 to £34,000 for two-income married couples, and left it unchanged for one-income couples. Moreover, two-income couples had the transferability of their Tax-Bands capped at (2/3<sup>rd</sup>) £28,000. That is, assessed persons (predominately husbands) could *not* use the ad-

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<sup>105</sup> *ibid*: para.2.4.4

<sup>106</sup> *ibid*: para.2.4.5

<sup>107</sup> Fianna Fáil and the Progressive Democrat Party (03 June 1997) 'Priorities for Government'

ditional £6,000 against their tax liability. The benefit went to second earners (predominately wives). This, therefore, increased housewives' incentives to join the workforce. Incredibly, the Minister introduced this fundamental change to the ethos of the Irish income tax code without giving prior warning (to his party as well as the public)<sup>108</sup>. The backlash was immediate and without precedent. Nonetheless, with some concession (see below), the Bill was passed and the process of Tax-Band individualisation continued over succeeding Budgets but at a slower pace than the Minister envisaged and has not been completed to date (one third remains transferable).

Seven days after unveiling his plan to individualise Tax-Bands, in the midst of the ensuing controversy, the Minister announced a Home Carer's Credit (HCC) to be paid to breadwinners with spouses caring for young, elderly, or incapacitated relatives at home<sup>109</sup>. Only one Credit is permitted per taxpayer, regardless of the number of dependants their spouse is caring for, and per dependant – siblings, for example, sharing the care of a parent do *not* each qualify for a HCC. Carers are permitted some independent income. If this exceeds the prescribed amount the HCC is gradually withdrawn (£1 for every £2 earned), and should the carer take up employment paid above the upper earnings limit the Credit is payable for another year. These measures are intended, according to the Minister, to minimise any employment disincentives<sup>110</sup>. The OECD in a 2005 commentary on the Irish tax system, however, concluded the payment: 'discourages the marginal spouse to enter the jobs market'<sup>111</sup>. The HCC halved the tax advantaged granted to couples with a working wife in Budget 2000. However, unlike the Tax-Band differential the HCC has *not* increased since its inception and stay-at-home spouses with adult children

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<sup>108</sup> Unlike the general public, experts and Commissions had been deliberating the merits of individualised Tax-Bands and Allowances since 1991. See for example, Tim Callan and Brian Farrell (1991) *Women's Participation in the Irish Labour Market* Dublin: NES; (1993) *Commission on the Status of Women*; (1996) *Report of the Expert Group on Integrating the Tax and Social Welfare Systems*; (1998) *Strengthening Families for Life: Commission on the Family*; (1996) *Report of the Working Group Examining the Treatment of Married, Cohabiting and One-Parent Families under the Tax and Social Welfare Code*; Tim Callan et. al. (1999) 'Income Tax and Social Welfare Policies' in Colm Kearney (eds.) *Budget Perspectives* Dublin: ESRI

<sup>109</sup> Department of Finance (08 December 1999) Press Releases – 'Minister for Finance announces £3,000 tax allowance for one-income families whose spouse work at home to care for children, aged, and the handicapped' <http://www.finance.gov.ie./viewdoc.asp?DocID=1266>; Finance Act 2000, c.2, s.12.

<sup>110</sup> *Dáil Debate* (Mr Charlie McCreevy) Finance Bill – Report Stage, 20 March 2001 Vol. 532 Col. 980

<sup>111</sup> OECD (2005) *Taxing Working Families: A Distributional Analysis* Paris: OECD p.93

are *not* eligible. The rise in married women's employment participation rates since 2000 has been greatest among those aged 45 years and over.

In 2001 the value of the PAYE Allowance (introduced in 1980 for all taxed-at-source employees in business separate to a spouse), which had been converted into a tax credit in 1999, was doubled. The Government were now committed under a national pay agreement to exempt the minimum wage from income tax<sup>112</sup>. In meeting this end by means of the PAYE Credit, rather than personal Allowances (now credits), the commitment could be realised at less expense, i.e. as it is paid on an individual basis it is not, nor ever was, doubled for one-income married couples. In each of the six succeeding Budgets, 2002-07, the PAYE Credit was increased by a greater amount than personal Credits. Consequently, while the minimum wage was outside the tax net by 2005, the PAYE Credit and the single person Credit have been of equal valued since 2007. In effect, this together with the two-thirds individualised Tax-Bands means that working wives, having long felt the brunt of the income tax code, now attract substantially more tax advantages for married couples than housewives. With a Commission on Taxation in 2009 recommending that: 'The present [different] arrangement with regard to band structure and credits which apply to married one-earner and married two-earner couples should remain in place' this trend looks set to continue<sup>113</sup>.

**WORD COUNT 8,577**

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<sup>112</sup> (2000) *The Programme for Prosperity and Fairness* para.1.1.3

<sup>113</sup> (2009) *Report of the Commission on Taxation* Dublin: Stationery Office recommendation 5.4