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Union Cold Storage and the Birth of Multinational Tax Planning, 1897-1922

"Commerce is curiously conservative in its homes, unless it is imperiously obliged to migrate"
Walter Bagehot[1]

Introduction

Today's corporate managers know that while tax planning may improve the bottom line, it also carries a downside in terms of reputational risk.[2] The past decade has seen the rise of a phenomenon dubbed "tax shaming," with legislators, activists and the popular press condemning multinationals for participating in "aggressive" or "unethical" tax avoidance.[3] This campaign has occasionally been associated with dramatic changes in corporate policy. In 2012, for example, the global coffee chain Starbucks announced that it was voluntarily increasing its tax payments in the United Kingdom.[4] And the following year, one of Britain's leading banks, Barclays, closed down its profitable tax structuring division, citing the hostile political climate.[5] Advocates of corporate social responsibility (CSR) promote the idea of a moral dimension to tax compliance, although it remains to be seen whether firms that consciously adopt an ethical approach to tax obligations will outperform their rivals.[6] Some sceptics dismiss the CSR agenda as a public relations exercise; others regard it as a potential threat to legal certainty or economic competitiveness.[7] A few practitioners even claim that "tax shaming" is a dangerous step towards "taxation by mob rule."[8]

Public debate over the morality of tax avoidance goes back to the early twentieth century. This case study concerns one of the first documented instances of tax shaming, which involved the Union Cold Storage Company (Union). In 1922, Union's founder and managing director, William Vestey, was awarded a peerage. His appointment occurred at the height of a major scandal surrounding the sale of public honours, which implicated the Prime Minister, David Lloyd George. There was no hard evidence that Vestey had paid for his peerage, but Lloyd George's political opponents were scrutinizing all honours recipients, looking for background detail that cast doubt on their suitability for office. These opponents argued that Vestey was unsuitable because he had saved millions of pounds by going into "tax exile" during the First World War. They did not suggest that he had done anything illegal, but that he was guilty of a lack of patriotism.

Vestey had made some injudicious remarks to the Royal Commission on Income Tax, three years earlier, which made it easy to pillory him as a heartless plutocrat. Yet while it may have been self-evident to Vestey's critics that his behaviour was "unpatriotic," not everyone shared their opinion. Union Cold Storage was a rising force in the international meat industry, at a time when British influence in the sector was waning. For some in government circles, Vestey's firm apparently had a systemic importance which went beyond the question of its contributions to the Exchequer.

The public debate over Union's tax planning took place at a superficial level, not least because it was conducted in ignorance of what was really going on inside the company. At the time, even the British tax authority, the Inland Revenue, failed to appreciate how far tax had underlain the Vestey group's structure

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and management since its inception. It was only in the mid-1930s, when they retrospectively audited the company's affairs over the previous forty years, that the Revenue pieced the picture together, concluding that the Vesteys were "the most notorious avoiders of tax in this country," men of "amazing cupidity," who would go to "desperate lengths."[9] This case study uses the Revenue's audit report to cast a new light on the controversy of 1922, but it also observes that the Revenue's later conclusions were considerably afflicted by hindsight. Then, to an even greater extent than now, the boundary between "acceptable and unacceptable" tax behaviour was fluid and contested.[10]

1. Background to the Vestey group, 1879-1914

The Union Cold Storage Company was founded in 1897 by William Vestey and his younger brother, Edmund. The Vesteys had already been in business together, as a partnership, for almost twenty years.[11] They traded as Vestey Brothers, and their core business was dealing in wholesale groceries, mainly imported. During the 1880s and 1890s, there was a revolution in the global food industry. Before then, the international trade in perishable foods was limited by the fact that there was no reliable technology for refrigerating or freezing produce.[12] To travel long distances, foods had to be preserved by being canned, salted, or pickled. The invention of refrigerated steamships in the mid-1870s opened a new market in frozen produce, allowing British importers to take advantage of lower farm gate prices in other parts of the world.[13] Poultry and eggs arrived from Russia and China, while meat could now be sourced in the Americas and Australasia. By the first decade of the twentieth century, Britain was much the world's largest destination for chilled and frozen meat, accounting for up to 80 per cent of global imports.[14] During the same period, Argentina surpassed the United States as the main exporter, with around 45 per cent of the market.

The Vestey brothers were early entrants to the frozen food business. In 1890, they constructed their first cold store in Liverpool.[15] At the time, they were still essentially wholesalers, with no significant involvement in the upstream (agricultural production) or downstream (retailing) sides, but over the next twenty years, they extended the business in both a horizontal and a vertical direction. The 1890s saw them establish further cold stores in Britain's major urban centres, such as London, Glasgow, and Manchester.[16] By the turn of the century, they had acquired cold storage capacity at the opposite end of the production chain, first in Russia and then China. In the following years, they went into transportation, establishing the shipping company Blue Star Line and buying their first refrigerated steamers in 1909. They also took over service providers, such as the Blackfriars Lighterage and Cartage Company (BLCC), a London-based distribution firm. Finally, in the years immediately before the First World War, Vestey Brothers moved into the business of producing meat at one end of the chain and retailing it at the other. They acquired millions of acres of ranchland in Australia, South Africa, Venezuela and elsewhere, forming private overseas companies to develop and manage these properties. In 1912, they bought out an existing chain of butcher shops, Fletcher's, which had some 400 outlets in cities across Britain. William Vestey became "Sir" William, when he was made a baronet for services to the food industry, in 1913. By the beginning of the First World War, the Vestey brothers had a stake in every stage of the meat business, "from the mountain range to the kitchen range," as they liked to say.[17] Figure 1 in Appendix C to this study depicts the structure of the group in 1914.

Union Cold Storage started off as a special-purpose vehicle. It was initially set up to buy the Vesteys' original, Liverpool cold store from them in 1897. Union was a private company until 1903, when it began issuing securities to the public (initially a £225,000 bond). The company used the cash it raised to buy more assets from the Vestey Brothers partnership, namely existing cold stores in London, Manchester, Hull and Riga (then in Imperial Russia).[18] There were further issues of bonds and preference shares from 1908 to 1914, by which time the company's enterprise value (debt and equity) was £3 million (*c.*£250 million today), with more than 7,000 public stockholders.[19] Every time Union issued securities, it passed the cash back to Vestey Brothers by buying more business assets from the partnership. By 1914, the company had eight cold stores in Russia, two in China, and owned the distribution firm BLCC. In the last transaction to take place before World War I, Union acquired from Vesteys land and development rights for a *frigorifico* (an abattoir with attached cold store) at Zarate in Argentina.[20] After the war, the company continued to take over investments made by the partnership, as it diversified into meat production, shipping and retail.

Why did Union's growth happen like this, by stepping into the Vesteys' shoes on each occasion? The first reason was financial: by issuing securities to the public and passing the proceeds back to the Vesteys through an asset purchase, Union allowed them to extract value from proven business units and free up capital for expansion on the "private side" of the group. The only stock the public held in Union was

in the form of debt or non-voting preference shares; all the common stock was owned by the Vesteys themselves. They thus had full control of Union, which, while being a public company, was merely one component of a wider privately-held group. Selling a business to Union did not mean losing control over it, because although the Vesteys abstained from board decisions concerning transactions between themselves and the company, they also controlled the composition of the board. As the group grew, its culture remained that of a family firm.

2. The basic tax planning scheme: depreciation

The second reason Union always bought assets from the Vesteys was that there were tax advantages on both sides. If the partnership earned income from a business (such as letting cold storage space), it would pay income tax on the profits. If it sold the business, on the other hand, the proceeds were a capital gain which was tax-free.[21] Union would now be the one receiving the income from the business, but owing to the tax treatment of the purchase price in Union's hands, Union's taxable income would be lower than the partnership's would have been.

One basic principle of British tax law is that when a business buys a fixed asset (such as an industrial refrigerator which it intends to let out), it cannot deduct the purchase price against its revenue for the purpose of computing its profits, because the purchase price is capital expenditure. There is nothing irrational about that rule: an accountant would not deduct the whole purchase price against a single year's revenue either; rather, the cost will be spread over the anticipated life of the equipment, with a proportionate part of the capital expenditure being expensed to profit and loss annually as depreciation. Those who crafted our tax laws in the nineteenth century were wary of allowing depreciation as a deduction for tax purposes, because it would be difficult to police taxpayers' honesty. Hence, British law always required the *taxable* profits to be computed without taking account of depreciation.[22] Business complained that this was unfair, and there was a change of policy in 1878, when Parliament enacted a specific statutory allowance, which did not extend to all fixed assets, but only applied to "plant and machinery."[23] The taxpayer was permitted to deduct a just and reasonable sum representing the loss in value attributable to wear and tear of its plant and machinery in the current tax year.

The "wear and tear allowance" (WTA) was completely separate from the depreciation expense in the taxpayer's accounts, which still had to be added back in the tax computation. Instead, it depended on the subjective question of what was "reasonable" in each specific case. Arguing about that issue with taxpayers came to consume a disproportionate amount of the Revenue's time, and they fell back on a rough and ready approach which allowed the taxpayer to deduct a fixed percentage of the original cost of the equipment, which the Revenue set for the sector as a whole.[24] Thus, there were two distinct systems, "accounting depreciation" and "tax depreciation," and there was often a mismatch between the rate used by the Revenue, and the way the taxpayer actually accounted for depreciation of the same equipment. The 1878 legislation had a serious defect from the Revenue's point of view, because it did not explicitly cater for sales and purchases of second-hand assets. Suppose the partnership, Vestey Brothers, incurred capital expenditure of 100 on fitting out a cold store in 1890, and then sold to Union in 1897 for 120. Assume the Revenue's rate is 7.5 per cent, so from 1890 to 1897 Vesteys deducted 7.5 from its annual income as a WTA, receiving a total of 52.5 in tax relief. The remining 47.5 of the original price is the "tax-written-down value" (TWDV), and would provide another six years or so of allowances, if the partnership kept the equipment.[25] But if Vesteys instead sold the equipment to Union, then the TWDV became irrelevant, because Union was a separate taxpayer.[26] Union could now start claiming WTAs based on the price *it* had paid for the equipment, which was more than the partnership's original cost. If the clock were advanced another seven years, by 1904 Union would have received WTAs totalling 63, and the TWDV would be 57. If Union then sold the equipment to another company, or back to the Vesteys, the calculation started again. The WTAs could be "refreshed" simply by one subsidiary selling the equipment to another.

When the Inland Revenue audited Union's affairs twenty years later, they argued that this had only happened because Union paid the partnership "excessive prices" for the cold stores it bought. It is not clear what the Revenue meant by "excessive"; the prices exceeded the seller's TWDV, but there was nothing in the law to roll over the TWDV where the purchaser was a connected party, or to adjust the WTAs in any other way.[27] Whether or not the prices were "excessive" as a commercial matter is hard to say, but the stores were sold as going concerns, not on a break-up basis, so cashflows mattered more than the residual value of the assets.[28]

The shuffling of businesses from the partnership to Union was one thing which led the Revenue to believe that the company had had a "policy of tax avoidance" ever since it was founded.[29] In the Revenue's eyes, however, the refreshing of WTAs was not the most objectionable feature of the way Union had exploited the rules on depreciation. If a business does not account for depreciation of assets which are losing value, but distributes all its income, net of other expenses, to its shareholders as profit, then the investors' equity is gradually being depleted. The company would be paying investors dividends partly out of their own capital, which modern company law seeks to prevent, by requiring companies to prepare accounts in accordance with generally accepted accounting practice.

A company which "under-accounts" for depreciation gives itself an advantage in terms of its ability to pay dividends: less income is required to provide the expected return, because there is less expense reducing the profit. Ordinarily, under-accounting for an expense would mean paying more tax, but because depreciation is not tax-deductible, under-accounting for depreciation has no effect on the tax payable. In the period covered here, the WTA, which was the tax system's proxy for depreciation, was available at the same rate, no matter how much or how little depreciation was recognized in the accounts. Hence, if a company provided for less depreciation than it claimed as a WTA, its distributable profits would exceed its taxable profits.

Example 1 in Appendix A illustrates the effect of under-accounting for depreciation under the law in force at the time. The analysis is complicated somewhat by the fact that the UK then had an integrated tax system, where both companies and shareholders were liable for income tax, but the tax was only paid once, at the company level. The net result, though, was that the company's effective tax rate (ETR) on its profits was lower than the "headline" statutory tax rate (in example 1, the ETR is only about two-thirds of the statutory rate).

At the time, English company law did not contain any "hard" prohibition against a company paying dividends without providing for depreciation.[30] But a company which under-accounted for depreciation persistently would artificially inflate the asset side of its balance sheet, and company law did require the auditors to confirm that the balance sheet gave a "true and correct view" of the financial position.[31] Thus, there was a tension between the benefit of the reduced tax rate which could be achieved by under-accounting for depreciation, and the pressure the company would be under from its auditors to disclose the true value of its assets.

Depending on the company's relationship with the auditor, it might be able to get the benefit of the reduced tax rate for a time, but sooner or later the auditor would demand that the controlling shareholder injected additional capital into the company, to bring the asset side of the balance sheet back in line with where it should be. The shareholder could just make the company a gift, but then the company might be taxed on the gift, which would defeat the purpose of the exercise.

When the Inland Revenue audited Union in 1935, they discerned a long pattern of behaviour which predated World War I and continued through the 1920s and early 1930s. Union had persistently under-accounted for depreciation, in the sense that the WTAs it received had always exceeded the depreciation provided for in its accounts. Thus, the company's taxable profits had always been lower than its distributable profits, and its ETR had been lower than the headline rate. The auditors, Deloitte's, had apparently been comfortable with this, on the basis that the Vesteys were "standing behind the company," and would step in and contribute capital as and when the deficit on the depreciation reserve exceeded a certain agreed limit.

Rather than making gifts to the company, however, the Vesteys had simply reversed the direction of the asset purchases via which the company had originally acquired its various businesses. Again, these transactions had taken place for what, from the Revenue's point of view, were "excessive prices": in some cases, assets which were fully written down in the company's books had been sold to the partnership at a large profit. Because these profits were capital gains, not subject to tax, Union had succeeded in "locking in" the benefit of the reduced tax rate, while keeping the auditors satisfied.

As example 1 in Appendix A illustrates, when you combined the tax benefit of under-accounting for depreciation with tax-free profits from asset sales, the overall economic effect was that while part of the subsidy the company needed to make good the deficit on its depreciation account came from the Vesteys, the rest was provided by the British Exchequer. While the Revenue objected to that on principle, they also

believed that, until about 1914, the loss of tax had been modest. That was partly because tax rates before 1914 were a good deal lower than the 30 per cent used in example 1 (as elaborated on below), but it was also because Union had been restrained in its use of the strategy.

Until World War I, the deficit on the depreciation reserve had never exceeded the par value of the Vesteys' own shares in the company, and had usually been lower than that. "The moral aspect," as the Revenue put it, "was not really serious," because even if the Vesteys had failed to provide the requisite capital injections, the loss would ultimately have fallen on them, rather than the public shareholders.[32] Between 1915 and 1920, however, the deficit on the depreciation reserve had ballooned to over £1 million, well into the range where the preference shareholders stood to lose out, if further funds were not forthcoming. As far as the Revenue were concerned, this was tantamount to a fraud on the company, and they were surprised that the auditor had permitted it to happen. In the event, however, Union had made a large capital gain by selling some land to the Vesteys in 1921, and this money had been used to reduce the deficit on the depreciation account to more manageable proportions.

Up until then then, the asset sales which filled the hole in Union's depreciation reserve had taken place only on an ad hoc basis. From 1921 onwards, however, the procedure became systematized. Union's depreciation provision invariably fell short of the WTAs it claimed against its taxable profits, by an average of £375,000 each year. Annual asset sales giving rise to tax-free profits of some £250,000 had been made to offset this deficit, the difference between those two amounts being made up by the tax saving.

The Inland Revenue recognized that, from the perspective of the preference shareholders, this was a less risky arrangement than if the deficit on the depreciation reserve was run up over several years and only filled in at the end. For a time in 1935-1936, however, the Revenue convinced themselves that even if Union's strategy could no longer be described as a fraud on the company, it certainly amounted to a fraud on the Exchequer.[33]

The Revenue's point was this: if Union could be *certain* that it was going to receive the capital profits from the partnership—which was the only basis on which, in all conscience, it could under-account for depreciation—then those capital profits lost their character as capital, and should be taxed like ordinary income. The result would be the same as if the Vesteys had made Union a taxable gift, i.e. it would largely defeat the object of under-accounting for depreciation in the first place.[34]

The Revenue made some ferocious noises about this in 1935, accusing the company of behaving dishonestly by entering into "secret contracts" with the Vesteys. Given the state of the law at the time, though, the Revenue's argument was speculative, and it is unsurprising that they eventually backed down and withdrew any allegation of fraud. In order to make the capital receipts taxable, either the Revenue had to argue that the company was trading in its own fixed assets (usually held to be impossible), or they had to persuade a court to take a broad-brush view of the whole course of dealings, taking into account the "economic substance" of the transactions, rather than just their "legal form."[35] At the time, however, the courts were mostly unwilling to entertain the "substance over form" approach, which did not come into fashion until half a century later.[36]

Under-accounting for depreciation was an effective method of managing down the ETR applicable to a given volume of commercial profit, but it had limitations.[37] In order to pay as little tax in the UK as possible, the Vesteys needed to be able to control how much commercial profit Union recognized in the first place. That required them to direct their attention away from the purely domestic aspects of tax planning, and to concentrate on its international dimension.

3. The basic tax planning scheme: transfer pricing

Union's exploitation of the deficiencies in the UK system of "tax depreciation" was only one half of the "policy of tax avoidance" which, by the 1930s, the Inland Revenue were convinced the company had been committed to ever since it was incorporated. The other half of the policy involved implementing a strategy which is now called "transfer pricing," though that terminology was not yet in use at the time. The basic idea behind transfer pricing is to set the charges for goods and services supplied by group companies to each other so that high profits accrue to those based in low-tax countries, while low profits accrue to the ones in high-tax countries: by manipulating the pricing, profit is shifted or "transferred" out of high-tax jurisdictions.

Today, many countries have anti-avoidance laws which oblige multinationals to file their tax returns on the basis that the individual companies in the group are "dealing at arm's length," i.e. charging each other the same prices as they would charge outsiders. Before the First World War, such laws were unknown: corporate groups were free to set whatever prices transferred the most profit "offshore." The Inland Revenue might not have liked the Vestey group's approach to inter-company pricing, but they had to acknowledge that, at least until 1915, it was "definitely legal."38

Figure 1 in Appendix C is a schematic representation of the Vestey group just before World War I. The group comprised three distinct profit centres: two "onshore," and one "offshore." First, there was the partnership itself (triangle top middle), which was resident in the United Kingdom (since that was where both Vestey brothers lived). Secondly, there were several UK-based companies (top left and bottom right): Fletchers, Blue Star Line, and Union and its subsidiaries. William and Edmund Vestey were managing directors of all these companies, and all important decisions relating to their business were made at Vestey group headquarters in London's West Smithfield. This meant that those companies were resident in the United Kingdom, because that is where they were "managed and controlled" (they were also officially registered in the UK, but that was not relevant for the purposes of their tax residence).[39]

Thirdly, there were at least 40 private companies (bottom left in Figure 1) registered in a variety of jurisdictions outside the United Kingdom, such as the National Cold Storage Company of New York, which owned the famous depository by Brooklyn Bridge. These companies performed various functions, including the provision of cold storage, animal husbandry, and food processing. Where they were resident for tax purposes may have been something of a moot point. Until 1921, the Vesteys treated them as non-resident, and they did not file tax returns in the United Kingdom. On paper, they were managed by local directors, with board minutes being signed off in-country. It is possible, however, that the local directors were in practice mere nominees, with no responsibility other than to implement decisions handed down to them by the Vesteys.

In 1935, the Revenue claimed to have uncovered evidence that, at the relevant time, the "offshore" group companies had in fact been "controlled by Union from London through a secret department of that company."[40] Had that been true, then those companies should have been treated as UK resident, which would have made it largely pointless to manipulate the prices of intragroup transactions, since wherever the profit was "transferred" to, it would still have been taxable in Britain.[41] Yet the Revenue had accepted, prior to 1921, that these companies were non-resident, and given that the world had moved on in the meantime, there was little prospect of their reopening this issue twenty years later. That said, it is possible that by 1915, the Vesteys were already facing questions from the Inland Revenue over the true status of the "offshore" companies; if they were, it would help to explain why they subsequently decided to emigrate. Example 2 in Appendix A provides a hypothetical illustration of how the Vestey group's transfer pricing strategy worked: the basic principle was that supplies by "offshore" group members to "onshore" ones were charged at high prices, while supplies moving in the opposite direction were priced much lower than a third party transaction, or even not charged for at all. Additional profits, over and above those which would have been earned on arm's length terms, accrued to the offshore companies, and the profitability of the onshore companies was correspondingly reduced.

Because a high proportion of Union's business involved handling produce on behalf of offshore group members, transfer pricing gave the Vesteys considerable leeway to manage down the commercial profit the group recognized in the United Kingdom. The only real constraint was the fact that Union needed to earn enough every year to enable it to pay the interest and dividends it owed on its securities.

Union also had a significant number of third party customers, which it charged at market rates, and in some years, there may well have been sufficient income from that source alone to discharge its financial obligations. In those circumstances, the transfer pricing strategy could be carried to its logical conclusion, with no profit whatever being recognized in the UK in respect of the company's intragroup supplies. In practice, the level of Union's third-party income would not be known until close to the balance sheet date, so what seems to have happened (according to the Inland Revenue) was that the question of intragroup charges was left in abeyance until year end. If there was a shortfall between the profits Union had made from third parties, as against its liability to pay interest and dividends, the offshore companies in the group would "top up" Union's profits to the required level. If the third-party profits were sufficient, no intragroup charges would be made.

In this way, the Vesteys could ensure that only the bare minimum of profit necessary to keep the company running ever came into the UK tax net, which in turn meant that the method of compressing the ETR by "under-accounting" for depreciation could be applied with the greatest possible leverage. Most of the group's global profits stayed outside the United Kingdom, where for the most part, before World War I, they would not have been taxed at all.

If the Vesteys had wanted to bring this money back to Britain, then they could have repatriated it by paying themselves dividends. It made no sense to do that, however, because the dividends would have been subject to tax in the UK.[42] There were much more efficient ways of utilizing these funds: if British investment opportunity presented itself, for example, the Vesteys could borrow as much as they needed from one of the offshore companies: there was no tax on taking a loan. Alternatively, the offshore companies could reinvest their retained earnings in extending their own business, lend excess cash to each other, or simply leave it in the bank. One way or another, their accumulated profits constituted a large pool of untaxed capital that William and Edmund Vestey could use to expand their international presence in whichever direction they wished.

4. The impact of the first world war on capital formation

4.1 Income tax and super-tax

Before the First World War, British tax rates were very low by modern standards. In the final pre-war budget, income tax (paid by both individuals and companies) was set at the flat rate of 6.25 per cent. Individuals (but not companies) who had high incomes, roughly £250,000 or more in today's money, were subject to an extra tax known as "super-tax," at graduated rates which rose to 6.67 per cent on incomes above *c.*£650,000. Companies deducted income tax, but not super-tax, from dividends they paid: thus, if a top-rate super-tax payer was entitled to a gross dividend of 100, s/he would receive 93.75 in cash; there would be no further income tax liability; but an additional 6.67 would be due on account of super-tax, making the net tax rate on the profits represented by the dividend 12.92 per cent.

For most of the period down to 1914, UK tax rates were even lower. From 1903 to 1913, the average income tax rate was 5.34 per cent, while super-tax (which was only introduced in 1909) was initially levied at a flat rate of 2.5 per cent. Evidently, the Vesteys had felt justified in spending significant time and resources on finding sophisticated ways to mitigate what most today would consider a modest burden of taxation. Reviewing the position in the 1930s, however, the Revenue were surprised that in one respect, the Vesteys seemed to have been lackadaisical with their tax planning.

Until 1922, when the law was changed, super-tax, despite sounding invincible, was in fact voluntary: since it was not paid by companies, most people could easily get out of it by transferring their business or investments to a "one-man" corporation. Before the war, the Vesteys continued to trade as a partnership (which was now a tax-inefficient structure), and always paid themselves a 10 per cent dividend on the Union common stock, which would have been exempt from super-tax if they had set up a new holding company. (Section 5 below touches on the first of those points; Appendix B explains how the Vesteys later dealt with the second.)

Almost as soon as World War I began, the British tax landscape altered rapidly and profoundly. Within 16 months, both income tax and super-tax rates had nearly trebled. By December 1915, companies were liable for 17.5 per cent income tax on their profits, while a shareholder in the top super-tax bracket paid an additional 17.5 per cent on dividends. As the war progressed, tax rates continued to rise: by 1918, income tax was at 30 per cent, super-tax 22.5 per cent. After the end of the war, not only did rates stay where they were, they actually went up; the increased cost of servicing the national debt made them impossible to reduce.[43] The 1920 budget raised the combined top income and super-tax rate to 60 per cent, almost a fivefold increase on its 1914 level. Having been a moderately-taxed economy in the Edwardian period, the First World War turned the UK into a permanently high-tax environment.[44]

To be sure, relatively few people were subject to tax at the top rate. In the 1920s, you needed an income of £30,000 (*c.*£1.5 million today) to fall into the top super-tax band; only some 3,500 Britons declared gross incomes of £10,000 or more in 1924, while the Inland Revenue estimated in 1929 that there were that there were 438 people in the country with incomes over £50,000.[45] For those who did fall into the higher brackets, however, the incentive and rewards for avoiding tax were much greater than they had been before the war.

4.2 Excess profits duty

As the war entered its second year in the latter half of 1915, the British government both introduced new taxes on business, and attempted to tighten the existing system up by passing some of the country's first anti-avoidance laws.46 For Union, one crucial innovation was the enactment of a so-called "excess profits duty" (EPD) in December 1915, designed to raise additional revenue, as well as address public anxiety about war profiteering.[47]

"Excess profits" were defined as the company's actual profits for the year, *less* a "pre-war standard" (which was statutorily floored at a fixed percentage of the company's "capital").[48] EPD was payable on these "excess" profits at the rate of 50 per cent (rising to 60 per cent in 1916 and 80 per cent a year later). The EPD the company paid was then deducted from its *actual* profits, and there was an income tax liability on the net sum. If the company's after-tax income was distributed to shareholders as a dividend, super-tax was also payable.

This meant that the effective tax rate on the distributed earnings of companies which made "excess" profits was greater than the top combined income and super-tax rate, as illustrated in the table below:

EPD computation (1918 rates)	
Capital	1,000
Profits for year	**200**
Pre-war standard (1,000 x 9%)	(90)
Profit liable to EPD (200 – 90)	110
EPD @ 80%	(88)
Profit liable to income tax (gross dividend) (200 – 88)	112
Income tax @ 30%	(33.6)
Net tax payable by company	**(121.6)**
Company's effective tax rate	60.8%
Net dividend receivable by shareholder	78.4
Super-tax @ 22.5% (on gross dividend)	(25.2)
Total tax paid	**(146.8)**
Net shareholder income	53.2
Effective tax rate on profits	73.4%

One sector sometimes singled out as profiteers were the meat importers, for whom World War I was a highly successful period. Demand was strong, since the continued availability of frozen meat for military and civilian consumption was a government priority, while German U-boat attacks endangered supply lines, so that prices inevitably rose.[49]

The British government took an active role in managing meat imports, leading to close cooperation between Whitehall officials and industry executives.[50] The Vestey brothers established friendly relations with the Ministry of Shipping, which had responsibility for refrigerated transportation, and the Ministry of Food.[51] They faced the accusation of a conflict of interest in 1920, when it emerged that the government's "chief adviser with regard to the sale of imported meat" was "connected with [Union's] subsidiary companies."[52]

When the row about William Vestey's peerage blew up in 1922, his detractors caught the government out, by exposing that his official citation—which stated that he had "gratuitously" provided cold storage facilities to the army in France—was misleading, since the War Office had paid Union to use those stores.[53] In Vestey's defence, some in government certainly believed Union to have sustained losses on its army

contracts, whether or not it did so in truth.[54]

There is no doubt, on the other hand, that for the Vestey group as a whole, World War I was a boom time for business. "The Vesteys did not quite *make* their fortune in 1914-1918," writes historian Phillip Knightley, "but the war helped them to consolidate and grow."[55] In view of the large increases in income tax and super-tax, and the introduction of EPD, the Vesteys regarded it as imperative to keep those profits as far away from the United Kingdom as possible.

Union found itself in an especially delicate position, because its new *frigorifico* near Buenos Aires was about to come on stream, a project that had been two years in construction and was expected to provide a significant boost to revenue[56]

The Times, 17 August 1925

The excess profits duty applied to "all trades or businesses . . . of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom," that is to say its scope was worldwide.[57] So Union would have to include the *frigorifico* profits in its EPD computation, in addition to paying income tax on them.

In the ordinary course of events, Union might well have looked to manage both these exposures using transfer pricing, i.e. it would just "undercharge" the Argentine producer companies in the group for slaughtering and storing their produce, so that a larger share of the global profit accrued in Argentina.[58] Thanks to the anti-avoidance provisions in the 1915 budget, however, it was uncertain whether using transfer pricing to avoid EPD was entirely legal. The rules may well have missed their mark, but they may equally have created doubt in the minds of the Vesteys and their advisers. Moreover, the brothers may have feared that, as the wartime state's appetite for revenue increased, further changes to the tax base were likely to follow.

4.3 Anti-avoidance

When the Inland Revenue analysed this issue in 1935, they took a hard-line view, concluding that, with the enactment of the "third war budget" in December 1915, Union's tax planning had definitively crossed the line from legality to illegality. That conclusion may have rested on an over-optimistic reading of the relevant law.

Three new rules were potentially in point. The first was aimed squarely at transfer pricing, but transfer

pricing of a specific variety, namely the situation where a foreign company had a subsidiary or agent in the United Kingdom, and used its "substantial control" over the subsidiary to reduce the amount of profits that were recognized in the UK, compared with "the ordinary profits which might be expected to arise from that business" (i.e. on an arm's length basis).[59]

The Revenue seem to have believed that they could stretch the concept of "substantial control" to cover the relationship between Union and the offshore companies in the Vestey group.[60] Yet it made no sense to say that those companies "controlled" Union; the reality was that they were all controlled by William and Edmund Vestey. Control by a "British subject" was expressly excluded from the scope of the rule, and the Vesteys undoubtedly continued to be British subjects, even after they moved to Argentina.[61]

The other two anti-avoidance rules were both specific to EPD, and referred to "transactions or operations" that were somehow "artificial" in nature.[62] One of these rules only applied where the taxpayer was claiming a "deduction," i.e. a deduction in computing profits. The Revenue stated that the deductions rule had "a most important bearing on the facts of this case," but that seems somewhat far-fetched, since reducing a company's revenue (by "undercharging" a connected customer) is not the same thing as inflating the expenses the company deducts from the revenue in order to arrive at its taxable profit.[63]

The final new rule was more difficult to appraise, not only because it was cast in extremely vague terms, but also owing to the fact that it carried a criminal sanction (albeit a fine of no more than £100).[64] The rule laid out that a taxpayer must not "enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation . . . for the purpose of avoiding" EPD.

Union could justly state that it did not accept business from other companies in the group for the purpose of avoiding EPD: it entered into contracts with them to make profits, or at any rate to help the group as a whole to do so. Was manipulating the prices under those contracts an "artificial operation"? While EPD gave rise to a large number of court cases, this particular rule was never litigated, so it is hard to know.[65] Probably there *was* some risk of a court holding the transfer pricing adjustments to be an "artificial operation," although the Revenue acknowledged that there was a "difficulty . . . in deciding the particular class of transactions or operations to which the term 'artificial' might be applied."[66]

Hence, it was probably the enactment of EPD, with its "artificial transactions" rule, which convinced the Vesteys that transfer pricing, by itself, was no longer sufficiently robust, and that more radical tax planning was in order.[67] To the extent that the new law did pose a threat to Union, though, the Vesteys' subsequent actions may have served to exacerbate the risk.

5. William and Edmund Vestey move to Argentina, December 1915

Irrespective of Union's anticipated problem with EPD on the *frigorifico* profits, by late 1915 William and Edmund Vestey had already decided to change their personal tax residence (and therefore that of the partnership) by leaving the United Kingdom. They first spent some time in Chicago, but soon afterwards settled in Buenos Aires.[68] Their decision to emigrate was primarily motivated by personal, rather than corporate, tax considerations. One of the basic principles of British tax law was that a United Kingdom resident was liable to income tax (and super-tax) on their worldwide profits, whereas a non-resident was only chargeable in respect of "profits arising in the United Kingdom."[69]

As UK residents, any profits the Vesteys earned through the partnership (including overseas income) were taxable, so the near trebling of income and super-tax rates in 1914-1915 affected them directly. Furthermore, because EPD applied to unincorporated businesses, as well as companies, any increase of the partnership profits would potentially trigger an EPD liability. By contrast, as residents of Argentina, the Vesteys would only be liable for income tax and super-tax on the partnership's "UK-source" profits, and EPD would only be exigible in respect of business carried on in the United Kingdom.

Before moving to Argentina, the Vesteys "ring fenced" the UK side of the partnership business by setting up a new private British company, Vestey Brothers Limited (VBL, shown next to Blue Star Line in the top left of Figure 2 in Appendix C). Transferring the UK business to VBL eliminated the super-tax liability on the British profits, provided VBL did not pay any dividends (see section 4.1 above). During the period when William and Edmund Vestey lived in Argentina (1915-1921), VBL paid some £50,000 a year in income tax (*c.*£2.5 million today); not a negligible sum, but, as the Inland Revenue noted, "much less than the partnership."[70]

Another advantage of transferring their residence to Argentina was that if the Vesteys *were* "controlling" the offshore companies in the group, then it would have removed the risk that those companies might be taxed in the UK. Moreover, as non-residents, William and Edmund could pay themselves as large an offshore dividend as they wished; and, in a subsequent fiscal year, they could bring all the money back into Britain, since it would by then be regarded as non-taxable "capital."

Although they lived in Argentina, the Vesteys made regular return visits to the UK, and the Revenue later cast doubt on whether they had genuinely acquired "non-resident" status. The starting point was that anyone who spent more than six months outside the country in any tax year was non-resident, but there was an exception where people who had previously resided in Britain went abroad "for the purpose only of occasional residence."[71] The courts had held individuals in that category to be resident, even if they spent less than three months of the year in Britain.[72]

The Vesteys had taken the view that they were not caught by this rule (presumably on the basis that their residence in Argentina was "permanent" rather than "occasional"), and had returned to the UK, quite openly, for periods totalling just under six months each year. The Revenue later voiced the somewhat paranoid suspicion that their visits to Britain had been longer than they claimed, noting that, as the owners of a shipping line, they were in a position to doctor passenger manifests "to make it appear they were on board ship when actually they were still in concealment in London."[73] Nothing ever came of that suggestion of the Revenue's.

When William Vestey was called upon to justify his leaving the country during the war—first by the Royal Commission in 1919, and then more publicly during the honours scandal in 1922—he took pains to point out that he had done so only after consultation with the British government. He claimed to have had "several interviews with the highest officials, who were most sympathetic," including the civil head of the Treasury, the trade minister, and anonymous "high officials of the Inland Revenue." [74]

Vestey's purpose in holding these interviews was to lobby the government for a change in tax policy, one which would have permitted firms like Union to pay tax on a percentage of their turnover in the United Kingdom, instead of their worldwide profits.[75] That was already the basis on which American meat companies trading in Britain were taxed, and would have created a level playing field between all participants in the market. Unfortunately for Vestey, it would also have required an about-turn in the constitutional worldview of the British Treasury, for whom it was self-evident that, if a British resident invested capital overseas, then the United Kingdom had a right to tax the "fruit," i.e. the profits of the foreign business.

Vestey's proposal was thus unrealistic, all the more so in the midst of war, although it was far from vacuous, indeed in some respects prescient: as business has become more globalized and digitized in the twenty-first century, governments seeking to capture tax revenues have increasingly found themselves falling back on the consumption of goods and services within their territory, rather than focusing on the residence of the supplier.[76] No record of Vestey's discussion with the Revenue's top brass survives, but it is improbable that the Revenue would have expressed much "sympathy" for his then-unorthodox ideas. It is tempting, therefore, to wonder if any potential alternative arrangements were discussed at these meetings, such as the Vesteys' going abroad. At around the same time, the Revenue were also talking to other UK-based firms who were contemplating moving because of high tax rates in Britain. While the circumstances were somewhat different (those firms had a majority of overseas shareholders), the Revenue seem to have been surprisingly relaxed about companies "emigrating," at least for the duration of hostilities.[77]

In 1922, the Chairman of the Conservative Party, who was responsible for vetting William Vestey's peerage, advised the Lord Chancellor that it had been "all to the advantage of this country that . . . Sir William should go to Buenos Aires [in 1915] in order to have a domicile there, and to carry on the subsidiary company in that way."[78] That does not necessarily reflect the attitude of government officials at the time, but it is clear that, alongside its core mission to secure the country's meat supply, the Board of Trade was keen to defend the interests of British meat companies against what it saw as the overweening power of the American "Beef Trust," comprising Swift, Morris and Armour.[79]

Anxieties on that account had already existed before World War I, when British firms did not fare well in

competition with their US rivals: after two price wars in 1911 and 1913, the British companies had lost their previously commanding share of the Argentinian export market, slipping from 37 per cent to 26 per cent, while the American share increased from 35 per cent to 59 per cent.[80] Several British firms had been forced to amalgamate or shutter their works, and by 1914, almost 60 per cent of the meat sold in London's Smithfield market was produced by American companies.[81]

During the war, the government was concerned that, if any more British meat firms went out of business, then the Beef Trust would have a virtual monopoly; which, since the Board of Trade was now the default purchaser for all meat imported into the country, would mean that the Trust could hold the British taxpayer to ransom.[82]

Union was a comparatively minor player in the Argentinian beef trade until it opened its *frigorifico* at the beginning of 1916, but it emerged from the war in a far more powerful position than any individual British company had enjoyed prior to 1914.[83] The company's newfound predominance was underlined when it took over the largest of the pre-existing firms, the British & Argentine Meat Company, in 1922.[84] By the mid-1920s, the Vesteys controlled almost a quarter of meat exports from the River Plate region (Argentina and Uruguay), and they consolidated their share after fighting a successful price war against the Beef Trust in 1925-1927.[85]

There can be little doubt that Union's rapid expansion owed much to its tax-efficient structure. Yet it is also likely that elements within the British government viewed this loss of tax revenue as a price worth paying, since it allowed Union to function as a national "champion" in the sector, with perceived benefits not only for the commercial profile of British capital overseas, but also the country's future food security.

Without more, however, William and Edmund Vestey's move to Argentina had no bearing on Union's own tax position. The Vesteys *could* have argued that, since they controlled Union and were now non-resident, Union was no longer a UK-resident company, because it had ceased to be managed and controlled in the United Kingdom. In practice, they never raised that line of argument, and in fact deliberately closed it off, by resigning from Union's board of directors when they emigrated, leaving in charge their trusted deputy, Roger Sing, who continued to base himself in West Smithfield.[86]

The Inland Revenue believed the Vesteys had resigned for tax reasons, but their resignation may have been motivated more by political considerations. If they *were* the beneficiaries of goodwill in government circles, and that was predicated on Union being a "British" business, then taking the company offshore might have caused the goodwill to evaporate.[87] Union would thus retain its UK tax residence, and another method would be found to mitigate its liability to income tax and EPD.

6. Union leases its overseas business to National, December 1915

Before 1915, there was no distinction between the profits Union generated from its activities in the United Kingdom, and profits which were attributable to its overseas operations (in Russia and China): both the domestic and foreign profits were taxed in the UK.[88] In December of that year, however, the company severed itself from the foreign side of the business, by entering into a transaction with one of the offshore companies in the Vestey group, the National Cold Storage Company of New York (National).

The transaction is depicted in Figure 2 in Appendix C, and although one Lord Justice of Appeal would subsequently refer to it as "an agreement . . . of a very remarkable character such as I personally have never had occasion to see before," it is immediately recognizable as a business lease.[89] The basic terms of the lease were that Union and its subsidiaries would "place the National company in full and undisturbed possession and control for its own individual benefit of all the businesses, business premises, goodwill, assets and undertakings of and controlled by the Union company in all parts of the world outside the United Kingdom."[90] In return, National would pay Union and the subsidiaries an aggregate annual rent of £43,500 (*c.*£3 million today).

The only "remarkable" feature of the lease was that whereas, in the ordinary course of events, all the profits generated by National from operating the foreign business—after paying the annual rent—belonged to National, there was also a "guarantee clause" which Union could activate in certain circumstances, whereunder National would pay additional fees. Union could activate the guarantee only if the company's profits from its own remaining (i.e. British) operations, plus the base rent receivable under the lease, were less than the amount required to pay interest and dividends on its securities. In practice, while the lease

was in force (1915-1921), Union's own profits were always sufficient to discharge its financial liabilities, so the guarantee was never activated.

Out of the £43,500 annual rent, £33,000 was attributable to Union's business in China, and was receivable by two UK-resident Union subsidiaries, which had previously operated these works themselves.[91] That proportion of the rent was therefore taxed in the UK. The remaining £10,500 annual rent was allocated to the *frigorifico*, which was not yet operative when the lease was signed.

To prevent that portion of the rent from being taxed in Britain, the Vesteys set up a new Argentinian company called Frigorifico Anglo SA (Anglo, bottom mid-left in Figure 2), which acquired the rights to the *frigorifico* from Union. Anglo subcontracted operation of the plant to National, which paid the £10,500 annual rent to Anglo. There was no corporate income tax in Argentina, so this proportion of the rent was tax-free.

National itself was wholly owned by the Vestey brothers, and was resident for tax purposes in the United States. In 1915, the federal corporate income tax rate in the US was 1 per cent. Thus, any profits National generated from Union's overseas businesses, after paying the lease rents, were taxed at a much lower rate than in the UK.

During the war, the US corporate income tax rate increased, first to 2 per cent (1916), then 6 per cent (1917), and finally to 12 per cent (in 1918). It is likely that the Vesteys undertook further structuring to mitigate the impact of these American tax rises (probably via National subcontracting the operation of the overseas businesses to other offshore companies in countries with lower tax rates).[92]

What is clear is that the £33,000 rent under the lease, which was taxed in the UK, was much lower than the profits Union had previously been generating from its overseas businesses: in 1914, for example, its Russian operations alone had produced profits of £104,000.[93] By virtue of the lease to National, "Union in fact escaped liability to EPD *in toto*, and paid much less income tax than would otherwise have been the case."[94] The Revenue had insufficient information to say how much profit the *frigorifico*, and Union's other foreign businesses, had generated during the lease term; the best they could guess was that "the profits arising abroad during this period must have been truly colossal." [95]

One reason Union was able to survive with reduced profits, and never had to call on the guarantee, was that the company had doubled down on the strategy described in section 2 above, namely that of "under-accounting" for depreciation. According to the Revenue, if Union had provided for "adequate" depreciation, then the company's profits would have been insufficient to pay the interest and dividends on its securities, and National would have had to pay an additional £100,000 a year under the lease, which would have been taxable in Britain.[96]

The Revenue also believed that, notwithstanding the anti-avoidance rule in the 1915 budget, Union had continued to use transfer pricing to reduce the taxable profits of its UK-based business, by "undercharging" offshore companies in the Vestey group to use its British facilities.[97] In the Revenue's opinion, the lease of Union's overseas business to National was an "artificial transaction" within the scope of the rule discussed above.[98] Although the lease had been entered into just before the rule came into force, the law was retrospective.[99] Union's directors were criminally liable for not disclosing the lease to the Revenue as the statute required.

The statute did not spell out what consequences were intended to follow if the taxpayer was party to an "artificial" transaction (other than the £100 fine). The Revenue assumed, however, that the artificial transactions rule would have entitled them to counteract the effect of the National lease, presumably by increasing Union's taxable profits for the relevant years to what they would have been if the lease had never been entered into.[100]

The Revenue's assertions were never put to the test, because the lease expired in 1921, long before they thought of this point. It is far from certain, however, that the Revenue would have had the better of the arguments, had they taken the issue to court. For one thing (as noted above), the Revenue feared that the word "artificial" was too nebulous for a tax statute; later anti-avoidance rules deliberately refrained from using it.[101]

Union would have had respectable arguments that the lease was not an "artificial transaction," since it had legal consequences which went beyond its effect on Union's tax position. When the lease was signed, the United States had not yet entered the First World War, and there were significant political benefits to operating in a neutral country. From a commercial perspective, the lease limited Union's upside from the foreign operations, but also shielded it against losses.[102]

Union undertook a further tax-driven reorganization in 1918, which was tangential to the main narrative here and is outlined in Appendix B. Broadly, by the summer of the following year, the Vesteys had a highly tax-efficient international structure, but its effectiveness relied on their remaining "offshore." With the war over, William Vestey judged it an opportune moment to resume his lobbying effort in favour of a territorial approach to taxation, which would allow him to move back to Britain, yet leave his overseas interests outside the UK tax net.

7. William Vestey's evidence to the Royal Commission, 1919

One of the ironies about William Vestey's role in the 1922 honours scandal is that he himself provided his critics with the ammunition to attack him. He would later be charged with unpatriotism, but he told the Royal Commission on Income Tax in July 1919 that he was appearing because "I was born in the good old town of Liverpool and I want to die in this country." Naively, as it would later prove, Vestey said that he was "technically abroad at present, but I came over specially to appear before this Commission. The present position of affairs suits me admirably. I am abroad; I pay nothing."[103]

For the most part, Vestey's interview with the Royal Commissioners was amicable. A former head of Inland Revenue, Sir Edmund Nott-Bower, admitted that the fact companies "controlled" from the United Kingdom were taxed on their worldwide profits gave "an enormous scope to the income tax," and assured him that they would "consider [that] very carefully." Another member was impressed because this was "not a case of someone coming and telling us that they might have to take their business away, or would have to do so; you have actually done it."[104]

The Commission did not dismiss Vestey's turnover tax proposal out of hand, acknowledging the argument that high business taxes were damaging to British competitiveness. Several members made clear, however, that they foresaw "grave difficulties" with changing the law, since it was liable to leave "a very serious gap in our income tax receipts."[105]

The tone of the hearing deteriorated somewhat when the accountant, William McLintock, queried figures Vestey had placed before the Commission which purported to show that his effective tax rate in the UK would be 82.9 per cent. McLintock pointed out that it would be about 20 per cent lower, because Vestey had miscalculated his EPD and included estate duty among the business taxes he would bear, even though it was not payable in his lifetime.[106] This annoyed Vestey, who retorted: "I know the figures all right," and he went on to describe the government's efforts to extract more tax from American meat firms operating in Britain as "merely a farce."[107]

A barrister named Duncan Kerly sought to tease out Vestey's personal attitude to taxation: "Are you not to pay anything for the advantage of living here?"[108] Vestey said, apparently sincerely, "I will give you £100,000 a year, beginning tomorrow," provoking the response from McLintock: "we cannot collect taxation on that basis." Finally, Vestey tried to advance his case by asserting that there were "from 3,000 to 5,000 men out of employment because I am not working in this country."[109] Whether the last statement was true or not, it could certainly be portrayed as politically incorrect, at a time of high post-war unemployment.

Kerly put it to Vestey that high British tax rates did "not prevent [Union] trading at a profit . . . You do not make such a big profit as [the Americans], but unless your operations are profit-producing you do not pay income tax."[110] Vestey probably knew, however, that to consolidate Union's position in the long term, he would need enough accumulated reserves to absorb several years' worth of losses; that, in any event, is what occurred from 1925 to 1927, when Union fought a successful price war with the Beef Trust.[111]

When the Commissioners released their report the next year, they ignored Vestey's turnover tax idea. Worse, for him, they recommended widening the scope of British tax on offshore companies. Their suggestion was that companies with a majority of British shareholders would be deemed resident the United Kingdom.[112] The proposal was never implemented, but it would have made a return to the Vestey

group's pre-war arrangements untenable.[113] That, at any rate, was the way the wind seemed to be blowing, when the Vestey brothers returned from tax exile and resumed their British residence in 1921.

8. Union and the honours scandal, 1922

By the time William Vestey's peerage was announced in June 1922, the sale of honours had been a subject of political controversy for more than a decade.[114] It was a convenient way for opponents of the coalition government to attack its Prime Minister, but the reality was that all parties funded themselves by selling titles. Some contemporaries apparently assumed that Vestey had been nominated by Lloyd George, when he was actually put forward by the Conservative party.[115]

Vestey had the misfortune to feature in the "climax" of the honours scandal, yet his behaviour was in a different category from the revelations which had provoked criticism of other recent appointees. The more prominent name in the spotlight at the same time was Sir Joseph Robinson, who had been fined half a million pounds a year earlier for defrauding one of his companies (and was eventually forced to turn his peerage down).[116]

Previous controversial appointments had usually involved people convicted of crimes, whether serious or more petty, including trading with the enemy and hoarding food supplies. Although his opponents occasionally said Vestey had been "evading" taxation, it is clear that no one was accusing him of doing anything illegal; nor was it ever seriously suggested that he should be stripped of his title.[117]

The campaign against him lasted exactly one month, beginning on 17 June. The "diehard" (anti-coalitionist) Conservative MP, Sir Frederick Banbury, wrote to a right-wing newspaper, *The Morning Post*, citing Vestey's "I pay nothing" remark, and asserting: "There would not appear to be any good reason why a person who during the war removed his business from this country in order to avoid taxation should be made a peer."[118]

On 29 June, a week after Vestey had already taken his seat in the House of Lords, a Liberal peer, Lord Strachie, called a special debate—which Vestey attended—to challenge his suitability. Strachie quoted at length from Vestey's evidence to the Commission, arguing that the fact Vestey was "domiciled abroad" disqualified him from taking part in Parliamentary proceedings. He called upon Vestey to deny that he had paid for his peerage (which Vestey declined to do).

Strachie poured scorn on Vestey's argument that high taxation made British business uncompetitive, claiming that if a business did not pay tax in Britain, then no one cared how competitive it was. He accused Vestey of avoiding £3 million in taxation and putting 3,000-5,000 people out of work. He concluded, somewhat cryptically, by asserting that "the feeling of most people would be that this was not the sort of man who ought to be rewarded for evading taxation."[119]

Vestey had been forewarned of this debate. He had cleared his response in advance with Conservative central office, who may have helped him write it.[120] He clarified that he was not "domiciled abroad," had never assumed the citizenship of another country, and was now residing in the UK again.[121] He explained that although he himself had been non-resident during the war, Union had still been subject to United Kingdom tax on its British business.

Vestey pointed out that Union was "the strongest competitor of the American meat companies in Great Britain," and claimed that "our new foreign businesses would have had no chance of success" if they had been subject to UK taxation.[122] He spoke again of his consultations with "high officials," arguing that his firm had been "of very great assistance to the government."

One establishment figure apparently unconvinced by Vestey's defence was the King, George V, who wrote to the Prime Minister on 3 July to complain that Vestey's appointment, along with Robinson's, had created a "very disagreeable" situation, which threatened to bring the Crown into disrepute.[123] The King's considered opinions on tax avoidance are not recorded; he may have believed Vestey was guilty of criminal evasion.

The 17th of July heard Vestey's name mentioned in the House of Commons, when Sir Frederick Banbury referred sarcastically to the "great service he rendered his country by moving his business out of the country, and evading payment of income tax, super-tax and excess profits duty."[124] That was the

day, however, that the honours scandal effectively drew to a close, when Lloyd George announced the establishment of a Royal Commission to inquire into the whole issue. By the time the Commission reported, in December 1922, he was no longer Prime Minister and the issue had lost its immediacy.[125] What motivated those who criticized Vestey for avoiding tax? It is possible that they had genuine ethical objections. Contemporaries, often from the right of the political spectrum, were fond of describing tax avoidance as "unpatriotic," though some of them later changed their minds.[126] Both Sir Frederick Banbury and Lord Strachie were landowners, and may have regarded tax avoidance as typical of the grubby behaviour of "plutocrats."[127] Yet Banbury was also a City stockbroker, and it was hardly as if landowners were above tax planning, especially when the top rate of estate duty had almost trebled as a result of the war (from 15 to 40 per cent).[128] What united these men, above all, was that both were longstanding critics of coalition: Strachie was the brother of John Strachey, the editor of *The Spectator*, who had made a career out of vilifying Lloyd George. The indignation they directed towards Vestey's tax arrangements has something of a manufactured flavour.

In general, as the legal historian Assaf Likhovski observes, tax avoidance had low salience politically in the 1920s.[129] Less than 10 per cent of the working-age population earned enough to pay income tax, compared with almost 75 per cent today. Many who did pay tax agreed with William Vestey, that rates were too high. When the Chairman of the Conservative party wrote to the Lord Chancellor assuring him that tax avoidance was "[no] ground whatever for regarding Vestey as an unsuitable man to be further honoured," not a few of his party's supporters in business would have seconded the sentiment.[130]

Conclusion

After the honours scandal died down in 1922, Union's tax affairs faded from public view. William Vestey's evidence to the Royal Commission was briefly flagged up again in 1925, when yet another Royal Commission was sitting, this one inquiring into British food prices.[131] The Labour MP George Lansbury said of Vestey: "He was a knight of the purse, or a knight of brass. I do not think I should call him a knight of chivalry, to run away from the country in the middle of the war to escape taxation."[132] By that time, however, public dissatisfaction focused on Union's reputed monopolization of the meat market and manipulation of prices (an accusation it dismissed as "absurd and wholly untrue").[133] The controversy over Union's tax planning might have helped to cement the Vestey brothers' reputation as hard-nosed businessmen, but there is no evidence that it ever lost them a customer.

As an exercise in "tax shaming," the public exposure Union received in 1922 was singularly ineffective. William Vestey did not think of tax as a moral issue, other than in the sense that he believed he was "being persecuted by the Revenue."[134] The Vesteys learnt one lesson from the events of 1922, which was that little good came of discussing these matters in public: the historian Richard Perren argues that they "became obsessed about business secrecy" from this point forward.[135]

There was a paradox about the debate in 1922, never alluded to at the time, and that was how William Vestey had squared the circle. No one asked him why he had come back to the UK, if British tax rates were so burdensome. The answer was not that he had reconciled himself to paying higher taxes, or given up on competing with the Americans. Unbeknown to his critics, and at that stage to the Revenue, Union had put in place a new tax scheme in 1921, objectively more "aggressive" than anything that preceded it.[136] The new group structure would prove astonishingly robust, enduring for sixty years in the face of repeated legislative and courtroom attacks by the Revenue.[137] The drastic step the Vesteys took by emigrating was the cause of their public discomfort, yet, had they known then what they knew later, they need never have left to begin with.

APPENDIX A

Example 1: The effect of "under-accounting" for depreciation

Share capital			6,000,000
Debt securities			6,000,000
Plant & machinery			4,000,000
Income (EBITDA)			1,000,000
Capital profits (non-taxable)			140,000
Depreciation reserve			**(100,000)**
Distributable earnings			**1,040,000**
Debenture interest (5%)			
Paid to investors	(210,000)		
Paid to Inland Revenue		(90,000)	
			(300,000)
Dividends (10%)			
Paid to investors	(420,000)		
Tax reserve		(180,000)	
			(600,000)
Retained earnings before tax			**140,000**
Statutory tax rate	30%		
Notional tax liability (EBITDA x 30%)		300,000	
Wear and tear allowance (4m x 7.5% = **300,000**) x 30%		(90,000)	
Actual tax liability		**210,000**	
Less tax paid		(90,000)	
Net sum payable to Inland Revenue		120,000	
Released from tax reserve			**60,000**
Retained earnings after tax			**200,000**
Effective tax rate on distributable earnings	20.2%		

The above table illustrates the effect of "under-providing" for depreciation under the law in force at the time. Assume Union had issued £6 million worth of preference shares paying a guaranteed dividend of 10 per cent, and £6 million worth of bonds with a 5 per cent coupon. During the relevant period, the UK had what was known as a "full imputation" income tax system. When a company made profits, and then paid those profits to shareholders as a dividend, both the company and the shareholder had a *notional* income tax liability, but tax was only paid in cash at the company level[138] The company would effectively declare a dividend out of its *pre*-tax profits, deduct tax from the dividend at source, and then use the tax deducted to pay its own income tax bill. The shareholder's liability was discharged by deduction (and the tax could be refunded if the shareholder was exempt).[139]

Interest on long-term debt (maturities of 1 year or more) was not tax-deductible, but was treated as a distribution of profit.[140] A company paying interest had to deduct tax at source, and pay the tax to the Inland Revenue; whereas tax withheld from dividends did not have to be paid to the Revenue immediately, but was held in a "tax reserve" pending settlement of the company's own income tax liability.[141]
The effect of these rules was that if Union's annual cost of finance (debt and equity) was £900,000, then Union needed to earn that amount in pre-tax (not post-tax) profits, since it was able to pass the full cost of its own tax on to the shareholders/bondholders.

In this example, we assume that Union's annual income—i.e. excluding capital gains—before accounting for interest, tax, depreciation or amortization, was £1 million, and that the income tax rate was 30 per cent. Out of its £1 million income, Union set aside 10 per cent, or £100,000, to cover depreciation of plant and machinery, even though the aggregate acquisition cost of the equipment was £4 million (so the company was only writing it down at 2.5 per cent, on a straight-line basis).

Union also made non-taxable capital gains of £140,000 on a sale of fixed assets to the Vesteys. Thus, its total distributable earnings were £1.04 million. Out of that sum, a net payment of £210,000 was made to debenture holders in respect of interest, with £90,000 tax deducted and paid to the Inland Revenue. A net £420,000 was paid to shareholders as a dividend, with £180,000 carried to the tax reserve. Hence, Union's retained earnings, *before* computing its own tax liability, were £140,000 (the same as its non-taxable capital profits).

In the tax line, the £100,000 allocated to the depreciation reserve out of income had to be added back, so that the company's *notional* tax liability was £1 million x 30 per cent = £300,000. For tax purposes, however, the Inland Revenue permitted the plant and machinery to be written down at the rate of 7.5 per cent, meaning £300,000 could be deducted from the gross income, leaving £700,000 taxable at 30 per cent = £210,000.

The company set off the £90,000 it had already deducted from interest payments, and made a further cash payment of £120,000 to the Inland Revenue. The remaining £60,000 originally allocated to the tax reserve was released and recognized as profit. Union's retained earnings after tax were thus £200,000, exactly the amount required to make up for the deficit on the depreciation reserve (assuming that the "true" rate of depreciation was 7.5 per cent).

Owing to the mismatch between the profit recognized for accounting purposes, and the taxable profit, the company's effective tax rate was only 20.2 per cent, even though investors suffered tax on distributions of 30 per cent. Thus, while the Vestey brothers subsidized Union to the tune of £140,000 that year, by buying assets from the company at a gain, a further subsidy of £60,000 was provided by the taxpayer.

Example 2: Hypothetical transfer pricing structure
Take what is, on its surface, a straightforward transaction: a chicken raised on a farm in Russia is slaughtered, frozen, brought to the UK and offered for sale.

Beginning with the farm, the land it occupies (oval half-way down on the left in Figure 1, Appendix C) is owned by the partnership, but the chicken itself is owned by one of the overseas companies (call it OffshoreFarmCo), which manages this farm on the Vesteys' behalf. At arm's length, farmers pay their landlords rent for the right to farm, but if OffshoreFarmCo pays rent to the partnership, the rent will be taxed in the UK. So, no rent is paid, meaning more profit accrues to OffshoreFarmCo and less to the partnership.

OffshoreFarmCo is going to sell our chicken to the partnership (this time wearing its wholesaler's hat), which will sell it to Fletcher's, which will sell it to a British consumer. Blue Star Line will transport the chicken from St Petersburg to London, and Union will provide cold storage at both ends of the journey. Assume the retail price of a frozen chicken in London is 100. At arm's length (i.e. if it were buying from a third-party producer and selling to an independent retailer), Vestey Brothers might expect to pay 40 for a chicken "ex-works" (as it leaves the slaughterhouse in St Petersburg), to incur transportation and storage costs of 20, and to sell it to the retailer for 80.

That would not be a tax-efficient pricing structure for our transaction, because it would involve each of

Vestey Brothers, Fletchers, and Union/Blue Star Line recognizing income of 20, all of which will be taxed in the UK. Instead, the partnership agrees with OffshoreFarmCo that it will pay 96 for a chicken "delivered at terminal," i.e. when it arrives at Union's facility in the London docks. OffshoreFarmCo will be responsible for all transportation and storage costs up to that point.
OffshoreFarmCo agrees with Union/Blue Star Line that it will pay them 2 to cover transportation and storage. The chicken arrives in London, the partnership sells it to Fletcher's for 98, and Fletcher's sells it to the public for 100. The net profit recognized in the United Kingdom is not 60, but 6. Compared with an arm's length transaction, 54 of additional profit has accrued to OffshoreFarmCo, which will not pay any tax on it, or will pay at a much lower rate than a UK group member would.[142]

APPENDIX B

Super-tax planning, 1918

One tax problem which neither the Vesteys' relocation to Argentina, nor the leasing of Union's foreign trade to National, did anything to ameliorate was their liability to British super-tax on ordinary share dividends they received from the public companies in the group, namely Union and Fletcher's. These dividends were clearly UK-source income, meaning that super-tax was due even though the Vesteys lived abroad.

Had Union/Fletchers been private companies, then the Vesteys could have fixed this problem easily, by not paying any dividends. As it was, however, they had historically taken dividends at the rate of 10 per cent on their ordinary shares, which meant receiving at least £30,000 a year from Union, and another £10,000 or so from Fletchers.[143] By 1918, super-tax on £40,000 a year was £12,000 (equivalent to at least half a million pounds in modern money).[144]

Figure 3 in Appendix C depicts the solution the Vesteys applied to this problem. In 1918, they formed a new private company, the Western United Investment Company (Western), registered in the United Kingdom, which henceforth became the top holding company for the group (effectively assuming the role previously occupied by the partnership). The Vesteys transferred to Western's ownership all the shares they held in Union, Fletcher's, Blue Star Line, Vestey Brothers Ltd., and a number of smaller UK companies.[145]

Thus, Western acquired control of those companies, and became entitled to all future dividends on the ordinary shares. Western's own capital structure was specially designed to give William and Edmund Vestey control of Western (and therefore, indirectly, of Union and Western's other subsidiaries), *without* the Vesteys being entitled to any of the income the company received from its investments. To this end, Western had two share classes: management shares (entitled to control but not income); and ordinary shares (entitled to income but not control).

The management shares were held by the Vesteys, while the ordinary shares were settled on trust. The beneficiaries under the trust were various members of the Vestey family (but not William and Edmund themselves). Forty per cent of the trust income was allocated to specific beneficiaries, but the remining 60 per cent was held either for accumulation, or on discretionary terms.[146]

From 1918 onwards, when Union (or Fletcher's, or any other UK company in the group) paid dividends on their ordinary shares, those dividends were received, in the first instance, by Western. Western had an income tax liability on the dividends, but this was discharged ("franked") by the tax that Union deducted at source. Western itself was under no obligation to pay any dividends: that was up to the Vesteys, who held the management shares.

Until 1922, if Western paid no dividends, then no super-tax was payable; and the company could use its income for whatever purpose it wished (including making "grants in aid" to Union and its other subsidiaries).[147] If Western did pay dividends, then those dividends would not be subject to any further income tax in the hands of the trustees.[148]As to the 40 per cent of the trust income which was pre-allocated to named beneficiaries, super-tax would be due on the amounts they received. As to the remining 60 per cent of the income which stayed in the trust, however, no super-tax was payable unless and until the trustees exercised their discretion by appointing the income to a beneficiary, which need not happen for many years.[149]

The overall effect of the 1918 restructuring was therefore to cut the super-tax bill on ordinary share dividends paid by UK-resident companies in the Vestey group by 60 per cent.

Endnotes

[1] Walter Bagehot, *Lombard Street: A Description of the Money Market* (London: King & Co., 1873), 11-12.

[2] Catriona Lavermicocca and Jenny Buchan, "Role of Reputational Risk in Tax Decision Making by Large Companies," *eJournal of Tax Research* 13, No. 1 (March 2015), 5-33; Megan Hess and Raquel Meyer Alexander, "Brewing Up Controversy: A Case Exploring the Ethics of Corporate Tax Planning," *Issues in Accounting Education* 30, No. 4 (November 2015), 311-327.

[3] Vanessa Barford and Gerry Holt, "Google, Amazon, Starbucks: The Rise of 'Tax Shaming'," *BBC News Magazine*, 21 May 2013 (https://www.bbc.co.uk/news/magazine-20560359).

[4] Andrew Goodall, "Starbucks Pledges Voluntary Tax Payments," *Tax Journal*, 6 December 2012 (https://www.taxjournal.com/articles/starbucks-pledges-voluntary-tax-payment-06122012).

[5] Felicity Lawrence, "Barclays Secret Tax Avoidance Factory that Made £1bn a Year Profit Disbanded," *The Guardian*, 11 February 2013 (https://www.theguardian.com/business/2013/feb/11/barclays-investment-banking-tax-avoidance).

[6] See, e.g., Hans Gribnau, "Corporate Social Responsibility and Tax Planning: Not by Rules Alone," *Social & Legal Studies* 24, No. 2 (June 2015), 225-250; Inga Hardeck and Rebecca Hertl, "Consumer Reactions to Corporate Tax Strategies: Effects on Corporate Reputation and Purchasing Behavior," *Journal of Business Ethics* 123, No. 2 (August 2014), 309-326.

[7] See, e.g., Dennis Rondinelli, "Globalization of Sustainable Development: Principles and Practices in Transnational Corporations," *Multinational Business Review* 15, No. 1 (Spring 2007), 1-23, here 3; Milton Friedman, "The Social Responsibility of Business is to Increase its Profits," *The New York Times Magazine*, 13 September 1970; Michael Devereux, Judith Freedman and John Vella, "Tax Avoidance," Oxford University Centre for Business Taxation, 3 December 2012 (http://eureka.sbs.ox.ac.uk/4428/2/TA_3_12_12.pdf).

[8] James Kessler, *Taxation of Non-Residents and Foreign Domiciliaries*, 17th ed. (Oxford: Key Haven, 2018), chapter 2.

[9] National Archives of the UK (TNA): IR 40/5238, Report by W. F. Atkins, 24 December 1935 (hereinafter "Atkins Report"), 83, 95-97, 182, 246.

[10] See, e.g., Heather Self, "Acceptable Tax Avoidance?" in *Beyond Boundaries: Developing Approaches to Tax Avoidance and Risk Management*, ed. Judith Freedman (Oxford: Saïd Business School, 2008), 151-156.

[11] Ian Collard, *Blue Star Line: Fleet List and History* (Stroud: Amberley, 2014), 3.

[12] See generally Susanne Freidberg, *Fresh: A Perishable History* (Cambridge, MA: Harvard University Press, 2009).

[13] Richard Perren, *Taste, Trade and Technology: The Development of the International Meat Industry since 1840* (Aldershot: Ashgate, 2006), 47-51.

[14] See, e.g., Roberto Gebhardt, "The River Plate Meat Industry since *c.*1900: Technology, Ownership, International Trade Regimes and Domestic Policy," PhD thesis, London School of Economics, 2000, 105-106.

[15] Phillip Knightley, *The Rise and Fall of the House of Vestey: The True Story of How Britain's Richest Family Beat the Taxman, and Came to Grief*, 2nd ed. (London: Warner, 1993), 11.

[16] See, e.g., Derek Oddy, *From Plain Fare to Fusion Food: British Diet from the 1890s to the 1990s* (Woodbridge: Boydell, 2003), 18.

[17] TNA: IR 40/5238, Report by F. N. D. Preston, 26 February 1929.

[18] *The Times*, 16 November 1903, 13.

[19] *The Times*, 12 July 1912, 18.

[20] *The Times*, 26 November 1913, 18.

[21] There was no capital gains tax in the UK until 1965.

[22] Dominic de Cogan, "Law and Administration in Capital Allowances Doctrine: 1878-1950," in *Studies in the History of Tax Law, Vol. 6*, ed. John Tiley (London: Hart, 2013), 175-220, here 190-191.

[23] Section 12 of the Customs and Inland Revenue Act 1878. This provision was one forerunner of today's capital allowances code.

[24] There were variations in practice across Inland Revenue districts. De Cogan reports that "in Leicester, for instance, an engineering business could be given a straight-line WTA of 7.5 per cent on the purchase price of machinery or plant. The same business in Cardiff would receive a 5 per cent reducing-balance WTA on the same investments" (de Cogan, "*Law and Administration,*" 189).

[25] This is deliberately oversimplified, because (until the law was changed in 1907) it was in fact possible for one taxpayer to claim WTAs which, in aggregate, exceeded 100 per cent of the price it had paid for the equipment: see de Cogan, *Law and Administration*, 187.

[26] The partnership stopped claiming WTAs when it sold the cold store, because the equipment was no longer being used in its own business.
[27] Parliament eventually amended the law in 1945, to provide that where a business sold plant or machinery for more than its TWDV, there was a "clawback" of previously-claimed WTAs via a "balancing charge" imposed on the seller: de Cogan, *Law and Administration*, 194-195.
[28] In the case of some later transactions the group carried out (such as various transfers of ships between Blue Star Line and Union in 1920), there may have been less commercial justification for the pricing.
[29] Atkins Report, 183.
[30] *Palmer's Company Law*, 11th ed. (London: Stevens, 1921), 220-224.
[31] Section 113(2)(b) of the Companies (Consolidation) Act 1908.
[32] Ibid., 184.
[33] Atkins Report, 207.
[34] The numbers would not match off exactly, as example 1 illustrates; in order to get to the "right" result, the Revenue would either have to say that the amount released from tax reserve was itself taxable, or restrict the WTA.
[35] In the 1910 tax year, the Inland Revenue persuaded a tax tribunal that the partnership should pay tax on the proceeds of its asset sales to the company, on the grounds that the partnership was "dealing" (i.e. trading) in cold storage units, but that seems to be the only time the Revenue succeeded with this argument.
[36] See, e.g., James Hollis, "The End of the Road? The '*Ramsay* Principle' and a GAAR for the U.K.," *Journal of Taxation of Financial Products* 10, no. 2 (April 2012), 4-12, here 7-9.
[37] As example 1 shows, the main limitation lay in the fact that the company had to account for tax deducted from interest payments (but not dividends) to the Exchequer, i.e. it was a function of the company's capital structure.
[38] Atkins Report, 184.
[39] The rule that UK-registered companies are UK tax resident unless a relevant double tax treaty provides otherwise was not introduced until 1988.
[40] Atkins Report, 211-212.
[41] Even if all the companies had been UK resident, there might still have been reasons for shifting profits around the group (such as accessing losses "trapped" in one company or another; there were no group relief rules in those days). Considerations of that nature would, however, have been relatively trivial.
[42] The Inland Revenue believed that none of the offshore companies had ever paid any dividends: Atkins Report, 185-6. Confusion seems to have crept into the published literature on this point, because commentators suggest that the Vesteys' "flight abroad" (see section 5 below) was influenced by the enactment of section 5 of the Finance Act 1914, which predated World War I and moved the taxation of foreign company dividends from a "remittance basis" (dividends taxed only if received in the UK) to an "arising basis" (dividends taxed as soon as they were declared by the company, irrespective of whether they were paid into a British bank account or not). Until then, it was common practice for British owners of overseas securities to have their dividends paid into an offshore bank account instead of a British one, to prevent a taxable "remittance." Where the Vestey group was concerned, however, the overseas companies were all privately held, i.e. there was no need for them to declare any dividends unless the Vesteys wanted them to. If dividends *had* been declared before 1914, then it would have been easy to get around section 5 of the Act by not declaring them in future. In fairness to those who have commented, William Vestey himself caused this confusion, when the Royal Commission on Income Tax asked him if he wanted section 5 of the 1914 Act repealed, and he said he did. Even so, the suggestion made in the literature that, "before the First World War, Britain did not tax British-based companies on profits they made overseas—only if they repatriated those profits" (Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World*, 2nd ed. (London: Vintage, 2012), 37; see also Knightley, *House of Vestey*, 22) is erroneous: foreign *business* income (as opposed to investment income) was always subject to different rules, which depended on whether the foreign business was an integral part of a trade carried on in the United Kingdom, or alternatively should be viewed as a separate foreign trade: see Sol Picciotto: *International Business Taxation: A Study in the Internationalization of Business Regulation* (Cambridge: C.U.P., 1992), 7; and John Avery-Jones, "Taxing Foreign Income from Pitt to the Tax Law Rewrite: The Decline of the Remittance Basis," in *Studies in the History of Tax Law, Vol. 1*, ed. John Tiley (Oxford: Hart, 2004), 15-56, here 26-31. Before 1915, Union treated its foreign operations (in Russia and China) as part of an integrated worldwide trade, and paid tax on the profits in the UK (even if, as discussed above, those profits were reduced by transfer pricing). The partnership also conducted business abroad, partly in its own name (in which case the profits were subject to UK tax), and partly through overseas companies (in which case the profits were not taxed). The 1914 law change did not affect that position.

[43] Peter Dewey, *War and Progress: Britain 1914-1945* (Abingdon: Routledge, 1997), 66-7.
[44] Tax rates fell back somewhat in the mid-1920s, but the Great Depression of the early 1930s saw them climb above their earlier peak: by 1933, the top combined rate was 66.25 per cent; while in 1938, with the rush to rearm against Germany, it rose to 72.5 per cent. (There were also changes to thresholds and abatements which, coupled with inflation, meant that many more people became liable for income tax, or fell into the lowest super-tax bands, than had done previously before.)
[45] A. B. Atkinson, "The Distribution of Top Incomes in the United Kingdom 1908-2000," in *Top Incomes over the Twentieth Century: A Contrast Between Continental European and English-Speaking Countries*, ed. A. B. Atkinson and T. Piketty (Oxford: O.U.P., 2007), 82-140, here 85; TNA: IR 64/75, List of "Millionaires," 7 June 1929.
[46] There had been anti-avoidance rules in the sphere of death duties since the late nineteenth century.
[47] EPD was retroactive: it applied to all accounting periods ending after the outbreak of the war. It was abolished in 1921.
[48] "Capital" was defined as the company's gross asset value.
[49] Richard Perren, "Farmers and Consumers Under Strain: Allied Meat Supplies in the First World War," *Agricultural History Review* 53, No. 2 (2005), 212-228.
[50] Ian Kumekawa, "Meat and Economic Expertise in the British Imperial State During the First World War," *Historical Journal*, 26 December 2017 (https://www.cambridge.org/core/journals/historical-journal/article/meat-and-economic-expertise-in-the-british-imperial-state-during-the-first-world-war/C35068E55815B81934D1A7D8B6C2707A).
[51] TNA: LCO 2/2750, Summary of Sir George Younger's Memoranda in Regard to the Vestey Case, 14 July 1922.
[52] HCDeb.(5thSer.),11November1920,Vol.134,Col.1396W.
[53] *The Times*, 3 June 1922, 8; HC Deb. (5th Ser.), 17 July 1922, Vol. 156, Col. 1797.
[54] TNA: LCO 2/2750, Summary of Sir George Younger's Memoranda in Regard to the Vestey Case, 14 July 1922.
[55] Knightley, *House of Vestey*, 22.
[56] E. G. Jones, "The Argentine Refrigerated Meat Industry," *Economica*, No. 26 (June 1929), 156-172, here 170.
[57] Section 39 of the Finance (No. 2) Act 1915.
[58] Income tax was not introduced in Argentina until 1932: see Andrew Mitchell, "Institutions and Endowments: State Credibility, Fiscal Institutions and Divergence, Argentina and Australia, *c.*1880-1980," Ph.D. thesis, London School of Economics, 2006, 143-155.
[59] Section 31(3) of the Finance (No. 2) Act 1915; and see Picciotto, *International Business Taxation*, 31, 177-178.
[60] Atkins Report, 186-187.
[61] William Vestey was quizzed in the House of Lords in 1922 about whether he had assumed Argentinian citizenship when he moved to Buenos Aires; he denied having done so. The questioner seems to have been concerned more with Vestey's credentials as a "patriot" than anything to do with transfer pricing.
[62] Section 44(3) and paragraph 5, Part 1, Schedule 4 of the Finance (No. 2) Act 1915.
[63] Atkins Report, 187. The case of *J. H. Young & Co. v IRC* (1925) 12 TC 827 held that this rule applied where a taxpayer changed the price payable under a contact in order to bring forward a loss, but the loss in question was clearly being claimed as a "deduction."
[64] Section 44(3) of the Finance (No. 2) Act 1915.
[65] Philip Ridd, "Excess Profits Duty," in *Studies in the History of Tax Law, Vol. 1*, 101-132, here 118-119; see also Peter Harris, "The Excess Profits Tax GAAR: An Aid in the 'Hopeless' Defence Against the Dark Arts," in *Studies in the History of Tax Law, Vol. 8*, ed. Peter Harris and Dominic de Cogan (Oxford: Hart, 2017), 221-256, here 234-235.
[66] Atkins Report, 188. In *Huntley & Palmers Ltd. v IRC* (1930) 12 TC 1209, the judge noted that he found it "very difficult to see what ['artificial'] means, and I will not complicate this case by saying anything about that."
[67] It is worth noting that, if the artificial transactions rule *did* apply to transfer pricing, then it would have the practical effect of forcing a company to increase its profits for the purposes of income tax, as well as EPD, because of the way the profits as reported for income tax fed into the EPD computation.
[68] *The Times*, 7 December 1916, 13; Knightley, *House of Vestey*, 24-25.
[69] In 1915, the relevant law was contained in section 2, Schedule D, of the Income Tax Act 1853.
[70] Atkins Report, 132.
[71] Section 39 of the Income Tax Act 1842.
[72] See, e.g., *In re Young* (1875) 1 TC 57.

[73] Atkins Report, 192-193.
[74] Cmd. 288-1, Royal Commission on the Income Tax: First Instalment of the Minutes of Evidence (London: HMSO, 1919), 450; HL Deb. (5th Ser.), 29 June 1922, Vol. 51, Col. 144.
[75] See his remarks to the Royal Commission: Cmd. 288-1, 454-455.
[76] Picciotto, *International Business Taxation*, 15, 33, 66; and see, e.g., https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754975/Digital_Services_Tax_-_Consultation_Document_FINAL_PDF.pdf
[77] TNA: IR 74/61, Memorandum by Charles Spry, 17 January 1916.
[78] TNA: LCO 2/2750, Summary of Sir George Younger's Memoranda in Regard to the Vestey Case, 14 July 1922. The "subsidiary company" referred to here is presumably Frigorifico Anglo SA.
[79] See Kumekawa, "Meat and Economic Expertise in the British Imperial State During the First World War."
[80] Perren, *Taste, Trade and Technology*, 74.
[81] See Jones, "Argentine Refrigerated Meat," 170.
[82] TNA: LCO 2/2750, Summary of Sir George Younger's Memoranda in Regard to the Vestey Case, 14 July 1922; Perren, "Farmers and Consumers," 218.
[83] Dawn May, "Multinational Corporations and the International Beef Trade," in *Food, Power and Community: Essays in the History of Food and Drink*, ed. Robert Dare (Adelaide: Wakefield Press, 1999), 193-206, here 195; Perren, *Taste, Trade and Technology*, 122.
[84] *The Times*, 14 October 1922, 15.
[85] Perren, *Taste, Trade and Technlogy*, 122-127.
[86] Atkins Report, 188.
[87] On this, see May, "International Beef Trade," 195, where she argues that the Vesteys "were widely distrusted in England because of their decision to move their business," citing the Board of Trade's chief meat negotiator, Henry Macrosty, who minuted in 1920: "Vesteys, while nominally British, are an uncertain quantity, being controlled from abroad and governed by purely money motives."
[88] For the reasons given in note 42 above. There was a difference between the Russian and Chinese operations, in that the former were owned by Union directly, while the latter were held through subsidiary companies. That was immaterial from a tax perspective, however, because the subsidiaries were also resident in the UK.
[89] *Union Cold Storage Co. Ltd. v Jones* (1924) 8 TC 725 at 742.
[90] TNA: IR 40/5238, Memorandum of Agreement between the Union company and the National company, 14 December 1915.
[91] The International Export Co. Ltd. and the Shanghai Ice & Cold Storage Co. Ltd.
[92] See William Vestey's remarks to the Royal Commission: Cmd. 288-1, 453. That aspect of the story is unclear, because the Inland Revenue had no information about these arrangements, which were irrelevant to the British tax position.
[93] *Union Cold Storage Co. Ltd. v Jones* (1924) 8 TC 725, 729. Even by late 1915, however, political conditions in Russia were apparently such as to justify none of the rent due under the lease being allocated specifically to the Russian businesses. Following the Bolshevik seizure of power in 1917, Union's properties in Russia were nationalized without compensation and written off by the company as a total loss.
[94] Atkins Report, 188-189.
[95] Ibid., 193.
[96] Ibid., 165. In the case of *Union Cold Storage Co. Ltd. v Jones* (1924) 8 TC 725, the Revenue succeeded in restricting Union's benefit from "under-accounting," by reducing its WTAs by about £200,000. The court agreed with the Revenue that Union was not entitled to claim WTAs in respect of plant and machinery which was leased to National, and thus not being used for the purposes of Union's own business. There was still a substantial discrepancy, however, between the WTAs and the depreciation in the accounts.
[97] The lease terms themselves were an exercise in transfer pricing, in that an arm's length lease would presumably have carried a higher base rent.
[98] Atkins Report, 189.
[99] Section 44(3) of the Finance (No. 2) Act 1915.
[100] The Revenue might also have argued that the WTAs were a "deduction" falling within paragraph 5, Part 1, Schedule 4 of the 1915 Act, and that under-providing for depreciation was an "artificial operation" that had increased the value of the deduction. It is doubtful, however, that they would have succeeded with that argument, given the wording of the rule.
[101] See, e.g., section 35 of the Finance Act 1941.

[102] The company raised this point in the case of *Union Cold Storage Co. Ltd. v Jones* (1924) 8 TC 725, 730, but the question of the lease being "artificial" was not raised there. There was also the point about the Vesteys having resigned from Union's board (so they could say they no longer controlled the company), but that was a fairly obvious piece of "window-dressing," which ought not have affected things one way or another.
[103] Cmd. 288-1, 454.
[104] Ibid., 452-453.
[105] Ibid., 455, 452.
[106] Ibid., 453-454.
[107] Ibid., 454.
[108] Ibid., 455.
[109] Ibid., 454
[110] Ibid.,
[111] Perren, *Taste, Trade and Technology*, 122-123. Union's losses in this period were subsidized by the Vesteys (Atkins Report, 59).
[112] Cmd. 615, Report of the Royal Commission on the Income Tax (London: HMSO, 1920), 9.
[113] Britain introduced "controlled foreign company" rules in the 1980s, but these do not deem the offshore company to be UK resident (other than for limited computational purposes).
[114] See generally Geoffrey Searle, *Corruption in British Politics, 1895-1930* (Oxford: Clarendon, 1987).
[115] Ibid., 366. Cf. Andrew Cook, *Cash for Honours: The Story of Maundy Gregory* (Stroud: History Press, 2008), 291. One reason for the growing rift between Lloyd George and his Conservative colleagues was that they kept falling out over who had a prior claim on prospective political donors. Vestey had formerly been a supporter of the Liberal party.
[116] See Tom Cullen, *Maundy Gregory: Purveyor of Honours* (London: Bodley Head, 1974), 107-118.
[117] No clear distinction was drawn between "evasion" and "avoidance" at the time. Avoidance was often referred to as "legal evasion."
[118] *The Morning Post*, 17 June 1922, 6.
[119] HL Deb. (5th Ser.), 29 June 1922, Vol. 51, Cols. 138-143.
[120] TNA: LCO 2/2570, Unionist Central Office memorandum, George Younger to Austen Chamberlain, 27 June 1922.
[121] Vestey in fact referred to himself as being "domiciled abroad," but it is clear that he meant "resident," not "domiciled."
[122] HL Deb. (5th Ser.), 29 June 1922, Vol. 51, Col. 144.
[123] Knightley, *House of Vestey*, 49-50.
[124] HC Deb. (5th Ser.), 17 July 1922, Vol. 156, Col. 1978.
[125] The Commission's report culminated in the enactment of the Honours (Prevention of Abuses) Act 1925, which criminalized the sale or purchase of titles.
[126] For example, in 1926, Lord Decies, Chairman of the British Income Taxpayers' Association, wrote in the *Daily Mail* that offshore tax avoidance was "unpatriotic and altogether reprehensible." By 1930, Decies was telling the American magazine *Time*: "our wealthy men should seriously consider whether they must send their money out of this country." (Lord Decies, "Why Income Tax Is High," *Daily Mail Year Book* (London: Associated Newspapers, 1927), 56; "Foreign News: Time May Have Come...," *Time*, 5 May 1930.)
[127] Searle, *Corruption*, 375.
[128] The formation of "estate companies" to mitigate inheritance taxes was a major business line for the then- booming tax avoidance industry: see Assaf Likhovski, "Tax Law and Public Opinion,": Explaining *IRC v Duke of Westminster*," in *Studies in the History of Tax Law, Vol. 2*, ed. John Tiley (Oxford: Hart, 2007), 183-221, here 206.
[129] Ibid., 205.
[130] TNA: LCO 2/2570, Unionist Central Office memorandum, George Younger to Austen Chamberlain, 27 June 1922.
[131] Cmd. 2390, First Report of the Royal Commission on Food Prices (London: HMSO, 1925), 184-185. [132] HC deb. (5th Ser.), 4 March 1925, Vol. 181, Cols. 554-557. The Official Report records that one Member responded to Lansbury's remark by shouting: "A nightmare!" See also *The Times*, 18 February 1925, 8; 5 March 1925, 8.
[133] *The Times*, 22 January 1925, 18
[134] TNA/PRO: IR 40/5238, Report by F. N. D. Preston, 22 December 1936, 33-35.
[135] Perren, *Taste, Trade and Technology*, 132.
[136] The new scheme effectively inverted the previous arrangements: the "offshore" companies in the group

were brought "onshore," becoming subsidiaries of Union; simultaneously, however, Union entered into an agreement with the Vesteys which entailed roughly half the company's annual profits being paid away to an offshore trust as a tax-deductible "rent." See generally Knightley, *House of Vestey*, 37-43.
[137] See *Union Cold Storage Co. Ltd. v Adamson* (1931) 16 TC 293; *Vestey's Executors v IRC* (1949) 31 TC 1; *Vestey v IRC* (1979) 54 TC 503.
[138] Companies paid income tax until 1965, when it was superseded by corporation tax.
[139] There would, however, be an additional liability for "super-tax," if the shareholder's gross income exceeded £3,000. Shareholders could demand a repayment directly from the Inland Revenue if their total income (grossed up for the tax deduction) was less than the exemption threshold. In 1914 the threshold was £160 (c.£12,500 today).
[140] See Richard Thomas, "Retention of Tax at Source and Business Financing," in *Studies in the History of Tax Law, Vol. 7*, ed. Peter Harris and Dominic de Cogan (London: Hart, 2015), 33-70. The average tenor of the debt securities issued by Union/Fletcher's was around 18 years.
[141] Tax deducted from interest payments was set against the company's own income tax liability, but could not be refunded if it exceeded the tax for which the company itself was ultimately liable. Thus, the amount of tax paid in respect of interest set a floor on the company's ability to manage down its ETR by under-accounting for depreciation.
[142] The actual tax treatment depended on the local law in the jurisdiction where the overseas company in question was established. Few countries imposed significant taxation of business profits in this period. In Russia, for example, there were levies on agriculture and industry, but these were generally in the nature of land or excise duties, rather than taxes on income: see Stefan Plaggenborg, "Tax Policy and the Question of Peasant Poverty in Tsarist Russia, 1881-1905," *Cahiers du monde russe* 36, No. 1/2 (Jan-Jun 1995), 53-69.
[143] The actual amount was higher, because the Vesteys owned some of the issued preference shares, in addition to their ordinary shares.
[144] The reasoning behind the policy of paying high dividends on the ordinary shares is somewhat obscure. In the case of Fletcher's, the answer seems to be that in 1912, Fletcher's had made an issue of participating preference shares to the public, shares which were entitled to a fixed dividend of 6 per cent, *plus* the right to receive up to an additional 2 per cent per annum, if the company paid a dividend in excess of 6 per cent on its ordinary shares (*The Times*, 20 February 1912, 18). Hence, a failure to pay dividends on the Fletcher's ordinary shares could have been regarded as prejudicial to the holders of participating preference shares. For a short period, between 1910 and 1913, Union had been in an analogous position, because in the former year, the Vesteys had chosen to offer to the public more than half of the common stock they held in the company (*The Times*, 14 July 1910, 15). What proportion of those ordinary shares actually ended up in public hands is unknown, but by 1913, William and Edmund were concerned enough about the prospect of losing control of their own company to undertake a controversial capital restructuring, whereby Union issued new ordinary shares to the Vesteys, while re-designating the existing common stock as 10 per cent preference shares (*The Times*, 28 October 1913, 18-19). The practice of paying a 10 per cent dividend on Union's ordinary shares predated that dispute, however, and was presumably influenced by the fact that, at the time, a healthy dividend on common stock was seen as an important commercial metric for a public company. Whatever the truth of the matter, it was apparently less problematic to change the corporate structure of the group, than it was the dividend policy of the public companies.
[145] These transfers did not all take place simultaneously, but in phases.
[146] Atkins Report, 133.
[147] Section 21 of the Finance Act 1922 enacted a rudimentary form of "close company" rule, which imposed a charge to super-tax on the undistributed income of certain private companies. The application of this rule to Western subsequently became a matter of dispute between the Inland Revenue and the Vesteys, but not until the late 1920s.
[148] Because the trustees' tax treatment was the same as Western's was, in respect of the underlying dividend from Union, i.e. the dividend was treated as carrying a tax credit, with no "layering" of charges as money was paid up the chain of ownership.
[149] The trustees themselves were not liable for super-tax, because they were only the legal, not the beneficial, owners of the income.

Figure 1: Vestey group structure pre-1915

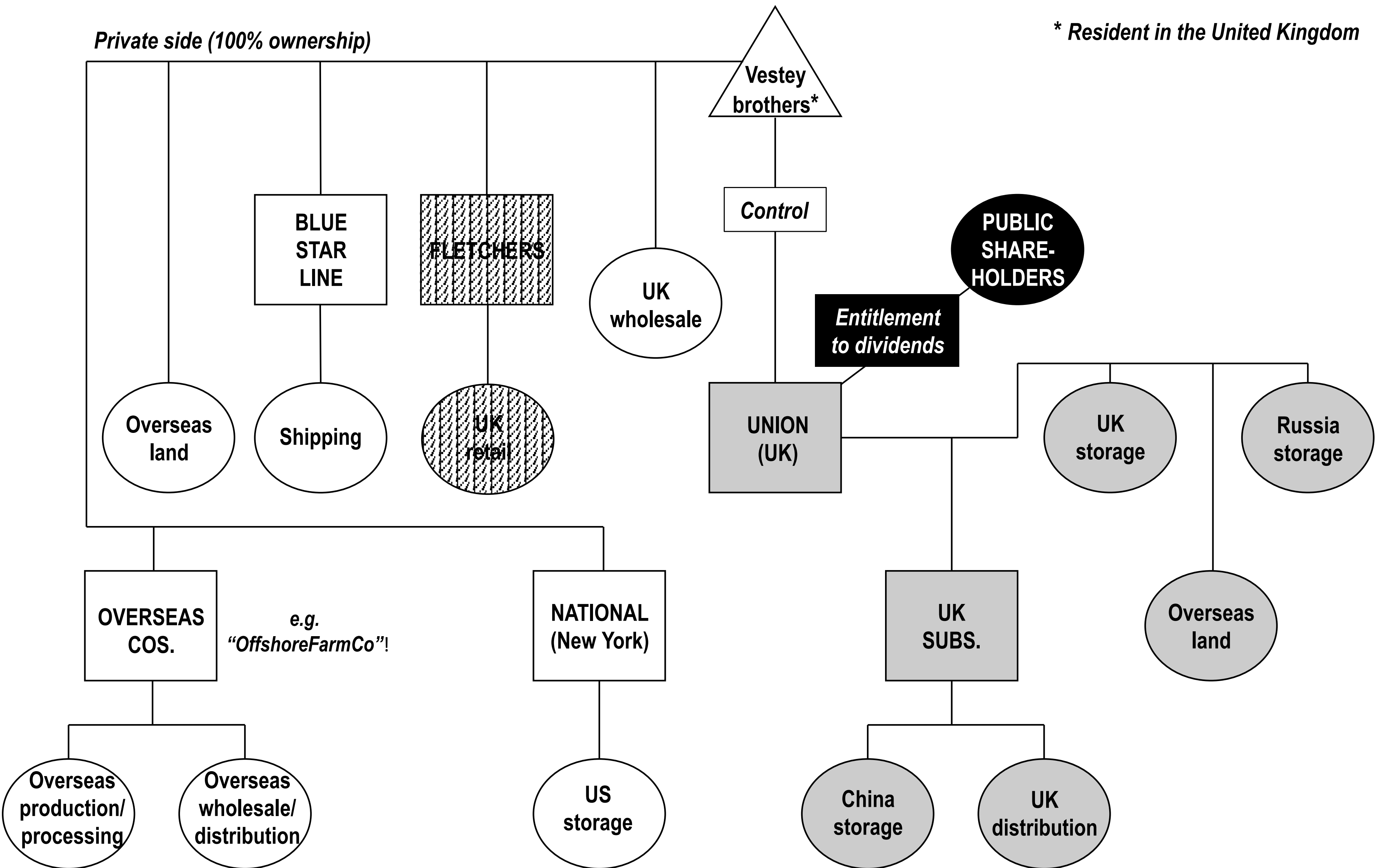

Figure 2: The "flight abroad," 1915

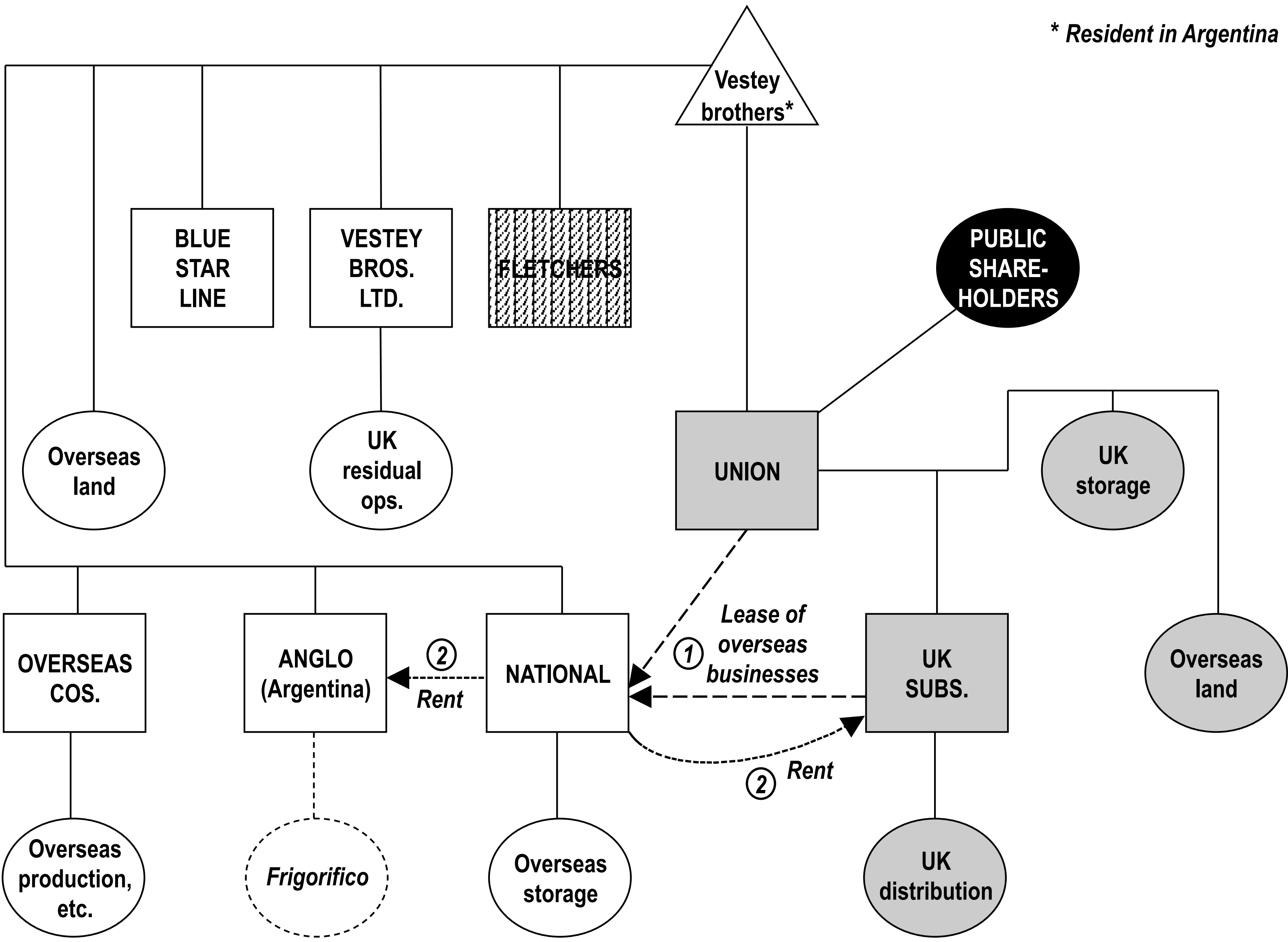

Figure 3: New holding company, 1918