



An enlightened approach to taxpayer confidentiality: The story of the first income tax

COMMENTARY BY [PAUL NEWMAN QC](#), 6TH APRIL 2021

Confidentiality is a fundamental concept at the heart of the modern taxation system. The need to strike a balance between the taxpayer's right to privacy and the requirement of HMRC to carry out its functions has been the subject of much legislation and litigation.¹ There has been an explosion in the exchange of information between revenue authorities of different countries and British politicians have for years been under pressure to emulate the tradition of American presidents publishing their tax returns. But there is nothing new under the sun: the introduction of income tax in Britain at the end of the 18th century was dominated by concerns over taxpayer confidentiality, which led to measures being developed which have left their mark on today's income tax system.

One of the principal objections to the introduction of the mandatory payment of income tax by Pitt the Younger in 1799² was the fear that it would lead to the public disclosure of taxpayers' financial circumstances. This went against the grain of the independently minded Briton, seeking to protect their property from the consequences of revolution in France and rebellion in Ireland, and to safeguard their standing in society and in commerce: in an age of patronage and credit, what a person appeared to be was as important as what they actually were. Pitt accordingly built

¹ For recent examples, see ss.18-23 of the Commissioners for Revenue and Customs Act 2005 (duties of HMRC in relation to taxpayer information); *R (Ingenious Media Holdings plc and another) v Revenue and Customs Commissioners* [2016] 1 WLR 4164 (scope of exception to taxpayer confidentiality in s.18(2) of the 2005 Act).

² Duties on Income Act 1799.

into the first income tax legislation provisions designed to maintain confidentiality – or 'secrecy' as it was then known.

The need to protect the taxpayer from disclosure led to the tax being implemented by self-assessment, only requiring the taxpayer to declare a sum which represented not less than 10% of their income;³ and the declaration was to be made to a body known as the Commissioners,⁴ who were persons of wealth, integrity and independence rather than mere officials, in whom the taxpayer could safely repose their trust, particularly as the Commissioners were required to swear an oath of secrecy.⁵

To provide further protection for commercial income, a specialist tribunal was established to deal with their affairs: the Commercial Commissioners, chosen by and from the commercial community. The system of self-assessment here, too, was designed to ensure secrecy: any person or company engaged in any trade or manufacture could be assessed to tax, either as to their entire income or as to that part arising from trade, declared in a sealed statement in a prescribed form which meant that the Commissioners would not know what part of the income derived from trading and non-trading sources.⁶ Similarly, the examination of witnesses by these Commissioners could only take place before those who had sworn the oath of secrecy.⁷ The final assessments were recorded in confidential books, and the taxpayer received a certificate with a number or letter code, which they would use, instead of their names, when paying the tax directly to the Bank of England.⁸

It appeared that these provisions materially contributed to the failure of the new tax to yield as much as had been expected. The inadequacy of the returns and the lack of resources of the Commercial Commissioners to investigate under-declared income led to less than £1.2m being paid in tax from commercial incomes, compared

³ *Ibid*, s.2.

⁴ *Ibid*, s.11.

⁵ *Ibid*, s.22.

⁶ *Ibid*, ss.95-97.

⁷ *Ibid*, s.98.

⁸ *Ibid*, ss.99,106,108.

to the hoped-for £4m. This led to Pitt introducing a Bill in 1800 which would have reversed many of the secrecy provisions, but it was defeated in Parliament.

Pitt's successor, Addington, proposed and passed legislation in 1803⁹ which removed the general declaration and the anonymous treatment of commercial income, whilst at the same time introducing two measures which together satisfied popular demand for secrecy. The first was the system requiring each taxpayer to return their income under different schedules according to the source of their income, so that each return was to be made to a different official in charge of a particular schedule, which ensured that no single civil servant would know the whole of the taxpayer's financial situation. The vestiges of the schedular system were an explicit feature of the Income and Corporation Taxes Act 1988 (albeit that separate returns have long been abolished), and are implicitly continued in the legislation which has overtaken it. The second was the deduction of tax at source, directed at the origin of the payment rather than the receipt of income, which permitted the taxpayer not to disclose the details of the transaction in issue or their own financial circumstances. Of course, there are many examples today of the deduction of tax at source, one being the PAYE system.

These practical measures went a long way to achieving the goal of confidentiality which was regarded as vital to the proper working of the taxation system, and in the process introduced the concepts of the schedular system and the deduction of tax at source, which have long been features of the tax system. Whilst Addington, and not Pitt, has been called the author of modern income tax,¹⁰ one should not overlook the importance of the desire for taxpayers to maintain confidentiality over their financial affairs.¹¹

For more information on our Trusts, probate and estates: non-contentious practice, [please click here](#). For more information on our Tax practice, [please click here](#).

If you are viewing this document on LinkedIn, you can download it by clicking on the



icon in the top-right-hand corner when in full screen view.

⁹ Property Duty Act 1803

¹⁰ A. Farnsworth, *Addington: the Author of the Modern Income Tax* (London, 1951).

¹¹ For further reading, see Chantal Stebbings, *The Budget of 1798: Legislative Provision for Secrecy in Income Taxation* [1998] BTR 651; J.F. Avery Jones, *The Sources of Addington's Income Tax* in Harris & De Cogan (eds.) *Studies in the History of Tax Law*, vol.7 (London, 2015), ch.1.