**The overlooked majority: the limits of Whitney v CIR**

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Caveat: Footnotes to be supplied. In the light of the length of those, there is more material, especially on companies after 1965 that might be included, and some further research to be done on the detail.

**The *Whitney* case**

When on a day in 1920 the American multimillionaire and noted bloodstock breeder Harry Payne Whitney read his mail in his New York house he would probably have been surprised, and perhaps dismayed, to see that he had received a notice from the Special Commissioners of Income Tax in London, England requiring him to make a return to them of his total income from all sources for the years ended (quaintly he must have thought) 5 April 1918 and 1919, especially as he had not visited the UK at all between 1914 and then.

He ignored the notices. He received another one later in 1920 for a return for the year ended 5 April 1921, and he ignored that one as well.

He did not ignore the next piece of correspondence from the Special Commissioners. This contained 4 notices of assessment for each of the years ended 5 April 1918 to 1921 inclusive, each in the sum of £90,000 (£4.25 million in 2022 money). The income assessed was dividends from a UK trading company in which Mr Whitney and his wife had large shareholdings. He appealed against them.

His appeal was heard by the Special Commissioners acting in a judicial capacity on 18 July 1923. They found against him, and he appealed by case stated to the High Court, where Mr Justice Rowlatt found against him (Mr Whitney’s counsel, Sir John Simon, offering no argument in the light of the Court of Appeal decision in *CIR v Huni*). He appealed to that Court who found against him in May 1924. He appealed again to the House of Lords who found against him (by 3 to 2) in November 1925.

The issue for the House was set out by Viscount Cave LC:

“My Lords, this appeal raises the question whether the Appellant, a citizen of the United States residing in New York, has been properly assessed to Super-tax.”

Although Viscount Cave’s speech was the first, he was in the minority. Lord Dunedin who spoke second was the first to give a speech for the majority. He started by stating where he agreed with Lord Cave:

“First, he considers that any individual who receives profits from property in the United Kingdom is liable to Super-tax, and second, he holds that the income of the individual from all sources mentioned in Section 4 of the Act is income which is taxable within the United Kingdom.”

And then that he did not find a particular subsection in the law relating to income tax as troublesome as Lord Cave. Then he said this:

“My Lords, I shall now permit myself a general observation. Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

Considered without context the “three stages” part of this paragraph might seem to be *obiter dicta*, matter not necessary for deciding the question in issue. But in fact these general observations had a very specific purpose in relation to the case. They were an elegant rebuttal of the reasons Viscount Cave had put forward for allowing Mr Whitney’s appeal, as set out in Lord Dunedin’s next paragraph:

“I come to the second [stage], and that, so far as Super-tax is concerned, is dealt with in Section 7. Sub-section (1) says that Super-tax shall be assessed and charged by the Special Commissioners. That does away with all of what I may call the territorial arrangements which apply to ordinary Income Tax. Next follow a set of sub-sections which provide for means which may help the Special Commissioners in their task. It is here that I part company with the noble and learned Lord Chancellor. Holding that Sub-sections (2), (3) and (4) setting forth the request for and the making of the return of income from all sources are inapplicable to an alien non-resident in the United Kingdom, he concludes that where no return has been made there can be no failure in the sense of Sub-section (5), and that accordingly no assessment can be made. *My Lords, I cannot help feeling with the utmost respect that that is tantamount to making liability dependent on failure to make a return, and yet ex hypothesi a liability is already established.* But my real reason for differing from my noble and learned friend is that I look on these sub-sections as mere aids to the Special Commissioners in their task, and not as conditions of their power.” [Emphasis supplied]

Paraphrasing in the vernacular, he is accusing Viscount Cave of putting the cart of assessment before the horse of chargeability. The three stages inexorably follow one another.

Although the general observations of Lord Dunedin have not been cited as much as one might expect, they have been the subject of recent approval by Lord Carnwath JSC in *R (oao Derry) v Commissioners for Her Majesty’s Revenue and Customs*. Here he was faced with an argument by HMRC that following the introduction of “self-assessment” in 1996, the three stages and the differentiation by Lord Dunedin of the substantive and the procedural represented by stages one and two no longer held good. Lord Carnwath referred to the judgement of Henderson LJ in the Court of Appeal saying:

“Henderson LJ disagreed (para 49). Lord Dunedin’s classic statement was of little assistance in respect of the present UK tax system which is ‘vastly more complex than it was a century ago’:

‘one cannot always expect today to find that provisions relating to the imposition and calculation of liability are unaffected by provisions relating to the machinery of assessment.’

Lord Carnwath’s view on this was:

“While it may be true, as Henderson LJ said, that modern tax legislation in general is much more complex than at the time of Lord Dunedin’s classic statement, the purpose of the tax law rewrite was to restore a measure of simplicity and coherence to the principal tax statutes. In any event, one does not need high judicial authority to make the obvious point that the first step in the imposition of a tax is to establish (in Lord Dunedin’s words) ‘what persons in respect of what property are liable’.”

Thus Lord Dunedin’s stages remain, and it follows that unless there is law charging tax on a subject matter, no assessment or enforcement of that tax is valid, but if there is such a charge, it cannot be affected by machinery provisions.

Lord Dunedin’s statement was wide in apparent scope – the three stages apply in the imposition of *a* tax, that is, any tax. In *Whitney* their Lordships were concerned with Super-tax. That is a tax which falls very clearly within the three stages. The charge at stage 1 is undoubted; once the machinery of returns or notification of chargeability is put into effect, the result will be an assessment on the relevant income at the relevant rates.

This it must be stressed is undoubtedly true of Super-tax. Super-tax was assessed in addition to any liability at the standard rate of income tax. But not all income tax fell to be assessed on the taxpayer, a state of affairs which Lord Dunedin himself referred to before his general observations. He was in this part of his speech explaining why section 26 of the Income Tax Act 1918 did not cause him the problems it seemed to for Viscount Cave and he then added:

“Further, I would add that Section 5(2) seems to me to point strongly the same way. Section 5(2) provides that when an assessment to (ordinary) Income Tax has become final, that is also final as regards the income from all sources for the purposes of Super-tax, thus showing that income which is not liable to Income Tax, i.e., income of a non-resident accruing abroad and kept abroad, is not to be taken into account in the matter of Super-tax.

I must, however, remark that this Sub-section cannot be further pressed for the purposes of this case, for if the Scotch case, which was not quoted to us, of Duncan v The Inland Revenue, 1923 S.C. 388, was rightly decided - and I take it it was - *it has no application to income such as that in the present case, where deduction for ordinary tax is made at the source.*” [Emphasis supplied]

The emphasised passage is important because it shows clearly that Mr Whitney did not receive any assessment at the standard rate on the dividends. This was not just because he was not resident, but because until 1965 no tax was charged on dividends because the distributing company was treated as having deducted an amount equal to that tax, because in turn it had paid income tax on the profits out of which the dividend was paid. Charging income tax at the standard rate on the recipient would amount to double taxation.

Thus at one and the same time there was an imposition of a tax, super-tax, which followed precisely Lord Dunedin’s observation that there are three stages in such an imposition, and an imposition of a tax, standard rate income tax, which did not follow the three stages, but only the first.

Dividends were by no means the only type of income where no standard rate income tax assessment was or could be made on the recipient: the same individual might receive many types of income from which income tax had been deducted by the payer before receipt (taxed income). A later part of this paper explains the history of taxed income in the UK tax system.

*Taxpayers to whom Whitney stages 2 and 3 did not apply, in whole or in part*

Any person, like Mr Whitney, all of whose income consisted of taxed income types would not be assessed. If they were entitled to reliefs and allowances given by the taxing acts (general reliefs) (Whitney stage 1) there needed to be, and was, a system for giving effect to those reliefs, but this was not the Whitney Stage 2 (or 3) system, as is explained later.

A person with both taxed income types and others would be assessed on the others. If they were entitled to general reliefs, they might be given effect to through the Whitney system, eg by reducing assessment or otherwise as with people like Mr Whitney or they might be given effect to in the same way as those with taxed income only.

This was the position in UK tax law from 1803 to 1926. After that time, when supertax was reformed and became surtax, it became necessary in relation to the more affluent taxpayers to take into account the interaction of the tax deducted from income and the assessment process.

Deduction at source until 1944 was generally at a uniform rate, the standard rate of tax. The introduction in 1944 of PAYE (Pay As You Earn) changed this. It was deliberately designed so that the deductions made by employers should be as close as possible to the final liability, and for that reason the personal allowance and other reliefs were taken into account in fixing the amounts deducted each pay day. But even with this sophistication the result at the year end might still be that the deduction was too big or too small, and some system was needed to deal with this.

Thus ever since 1803 there has been a body of taxpayers of differing size and proportion some or all of whose tax affairs were outside the second and third of the Whitney stages. The second stage, the return, assessment and appeal mechanisms, has been the subject of a great deal of legislative attention over this period, and much litigation has been devoted to these mechanisms. Much has been written, in the Tax History Proceedings and elsewhere, about the historical development of the second stage. Little, it seemed to me, has been written about those who have suffered tax at source and who seek repayments and in particular about their rights and obligations.

The rest of this Chapter describes the non-Whitney system as it has applied since 1803. It looks at the way it applied to payers of income from which tax was required or permitted to be deducted as well as its application to the recipients. It also looks at how the two systems interact for those with both types of income, and it considers and compares the rights and obligations of the non-assessed with those who are the subject of the second stage in Whitney.

But first it considers the first Whitney stage (the law charging tax) as it applies to deduction at source.

**Deduction at source in UK tax law**

Any author wishing to comment about the history of deduction at source in the UK must take account of the research and learning in Piroska E Soos’ book “The origins of taxation at source in England”. The object of the book, and the thesis upon which it was based, was to show that despite claims by his admirers and others, Addington’s system of deduction at source from interest and annual payments, although being successful in curbing evasion and increasing the amount of tax received by the Exchequer, was not the highly innovatory thing it was lauded as, but a development from an existing array of provisions for deduction at source, especially in the Land Tax, which, Soos shows, date back in some cases to the 16th century. Soos’ book ends effectively with the Income Tax Act of 1803 (though the 1806 Act gets a mention for a further example of deduction at source introduced then. This paper starts with that Act, but its indebtedness to Soos is substantial.

Soos classifies the provisions she discusses into two kinds; those which are a withholding by the payer of an amount representing tax and the accounting for that amount by the payer to the Inland Revenue; and those where the payer keeps the tax deducted as a way of obtaining an effective deduction in computing their own tax liability. It is also possible to make at least one further distinction, where an amount of tax paid or due to the Inland Revenue by the payer in respect of its own liability is credited to the payee because the payment is seen as coming from the after tax income of the payer. This is a feature of the peculiar system for taxing dividends in the UK in the period until 1965 and also applies in other areas, eg trusts, estates of deceased persons and life assurance policies.

In this paper the first type has been labelled “withholding”; the second “deduction and retention” and the third “imputation”, and where all three are meant they are called “deduction at source”.

The Acts of 1803 and 1806 contained seven provisions for deduction at source. For ease of comprehension I have used the text from the Income Tax Act 1918 where it still applied.

*Income from land*

Schedule A in the 1803 Act was a tax on the “annual value” of all land: that value being (broadly) the amount at which the land could be let. It applied whether the land as occupied by the owner or was let to a tenant, and was not a tax on rents. Given that the annual value of land was what it was worth to the freeholder it might be expected that the freeholder was the person chargeable by assessment. But the law provided that the tax was payable by the occupier, be they owner occupier or tenant.

Rules 1 and 2 of Head VIII of Schedule A provided (in the 1918 wording):

**1.** A tenant occupier of any lands, tenements, hereditaments or heritages who pays the tax shall be entitled to deduct and retain in respect of the rent payable to the landlord for the time being (all sums allowed by the commissioners being first deducted), an amount representing the rate or rates of tax in force during the period through which the said rent was accruing due for every twenty shillings thereof, the said deduction to be made out of the first payment thereafter made on account of rent, and any receiver on behalf of the Crown or other person receiving the rent shall allow the deduction on receipt of the residue of the rent.

**2.** A tenant who pays the tax shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid as rent.

Thus a tenant who paid the tax could recoup it from the rent they paid to the landlord. The tenant then had no net liability (so nothing to assess) and the landlord bore the tax by receiving a lower or no rent from the tenant, and thus had nothing more to be assessed on. This was a “deduction and retention” procedure under which the tenant was given an effective deduction.

A similar provision was in Rule 7 of Head VIII 3 of the second Head of Schedule A which provided (in the 1918 wording) for deduction and retention from annual sums to which the land was subject, namely:

“any yearly interest, annuity, rent, rentcharge (whether under the Tithe Act, 1836, or otherwise), fee farm rent, rent service, quit rent, feu duty, teind duty, stipend to a licensed curate, or other annual payment reserved or charged upon any lands, tenements, hereditaments, or heritages.”

In 1963 the tenant’s recoupment provisions in Schedule A were repealed with the Schedule itself. Under the replacement provisions called then Case 8 of Schedule D, the only withholding provision related to rents and premiums paid to non-residents, assimilating the case to annual payment withholding.

*Income from UK Government securities*

In Addington’s Act of 1803 there was no deduction of tax by the payer of income from gilt-edged securities and the like. But in the 1806 Act a scheme of deduction was introduced. The “Rules as to interest, &c., payable out of public revenue to or through the Bank of England or the Bank of Ireland, or by the National Debt Commissioners” in Schedule C provided (this the 1806 wording):

**1.** The Bank of England and the Bank of Ireland as respects any interest, annuities, dividends and shares of annuities and the profits attached thereto payable to them out of the public revenue of the United Kingdom, or payable out of any public revenue and intrusted to them for payment and distribution, and the National Debt Commissioners as respects interest, annuities and dividends payable by them or of which they have the distribution, shall, when any payment becomes due, deliver to the commissioners appointed to assess and charge the tax thereon true accounts in books provided for the purpose, of—

(a) the amounts of the interest, annuities, dividends, or shares of annuities and profits attached thereto payable to the Bank;

(b) all interest, annuities, dividends and shares of annuities intrusted to the Bank or to the National Debt Commissioners for payment to the persons entitled thereto; and

(c) the amount of tax chargeable thereon at the rate in force at the time of payment without any other deduction than is allowed by this Act.

**6.** The Bank of England and the Bank of Ireland shall set apart the tax in respect of the amounts payable to them, and the said Banks and the National Debt Commissioners respectively shall, before any payment is made by them, retain the amount of the tax for the purposes of this Act.

Although it does not actually say so, the Banks of England and Ireland paid the tax they withheld and retained to the Exchequer. Thus this was a withholding tax, despite the language of “retaining”.

The current provisions are in Chapter 5 Part 15 Income Tax Act 2007, having been assimilated in to the annual interest rules for withholding in 1996..

*Income from non-UK securities*

The 1806 Act also applied the UK Government securities provisions in Schedule C to “all Dividends and Shares of Annuities payable out of the Revenue of Ireland, or of any Foreign State, or of any Colony or Settlement belonging to the Crown of the United Kingdom, which shall have been entrusted to the said Governor and Company for Payment to any Persons Corporations or Companies in Great Britain …”

In 1853 the rules applying to dividends etc from a foreign state were extended to dividends or other annual payments payable by any foreign company, where the interest, dividends or annual payments are entrusted to any person in the UK for payment to any person in the UK.

*Income from offices and public employments and publicly funded pensions and annuities*

The fifth and sixth rules of Schedule E in the 1803 Act (in the 1918 wording) provided:

**“11.**—(1) Where any official pay is payable at a public office, or by any officer of the Royal household, or by a Crown receiver or paymaster, or by any agent employed in that behalf, the tax chargeable thereon shall be deducted out of the official pay, or out of any money which is payable on account of that official pay or any arrears thereof, and shall be applied in satisfaction of any such tax which has not been otherwise paid, and shall be paid to the Commissioners of Inland Revenue.

…

(3) In this rule the expression ‘official pay’ means any salary, fees, wages, perquisites, or other profits, or any annuity, pension, or stipend.

(4) Where an annuity or pension is payable out of any particular branch of the public revenue at the office of that branch, the commissioners acting for that department may charge the tax in respect of the same as if the annuity or pension were salary or wages payable thereout.

**12.** Where any emoluments chargeable under this Schedule do not arise as described in the last preceding rule, but arise from any other office or employment of profit, and are payable by any officer, receiver, or agent, any tax chargeable in respect thereof which has not been otherwise paid shall be deducted therefrom or from the arrears thereof and paid to the proper officer.

These are true withholding taxes, with the payer accounting to the Inland Revenue for the tax deducted to be set against the liability under Schedule E.

Three other provisions provided for deduction and retention: where a deputy executed the duties of an office and received the profits before paying them to the office holder, who in turn could deduct tax paid on salaries; where an office holder was obliged to pay part of the profits to another person; and on payments to deputies and clerks out of taxable income.

In 1943 and 1944 two Acts contained the powers to make regulations that required tax to be deducted by employers from payments of “emoluments” to employees in accordance with prescribed tax tables (PAYE or Pay-as-you-earn). This system which continues to the present day with certain extensions in scope is a withholding tax system.

In 1971 a withholding tax on payments made for labour in the construction industry was introduced, at a rate of 30%. This was introduced partly to combat evasion of PAYE as well as of assessable taxes on trades. The rates of withholding have varied over the years, and since 2004 depend on the registered status of the subcontractor.

*Income from shares in UK companies*

A provision, originally in Schedule D but later generalised, provided for companies to deduct a proportionate amount of the tax it paid on its profits from dividends it paid. Section 127 of the 1803 Act said:

CXXVII. … and such Estimate [of the tax due on profits] shall be made on the Amount of the annual Profits and Gains of such Corporation, Fraternity, Fellowship, Company, or Society, before any Dividend shall have been made thereof to any other Person or Persons, or publick Bodies having any Share, Right, or Title, in or to such Profits or Gains; and all such other Person or Persons, and publick Bodies, shall allow out of such Dividends a proportionate Deduction in respect of the Duty so charged;

This rather opaque clause and its successors has been the subject of much misunderstanding and litigation, but essentially it amounted to an imputation system. There was no “deduction” as such as a payment out of taxed profits would inevitably be net of that tax, but the term “deduction” was in very common use in relation to these dividends.

In 1965 the system was entirely changes so that payments of dividends included a withholding tax on the after tax dividend. In 1973 it was changed again with a reversal to an imputation system. As companies now paid corporation tax not income tax at the basic rate, the solution devised was to give recipients a “tax credit” which was added to the amount of the dividend and represented the tax paid by the company. The link between the two was reinforced by requiring the payer of dividends to account for tax on an equal amount of the total credits in advance of, and on account of, its normal corporation tax payment.

The tax credit was abolished in 2016 and recipients became liable on the net amount of the dividend.

*Income from interest and annual payments (not covered by any of the previous provisions)*

The rule permitting, but not requiring, deduction at source from annual interest and other annual payments (including annuities not covered elsewhere) was in s 208 of the 1803 Act (after the rules of the Schedules), and, as recast in 1918 as Rule 19 of the general rules applying to all Schedules, provided:

**“**Where any yearly interest of money, annuity, or any other annual payment (whether payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to tax, *no assessment shall be made upon the person entitled to such interest, annuity, or annual payment,* but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest, annuity, or annual payment, without distinguishing the same, and the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled, on making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due. [Emphasis supplied]

The person to whom such payment is made shall allow such deduction upon the receipt of the residue of the same, and the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.”

This is the provision introduced by Addington to prevent the evasion that was rife under Pitt’s 1799 Act. It was a deduction and retention provision and the cornerstone of the Inland Revenue’s (the Revenue, which term includes HMRC from 2005 )thinking abut income tax for well over a century. The phrase “payable wholly out of profits or gains brought into charge to tax” meant that there had to a sufficient amount of income tax suffered by the payer, either by assessment or deduction, to frank the payment, otherwise no tax could be deducted and the payee was liable to tax.

In 1888 a new withholding provision was introduced to cater for payments of annual interest, annual payments and also patent royalties where the payment was not made out of taxable profits or gains (eg because the payer’s income was too small) or they were not within the charge to tax. It seems that payments were being made under deduction of tax and the tax retained so that the payer got an undeserved windfall. This provision became Rule 21 of the general rules applying to all Schedules in the 1918 Act:

“(1) Upon payment of any interest of money, annuity, or other annual payment charged with tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment.

This withholding and the retention and deduction rules were extended to cover patent royalties in 1907 and to certain mining rents and communications easements in 1934.

The withholding provisions alone were extended to copyright royalties paid to a person abroad in 1927; where a capital sum was paid for a patent, to payments to a non-resident in 1945; and to certain lump sums paid in avoidance schemes including land or occupation income, but only on direction by the Board of Inland Revenue in 1969.

In 1965 when corporation tax was introduced, companies had to be in the withholding rules and not the deduction at source rules for interest and annual payments, as they did not have any profits or gains brought into charge to income tax.

So far as the provisions applied to interest, In 1969 there was a wholesale reform of the tax treatment of interest. Annual interest was taken out of the withholding and deduction at source rules described above and moved to its own withholding system, independent of that for annuities and annual payments. Withholding only applied to payments made by a company or by a non-company to a non-resident. It did not apply either to payments made to a bank for a loan or to interest paid by a bank eg on deposits. Many further exclusions were added later. Withholding on certain bank and building society interest payments on some deposits were reintroduced in 1990 but repealed in 2016.

*Income from trusts and estates*

The position of beneficiaries of trusts and estates who were entitled to income from the trust or to whom discretionary payments of income might be made is somewhat cloaked in mystery. This is because the trustees and personal representatives were clearly liable to tax on income received by them from the trust’s investments, either on the basis that they were in receipt of the income or were legally entitled to it. They might be assessed or be subject to deduction of tax on the income.

There has been extensive writing about this issue, especially by Malcolm Gammie QC, about the correct basis of taxation of beneficiaries of trusts but without going into it, it can confidently be said that where trustees of accumulation or discretionary trusts made income payments to beneficiaries, the payments were treated as falling within either the deduction and retention rules or the withholding rules applying to interest and other annual payments.

There is no clear legislation which confirms this, though it can be inferred from eg s 25 ITA 1918 and elsewhere, including the legislation in FA 1973 increasing the rate of tax on trustees of certain discretionary trusts, and providing for a payment to beneficiaries to be treated as grossed up by that rate of tax, a system explicitly replacing the deduction and retention or withholding rules. The Revenue’s Form R185 has been used by trustees for decades to evidence this.

But where the trustees pass on income to which a life interest beneficiary is entitled, the position seems to be that the income does not lose its nature but the beneficiary is entitled to a credit for any tax paid or suffered by the trustees. The situation is therefore akin to that for dividends from companies up to 1965. Again the R185 shows this, but no legislation confirms it.

Similarly legislation in FA 1938 treated payments made to beneficiaries as net of standard rate of income tax, which implicitly was paid or suffered by the personal representatives. There was no looking through to the underlying sources of income, but in 1993 changes were made to the rate of tax deemed deducted as a result of the introduction of separate initial rates of tax for savings and dividends. This was achieved by pro-rating the amount of underlying income of each type deemed distributed.

*Other miscellaneous provisions*

In 1921 the Finance Act provided a power to make regulations for charging and accounting for tax on refunds of contributions to superannuation funds and commuted lump sums paid by them. Regulation 7 of the regulations of 10/11/21 provided for a withholding where a refund was made to an employer. Regulation 8 did the same for refunds to an employee and to commutation payments for annuities. Regulation 9 provided that withholding applied to annuities to non-residents except where the employment was abroad.

From 1970 where a scheme was approved by the Board of Inland Revenue, the administrator was charged to tax at 10% and was empowered to deduct the tax from the payment (if the rules of the scheme allowed). These provisions were repealed in 2004

In 1986 a withholding was introduced on payments made to non-resident entertainers and sportsmen.

Finally mention should be made of the charge on gains made on life assurance policies introduced in 1968. The recipient of a gain on a policy is treated as having paid standard or basic rate on the actual amount of the gain. This deemed income tax is in effect an imputation of the corporation tax paid by the company at income tax rates on the part of its income which is accumulated for the policyholder. Unlike dividend rax credits and income tax paid by trustees, the deemed tax is not however repayable.

Ignoring some of the more arcane provisions it can be seen that the story is of a major use of deduction at source from the outset in the early 19th century but that in the period up to 1944 all the major types of income to which deduction at source applied were from the investment of capital, being:

* Rent from let properties
* Interest from Government securities (gilts etc)
* Dividends from UK companies
* Interest and dividends from foreign entities received through a paying agent/custodian
* Other annual interest from UK sources
* Annual payments including annuities and patent royalties from UK sources
* Receipts of income payments as beneficiaries of trusts and estates

On the other hand income from the provision of services and goods such as trading and professional profits and employments and from the annual value of owner occupied property were not generally subject to deduction at source.

From 1943 the balance changed with all income from employments and most pensions being subject to withholding, as well as (from 1971) much labour-only subcontracting in the construction industry, while some income from capital ceased to be subject to this method of collection, including rents (1963) and dividends (2016) and much interest.

As a vast generalisation then, before 1943 it was what the French call the ‘rentier’ classes, those living off their investments, who were most affected in their tax affairs by deduction at source; while after 1943 it was the employed and pensioners who predominated in this category.

Obviously there would be some individuals in both the deduction at source and assessable income categories throughout the period: traders and professional people with savings and investments, often inherited. Rentiers too would be liable to be assessed if they were owners of land or of income received directly from abroad.

The same split between investment and trading etc income also applied to companies, dividing trading (and from 1963 property investment) companies on the one hand with assessable income and investment and life assurance companies, all or most of whose taxable income was subject to deduction at source.

As for trustees, personal representatives of deceased persons and clubs and other societies, in most cases their taxable income was investment income subject to deduction at source.

One further division falls to be made. Until 1909/10 there was one rate of income tax. From then on there was the standard rate, on top of which, if the total incomes of individuals passed a threshold, there were additional taxes, super-tax, then surtax and from 1973 tax at the higher rates.

But throughout the years up to the present the normal rate of deduction at source has never exceeded and has usually been the same as the only, standard or basic rate of income tax respectively.

For companies there have been several additional taxes apart from income tax, most notably profits tax, until in 1965 corporation tax replaced income tax. Often however the rate of CT exceeded the standard or basic rate of income tax deducted from income received.

It should also be noted that withholding taxes may be treated, in certain cases, as final taxes, ie the amount of tax payable on the income can neither be increased by assessment nor reduced by allowances or rate reductions. In the UK withholding taxes have never been treated as final, with the exception of some income accruing to non-residents.

The next part of the paper shows the way that the UK tax system has established procedures for dealing with those aspects of the system not governed by Stage 2 of Whitney, because the standard “return, assess and appeal” procedure applicable to income not within the deduction at source rules do not apply.

**The income tax system as it applies to the payers of payments from which tax is deducted at source**

*The deduction and retention rules*

Where the deduction and retention rules applied, the law relating to income from property (Schedule A) and to the general rule for interest and annual payments provided that deduction was voluntary: the wording in 1803 was “shall be entitled” to deduct and retain.

The rules governing that entitlement also provided that net payment “acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid”, so that the payer could not be sued for the amount which had been deducted.

The payer was also specifically prevented from claiming a deduction for payments made where the tax was deducted and retained in computing profits from a trade, and more generally a deduction against any type of income was prohibited. This was to prevent double relief, once by retention and again by deduction from income.

Following the introduction of graduated rates above the standard rate, specific provisions allowed the payments under the general rule to be deducted in computing the tax at the graduated rates.

*The “imputation” rules*

In the cases of imputation, the rules governing the payer were even more exiguous. Dividends were expressly not deductible in computing the profits of a company for income tax purposes, but this rule did not depend on whether tax was imputed or withheld from dividends.

The only exception was that for the period 1973 to 1999 when the payer was required to account for advance corporation tax (ACT) on dividends that carried a tax credit. The system allowed for set-off of dividends received and for setting any ACT against CT of the payer or against the CT liability of other group members. ACT was not a voluntary tax and had to be paid to the Inland Revenue, so in that respect the system was more like that for withholding taxes.

*The withholding rules*

Withholding taxes were not retained by the payer but had to be accounted for to the Inland Revenue. This was achieved by requiring the payer to inform the Inland Revenue of the payments and to account for the tax deducted. Such provisions were included in the 1806 Act in relation to income from UK and foreign government securities and in the 1803 Act in relation to income from offices and certain public employments.

The 1806 rules provided that the payers (primarily the Bank of England) had, when any payment of interest was becoming due, to notify the assessing commissioners appointed by submitting “true” accounts of the payments to be made for each person. Those commissioners then assessed the Bank on the amounts of tax chargeable on those accounts, and the Bank was required to set aside the tax in a separate account and pay the net amount only. The set aside amounts were then to be paid to the account of the Commissioners of Inland Revenue at the Bank.

In relation to the charge on foreign public dividends, the system described above was modified so that any payer delivered an account to the Special Commissioners when a notice to do so was published in the London Gazette. This account had not only to be true, but “perfect”. The Specials assessed the payer, deducted the tax from the dividend when paid and paid the tax to the Inland Revenue. In default of payment the tax could be assessed and recovered in the normal way for income tax assessed. The payers were remunerated for doing this at a rate of 13s 6d per £1,000 (0.0675%) of dividends paid.

The rules for interest and dividends from overseas other than from overseas Governments introduced in 1853 were assimilated to the rules in the previous paragraph.

As to the income from offices etc (Schedule E) rules in force from 1803, they required the payer to deduct “the tax chargeable thereon” from any payments and to pay that tax to the Inland Revenue.

On the introduction in 1944 of Pay As You Earn, the previous system was formalised so that employers making payments of emoluments to employees were required to deduct tax from the payments and to pay the tax over to the Inland Revenue monthly with full details of the payments for each person.

The Inland Revenue had the power, if payments were not made in time, to assess the employers and enforce payment as if the rules of taxation of income from employments applied.

In relation to annual interest and other annual payments, withholding on certain payments not paid out of profits or gains of the payer was introduced in 1888. This required the payer to deduct a sum from any payment at the rate of income tax applicable, and to “forthwith” render an account to the Inland Revenue: the amount was treated as a debt due to the Crown and recoverable accordingly.

In 1927 this provision was amended, so that the account was to be provided for the use of the Special Commissioners , who assessed and charged the payment on the payer. The Specials we also given a power to assess where no return was made or they were not satisfied with one, and an appeal right was given against that assessment to the Special Commissioners.

When corporation tax was introduced by FA 1965, all annual interest and annual payments made by a company fell within the withholding rule, and new provisions were introduced requiring companies making payments to make returns quarterly of the payments and to pay the tax at the same time. The rules about assessments and appeals from 1927 applied, and these rules are still in force.

The 1927 rules continued to apply to payments by non-corporates, and are still in force.

**The income tax system and the payees of payments from which tax is deducted at source**

*Law applying to the payee*

Where a tenant recouped the Schedule A tax on the land they occupied, they were “acquitted and discharged” of the sum deducted as if was an actual payment of rent. The landlord was required to allow the deduction. The same applied where the land was charged with annual payments.

Similarly the recipient of interest and dividends on Government securities and receipts from abroad where a paying agent was involved was required to allow the deduction when they received the ”residue” of the payment.

Acquittal and discharge of the payer and compulsory allowance of the deduction by the reviewing applied to the deduction and retention rules for annual interest etc., and in the case of income from offices, allowance was required.

*The “rentiers”: 1803 to 1910*

The elaborate rules established in 1803 for the making of returns of income, the assessment of it and appeals against the assessments, Whitney stage 2, expressly did not apply to income which did not fall to be assessed. Thus a return required by the assessor of a parish, or the payer of fees from an office, did not include any income from which tax had already been deducted. Indeed a person might be required to make several such returns where income arose in different parishes.

This complete separation of the Whitney stage 2 system and the deduction at source system would have sufficed to ensure that every taxpayer was charged to tax on the correct amount of income, had the deduction of tax at source, withholding, been a final tax, but it was not. Although until 1909-10 there were no additional graduated taxes levied on income, all resident taxpayers were entitled to claim certain allowances and “abatements” of tax if they met the criteria. The main types of allowance from 1803 to 1910 were an exemption for small incomes, those up to £150, and an abatement, ie reduction of the rate of tax for the income above the exemption threshold and below a higher figure. Other allowances included one for life assurance premiums and for cases where a relative had caring duties. There were also unlimited exemptions for certain bodies such as charities and friendly societies.

In order to give effect to these allowances a rentier was required to make a claim which included a return of total income, to include all income which had suffered deduction at source. Such a return was normally made to the assessor for the parish, and thence to the Surveyor of Taxes (the Inland Revenue official) to which a return of trading profits was made. In cases where there either was none, or more than one, a return would be made in the parish in which the person resided. The Surveyor’s district covering that parish was known as the “General Claims District” (GCD) for that taxpayer. Non-residents were not entitled to abatements and exemptions so the question of where they should make the returns did not arise.

Making the claim and return to the assessor was a formality, as the assessor passed the claim to the Surveyor without further ado. Surveyors were instructed in this period to refer the first claims by individuals and all claims by bodies such as charities to a specialist Head Office division known as “Claims Branch”.

In theory claims made to the assessor in the first instance had to be allowed by the General Commissioners once agreed by the surveyor. Claims were given effect to by the surveyor for the GCD so far as possible by set-off against assessments under Schedules A or D, including future assessments, and only where that was not possible was a repayment made. Where there was more than one district elaborate procedures were in place to prevent more than one set-off (and more importantly, more than one repayment) being made for the same claim.

Where the surveyor disputed a claim (because for example he had doubts about the correctness of the total income return, or criteria for the claim were not met) the matter could be referred to the General Commissioners for their decision. Such a decision by them was final, even after the introduction of appeals to the High Court by way of case stated in 1874. Nor did claimants have any remedy against failure by Inland Revenue to make a repayment or to dispute the legality of set-off, except possibly by costly action using a Petition of Right or writ of mandamus .

The pure rentier, one with no assessable income, was of course entitled to be repaid, as there would be no assessments against which set-off could be made.

The Revenue issued a Form, R40, to enable those with investment income subject to deduction to claim repayment. It too required a return of total income, including any amounts which the taxpayer themselves paid to others under the deduction and retention rules. This was to ensure that relief was not given for allowances which had the effect that not all income was taxable and so the payment was not entirely out of profits and gains.

In this period, even where the rentier had assessable income, the two systems, deduction at source and Whitney-style assessment were kept separate, and any allowances set against whether one or the other by the Inland Revenue.

*The rentiers: 1910 to date.*

In the famous People’s Budget of 1909, David Lloyd George, the Chancellor of the Exchequer, introduced an additional tax (Super-tax) above the normal rate of income tax on total incomes in excess of £5000. Because it was charged on total income, a further requirement was also introduced on those whose incomes exceeded the threshold (and any others on demand) to make a return of total income to the Special Commissioners, on whom all the administrative functions of the super-tax were imposed.

Super-tax was imposed initially as

“an additional duty of income tax [then 5.83%] … at the rate of sixpence for every pound [2.5%] of the amount by which the total income exceeds three thousand pounds”

In this way it did not matter whether the total income was all assessed, received under deduction of tax or a mixture. No recognition of income tax on an assessment or deducted at source was reflected in a super-tax assessment, and the Special Commissioners did not need to know the make up of the income tax at the “standard” rate as it was now called.

Thus a rentier with, like Mr Whitney, sufficiently high total income would be in the non-Whitney system in relation to income tax at the standard rate deducted at source, and also within Whitney stage 2 and assessable as regards Super-tax (which is what the Inland Revenue were doing to Mr Whitney). Someone with taxed income and untaxed income might find themselves in three systems, two Whitney stage 2 systems for both income tax at the standard rate and Super-tax as well as the non-Whitney system.

In 1915 relief for management expenses was granted to life assurance companies. The relief was given by way of repayment of taxed income, so that these companies, with very large amounts of investments, became claimants for large repayments.

The Royal Commission on the Income Tax was set up in 1919 and reported in March 1920. It had little to say about the non-Whitney system and deduction at source. They considered, as urged by the Inland Revenue, to uphold the system as “of paramount importance, lying as it does at the very root of our Income Tax system.”

Inland Revenue estimated it collected 70% of the tax yield.

They reported that many witnesses had complained about the burden it imposed on those not liable at the full rate of standard income tax by depriving them “of the use of money which in the end the Crown has to refund”. They suggested certain ameliorations to combat this, such as extending the special arrangements for low income annuitants and pensioners to share- and debenture-holders. They also dealt with repayments at Part XVII of their report. In that section they approved the practice of Inland Revenue in applying repayments due to other assessments, but said there were many cases where that was not possible (because either they had no assessments or they were insufficiently large to enable set off the whole repayment (eg Schedule A assessments on the annual value of property or on small amounts of untaxed interest).

Many witnesses had been critical of the need to have repayment claims considered by the central Claims Branch, but the report noted that Inland Revenue had told them that arrangements were in hand to decentralise approval of many claims to tax districts. They also suggested quarterly or even more frequent repayments might be made. Their suggestions for legislative change were:

* Extend the time limit for all claims to six years for those with a three year limit and for the patchwork of different claims much tighter deadlines a minimum of one year, in both cases to run from the end of the year of assessment (5 April).
* Give a right of appeal to the Courts from a decision of the Commissioners or the Board of Inland Revenue in regard to repayments

but they declined to accept the suggestion of the leading tax barrister of the time (A M Bremner) to give a right to enforce repayment by summons before the High Court judge in charge of the Revenue list.

They also argued for a reduction in formalities –

* Mortgagors and mortgagees both liable at less than the standard rate to agree to deduct at a lower rate.
* Declarations of truth by charities to be made before a JP or Commissioner of Oaths instead of a General Commissioner
* An explanation by the Inland Revenue of the difference between the sum claimed and the remittance of the repayment
* Forms of claim (such as R40) to be issue in duplicate and in distinctive colours, to enable a copy to be kept by the claimant.

The legislative and administrative reaction to the Report included the introduction of a right of appeal to the High Court from a decision of the Commissioners on a claim , enacted in 1927.

The Finance Act of that year also radically changed the basis of assessment at rates in addition to the standard rate. The new basis was the assessment of total income at rates exceeding the standard rate (so that for 1928/29 that standard rate was 20% and income above £2,000 was charged at rates from 23.75% to 50%. However tax borne by the taxpayer at the standard rate was treated as a an instalment of the total tax payable for the year. Any excess tax (to be known as “sur-tax”), was charged as deferred instalment.

In that way for surtax payers the non-Whitney system and the Whitney Stage 2 systems were combined. It was however still possible for a pure rentier liable to surtax to be entitled to a repayment of income tax at the standard rate, for example if they were entitled to allowances or reliefs.

The decentralised provisions for repayment claims was given effect to at this time, though claims by charities and other totally exempt bodies continued to be made to Claims Branch. The practice of Inspectors of Taxes was to allow in-year repayments by instalments, though such claims had to be accompanied by particulars of income and tax deducted received so far. In the case of dividends a taxpayer could claim as soon as they had borne sufficient tax to cover the amount of the reliefs. In some cases such as large superannuation schemes, claims might be made weekly or fortnightly and required a lot of clerical input in the Inland Revenue. All claims, whether by instalments or not, were required to be accompanied by vouchers showing tax deducted. Claimants also had to give details of payments made by them under the system of deduction and retention of tax at source, as a repayment could not be made to the extent that tax needed to be kept in charge to frank the payment.

The legal rules for claims to repayment were formalised and recast to an extent in the Income Tax Management Act 1964 and then consolidated in sections 42 and 43 Taxes Management Act 1970 (TMA). These provided for:

* Claims to be made to an Inspector or the Board, without the involvement of any Commissioners
* Appeals against the decision of the Inspector or Board by written notice within 30 days of receipt of the notice of decision (with 3 months for certain claims with an overseas element)
* A requirement that the claim must be in such form as the Board determine with a declaration of truth and may require a return of income and gains.
* Claims to be given effect to by discharge (of an assessment) or repayment, the latter on receipt of proof that the tax has been paid by deduction or otherwise.
* Provision for supplementary claims in case of error or mistake.
* A time limit of 6 years, with power to extend in certain cases.

Although section 42 TMA was capable of applying to claims made in tax returns, in practice a claim eg for sideways set off of trading losses, such claims were settled either by agreement or by the Inland Revenue issuing assessments which, by not giving effect to it, disallowed the claim. Any appeal would be against the assessment, not against the decision on the claim. Those who did not make a return of total income such as rentiers, but who used the Form R40, would be governed by the whole of s 42, and any claim given effect to by repayment.

In the Finance Act 1971 surtax was abolished and the basic rate and graduated rate systems unified with effect from the tax year 1973-74.. This mainly affected the time when the tax at the higher rates was paid. Somewhat surprisingly, the new charge to income tax simply provided that:

“in respect of so much of an individual's total income as exceeds such amount as Parliament may determine, at such higher rate or rates as Parliament may determine”

Neither section 32 FA 1971 (as above) nor the provisions in subsequent Acts determining the higher rates nor any other provision mentioned what should be done with any tax deducted at source, other than a rule for tax credits on dividends:

“A person, not being a company resident in the United Kingdom, who is entitled to a tax credit in respect of a distribution may claim to have the credit set against the income tax chargeable on his income under section 3 of the Taxes Act or on his total income for the year of assessment in which the distribution is made and, where the credit exceeds that income tax, to have the excess paid to him.”

There is no explanation in this of what happens if there is also income tax deducted at source and whether one had property over the other. There matters rested until the law relating to self-assessment was amended in FA 1996?. The amendment to s 9 TMA provided for there to be:

“(b) an assessment of the amount payable by [the taxpayer] by way of income tax, that is to say, the difference between the amount in which he is assessed to income tax under paragraph (a) above and the aggregate amount of any income tax deducted at source and any tax credits …”

Finally, the non-Whitney system and the Whitney system appear to have been fully integrated. This was reinforced by providing in s 59B TMA:

“(1) … the difference between—

(a) the amount of income tax and capital gains tax contained in a person’s self-assessment under section 9 of this Act for any year of assessment, and

(b) the aggregate of any payments on account made by him in respect of that year and any income tax which in respect of that year has been deducted at source,

shall be payable by him or (as the case may be) repayable to him …”

thus it provided explicitly for a repayment to be made without a requirement for a claim.

When self-assessment was introduced, section 42 TMA was also remodelled so that it required a claim to be made in a return if it could be (ie if one had been required), but otherwise a new set of provisions governing the making and giving effect to non-return claims, including enquiries into them, was added to TMA as Schedule 1A. One innovation in Schedule 1A was that it put an obligation on the Inland Revenue to give effect to the claim “as soon as practicable” after it is made, by discharge or repayment of tax. But where an enquiry is opened into the claim, the officer concerned may withhold part or all of the claim.

This procedure contrasts with the self-assessment case where any repayment that is self-assessed (section 59B TMA) is repayable on 31 January after the tax year, even if the return is enquired into.

An irony needs to be noted though. Soon after the Schedule 1A provisions were introduced, deduction at source from investment income, for residents at least, rapidly declined. Tax credits on dividends payable to exempt bodies were removed in 1999, and abolished altogether in 2016. Deduction of tax from bank interest was abolished at the same time.

The provisions of paragraph 2 Schedule 1A do not however gave the claimant any right to enforce the making of a repayment when it is not enquired into, nor does s 59B TMA give any such right. In a Whitney case where there is an assessment to tax which becomes due and payable, the Inland Revenue have always had a number of ways of enforcing the debt (ie Whitney stage 3).

Mr A M Bremner pointed out to the Royal Commission that in a case where the repayment is being apparently unnecessarily delayed, judicial review (by a write of mandamus) may be possible as was done in *Opman International Ltd*. But things are slightly different in the other main area where the Whitney system does not apply.

*PAYE taxpayers 1944-2022*

In most cases of deduction at source considered earlier, the rate of tax has been the standard or basic rate of tax applying. It is because of that that the possibility of repayments arise whenever a relief or allowance reduces a person’s liability to tax to a rate below that standard rate. There were certain arrangements in place before 1944 under which the rate of tax deducted might be lower or waived entirely, but PAYE differed because it was the very essence of the scheme that the tax tables and codes designed to tell employers how much tax to withhold from each employee’s pay every week, month or otherwise, was to be as close as possible to their actual liability for the year.

This was set out in s 2(2) Income Tax (Employments) Act 1943 thus:

“(2) The said tax tables shall be constructed with a view to securing that, so far as possible,—

(a) the total tax payable in respect of any emoluments for any year of assessment is deducted from the emoluments paid during that year; and

(b) …

In this subsection the references to the total tax payable for the year shall be construed as references to the total tax, other than surtax, estimated to be payable for the year in respect of the emoluments, subject to a provisional deduction for allowances and reliefs …”

The operation of PAYE on the entirety of a person’s income by the use of a code number which was given to the employee with instructions on how it might be changed and what information was needed to do so made it unnecessary for a tax return to be issued. Instead a PAYE taxpayer’s annual liability to tax was determined by the Inland Revenue in a process known as the annual reconciliation. This compared the records of payments and tax deducted by the employer and sent to the Revenue at the end of the year (P14 and P35) with the information held about a person’s allowances and any income eg from benefits which had not been taken into account in fixing the code number.

Where the deductions made and the liability under the law (Whitney stage 1) coincided within a small tolerance no further action was required. If total liability exceeded the deduction, the “underpayment” was usually collected by restricting the code number in the following year, but it might be assessed in a Schedule E assessment (a truncated version of Whitney stage 2). After the introduction of self-assessment Schedule E assessments disappeared, replaced by a self-assessment of total income. Instead of requiring every taxpayer to make a self-assessment, the Revenue adopted a policy of seeking voluntary payment to them of underpayments in cases where they believed they could not effect recovery through a code number for later periods (coding out). If this did not work, HMRC issued a notice to file a return (thus making them subject to the normal Whitney stages 2 and 3 processes) so that they could establish an enforceable debt. This approach was upheld by the Upper Tribunal, but while the case was proceeding a new form of “simple” assessment was introduced to replace the voluntary requests and then notice to file. This too was a truncated form of Whitney stage 2 and allows for Stage 3.

If deductions exceeded liability then the question arises – what then? The Regulations made for PAYE have always stated that in determining a code for a year the Revenue may (since 2003 must) have regard to any tax overpaid which had not been repaid. That obviously permits the Revenue to make the repayment by increasing the code number so that it is paid in instalments during the year in which the code is operative, but does not explain why otherwise tax is repayable. The Revenue’s PAYE Manual does not even have a section covering coding in overpayments.

There is nothing in the Taxes Acts up to and including ITEPA 2003 which refers to a repayment being made in these circumstances outside the normal provisions relating to claims or gives the Revenue power to make regulations to cater for such repayments, nor do any of the regulations. The Revenue’s PAYE Manual simply assumes that repayments may be made in the light of a reconciliation calculation. What avenues are open to a taxpayer who believes that their overpayment is higher than the Revenue calculation, or who believes that they have been treated as underpaying when they have overpaid?

In the latter case they may appeal against a simple assessment but only after having raised a query and been given a final response. However the possible responds by HMRC do not include making a repayment, only to cancelling it. This contrasts with a self-assessment where the outcome of a dispute may be to establish an amount repayable.

A possible other way of settling a dispute of this kind is to object to a code number on the basis that the Revenue had failed to have regard to a repayment due which should have been reflected in the coding. Failing a satisfactory dealing with the objection, an appeal lies to the Tribunals.

Another possible remedy is to invoke s 711 ITEPA and demand a notice to file a return, so that the repayment becomes repayable under s 59B TMA.

The only other remedy appears to be judicial review, which because of the cost is unlikely to be an option for the average taxpayer not within self-assessment.

None of this detracts from the fact that a PAYE taxpayer outside the self-assessment system may make such other claims as they wish, which are subject to paragraph 2 Schedule 1A TMA.

*Drawing the threads together*

Throughout the period from 1803 onwards when the income tax was in force, the Acts dealing with the tax have contained a very large number of provisions dealing with Whitney Stage 2. Those provisions have been the subject of the overwhelming number of reported tax cases before the courts, and took up very substantially all of the time of the General Commissioners. The offices of the Revenue were also substantially devoted to carrying out Whitney Stage 2.

Very little procedural law in those Acts has dealt with non-Whitney taxpayers or even expressly with deduction at source. The rights of non-Whitney taxpayers were sketchy and not generally laid down in the law or not laid down until much later than any laws about obligations to the Revenue. The procedural law of PAYE as it affects the employee was and is in secondary legislation which still does not clearly establish a right to repayment after a reconciliation.

This paper has sought to bring to light in as coherent a way as possible the way that non-Whitney taxpayers have been dealt with over the years both by the law and Revenue practice.