

**THE FEDERAL INCOME TAX: A
SERIES OF LECTURES DELIVERED
AT COLUMBIA UNIVERSITY IN
DECEMBER, 1920**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649582099

The Federal Income Tax: A Series of Lectures Delivered at Columbia University in December, 1920 by Robert Murray Haig & Thomas S. Adams & Thomas Reed Powell

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S. ADAMS & THOMAS REED POWELL**

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BY

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*A Series of Lectures
Delivered at Columbia University
in December, 1920*

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New York

COLUMBIA UNIVERSITY PRESS

1921

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INTRODUCTION

THE PROBLEM IN GENERAL

BY

EDWIN R. A. SELIGMAN, Ph.D, LL.D.

The taxation of income is a relatively new phenomenon in American fiscal life. Only within a decade has the Federal Constitution been amended so as to make a national income tax possible; and this amendment came in the nick of time. It is appalling to think of the situation into which we should have been plunged had we not been in a position to alight our revenues during the Great War from this source. The very newness, combined with the hugeness, of this fresh device has, however, naturally engendered all sorts of difficulties from which we are slowly trying to extricate ourselves.

In every new fiscal project there are three stages which must be traversed. The first is for the legislator to decide as to the fundamental principles on which the bill is to be constructed. These principles are primarily economic in character. Inasmuch as fiscal science is still a youthful discipline in America and in view of the comparative insignificance of the income tax in the public finance of foreign countries, the economists have not yet addressed themselves, with complete success in achieving unanimity of results, to many of the problems which must guide the legislator. Some of these questions have indeed received a fairly careful study, such as that of exemptions and abatements for the minimum income, the justification of progressive taxation, and the position that ought to be occupied by an income tax in the general fiscal scheme. But other and equally fundamental problems still await a searching examination at the hands of economists and students of public finance.

At the very outset we are confronted by the question of

what income really means. To this many answers have been given. But no thoroughgoing fiscal analysis of the conception has yet been made, and as a consequence no two countries agree in the law on the subject. Among the fundamental points at issue here are questions like the following:

Is income to be conceived of in terms of money, of money's worth, or of mere psychic benefit? If income is a flow and capital a fund of wealth, between what periods of time is the flow realized, and when does the flow congeal into a fund? Are both realization and separation necessary to the concept of income? Does income include the appreciation of capital? Are gifts to be considered income? The decision as to these and many other similar questions waits upon a far more thorough analysis than is found in the ordinary books.

After this basic question is settled other difficult problems present themselves. The general rate of taxation is indeed primarily a political question and, as such, one for the statesmen to ponder and decide. But the question of the effects of a drastic progression and of the influence of high surtaxes involves an economic analysis. Again, while there is substantial unanimity among students of public finance as to the desirability of differentiating incomes according to the sources from which they are derived, there is great diversity of opinion as to the more recent proposition of differentiating incomes according to the purpose to which they are to be devoted. In other words, while the distinction between earned and unearned income is generally accepted, this is far from being the case as to the distinction between income saved and income spent.

A similar lack of unanimity is manifest in the treatment of losses, as contrasted with gains, in the problem of wasting assets, and in the domain, so important in modern industrial society, of business reorganizations. On every side, in fact, we are confronted with problems bristling with difficulties, into which the economist has thus far put scarcely more than an entering wedge and without a successful treatment of which the legislator must necessarily flounder. It is the purpose of these addresses to attempt a beginning at least in the contribution to a more thoroughgoing economic analysis. Until fis-

cal science reaches a definite conclusion on these problems the way of the legislator will be a thorny one.

In the second place, it is to be noted that even though the fundamental economic and fiscal principles have been settled, the legal and constitutional aspects of an income tax law, as indeed of all laws, is of commanding importance. So far as the mere framing of the language is concerned, the matter can well be left to the bureaus of legislative drafting and to the competent official advisers of the legislature. However, when we leave the field of phraseology, important though that be, and enter upon that of legal and constitutional validity, we again encounter many difficulties. Here we have to deal not only with the precise legal effect of the various provisions of the act but with their constitutional aspects. It is questionable whether the legitimate desire to give a fixed constitutional interpretation of a complicated statute like the income tax law is not resulting in a regrettable tying of the hands of the legislator and an undue curtailment of legislative discretion, with the result of raising many new problems in the place of the single problem which the courts endeavor to settle. We are already now beginning to suffer from a complexity which is more or less foreign to the system in England or other countries. Inasmuch as certainty is one of the prime requisites of a good tax system, the attempt of our courts to achieve certainty and to make it harmonize with constitutionality is one of supreme interest. Several of the addresses in this course, accordingly, are devoted to problems of constitutionality and of legal interpretation.

The adoption by the legislator of definite economic principles and the enactment of these principles into a well-phrased, well-considered, and constitutionally valid enactment constitute only a part and perhaps even the minor part of the matter. Since a law has to be executed, the administrative aspect of an income tax is perhaps the most significant of all. It is precisely here that the chief difficulties are encountered. For it is proverbial that democracies are for obvious reasons relatively weak in the administration of laws. This is especially true in the case of the income tax. The novelty and the immensity of

the system have put upon our administration a responsibility under which it is staggering and groaning. The difficulty in the problems of administrative interpretation of the income tax is evidenced by the flood of administrative regulations which have been issued during recent years.

There are two points apart from the results of general political considerations which distinguish the American from the British income tax administration. In the first place, a broader discrimination is vested by the British law in the administrative authorities than is the case in the United States. This lack of administrative discretion and the virtual tying of the hands of the administrator are responsible for not a little of our existing embarrassment. On the other hand, however, the attitude of the official toward the taxpayer is different in the two countries, perhaps in part as a result of the above situation. Whereas the British administrator seeks primarily to do even-handed justice, as between the individual and the government, the American administrator has as his paramount aim the interests of the Treasury. In the one case we have a more or less successful accommodation with the particular taxpayer; in the other case we have, frequently, a more rigid and inelastic interpretation of the law. The problems of dealing with the individual taxpayer, of the relief provisions, of the Treasury procedure in particular cases, of the treatment of inventories, of consolidated returns and the like—all these involve administrative problems of the greatest difficulty and complexity. Not a few of the addresses of this course deal with such problems.

The gentlemen who were invited to prepare the following contributions are each of them acknowledged authorities in their respective fields. Economists, accountants, lawyers, and administrators—they form a group the coöperation of which is indispensable in any attempt to make the American income tax worthy of the paramount rôle which it is destined to play in our fiscal system for many a long year. These addresses constitute, as a whole, the most signal attempt that has yet been made in any country to elucidate the basic principles of importance to the framer, the administrator, and the payer of the modern income tax.