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THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION was founded in 1939. For reasons of organizing character this Bureau is established as a separate foundation according to Netherlands law. The Bureau is a scientific, independent, non-profit making, non-political foundation of which the purpose is defined in the articles as follows:

(*art.* 2) The Object of the International Bureau of Fiscal Documentation is the foundation and maintenance of an international documentation bureau, in order to supply information in fiscal legislation and the application of fiscal law, and to stimulate the study of fiscal science.
(*art.* 3) The International Bureau of Fiscal Documentation shall endeavour to realise this object by:
a. founding a library on fiscal legislation, books, periodicals and other publications;
b. supplying information;
c. giving any one the opportunity to study all material available in its library;
d. issuing a periodical;
e. any other appropriate measures.

In close co-operation with the I.F.A. and with the aid of experted cooperators in a great number of countries, the Bureau tries to collect all possible data in the sphere of national and international fiscal law. In this way the Bureau will be able to supply detailed information concerning special subjects (no advice is given) for which a fee is due, which is necessary for the maintenance and extension of the Bureau.

On general subjects the Bureau brings out publications of documentary character in the Series: "Publications of the International Bureau of Fiscal Documentation," and in the Series "Studies on Taxation and Economic Development."

These series have been supplemented by various special publications. Since 1961 the Bureau has published *European Taxation,* at first as a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, but since January, 1965 as an expanded monthly periodical. A new loose-leaf, "Tax News Service", first published in 1965, brings rapid information of world-wide tax developments. Two loose-leaf services were started in 1963: "Supplementary Service to European Taxation" and "Guides to European Taxation". The latter series includes two published volumes:

"Taxation of Patent Royalties, Dividends, Interest in Europe"

"Corporate Taxation in the Common Market".

LE BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE fut fondé en 1939. Pour des raisons de caractère organisatoire, ce Bureau est établi comme une fondation séparée conformément au droit civil néerlandais. Le Bureau est une institution scientifique, indépendante, sans but lucratif en sans objet politique, dont le but est défini dans les statuts comme suit:

(art. 2) le but du Bureau International de Documentation Fiscale est d'établir et de maintenir un bureau international de documentation tendant à fournir des informations concernant la législation fiscale et l'application du droit fiscal, ainsi qu'à stimuler l'étude de la science fiscale.
(art. 3) C'est par les moyens suivants que le Bureau se propose d'atteindre ce but:
a) en établissant une bibliothèque contenant un grand nombre d'ouvrages, revues et d'autres publications dans le domaine fiscal;
b) en fournissant des informations;
c) en procurant à tous ceux qui s'y intéressent l'occasion de consulter les ouvrages qui se trouvent dans la bibliothèque;
d) en publiant un périodique;
e) en recourant à tous les autres moyens dont on peut disposer.

Le Bureau veut, par une coopération avec l'IFA et avec l'aide d'experts d'un grand nombre de pays, rassembler toutes les données possibles dans le domaine du droit fiscal national et international. De cette façon, le Bureau est à même de fournir de renseignements détaillés concernant des problèmes spéciaux mais sans donner d'avis. Pour ces renseignements on demande des honoraires nécessaires pour le maintien et l'extension du Bureau. Sur des sujets généraux, le Bureau publie des études de caractère documentaire dans la série: Publications du Bureau International de Documentation Fiscale.

Ces séries ont eu des suppléments spéciaux et variés. Depuis 1961 le Bureau a publié la revue European Taxation, d'abord comme une revue bi-hebdomadaire en langue anglaise portant sur les développements fiscaux dans le continent européen, le Royaume Uni et l'Ilande, puis à partir de janvier 1965 il devenait mensuel et s'augmentait du Tax News Service, présenté sous feuillets mobiles donnant une information rapide, à l'échelle mondiale, de tout ce qui touche à la fiscalité. En 1963 paraissaient, toujours sur feuillets mobiles, d'une part «Supplementary Service to European Taxation» et d'autre part les «Guides to European Taxation». Cette dernière série comprenaient la publication de deux volumes, *en langue anglaise:* «Régime fiscal des redevances, dividendes et intérêts en Europe» et «L'imposition des sociétés de capitaux dans les pays du Marché Commun»

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(*art.* 2) the object of the Association is the study of international and comparative public finance and fiscal law, especially international and comparative law of taxation, together with the financial and economic problems connected therewith.
(*art.* 3) The Association shall endeavour to realise this object by:

a) organizing Congresses;
b) issuing a periodical;
c) founding one or more libraries and a documentation bureau;
d) and other appropriate measures.

L'IFA fut fondée le 12 février 1938 par un nombre d'experts en matière fiscale de divers pays. Le but et l'organisation sont définis dans les Statuts comme suit:
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(*art.* 3) l'Association se propose de réaliser ce but en

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(b) publiant un périodique;
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CONTENTS

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I

FOREIGN INVESTMENT AND TAXATION IN INDIA

by

K.C. KHANNA*)

"Anybody who invests in India is a sucker but anybody who does not invest in India is a bigger sucker". (Anonymous American).

India has a total area of about 1,260,000 square miles which is nearly equal in size to the whole of Western Europe. With a population of about 460 million it is the second most populous country in the world. Every seventh person in the world today is an Indian!

India is a sovereign democratic republic with a parliamentary form of government based on universal adult franchise. It is a federal Union of 16 States and 6 Centrally administered Union Territories.

Scope for Foreign Investment

In 1949, two years after India gained Independence, the late Prime Minister Nehru declared that India welcomed foreign capital and recognised that it would come only if the foreign investor was assured of profit and security. He stated in the Indian Parliament "Indian capital needs to be supplemented by foreign capital not only because our national savings will not be enough for the rapid development of the country on the scale we wish, but also because in many cases scientific, technical and industrial knowledge and capital equipment can best be secured along with foreign capital". Over the last fifteen years, there has been no turning back; in fact, the opportunities for foreign investment have widened over the years. In his last Budget speech in February, 1964, the Central Finance Minister, Mr. T.T. Krishnamachari observed "we should specially welcome foreign investment in the shape of equity capital which not only brings with it technical know-how and managerial skills but also a special advantage of not adding to the heavy and growing burden of debt repayment".

The scope for foreign private investment in India is very large indeed because India at the moment is very short of technical and financial resources and must catch up on the short-falls on the third Five Year Plan, which recognises that with the best effort the country can make to enlarge its foreign exchange earnings, it cannot for a number of years cope with the increasing import requirements of the economy. Foreign exchange has either to be earned by exports or has to be secured through an inflow of external resources.

* The author is a member of the Institute of Chartered Accountants of India; Member of the Seven Man Study Group of the International Fiscal Association.

In recent years foreign capital has come to India mostly in the shape of foreign aid which means loans from Government to Government or from specialised institutions to the Government of India. The share of Britian, U.S.A. and other countries comprising France, West Germany, Japan etc., in the inflow of foreign private capital into India in 1960 was 65%, 16% and 19% respectively against the corresponding shares of 82%, 9% and 9% in 1955. The total of such investments has risen from about Rs256 crores in 1948 to about Rs668 crores in 1963. The annual average inflow of private foreign investment during the last 15 years has only been about Rs.30 crores, the net addition to foreign private investment during the last three years having been of the order of Rs50 crores to Rs60 crores a year. This is grossly insufficient for the country's requirements and so further efforts must be made to increase the inflow.

Inducements to Foreign Investment

India's attractions for the foreign investor mainly stem from her political and economic stability, her uniformly good record in meeting her obligations and the freedom she allows in repatriating capital and earnings - factors which cannot be taken for granted in many other developing countries. An even more important factor is the existence of a fairly developed infrastructure which is steadily expanding. Power and transport facilities are developing fast to support industrial growth. A large and growing domestic market - a sheltered one at that—is another major attraction which the country offers. From the point of profitability too, the prospects are fairly promising. According to a study by the U.S. Department of Commerce, earning of direct American investment in India in manufacturing industries was amongst the highest in the world, being 20.6% in 1962 compared with a mere 9.1% in Japan, 18% in Pakistan, 12.7% in Phillipines and 12.6% in Western Europe. As for British capital, a survey conducted by the Board of Trade showed that the return in 1962 amounted to 9.4% which was higher than the return earned on British investments in U.S.A., Australia and Canada. Besides the fair level of profitability and a vast home market, India gives a closer access to the developing countries in both Asia and Africa.

In a report prepared by the First National City Bank of New York for the benefit of American investors in India, the Bank states that a very large part of the increased investment in India was through retained earnings which could have been repatriated. This, the Bank concludes, is indicative of the investor's faith in India's long run potential. There is no restriction imposed on foreign investment which is not equally applicable to domestic investment. In the unlikely event of compulsory acquisition or nationalisation of an undertaking, India's Constitution guarantees adequate compensation.

Government's Industrial Policy

A philosophy of mixed economy has been reflected in the industrial policy resolution of the Government of India which divides the whole industrial field in three categories:

(a) those which are the exclusive responsibility of the State, for example arms and amunition, atomic energy, heavy electrical plants, coal, mineral oil etc.;
(b) those that are open both to public and private sectors, for example aluminium, machine tools, ferro alloys, essential drugs and fertilizers etc.; and
(c) the remaining industries to be developed through the initiative and enterprise of the private sector.

The form of foreign private investment which is looked upon with the most favour by the Government of India is that of joint collaboration ventures with Indian partners. This form of investment not only places least strain on the balance of payments, but by providing technical know-how it helps to train Indian personnel. It also helps in widening investment of Indian capital and managerial skill. Foreign collaboration may be in the form of equity capital participation, for technical collaboration involving payment of royalties, technical service fees, appointment of foreign personnel etc.

While as a general rule, the Government of India prefers to retain majority ownership and effective control of an undertaking in Indian hands foreign collaborators may be allowed majority shareholding in new projects if

(a) the project has a high priority ranking in the plan programme;
(b) the amount of the foreign exchange required for the project justifies majority participation by the foreign collaborator; and
(c) the main contribution of the project is in a field of technology wherein India has not made much progress or where additional development seems necessary.

The Government does not generally favour the establishment of an industrial venture which is wholly owned by the foreign investor. Indian participation is normally insisted upon. In addition, the Government expects suitable provision for the training of Indians for technical and administrative posts. Ordinarily foreign investment is not permitted in trading or commercial activities or in plantations and in banking and insurance.

In the past four years the number of schemes approved for foreign technical collaboration and financial participation was as follows:

Year	Number
1960	390
1961	402
1962	299
1963 (upto 30th Sept.)	227

Collaboration cases approved by the Government in the past four years cover a wide range of large and medium sized industries which include alloy and special steels, steel castings, steel forgings, non-ferrous metals, heavy structurals including cranes, industrial machinery for textiles, jute, mining, washeries, cement-making, paper making and sugar machinery, machine tools, shovels and earth-moving equipment, motor cars and ancillaries, ball and roller bearings, electric motors and transformers, cables and wires, other electrical industries, heavy chemicals, miscellaneous chemicals, fertilizers, drugs and pharmaceuticals, dye stuffs, rayon and staple fibre, paper, paper board and pulp etcetera, refractories, plastics, rubber manufacture (including synthetic rubber) industrial gases, cotton textiles, industrial and scientific instruments and watches.

Industrial Licensing Procedure

The chief instrument employed for the execution of the Government's industrial policies is the licensing procedure adopted under the Industries (Development and Regulation) Act 1951, which requires a new undertaking to obtain a licence for the manufacture of any product covered in the First Schedule of the Act, employing more than 100 persons or having fixed assets in excess of Rs.10 lakhs. Such licence is also necessary in the case of existing undertakings for substantial expansion or manufacture of a new product or change of location.

Confronted with an acute shortage of foreign exchange the Government of India has wisely adopted a flexible and pragmatic approach in dealing with the foreign investor and the Finance Minister has recently reiterated that the doors to foreign investment must be opened wider. Apart from adopting a more flexible approach, the Government has initiated a number of administrative and procedural reforms with a view to reducing red tape, delays and cumbersome procedures which might have been a deterrent to foreign investors. Accordingly, a "letter of intent" is now issued to an industrialist within about a month from the date of the receipt of an application from him for starting an industry in the country. This "letter of intent" gives the applicant the earliest possible opportunity to finalise other parts of his project, terms of foreign collaboration, import of capital equipment, issue of capital etc., and indicates the conditions on which the Government is prepared to grant licence. All applications for further clearances will be considered simultaneously within a period of four weeks.

The application for industrial licence or permission should be made to the Secretary, Ministry of Commerce and Industry, New Delhi. For quicker disposal, one copy each of the application should also be forwarded to the Director of Industries of the State concerned and to the appropriate technical authorities of the Central Government such as Development Wing, Textile Commissioner, Iron

& Steel Controller etc. The application should, among other particulars, give information in respect of

(a) capital structure,
(b) foreign collaboration,
(c) requirements of foreign technicians,
(d) investment envisaged,
(e) requirements of capital equipment, raw material, rail transport, land, water and power supply, staff, labour and management etc.

If the proposed project involves the issue of capital exceeding Rs.25 lakhs and the import of plant and machinery, applications should also be made to the Controller of Capital Issues, Ministry of Finance and the Chief Controller of Imports and Exports, New Delhi. New and existing units having fixed assets not exceeding Rs.10 lakhs in value do not require a licence under the Industries (Development & Regulation) Act.

Broadly, the cost of capital equipments to be imported is allowed as a minimum to be financed from abroad. This is permitted either as equity participation or in the form of equity and loan capital.

The Government of India have recently appointed a Committee of senior officials to assist industrialists and foreign collaborators. The committee deals with projects costing over Rs.5 crores and advises private investors in regard to licensing procedure etc.

After the Central Government's approval has been obtained an application should be made to the Reserve Bank of India for its approval in regard to the foreign exchange implications of the project and permission for issuing shares to foreigners in terms of the Government's approval. The proposed project shall also be registered as a public or private company with the Registrar of Joint Stock Companies.

Taxation of Companies

In India, corporate organisations are called companies. For income tax purposes, a company includes:

(a) an Indian company, that is, an organisation incorporated and registered in India under the Indian Companies Act; and
(b) a foreign organisation which has been assessed in India as "company" in the assessment year 1947-48 or has obtained a declaration from the Central Board of Direct Taxes for being treated as "company" for the purposes of Income-tax Act.

To acquire the status of a company, a foreign corporation should obtain the necessary declaration from the Central Board of Direct Taxes, New Delhi. For this purpose a foreign corporation should apply to the Central Board of Direct

Taxes with proof of incorporation, copy of Articles and Memorandum of Association, and brief details of its activities in India. Such a declaration in actual practice is made in every case in which the foreign organisation possesses the ordinary characteristics of a company limited by shares and is treated as a legal entity under the law of the country of its incorporation. In the absence of such requisite declaration, a foreign corporation will be treated as an "association of persons". At current rates of taxation, if a foreign company's income is likely to exceed Rs.100,000, it will beneficial for it to be assessed as a 'company' in India.

Assessment Year and Previous Year

The Financial year of the Government of India commences on 1st April and ends on 31st March next following. For purposes of tax this is called the 'assessment year'. The rates of tax to be levied for the assessment year are prescribed by the Finance Act which is enacted by Parliament every year. The tax for an assessment year is levied in respect of income derived in the 'previous year' which is generally the year ending 31st March immediately preceding the financial year. Where accounts are maintained for a different period, the 'previous year' will, at the option of the company, be the accounting year ending in the immediately preceding financial year.

A new business can choose any year as 'previous year' by closing its accounts for the appropriate period within twelve months of its setting up, even though the period covered for the first assessment year is less than a year. Once the 'previous year' is determined for a particular source of income, it cannot be changed for any subsequent year except with the consent of the Income-tax Officer and on conditions, if any, imposed by him.

Residence of Companies

A company is treated as resident in India if

(a) it is an Indian company, that is, a company registered in India, or

(b) the control and management of its affairs is sit ated wholly in India.

Thus if control and management is partially situated outside India, a non-Indian company becomes non-resident. Generally speaking, all foreign companies are non-resident companies under the Indian Income-tax Act, 1961.

Scope of Taxable Income

The taxable income (total income) is computed with reference to a company's residential status. In the case of a resident company, total income of a previous year includes

(a) income received or deemed to be received, in India in such year by it or on its behalf;

(b) income which accrues or arises or is deemed to accrue or arise, to it in India during such year; and
(c) income accrues or arises to it outside India during such year.

In the case of a 'non-resident' company, total income of a previous year includes
(a) income received, or deemed to be received, in India in such year by it or on its behalf; and
(b) income which accrues or arises, or is deemed to accrue or arise to it in India during such year.

If an income is included in the total income on the basis that it has accrued or arisen or is deemed to have accrued or arisen, it shall not again be so included on the basis that it is received or deemed to be received in India. For attracting tax liability, the place of accrual and receipt of income is important and the place of control and management of business is not material except for determining the residence. Under the Income-tax Act there are some provisions which deem that a particular income accrues at a certain place even if it actually accrues at other places. Thus income is deemed to accrue or arise in India if it accrues or arises directly or indirectly:
(a) through or from any business connection in India;
(b) through or from any property in India;
(c) through or from any asset or source of income in India;
(d) through or from any money lent at interest and brought into India in cash or in kind; and
(e) through any transfer of capital asset in India.

In addition, dividends paid by an Indian company outside India are deemed to have accrued in India.

The expression 'business connection' used earlier does not admit of precise definition. It, however, connotes an element of continuity in the relationship between the agent, licensee or other person in India who assists in earning profits and the non-resident who receives or realises them. Isolated transactions will not ordinarily amount to a business connection. Dealings between a resident and non-resident on the basis of principal to principal will not be a 'business connection'. The Act specifically provides that where purchases are made in India by a non-resident solely for the purpose of export such transactions shall not constitute a 'business connection'. Only those profits arising through or from 'business connection' which can be reasonably attributed to the operations in India are taxable. Where separate accounts are maintained for operations in India there is no difficulty in computating the taxable income of a foreign enterprise. Where separate accounts for Indian business do not exist taxable profits are estimated either with reference to a percentage of Indian turnover, or on the basis of proportionate profits on Indian turnover as compared to world turnover.

The tax is attracted if income is received in India by the company or on its behalf, irrespective of where the profits have arisen. The income, profits and gains may be received either in cash or in kind or both. However, income accruing or arising outside India cannot be deemed to be received in India merely because a particular item has been taken into account in a balance sheet prepared in India. Remittances of capital to India are not taxable. Remittances to India of past income earned abroad are also not taxable under the Income-tax Act, 1961.

Foreign Company Operating in India

A foreign company may operate in India by

(a) opening a branch in India;

(b) forming a subsidiary Indian company;

(c) holding a minority interest in an Indian company.

The tax position in each case is examined below:

(*a*) A branch of a foreign company is not treated as a separate entity and for purposes of income-tax the foreign company itself will be treated as the assessee. However, being non-resident it will pay tax only on income arising or deemed to arise in India as well as on income received or deemed to be received in India. Interest and royalty payments to the head office cannot be claimed as deduction from the profits of the branch. A reasonable portion of the overhead expenses incurred in the head office, however, can be so claimed. The loss arising outside India cannot be set off against income in India. The company will pay the tax at the current rate of 65 per cent subject to concessions by way of tax holiday, development rebate and spread of capital expenditure on scientific research etc. considered later. The foreign company will be entitled to double taxation itself, if such agreement exists between its country and India.

(*b*) The subsidiary Indian company being resident in India, will be assessed on all its income whether arising in India or outside. The parent company will be taxed on dividends, interest and royalty, if any, received from the subsidiary. However, the subsidiary can claim against its income the interest and royalty paid as deductions. The Indian company will pay tax at the current rates subject to concessions and rebates, if any. It will be entitled to double taxation or unilateral relief, as the case may be, if any income arises to it outside India and is subject to tax in another country. The parent company will pay tax at the appropriate rates on dividends received from the Indian company, royalty, interest and other remaining income. The dividends, if any, paid out of the tax-free profits of the Indian company under tax holiday provisions will not bear any tax. The parent company will be entitled to double taxation relief if any such agreement exists between its country and India.

(*c*) In respect of minority holdings in an Indian company formed and registered

on or after 1st April, 1961, the position will be the same as for an Indian subsidiary company discussed in (b) above.

In short there is no difference in taxation whether a foreign company holds majority or minority interest in an Indian company formed on or after 1st April, 1961.

Rates of Company Taxation

Companies are charged a basic income-tax at the rate of 25 percent of all taxable income; the only exception is a concessional rate of 15 percent on dividend income received by a foreign company from a closely-held Indian company engaged in priority or basic industries. Such industries mainly include the manufacture of iron and steel, ferro-alloys, aluminium, copper, lead, zinc, industrial machinery, boilers and steam generating plants, equipment for generation and transmission of electricity, machine tools, tractors, steel castings and forgings, paper, pulp, tea, electronic equipment, petrochemicals and mining industries.

In addition to income-tax, supertax is charged on all companies. The standard rate of super-tax is 55 percent but is subject to varying rebates depending on the nature and quantum of a company's income, the type of goods manufactured, its capital structure and the distribution of its shareholding, the extent of dividends distributed by it, the issue of any bonus shares and a number of other factors. A distinction is also made between companies in which the public is not substantially interested (closely-held corporations) and others. A further differentiation is made in the super-tax chargeable between a company which has made prescribed arrangements for declaration and payment of dividends in India and a company which does not declare and pay dividends in India. Ordinarily a foreign company, that is, a company which is not registered in India is not likely to declare and pay dividends in India. Accordingly the rates of tax applicable to foreign companies are those which apply to companies which have not made prescribed arrangements for declaration and payment of dividends in India. Details of current tax rates have already been given in Tables A and B published on pages 274 and 275 of the Bulletin's issue for July, 1964 (XVIII/7) to which a reference may be made. The position in regard to different types of income earned by a foreign non-resident company is summarised below:

(a) Dividends received from an Indian Company

In India dividends received by one company from another are charged to income-tax (not super-tax) in the recipient company's hands even if the dividend paying company has paid full tax on its profits. The rate of tax on intercorporate dividends received by a foreign company from an Indian Company is 25 percent with the exception of a rate of 15 percent payable by a foreign company on dividends

received from a closely-held Indian company engaged in a priority industry referred to above. No expenses are allowed as a deduction from dividend income. Tax on dividends is withheld at source.

(b) Royalties received from an Indian Concern

Royalty terms vary widely; in the case of engineering concerns royalty rates have been as low as 1.5 percent and as high as 10 percent. In considering what is reasonable, account is taken of the complexity of the manufacturing process involved, the essentiality of the article and the sales potential.

The Government of India feels that royalty as a source of income should not be treated differently from other sources of income for purposes of taxation. Thus income derived, whether periodically or in a lump sum, from royalties for the use of patent, process, formula or trademarks is taxable just as any other income. If payments of royalty are made by way of a free issue of equity shares the value thereof will be subject to tax. Income from royalty accrues wholly in this country in which the patent, process or trade mark is actually exploited. Consequently royalty received by a foreign patentee in respect of use of its patent in India is considered to arise in India even if the patent is registered in a foreign country. In the computation of taxable income from royalties any legitimate current expenditure for the purpose of earning the income is deductible. Royalties payable by an Indian concern in pursuance of an agreement made on or after 1st April 1961 and approved by the Indian Government are charged to tax at 50 percent; previously the rate was 63 percent.

(c) Fees for Technical services rendered to an Indian concern

Any amounts received either in a lump sum or periodically by way of charges or fees for technical services or assistance are treated as under:

(a) to the extent the technical fees or charges are reasonably attributable to technical assistance and services rendered or performed outside India, the income is regarded as having accrued outside India. It is not liable to tax in India if the recipient is non-resident and the amount is received outside India;

(b) in respect of the amount attributable to technical assistance and services rendered or performed by the non-resident in India, the technical fees or charges are considered as income arising in India. From this, actual expenditure incurred by the foreign collaborators in rendering such assistance or service is deductible and only the net amount is liable to tax;

(c) any amount received for assignment of a patent or trade mark is generally in the nature of capital receipt in the hands of the foreign collaborator and is not taxable. But if periodical payments, especially those based on turnover or production are also receiveable, such receipts are considered as income.

(d) any amount received for sale of know-how delivered abroad will not be taxable in the hands of a non-resident if the payment is also made abroad. The nature of receipt, capital or revenue, will depend on the facts of each case. According to the present practice, the tax authorities do not attempt to tax the value of equity shares where participation by a foreign enterprise in such equity is achieved by transfer of know-how delivered abroad. However, the capital gains realised on subsequent sale of shares will be liable to tax.

Since the existing law imposes a liability to tax on a non-resident on receipt basis, technical service fees received by a non-resident in India will be liable to Indian tax even if the services have been rendered abroad.

The rate of tax on taxable fees and charges received by a non-resident company from an Indian concern for rendering technical services etc. in pursuance of an agreement made after 29th February, 1964 and approved by the Government is 50 percent.

The deductibility of payments for royalty and technical fees from the gross business income of the payer company will depend on whether the payments are considered as revenue or capital expenditure. Thus royalty based on turnover or production for use of patent, process, formula or trade mark will be deductible from gross business income. If technical fees and charges are in respect of capital assets such as construction of a factory or bringing into existence a benefit of enduring nature, the payment may be considered as capital expenditure and may not be allowed as deduction. However, the payer will be entitled to depreciation allowances if the amount is capitalised along with the cost of the asset. The amount paid for acquisition of know-how is capital expenditure whether it is paid in lump sum or in instalments. As a concession, expenditure incurred for purchase of patent rights is allowed by the tax authorities as consolidated revenue expenditure spread over 14 years.

(d) Interest received from an Indian concern

Any interest payable by an industrial undertaking in India on moneys borrowed by it in a foreign country in respect of purchase outside India of plant, machinery or raw materials where the term of the loan or debt have been approved by the Central Government is exempt from Indian tax to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government. Similarly, interest payable by Government or local authorithy on moneys borrowed by it from sources outside India or interest payable by an industrial undertaking in India under a loan agreement entered into with a financial institution in a foreign country subject to Government approval is exempt from Indian tax.

(e) Income from business carried on in India

Profits of business carried on in India through a branch of a non-resident company are charged to tax at the rate of 65 per cent.

(f) Capital Gains realised on Capital Assets situated in India

There is no difference between the rates of tax on long-term capital gains of a resident company and a non-resident company. Short-term capital gains, i.e. capital gains realised on sale of a capital asset situated in India within one year of the date of purchase are however taxed like any other business profit. Details are given in the following table:

Capital Gains Tax Payable by a Non-resident Company.

Type of Capital Gain	Total Tax
Short-term Capital Gains	
On sale of all capital assets within one year of purchase	65 %
Long-term Capital Gains	
(a) Land and buildings	40 %
(b) others	30 %
(c) on bonus shares received	12.5 %

Total Tax Burden

The rates of company taxation considered in the last paragraph apply mainly to a foreign non-resident company receiving royalties, fees and interest from an Indian concern or carrying on business in India through a branch. The position is somewhat different if the non-resident company earns income in India through equity participation in an Indian company by holding majority or minority shareholding therein. Since the tax paid by the Indian company must be taken into account for determining the aggregate burden of tax on the non-resident investor, figures are given below showing the net return to the shareholding non-resident company on the assumption that the entire capital is held by the non-resident investor and that the total net profits are distributed (which ultimately must be the case) as dividends. It would be relevant to point out at this stage that in addition to tax on profits, an Indian company in which the public are substantially interested is liable to a tax of $7\frac{1}{2}$ % on all dividends distributed and a tax of $12\frac{1}{2}$ % on all bonus shares issued (capitalisation issues). These additional imposts are levied by reducing the rebate of super-tax available to an Indian company and are justified in the context of a developing economy wherein the retention and ploughing back of profits is preferable to distribution and dissipation.

(A) Net return to a foreign company operating through an Indian company in which the public is substantially interested (income over Rs.25,000)

		Basic/Priority Industries		Others
Taxable Profit		100.00		100.00
Company's Tax		45.00		50.00
		55.00		50.00
Dividend Tax		3.84		3.49
Distributable Profits (Dividend)		51.16		46.51
Shareholder's Tax	*à* 25%	12.79		11.63
Net return to shareholding company		38.37		34.88

(B) Net return to a foreign company operating through an Indian company in which the public is *Not* substantially interested

Taxable Profit		100.00		100.00
Company's Tax		54.00		60.00
Distributable Profits (Dividend)		46.00		40.00
Shareholder's Tax	*à* 15%	6.90	*à* 25%	10.00
Net return to shareholding company		39.10		30.00

(C) Net return to a foreign company operating through a branch in India is 35%

Tax Rebates, Concessions and Incentives

The total tax payable by a company as shown in the preceding paragraph is determined with reference to its (i) total income and (ii) the rate of tax applicable. However, several tax concessions are provided with the result that either the total income is reduced or the rate of tax is decreased, or both. Consequently the effective rate of taxation, particularly on new industrial units, is lower than the general rate prescribed, specially in the initial period of an undertaking. Some of the important tax concessions are:

(a) Tax holiday for new Industrial Undertakings

New industrial undertakings are exempt from tax on total income upto 6% of the capital employed in the undertaking. The exemption is available for the accounting year in which production commences and for the 4 succeeding years if

(i) the undertaking is not formed by the splitting up or the reconstruction of business already in existence or by the transfer to a new business of buildings, machinery or plant (except building, machinery or plant not exceeding 20 % of the total value) previously used for any purpose; and

(ii) it employs 10 or more workers in a manufacturing process carried on with the aid of power or 20 or more workers in a manufacturing process carried on without the aid of power. The concession is also available, subject to certain conditions, to hotels started after 1st April, 1961.

(b) Dividends of new Industrial Undertakings

Dividends paid by a new industrial undertaking out of profits which have been exempted under the above provision are also exempt from tax in the hands of the shareholders.

(c) Depreciation allowances

In addition to normal depreciation allowance on fixed assets at stipulated rates, an extra shift allowance on machinery and plant is given for multiple shift working. An initial allowance in respect of new buildings built for the benefit of low paid employees is also granted.

(d) Development Rebate

Under the Indian Income-tax Act, development rebate is allowed on new plant and machinery in addition to any depreciation allowance granted for the same asset. The development rebate is allowed at 20 percent of the cost (40 % in the case of a new ship) and can be claimed either in the year of acquisition and installation or installation within one year of acquisition. The total amount deductible over the life of depreciable machinery and plant which qualifies for development rebate is 120 percent (in the case of a ship 140 percent) of its cost. The rebate is given subject to fulfilment of certain conditions, the important ones being:

(i) the plant and machinery must be new; in the case of imported plant, development rebate will be allowed on second-hand items also, subject to certain restrictions;

(ii) 75 % of the rebate must be credited to a special reserve account which shall not be used for eight years for distribution as profits or for remittance abroad either as profits or for the creation of any asset outside India;

(iii) the plant and machinery on which rebate has been given shall not be sold or otherwise transferred for a period of eight years.

If full effect cannot be given to the development rebate, the balance may be carried forward for eight subsequent years for being set-off against other income of the company.

(e) Expenditure on Scientific Research

Revenue expenditure on scientific research which may lead to or facilitate an extension of the business on research of a medical nature which has a special relation to the welfare of workers employed in the business is allowed in the year in which it is incurred. Capital expenditure is allowed to be deducted at the rate of 20 % in each of the five consecutive accounting years.

(f) Set-off and carry forward of losses

Business loss can be set-off against income under any other head in the same accounting year but if it cannot be wholly set-off in that year, it can be carried forward to the next year and can be set-off against income from business, and so on for eight succeeding years after which the unabsorbed loss will lapse.

(g) Tax rebate on income from exports

A rebate calculated at one tenth of the average rate of tax is allowed on income derived from the export of goods or merchandise out of India. The rebate is admissible to Indian companies or companies which have made the prescribed arrangements for declaration and payment of dividends in India.

(h) Tax rebate on Income from Basic or Priority Industries

Lower rates of tax are charged on income from basic or priority industries, details of which have been given earlier in this article, by giving a rebate of 10 percent on tax-rate.

(i) Tax Concessions to foreign personnel

The Government of India recognising that foreign capital must bring with it foreign technical and administrative personnel have provided tax concessions for individuals who are not citizens of India.

A foreign technician having specialised knowledge in constructional or manufacturing operations or in mining or in generation or distribution of electricity or any form of power who is employed by an Indian company in which such specialised knowledge is actually used is entitled to tax-free remuneration for a period of 365 days from the date of his arrival in India. If the technician's contract of service is approved by the Government of India, the exemption is available for a longer period of 36 months and if he continues to remain in employment in India after the expiry of the said period of 36 months, the employer may pay the tax on remuneration for a period not exceeding 24 months and such tax shall not be treated as the income of the technician.

In the case of a technician having specialised knowledge in industrial and business management techniques, the remuneration is exempt for a period of six

months from the date of arrival in India provided the contract of service is approved by the Government.

The remuneration received by a foreign employee of a foreign enterprise which is not engaged in carrying on any business in India is exempt from tax provided the individual's stay in India does not exceed in aggregate a period of 90 days in any year and the remuneration is not liable to be deducted from income of the employer, if any, taxable in India.

A foreign employee working in India is entitled to tax-free passsage moneys or free or concessional passages for himself, wife or children in connection with his proceeding on home leave out of India provided that such passages are included in the terms of the service and fulfil prescribed conditions.

Tax exemption similar to that granted to industrial technicians is granted to foreign professors and teachers coming to India on approved programmes.

A resident foreigner is entitled to a rebate of tax at average rate on an amount not exceeding Rs.2,000 or 25% (Rs.4,000 or 25% in the case of more than one child) of his total income provided he has expended such sum during the previous year out of his taxable income on the full time education of his child dependent on him and not more than twenty-one years of age at an educational institution situated outside India.

(i) Double Taxation Relief

There are reciprocal arrangements for relief from double taxation and also agreements for avoidance of double taxation. Such agreements have been signed, for instance, with Pakistan, Ceylon, Sweden, Norway, Denmark, Federal Republic of Germany, Japan and Finland. Agreements with Sweden, Denmark, Norway and Finland and to some extent agreements with West Germany are based on the method of exclusion i.e. the income from sources allocated to one country is not taxed in the other country. The agreement with Japan, the proposed agreement with the U.S.A. and to some extent the agreement with West Germany are based on the method of tax credit. Generally the agreements not only demarcate the zones of taxation between India and foreign countries concerned according to the nature and source of income but also ensure that the benefit of tax incentives is retained by the foreign investor as far as possible, say, by having a tax sparing clause. In the case of countries with which India has no agreement for relief or avoidance of double taxation, the Indian Income-tax Act grants unilateral relief to residents in India. Such relief is admissible on the doubly taxed income accruing or arising outside India but is limited to the lower of the two taxes and is not granted on income which is deemed to accrue or arise in India. Recently agreements have been negotiated with France and U.A.R. also and these await ratification.

Surtax on Company Peofits

Mention may be made of a surtax on company profits which has been recently super imposed on income-tax and super-tax. Briefly, if profits after payment of income-tax and super-tax exceed 10 percent of the capital base, that is, paid-up share capital plus reserves, debentures and other long-term borrowings, or Rs.2 lakhs, whichever is greater then such an excess will be taxed at the rate of 32 percent for basic or priority industries and at 40 percent for others.

Conclusion

To conclude, the cumulative effect of the various taxes outlined above may seem to present a formidable bill of fare but it must be stated that earnest attempts are being made by the Government of India to lighten the burden on the foreign investor as far as possible having regard to the general economic policy and the need for resources in a developing economy. In spite of difficulties and headaches inherent in investment anywhere abroad, the major factors in favour of investment in India are the country's stupendous and growing market and the fair prospects of profitability coupled with stability and security. The numerous tax incentives and other benefits granted to foreign individuals and corporations so outweigh the inevitable hurdles and hardships that we can confidently end on a note of optimism so typically voiced by the American investor in his characteristic remarks quoted at the beginning of this article.

ALGERIA

TAX NEWS

Impôt Complémentaire sur le Revenu

Jusque là, l'impôt sur les revenus n'était pas retenu. Les salariés faisaient chaque année, une déclaration d'impôts et le percepteur envoyait en retour un extrait de rôles les obligeant à payer une somme globale, généralement importante pour les familles ayant un revenu moyen.

La Loi de Finances 1964 (Arrêté du 24 Août 1964) a modifié tout cela, aussi bien le mode de perception de cet impôt que le montant qui touche maintenant surtout les hauts salaires.

Désormais, les retenues faites chaque mois par l'employeur sont immédiatement versées au Service des Impôts Directs.

Tous les salaires inférieurs à 250 Dinars par mois ne sont pas touchés par cette mesure et ne paient pas d'impôt.

Les retenues sur les salaires ont un effet rétroactif à partir du premier mai 1964. Ce qui signifie qu'à partir de fin septembre 1964, les sommes prélevées au titre des impôts 1964 seront doubles de celles qui figurent sur le tableau ci-dessous rapporté, et ce jusqu'à fin décembre.[1])

Plus exactement le retard des mois de mai, juin, juillet et août 1964 sera récupéré au cours des quatre fin de mois et ce jusqu'en décembre 1964.

En fin d'année, s'il apparaît que les sommes retenues à la source à chaque fin de mois, sont supérieures à celles réellement dues, le contribuable peut faire une réclamation à son percepteur et obtenir la restitution des sommes perçues en trop. Dans le cas contraire, il doit compléter ce qu'il doit.

Reported by: Maître Max Hubert Brochier, Algiers

Summary

Up to now salaries have not been subject to a withholding tax. The employees file a return each year and are thereon assessed. By virtue of the loi de Finances of 1964 (Decree of August 24, 1964) this provision is changed.

The employer is obliged to withhold the tax each month from his employees and remit it to the tax revenue authorities. Salaries lower than 250 Dinars per month will not be affected by this new provision. This provision will be retroactive as of May 1, 1964. From the end of September 1964 the employer has to withhold the double tax amounts as stipulated in the tax tables below[1]) up to and including the end of December 1964 in order to charge for the months May to September 1964.

If at the end of the year the taxpayer paid more tax than due he will get a refund. Conversely if the tax withheld is lower than due at the end of the year the taxpayer must pay the additional tax.

[1]) Le tableau n'est pas reproduit ici. Pour l'obtenir, on est prié de s'adresser au comité de rédaction du Bulletin.
For the table of rates please contact the Editor of the Bulletin.

AUSTRALIA

TAX NEWS

EXEMPT INCOME

The operation of Section 23 (q) of the Income Tax Assessment Act in relation to the imposition of U.S. States taxes on income earned in the U.S. was considered by the Board of Review.

A professor at an Australian university was invited to lecture at various American universities. Fees paid for these services were exempt from United States Federal income tax, by the operation of Article XIII of the United States-Australia Double Tax Convention, as he was a resident of Australia.

On fees amounting to $7,600 received from the Columbia University, New York, $96 New York State income tax was charged. Similarly, $3,500 received from the University of Colorado was subject to $36 Colorado State income tax, and $16,500 from Harvard University was subject to $304 Massachusetts State income tax.

Section 23 (q) of the Income Tax Assessment Act provides that exempt income shall include income derived by a resident from sources out of Australia where that income is not exempt from income tax in the country where it is derived.

Taxpayer was in fact a resident, and the Commissioner conceded that the fees paid to him arose from sources outside Australia, and that the taxes paid to the three States in the U.S.A. were "income taxes". The Commissioner contended however that the words "income tax in the country where [the income] is derived" refer to tax levied by a Federal or national Government and not to income tax levied by the Government of a constituent State. "The country" should be limited to one of equivalent international status, thus excluding States or Provinces of a Federation or Union. It was further suggested that it would be more just to the revenue to require that Section 23 (q) should not apply if the income was exempt from "an" income tax, viz. in this case, U.S. Federal Income Tax.

For the taxpayer it was submitted that his earnings were not exempt from tax in the country in which they were derived, because the fees were taxed in the U.S., even though the tax was levied by a State. Further, it was argued that "country" should be regarded as any law area, hat each of the American States was a country for the purposes of Section 23 (q).

The Board said: "We think it is clear not only on the terms of the specific provisions, but also from the history of the legislation that both Section 23 (q) and Section 45 are directed at the avoidance of double taxation: Section 23 (q) by exempting from Australian tax foreign source income [other than dividends, Section 44 (1A)] where that income is 'not exempt from income tax in the country where it is derived' and Section 45 by the grant of a credit against Australian tax of foreign tax on dividend income from a company which is a 'resident of a country outside Australia' for which an Australian resident is 'personally liable under the law of that country'. The words last quoted from Section 45 support, we think, the soundness of the view that the words in Section 23 (q) 'income tax in the country' of source of foreign income should be understood as embracing income tax levied by any

government of 'the country where it [the income] is derived'. For it would be strange in the light of their evident purpose and history if Section 23 (q) were to be given a narrower application than Section 45 which, as we have already said, would, in our opinion, clearly be applicable to allow credit for foreign dividend taxes whether liability therefore arose under the law of a Federal or State government, or both. The terms of the proviso to Section 23 (q) where it speaks of 'a liability for payment of income tax in the country' where the income is derived, also points to the view we take. In truth the touchstone for the application of Section 23 (q) is simply liability for income tax in the foreign country of source of the income.

"No doubt the instrument—exemption of foreign taxed income from Australian tax—which Section 23 (q) uses to achieve its purpose, is blunt as compared with the precision instrument of a credit against Australian tax for foreign tax such as has obtained since 1947 in respect of foreign dividend income falling within the terms of Section 45. But the task of refining the instrument is one for the legislature. In the view we take, that the purpose of Section 23 (q) is the elimination of double taxation, we think that neither in the terms of Section 23 (q) itself or of allied provisions, nor in the legislative history of those provisions is there any justification for excluding from the operation of Section 23 (q) foreign source income which is subject to tax levied by a foreign State in which the income is derived and which is a member of a Union or Federation of States which, by application of an international agreement with Australia, exempts that income from any national income tax which otherwise would be levied thereon by such Union or Federation".

It was decided, therefore, that taxpayer's U.S. income should be exempt from Australian tax by the operation of Section 23 (q).

Reported in 11 C.T.B.R. (N.S.) Case 49, 14 T.B.R.D. Case No. P7.

Source: *The Australian Accountant*

AUSTRIA

BIBLIOGRAPHY

Besteuerung in Westeuropa, Informationen zu aktuellen Fragen der Sozial- und Wirtschaftspolitik, Nr. 7, Institut für angewandte Sozial- und Wirtschaftsforschung, Wien, Renngasse 12, März 1964, pp. 26.

This is a concise survey on taxation in West European countries. This book discusses the comparison of tax burdens in these countries along with the relevant tax burden.

BRAZIL

TAX NEWS

A recent case states that according to the Income Tax Regulations, the withholding tax on dividends must occur when the accounts of the corporation have been approved by the General Meeting. Therefore, when an account is set up on the balance sheets,

even though attributable to prior years, the income tax must be paid whether or not the dividends were actually paid. This case came about in a territorial court in Sao Paulo when a corporation contested the decision of the tax authorities that the withholding tax and the additional tax on it must be paid on the amount set aside on the balance sheet as "Dividends to be paid", notwithstanding the fact that the dividends were not distributed.

CEYLON

BIBLIOGRAPHY

A digest and index of Ceylon Tax Cases, reported in the Ceylon Tax Cases Vol. I and II (See 1964. p. 113), The Department of Inland Revenue, Ceylon, Sabapathipillai, S, Government Press, Ceylon, Colombo, 1964, pp. 195, Rs.15.—.

This book is a digest and index of the reported Ceylon tax cases from Vol. I and II re income tax, profits tax, excess profits tax, estate duty and stamp duty, published respectively in 1961, 1962. Apart from the usual index i.e. under the names of parties involved in the Ceylon tax cases, it also contains a useful index arranged according to the sections of the Income Tax Ordinance, Stamp Ordinance, Estate Duty Ordinance and to the subject matter i.e. building contractor, profits etc., Where appropriate, a concise summary is set forth referring to cases in the two volumes published in 1961 and 1962.

CHILE

TAX NEWS

The Internal Revenue Service of Concepción has announced that manufacturing industries increasing their volume of production by 10% in a fiscal year will be entitled to a reduction income tax payable under the "first category". These concessions may only be obtained until 1930.

Source: Bank of London and South America Ltd., *Fortnightly Review,* vol. 29

COMMON MARKET

DOCUMENTS

LES IMPOTS INDIRECTS DANS LE MARCHE COMMUN

Une conférence de M. Dequae[1])

LA REFORME DES IMPOTS INDIRECTS DANS LE CADRE DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE

Les impôts indirects et le traité de Rome

Dès l'entrée en vigueur du traité de Rome, la Commission de la Communauté Economique Européenne s'est penchée sur les conséquences pour le Marché commun de l'actuelle diversité des structures et des charges fiscales dans les six pays. De l'avis de la Commission, il est nécessaire de réaliser dans le domaine fiscal des réformes permettant entre les Etats-membres la libre circulation des marchandises, des services, des capitaux et des personnes, et garantissant que la libre concurrence ne soit pas faussée par des mesures d'ordre fiscal qui nuiraient à la meilleure répartition du travail qui constitue un des objectifs essentiels du traité.

S'appuyant sur les travaux effectués en commun avec les administrations nationales et sur l'avis exprimé par le comité fiscal et financier (Comité Neumark), la Commission a estimé devoir donner un ordre de priorité aux problèmes qui se rapportent aux impôts indirects. La raison de cette priorité est évidente: l'influence des impôts indirects sur les produits est immédiate et les échanges intercommunautaires en sont donc directement affectés.

En ce qui concerne tout d'abord les impôts indirects autres que la taxe sur le chiffre d'affaires, la Commission pense qu'une harmonisation progressive des droits d'accise est indispensable mais elle n'envisage cette harmonisation qu'à une échéance assez lointaine et se contente d'éliminer à brève échéance les disparités de structure entre ces impôts dans les six pays. En effet, il faut admettre que l'harmonisation des ces impôts présente de nombreuses difficultés. La part de ces impôts dans les recettes budgétaires est en effet très variable suivant les pays: très importante en Italie, elle l'est moins en Allemagne, en France et en Belgique et est encore inférieure aux Pays-Bas et au Luxembourg. De plus, alors que certains de ces impôts existent dans les six pays, d'autres sont propres à un ou deux Etats. Enfin, ils obéissent à des préoccupations économiques ou sociales différentes suivant les pays.

Quant aux taxes sur le chiffre d'affaires, les travaux de la Communauté sont plus avancés et je me limiterai aujourd'hui à vous parler de la réforme de ces taxes au sein de la Communauté.

1 Le 2 octobre 1964, M. Dequae, ministre des Finances, a donné une conférence particulièrement intéressante à l'Ecole supérieure des Sciences fiscales à Bruxelles au sujet de la réforme belge projetée, des impôts indirects dans le cadre de la Communauté Economique Européenne.

La Commission estime que l'existence dans tous les Etats-membres, à l'exception de la France, d'une taxe sur le chiffre d'affaires à cascade, constitue pour la bonne marche du Marché commun un inconvénient important. Elle est arrivée à la conclusion que seule une harmonisation, prévue d'ailleurs par l'article 99 du traité, est susceptible d'apporter une solution définitive au problème. Après des études approfondies dont elle avait chargé le groupe de travail et le comité Neumark, elle a fait siennes les conclusions de ces études selon lesquelles les taxes à cascade ne peuvent non seulement pas servir de base à une harmonisation mais doivent disparaître en vue d'un bon fonctionnement du Marché commun.

Dès lors, la Commission a soumis au Conseil de la Communauté à qui appartient en définitive la décision, un projet de directive en matière d'harmonisation des taxes sur le chiffre d'affaires qui prévoit ce qui suit:

1) les Etats-membres devraient instaurer au plus tard le 1er janvier 1970 un système de taxe sur la valeur ajoutée et à partir de cette date des mesures de compensation forfaitaires à l'importation et à l'exportation entre les Etats-membres ne seraient plus admises;

2) ce système de t.v.a. serait un impôt général de consommation frappant en principe tous les biens et tous les services; la taxe serait calculée sur le prix du bien ou du service déduction faite du montant de la taxe ayant grevé les divers éléments entrés dans la formation du prix; la taxe serait appliquée jusqu'au stade du commerce de détail inclus mais les Etats-membres auraient la faculté de restreindre le champ d'application jusqu'au stade du commerce de gros inclus;

3) des propositions au sujet de la structure et des modalités d'application du système seront soumises au plus tard le 1er avril 1965 au Conseil;

4) la Commission estime que le but final de l'harmonisation des taxes sur le chiffre d'affaires doit consister dans la suppression des taxations à l'importation et des détaxations à l'exportation aux frontières internes de la Communauté et soumettra au Conseil, avant la fin de l'année 1968, des propositions adéquates tendant à supprimer ces frontières fiscales;

5) d'ici 1970 les Etats-membres pourraient prendre des mesures pour faciliter l'adaptation de leur système actuel au système commun de t.v.a. mais devraient soumettre en temps utile les mesures envisagées à la Commission afin que celle-ci puisse examiner si ces mesures n'altèrent pas les conditions d'échanges entre les Etats-membres.

Ce projet de directive a reçu un avis favorable de la part du Comité économique et social et de la part du Parlement européen à Strasbourg.

Avant d'examiner les problèmes que pose pour la Belgique la réalisation de ce projet, je voudrais d'abord m'étendre quelque peu sur les aspects économiques des impôts sur le chiffre d'affaires, ensuite nous verrons pourquoi la Commission a choisi la t.v.a. et nous examinerons les principaux problèmes que pose pour la Belgique le régime proposé par la Commission et, enfin, nous vous exposerons la nature des travaux entamés chez nous en rapport avec ces problèmes et les premières conclusions qu'on peut en tirer.

Aspects économiques de l'impôt sur le chiffre d'affaires

Les impôts sur le chiffre d'affaires ont, dans la plupart des pays, pris naissance lors de la

première guerre mondiale ou immédiatement après, afin de procurer au Gouvernement de nouvelles ressources budgétaires que l'impôt sur le revenu n'était plus à même de fournir. Il s'agissait d'un impôt de consommation à cascade frappant les différents stades de la production et de la distribution, dont le rendement et la simplicité de perception avaient été retenus comme des qualités essentielles. On se préoccupait très peu des conséquences économiques néfastes qui d'ailleurs étaient jugées acceptables étant donné la modicité des taux.

Les conséquences sur le plan économique de la taxe à cascade sont suffisamment connues: elles encouragent la concentration verticale des entreprises, la détaxation à l'exportation est malaisée et à l'importation de produits étrangers il est difficile d'établir des taux qui correspondent exactement à la charge fiscale frappant les produits indigènes similaires.

Jugées acceptables au début, ces conséquences le furent dans notre pays beaucoup moins au fur et à mesure que les taux de la taxe de transmission furent majorés et que ses effets devenaient de plus en plus sensibles.

L'administration qui avait conçu le système, était d'ailleurs la première à faire remarquer que si ce système se combinait avec des taux élevés, il devenait intolérable. Ainsi, lorsqu'en 1926 le taux initial de la taxe, soit 1%, fut porté à 2%, elle fit remarquer dans un langage direct et imagé au ministre des Finances de l'époque: «La législation sur la taxe de transmission est un mécanisme d'horlogerie et vous allez marcher dessus avec de gros sabots».

Afin de réaliser l'égalité de la marchandise devant l'impôt et d'établir dans une certaine mesure l'égalité de concurrence entre les produits belges et les produits étrangers, diverses mesures furent prises au fil des années parmi lesquelles les plus importantes sont les suivantes:

- l'instauration de nombreux régimes de taxes forfaitaires que nous connaissons dans le régime actuel;
- l'octroi aux exportateurs d'autorisations leur permettant d'acheter en exemption de l'impôt les matières entrant dans la fabrication des produits exportés;
- l'établissement sur les produits importés de taxes compensatoires qui étaient censées correspondre à la charge fiscale que les produits similaires belges avaient supportée au stade antérieur lors de leur fabrication en Belgique.

Ces palliatifs, on peut bien le dire, sont actuellement insuffisants. En effet, les taxes forfaitaires ne couvrent pas toutes les transactions dont une marchandise est l'objet depuis sa production jusqu'à sa consommation puisqu'il ne se rapporte qu'à un cycle de transmission et qu'une fois ce cycle parcouru, le sort fiscal des transmissions ultérieures de la marchandise est réglé d'après la nature de celle-ci dans l'état où elle se trouve à ce moment. D'autre part, l'exemption accordée aux exportateurs ne se rapporte qu'aux achats de matières effectuées par ces derniers; elle laisse donc subsister une charge fiscale résiduaire dans les produits exportés qui s'élève actuellement à plusieurs milliards. Enfin, les taux des taxes compensatoires établies pour les produits importés ne peuvent àtre que des taux moyens et il en résulte qu'il n'est pas possibile d'assurer pour toutes les entreprises la neutralité absolue nécessaire à l'existence d'une saine concurrence.

Le remplacement du régime de la taxe de transmission par un autre système d'impôt sur le chiffre d'affaires est donc nécessaire. Le régime proposé par la Commission remédie-t-il aux inconvénients? La réponse est en principe affirmative. Un tel système est neutre du point de vue économique puisque la charge fiscale qui grève les produits ne diffère pas selon le nombre de stades que parcourt la marchandise et, en ce qui concerne le commerce international, la détaxation complète des marchandises exportées est assurée tandis qu'à l'importation, les produits importés sont grevés d'une charge fiscale égale à celle des produits indigènes.

Pourquoi la commission de la C.E.E. a-t-elle choisi la T.V.A.?

Cependant, on peut se demander si les impératifs d'ordre économique dont nous avons parlé plus haut ne peuvent pas être respectés sans réformer de fond en comble le régime de la taxe de transmission ou, tout au moins, en instaurant un autre régime d'impôt sur le chiffre d'affaires qui ne présente pas les inconvénients de la t.v.a. dont nous parlerons plus loin.

On peut tout d'abord songer à apporter au régime cumulatif actuel certaines modifications qui feraient disparaître les inconvénients signalés ci-dessus. Ainsi, on pourrait généraliser la taxe forfaitaire actuelle et réduire par un accord des Etats-membres de la Communauté les inconvénients résultant des compensations aux frontières que suscite le systéme cumulatif.

J'ai déjà dit que les taxes forfaitaires du type actuel n'excluent pas l'effet cumulatif. Une fois parcouru le cycle de transmission couvert par la taxe forfaitaire, une nouvelle taxe est due à laquelle peuvent échapper les entreprises intégrées. De plus, il n'est pas possible de soumettre toutes les marchandises à une taxe forfaitaire et ceci est particulièrement vrai pour les marchandises qui peuvent être consommées comme telles et qui sont également susceptibles d'une utilisation industrielle. Comme le taux de la taxe forfaitaire devrait être normalement fixé à 12% pour assurer au Trésor les mêmes recettes, on grèverait cette industrie d'une charge supplémentaire puisque, autrefois, elle pouvait acheter cette marchandise en ne payant que la taxe ordinaire de 6%. Remarquons d'ailleurs encore que lorsque la taxe forfaitaire s'applique à une marchandise susceptible d'une utilisation industrielle, il faut créer une réglementation spéciale pour chaque produit en indiquant à partir de quel degré de transformation industrielle les ventes de la marchandise cessent d'être couvertes par la taxe forfaitaire.

Quant à la possibilité de calculer un accord entre les Etats-membres de la Communauté au sujet des détaxations pour les marchandises exportées et des impositions compensatoires pour les marchandises importées, l'expérience vécue durant ces dernières années, démontre qu'il ne faut pas trop y compter.

Le traité de Rome prévoit dans son article 97 la possibilité pour les Etats-membres qui perçoivent la taxe à cascade de fixer, pour les impositions des produits importés et pour les ristournes aux produits exportés, des taux moyens par produit ou groupe de produits. Ainsi libellées, ces dispositions ne posent pas suffisamment de limites à la recherche de la charge interne supportée par les produits indigènes et n'excluent pas, de façon suffisamment précise, des manupulations des taux au-dessous du plafond fixé par le traité. Dans la pratique des abus se sont manifestés et les taux, difficilement contrôlables, peuvent

facilement cacher des primes à l'exportation et une protection à l'importation susceptible de fausser la concurrence.

Face à cette situation la Commission a essayé tout d'abord d'y remédier dans la mesure du possible par l'accord de 1960 des Etats-membres qui consiste à ne plus modifier les taux des taxes compensatoires et des ristournes, sauf pour des raisons de technique fiscale. L'expérience a montré que la notion de technique fiscale était très diversement interprétée et, dans la pratique, cet accord n'a pas eu de résultat. L'intangibilité des taux qui devait être admise à une date déterminée, n'a pas été acceptée parce que les Etats-membres n'ont pas voulu perdre totalement la possibilité de reviser dans les limites prévues par le traité les taux existants.

En outre, la Commission a engagé parallèlement une autre action en essayant d'établir pour les mesures de compensation et de ristourne déterminées d'après un taux moyen, une méthode commune de calculs. Dans ce domaine également aucun accord n'a pu être réalisé jusqu'à présent. En effet, si cette méthode a reçu un avis favorable de la part des techniciens, certains Etats-membres ont contesté le principe même d'une telle méthode de calculs qui limiterait les possibilités accordées expressément par les dispositions du traité.

On peut donc admettre que pour des raisons de nature aussi bien nationale qu'internationale, les distorsions de nature économique découlant d'un régime de taxe à cascade ne peuvent être éliminées que par l'instauration d'un régime de taxe unique c'est-à-dire un régime dans lequel les entreprises intégrées ne sont pas injustement favorisées et dans lequel l'imposition à l'importation et la détaxation à l'exportation peuvent être exactement calculées puisque, dans un tel régime, la charge fiscale est la même quel que soit le nombre de transmissions dont les marchandises font l'objet durant leur production et leur distribution.

Pourquoi, parmi les systèmes de taxe unique la Commission de la C.E.E. a-t-elle choisi la t.v.a.?

Les experts nationaux qui, durant de longues années, ont étudié en commun avec les services de la commission le problème de l'harmonisation de l'impôt sur le chiffre d'affaires, sont arrivés à la conclusion que, raisonnablement, trois systèmes sont susceptibles d'être retenus: une taxe unique générale perçue au stade antérieur à celui du détail, une taxe unique générale perçue au stade la production et une taxe unique sur la valeur ajoutée.

La Commission a cru devoir choisir la t.v.a. parce que ce régime ne défavorise pas comme les autres régimes le progrès technique étant donné qu'elle permet d'abord un taux assez élevé puisque le paiement de la taxe est réparti tout le long du circuit de la production et de la distribution et que, dès lors, il est possible d'éviter le cumul de taxes pour les biens d'investissement qui, dans les autres régimes, sont taxés doublement, soit une première fois lors de l'achat par l'industrie et une seconde fois lors de la vente du produit fabriqué dont le coût des biens d'investtissement constitue un élément du prix. En outre, un système de t.v.a. permettrait plus facilement que les autres le but final de l'harmonisation qui, d'après la Commission, doit réaliser la suppression des mesures de compensation forfaitaires à l'importation et à l'exportation pour les échanges entre les Etats-membres. Dans les autres régimes ce but ne pourrait être atteint qu'au prix de très grosses difficultés administratives.

La Belgique et la T.V.A.

Quand on examine les arguments avancés par la Commission il faut admettre que dans sa conception la solution qu'elle propose est logique et qu'elle réalise le mieux les buts qu'elle veut atteindre.

Mais la Commission qui veut réaliser entre les six un marché commun aussi parfait que possible, s'est évidemment uniquement placée sur un point de vue économique. Certaines considérations d'ordre économique ont, à ses yeux, été déterminantes pour faire son choix. Or, la réforme qu'elle propose constitue un bouleversement complet qui risque d'avoir sur la structure économique du pays et même sur le plan social, des conséquences importantes auxquelles les gouvernements nationaux ne peuvent pas rester indifférents.

Comme toute réforme fiscale, le remplacement de la taxe de transmission par un autre système d'impôt sur le chiffre d'affaires aura des répercussions profondes dans de nombreux domaines. Ainsi, il en résultera une modification de la structure des prix puisqu'un des buts poursuivis est précisément d'égaliser la charge fiscale pour toutes les marchandises sans que celle-ci soit influéncée par le processus de production et de distribution plus ou moins long dont ces marchandises font l'objet; il faut donc craindre que si la réforme n'est pas réalisée avec un certain discernement et surtout durant une période de conjoncture stable, une hausse du niveau général des prix peut en résulter. Une hausse des prix est d'ailleurs inévitable si le régime réalise la complète détaxation des produits exportés puisqu'il faudra, afin de réaliser au Trésor les mêmes recettes, reporter sur la consommation intérieure l'imposition qui grève encore les produits exportés dans le régime actuel. De plus, la législation sur les taxes assimilées au timbre, toute compliquée qu'elle soit, est entrée dans les moeurs et les entreprises et les administrations s'y sont adaptées depuis de longues années. Elles ont acquis l'habitude de l'appliquer. La connaissance du régime, la jurisprudence de nos tribunaux et de l'administration, la doctrine se trouvant dans les ouvrages parus sur la matière, constituent un acquis qu'on abandonne pas en un tournemain et qui doit faire réfléchir certains novateurs qui, par souci de perfectionnisme malencontreux, voudraient tout bouleverser.

Mais, si n'importe quelle réforme pose déjà de graves problèmes, l'instauration de la t.v.a. en pose encore de plus grands. A côté d'un aspect séduisant qui a d'ailleurs conquis la Commission de la C.E.E., ce régime présente certains inconvénients particulièrement importants.

Les obligations imposées aux assujettis sont, tout d'abord, bien plus nombreuses dans un régime de t.v.a. que dans n'importe quel autre régime d'impôt sur le chiffre d'affaires. Ainsi, afin d'être en mesure de prouver à l'égard de l'administration le montant des taxes payées sur leurs achats qui peuvent venir en déduction de celles dont ils sont eux-mêmes redevables, ils doivent nécessairement tenir une comptabilité régulière. Cette obligation qui ne gêne sans doute pas fort les entreprises d'une certaine importance, apparaît comme particulièrement difficile à imposer quand on retient un autre aspect de la t.v.a. La plupart des experts belges et étrangers estiment que le champ d'application de la t.v.a. doit englober tous les stades de la production et de distribution, même celui du détail. La solution qui consisterait à arrêter le champ d'application au dernier stade de la production ou même au stade du commerce de gros ne permet, en effet,

pas de réaliser aisément la neutralité de l'impôt étant donné que la charge fiscale par rapport au prix de vente aux consommateurs dépendrait de l'importance variable des marges bénéficiaires exclues de la base imposable. Ceci veut dire que chaque fois que le circuit normal de la distribution (producteurs - grossistes - détaillants - consommateurs) n'est pas respecté, il faudrait, afin de réaliser l'égalité de la marchandise devant l'impôt, appliquer des correctifs à la base de perception, ce qui est évidememnt impensable.

Si on remplace le régime de la taxe de transmission par celui de la t.v.a., le nombre des assujettis sera donc très considérablement augmenté puisque le champ d'application de la taxe doit être étendu au commerce de détail et à l'agriculture qui n'ont pratiquement aucune obligation à remplir dans le régime actuel. Or, il s'agit précisément de personnes dont la plupart ne tiennent pas une comptabilité régulière et qui ont été exclues du champ d'application de la taxe de transmission parce qu'on a estimé qu'il n'était pas possible de leur imposer des obligations de nature fiscale dans ce domaine. On ne peut, dès lors, songer à imposer à ces secteurs de l'économie toutes les obligations qu'implique la t.v.a. Il faudra prévoir pour eux un régime d'exception. Les détaillants qui ne dépassent pas un certain chiffre d'affaires pourraient être imposés forfaitairement et les agriculteurs pourraient être exemptés en ce qui concerne les livraisons qu'ils effectuent mais les clients de ces derniers pourraient procéder à une déduction forfaitaire de la taxe perçue aux stades antérieurs. Ces régimes d'exception rendent le système particulièrement compliqué puisqu'ils s'appliqueront à la grande majorité des assujettis et que seule une minorité se verra appliquer le droit commun.

La t.v.a. a encore d'autres inconvénients qui lui sont propres:

- il s'agit d'un impôt calculé sur le chiffre d'affaires qui introduira dans les impôts indirects les complications qu'on rencontre en matière d'impôt direct pour déterminer ce chiffre d'affaires;
- on dit que la t.v.a. ne doit pas seulement s'appliquer aux livraisons de marchandises mais également aux prestations de service.

Comment appliquera-t-on ce principe aux professions libérales, aux entreprises de transport et à d'autres services qui présentent un aspect tout particulier?

- Dans un système de t.v.a. l'assujetti peut déduire les taxes ayant grevé les achats de biens d'investissement. Cette déduction, pourra-t-elle se faire immédiatement au seulement «prorata temporis» c'est-à-dire chaque année pour la fraction d'amortissement admise pour cette année? La première solution est la plus simple mais dans une période de haute conjoncture elle peut avoir un effet antiéconomique puisqu'elle favorise les investissements. La seconde est fort compliquée mais semble plus logique tout en constituant un frein pour les investissements puisque les entreprises font l'avance des taxes pendant une période qui peut être longue;
- il ne peut être question de soumettre toutes les marchandises au même taux. Dans quelle mesure sera-t-il possible de poursuivre dans ce domaine une politique sociale et d'exempter les produits de première nécessité qui, dans le régime actuel, sont exemptés de la taxe de transmission? Comment ces régimes de faveur s'insèreront-ils dans l'ensemble?

Travaux entamés en Belgique et premiers Résultats

Les problèmes que suscite l'instauration d'une t.v.a. en Belgique retiennent depuis un bon bout de temps déjà l'attention de l'opinion publique. Le Gouvernement n'est évidemment pas resté inactif. La réforme de la taxe de transmission figurait déjà dans la déclaration gouvernementale. Sans attendre une initiative de la part de la Commission de la C.E.E., le Gouvernment estimait déjà à cette époque pour des raisons de nature nationale que cette réforme était nécessaire. Un premier pas important était sur le point d'être franchi l'an dernier dans les secteurs des produits métalliques et sidérurgiques. La situation économique du pays a malheureusement rendu impossible cette réalisation étant donné que cette réforme aurait eu comme conséquence d'augmenter ou de diminuer pour beaucoup de produits la charge fiscale de l'impôt et qu'elle aurait dès lors encore accentué la poussée inflationniste qui s'est manifestée dans notre pays. Comme la situation économique n'est pas encore suffisamment stabilisée ce projet ne pourra sans doute pas être réalisé dans les tout premiers mois.

Etant donné que depuis lors la Commission de la C.E.E. a émis des propositions concrètes tendant à instaurer un régime communautaire d'ici 1970, on peut se demander s'il est encore opportun de réaliser le système qui avait été retenu l'année dernière et qui était un système transitoire destiné à aboutir, en fin de compte, à une taxe unique perçue au stade qui précède le commerce de détail. Si une décision au sujet du système communautaire doit être prise à brève échéance, j'estime qu'il est inopportun de passer par un stade intermédiaire. En effet, cette solution comporterait deux bouleversements se succédant rapidement et entraînerait pour l'administration et pour les entreprises un travail supplémentaire considérable. De plus, les risques de perturbation dans les prix seraient vraisemblablement accrus.

Cela n'implique cependant pas qu'il m'est actuellement possible de me rallier sans plus aux propositions de la Commission. Je suis d'accord avec elle quand elle dit que la perception des impôts indirects ne peut influencer la position concurrentielle des entreprises et ne peut avoir comme conséquence de créer entre les Etats-membres des distorsions de nature économique. Je suis d'accord avec elle d'admettre que cette parfaite neutralité ne peut pas être réalisée tant qu'existe, dans un ou plusieurs Etats, un système de taxe cumulative à cascade. L'expérience des dernières années nous confirme ce point de vue.

Mais faut-il absolument que le même système de taxe existe dans les six pays? Ne pourrait-on leur laisser la liberté du choix du système qui correspond le mieux à la structure économique du pays, à la mentalité des contribuables et aussi aux moyens dont dispose l'administration? On peut s'imaginer que la France se contente de son système de t.v.a. et que la République Fédérale d'Allemagne désire adopter un système semblable. Mais faut-il nécessairement que les autres pays choisissent le même système? Ne pourraient-ils, si celui-ci leur convient mieux, plutôt choisir une système de taxe unique avec paiement unique? Un système pareil est appliqué en Suisse, en Angleterre, en Norvège et en Suède et ces pays s'en trouvent bien.

La Commission admet que la neutralité de l'impôt pourrait être réalisée, pour autant que les Etats-membres adoptent un régime de taxe unique, même si ce régime diffère d'un pays à l'autre. Mais elle pense que la suppression des frontières fiscales – but final

à atteindre d'après elle – n'est possible que si tous les Etats-membres adoptent le système de t.v.a. Même si cette affirmation est exacte, on se demande si la Commission en fixant comme objectif à atteindre la suppression des frontières fiscale – c'est-à-dire la suppresion de tout contrôle physique et de toute compensation des taxes aux frontières internes – fait preuve de suffisamment de réalisme. Il est douteux que cet objectif puisse être atteint aussi longtemps qu'on ne poursuive que l'intégration de l'Europe sur le plan économique. Si on supprime les frontières fiscales, il faut que les systèmes d'impôt sur le chiffre d'affaires soient unifiés et que les taux et les exemptions soient les mêmes dans les six pays. Ceci veut dire que les Etats-membres doivent abandonner leur liberté d'action dans une branche importante de la fiscalité. Cet abandon de l'autonomie financière ne sera à mon sens pas possible aussi longtemps que les pays resteront autonomes en ce qui concerne les grands secteurs de la vie publique tel que le secteur social, celui de l'enseignement, celui des travaux publics et d'autres encore. Dès lors, l'argument principal qu'avance la Commission pour proposer la t.v.a. comme système communautaire, m'apparaît comme bien faible parce que la Commission tient compte d'une évolution du marché commun qui apparaît actuellement encore comme incertaine en tout cas comme très éloignée. Il ne rentre pas dans mes intentions de me présenter comme un adversaire de la t.v.a. Nous devons abandonner le systéme à cascade et nos partenaires devraient faire de même, mais le choix reste à faire au sujet du système à instaurer et la t.v.a. figure parmi ceux qui peuvent être retenus. Afin d'éclairer le Gouvernement sur le choix qu'il s'agira de faire, j'ai constitué un groupe de travail présidé par le Secrétaire Général du département des Finances et composé de hauts fonctionnaires de tous les départements intéressés avec la tâche de nous éclairer sur les répercussions qu'aurait en Belgique l'instauration d'une t.v.a. et d'examiner s'il existe un autre système qui aurait les mêmes avantages que la t.v.a. tout en n'ayant pas autant d'inconvénients.

Ce groupe de travail a déposé tout récemment un premier rapport. Il expose quelles devraient être la structure et les modalités d'un système de t.v.a. qui tienne compte de la situation économique et sociale du pays, de même que de la mentalité belge et il exprime également l'avis qu'en ce qui concerne le choix entre un système de t.v.a. et un système non cumulatif, la préférence devrait être donnée à un système de t.v.a. englobant le commerce de détail mais avec application d'un régime particulier aux agriculteurs, aux artisans, aux petites productions et aux petits détaillants.

Il a également consulté le Conseil central de l'économie et les principaux groupements professionnels. Leurs avis sont partagés quant au choix à faire entre un régime de t.v.a. et un autre régime de taxe unique. Les représentants des travailleurs se prononcent plutôt pour la t.v.a.; l'industrie et l'agriculture demandent, avant tout, une amélioration du régime actuel dans un délai aussi rapproché que possible; le commerce de gros et celui du détail choisissent soit la t.v.a. soit la taxe unique au stade de la production.

Le rapport confirme que l'instauration de la t.v.a. pose de très gros problèmes qui doivent encore faire l'objet d'études plus poussées tant de la part de l'administration que des milieux intéressés. Je voudrais engager avec insistance surtout ces derniers, qui ne sont pas toujours complètement au courant des différents aspects du problème, à poursuivre leurs études et d'en communiquer les conclusions à l'administration.

Pour ma part, je ne pense pas que les Etats-membres seront en mesure de prendre une

décision définitive au sujet de la proposition de la Commission, aussi longtemps que celle-ci n'aura pas fait connaître la structure et les modalités d'application du système qu'elle préconise. La Commission pense qu'aussi longtemps que les frontières fiscales subsisteront les modalités du système peuvent différer d'un pays à l'autre.

Cette opinion me laisse sceptique.

Ainsi, elle ne verrait pas d'inconvénient à ce que les taux et les exemptions ne soient pas les mêmes dans les six pays. Certains experts expriment l'avis qu'une telle situation pourrait être l'origine de distorsions étant donné que la neutralité concurrentielle ne serait pas respectée si un pays exportait des marchandises dont il est gros producteur tout en imposant une marchandise, concurrentielle à la première, qu'il achète à l'étranger.

Autre exemple: même après la suppression des frontières la Commission estime que les Etats-membres pourraient conserver le choix d'appliquer la t.v.a. jusqu'au commerce de détail inclus ou de l'arrêter au stade du gros. Là aussi je n'ai pas tous mes apaisements. N'en résultera-t-il pas un détournement du trafic commercial normal, tout au moins dans la région frontalière, au détriment des pays qui appliqueraient la taxe aux opérations effectuées par les détaillants? Il faut d'ailleurs envisager que si actuellement le commerce de détail ne participe que dans une faible proportion au commerce national, qu'au fur et à mesure que progresse l'intégration économique des six pays, cette proportion deviendra plus importante et le commerce de détail exempté dans un pays sera alors avantagé par rapport au commerce de détail du pays qui applique la t.v.a. jusqu'au dernier stade.

D'autres différences dans l'application du système pourraient à mon sens également créer des distorsions que l'harmonisation a précisément pour but d'éliminer. Je me limiterai à mentionner les régimes qui seront réservés aux agriculteurs et aux petits détaillants. Certains pays leur réserveront un régime d'exception, d'autres les soumettront au droit commun. Dans quelle mesure ces régimes d'exception ne constitueront-ils pas un régime de faveur susceptible de fausser la concurrence entre les six pays?

Conclusions

Après cet exposé sur les travaux de la Commission de la C.E.E. dont elle mérite, certes, d'être félicitée, et sur l'état de la question en Belgique, il faut maintenant que je me résume.

Pour la bonne marche de la Communauté Economique il est absolument nécessaire que les 5 Etats-membres qui appliquent encore l'impôt sur le chiffre d'affaires à cascade renoncent à ce système. On ne peut qu'approuver les propositions en ce sens, faites par la Commission.

Quant à l'avis de la Commission selon lequel le même système devrait être appliqué dans les six pays et que ce système devrait être un système de t.v.a., je fais une double réserve. Tout d'abord je ne suis pas convaincu que le système qu'elle propose est pour chacun des six pays celui qui lui convient le mieux et je pense que si dans certains pays l'instauration d'une t.v.a. s'avère impossible pour des raisons qui lui sont propres, l'instauration dans les six pays d'un système de taxe unique qui serait différent d'un pays à l'autre, serait déjà bénéfique pour la bonne marche du Marché commun.

Ensuite, si on décide néanmoins que le système doit être le même dans les six pays, je crois qu'on ne peut raisonnablement retenir que le système de la t.v.a. puisqu'il existe

déjà dans un pays et qu'il est sur le point d'être instauré dans un autre. Mais avant que les Etats-membres se prononcent à ce sujet, il faudrait qu'il soit indubitablement établi que les différences dans l'application du systéme entre les six pays, ne soient pas à l'origine d'autres distorsions peut-être aussi graves que celles qui résultent des disparités entre les régimes actuellement en vigueur.

La législation sur les taxes assimilées au timbre est une pièce maîtresse de notre appareil fiscal. Vieille maintenant d'une quarantaine d'années elle est arrivée à son terme après avoir été un merveilleux outil qui a traversé avec succès des périodes de prospérité et de crise, de paix et de guerre. Actuellement, à cause de la hauteur des taux, on lui impose une tâche pour laquelle elle n'a jamais été conçue.

Si la machine, bien huilée au début, est actuellement enrayée, sa magnifique réussite dans le passé doit nous inciter à faire aussi bien à l'avenir. La législation est et restera compliquée parce que la vie des affaires est complexe et parce qu'une simplification ne pourrait être réalisée que moyennant un dégrèvement massif auquel on ne peut songer dans le monde moderne.

Les artisans du nouveau régime devront surtout retenir les aspects économiques du problème tout en tenant compte des conséquences de nature sociale et des particularités propres à notre peuple. Ainsi, leur oeuvre sera digne de celle de leurs précédesseurs. Je suis convaincu qu'ils se montreront à la hauteur de leur tâche.

INDIRECT TAXES WITHIN THE COMMON MARKET

Summary

Mr. Dequae, the Belgian Minister of Finance, lectured at the "Ecole Supérieure des Sciences Fiscales" in Brussels.

The lecture contains the Minister's opinion of the introduction of a tax on added value (T.V.A.) in 5 EEC countries with emphasis directed to Belgium. He agrees that the multi-stage turnover tax, where it still exists, must be abolished. However, the same system as the T.V.A. need not be applied in all the six Member States, since every country has its own economic and social structure within which a certain system functions best. A single point tax, in view of the Belgian economic and social structure, is considered to be more preferable than the T.V.A. Nevertheless, a special study group established to examine the Belgian case in this respect was of the opinion that the T.V.A. system is preferable to any other non-cumulative tax system.

The introduction of a T.V.A. system in Belgium may solve old problems but will bring about many new ones which may hamper the objectives which were established by the European Economic Community.

DAHOMEY

BIBLIOGRAPHY

Problèmes d'Outre Mer, Informations d'Outre Mer, Lefebvre, Paris, 12, rue Margueritte, June 15, 1964, pp.3.

Brief survey of new tax measures, e.g. with regard to personal tax, income taxes (rates), excise and customs duties.

FRANCE

BIBLIOGRAPHY

La pratique de la Fiscalité Immobilière, Ce qu'il vous faut savoir, Encyclopédie pratique pour la vie des affaires, BROET, L., Paris VI, 13, rue de l'Odéon, J. Delmas et Cie., 1964.

A practical analysis is presented on the taxation of building construction with respect to the turnover tax provision, capital gains tax on the alienation of real property and buildings and the special regulations for certain companies i.e. housing cooperatives, real estate investment companies and real estate management companies (under the reform law of March 15, 1963). See: the articles published in European Taxation under the heading of: Taxation of building construction in France, Parts A, B and C, pp. 28 51 and 61 (Eur. Tax.) 1964.

GERMANY

BIBLIOGRAPHY

Betriebsprüfung und Steuerstrafverfahren, Eine Auswahl aktueller Fragen aus der Praxis, LOHMEYER, H., Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf 1964, pp. 80.

In computing the annual accounts of an enterprise two risks are involved. On the one hand there is the possibility that too much tax will be paid; on the other hand there is the possibility that the entrepreneur will be subject to penal proceedings if too little tax is paid. The latter risk is discussed in this book emphasizing the task of the accountant in this field.

Die Prüfung des Jahresabschlusses, Handbuch für Studium und Praxis, Veröffentlichungen der Union Européenne des Experts Comptables, Economiques et Financiers, 54, Rue St. Lazare, Paris, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 1964. pp. 195.

This is the second and revised edition of a handbook for study and practice computed by the commission of the European Association of Accountants.

Gemeindehaushalte, Heft 75 Institut "Finanzen und Steuern", Bonn am Rhein, Markt 14, August 1964, pp. 148.

The municipal financing of various cities i.e. Hannover, Düsseldorf, Köln, Frankfurt, Stuttgart and München are discussed herein. In particular the discussion centers around the expenditures of these cities as well as the types of revenues that make up the budget.

Juristen-Jahrbuch, ERDSIEK, Prof. Dr. G., Köln-Marienburg, Verlag Dr. Otto Schmidt KG, 1964, pp. 279.

Annual publication of the Association of German Jurists (lawyers, judges, notaries etc.) for the year 1964/1965. It not only contains information necessary for members of the association but also various articles. In addition the important decisions of the High Court are listed.

Mahnwesen; Prozess; Vollstreckung: die Verwirklichung von Forderungen in der Praxis, SCHNEIDER, Dr. E., Köln-Marienburg, Verlag Dr. Otto Schmidt KG, 1964, pp. 203.

The default of a debtor. The routes to payment under German law are set forth in this book. The practical application, i.e. dunning letters, contacting a lawyer, dunning by officials connected with the courts and legal proceedings along with estimated costs are discussed herein. Attention is given to obtaining payment after receiving the court's judgement. The author is quite experienced in this phase of the law and is also a frequent lecturer on this subject.

Rückstellungen in Ertragsteuerbilanzen und bei der Einheitsbewertung des Betriebsvermögens, LITTMANN, Dr. E., Dr. K. FÖRGER, Stuttgart, Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., GmbH, 1964, pp. 498, DM 46.-.

Why establish a reserve for operating an enterprise? Which type of reserves are allowed under German tax law and what are the conditions and tax consequences of their establishment? What are the accounting procedures for the reserve? The answers to these questions are discussed in a lucid manner in this book. The first part deals with the concepts of reserves, clarified by examples of the existing legal provisions. The second part gives a survey and comment of all important court decisions affecting reserves, alphabetically listed. This book is an enlightening guide to a most difficult subject.

Wozu und wie gründet man eine GmbH?, PRIBILLA M.E., Wilhelm Stollfuss Verlag Bonn, 1964.

The series of these handy guides bears the name "International Business Books" and will be published besides on France, on Germany, Italy and the United Kingdom.

This guide "Why and how to establish a GmbH" is the first of the German series. Shortly, the guide to the corporation and two forms of partnership will be published. The guide to the GmbH already includes two sections comparing the corporation and the partnership with the GmbH. The other sections contain information on commercial and tax law.

INDONESIA

TAX NEWS

Tax Amnesty Regulation

President Sukarno sanctioned a Tax Amnesty Regulation by his promulgation in the Official Gazette of the Republic of Indonesia. The regulation will come into effect as of a later date which will be determined by the Minister of Finance.

The tax amnesty regulation pertains to any

income received or any accumulated capital which has never been subject to either the income tax, the corporation income tax or net worth tax. The present economic situation in Indonesia opens the opportunity to accumulate capital from criminal activities i.e. corruption or smuggled good transactions. The tax authority is fully aware of the inability of the revenue collecting agencies to curtail these fiscal infringements. The Government now gives the opportunity to the parties concerned to settle their matters of imposing a 10% lump-sum tax on capital which has never been subject to tax in previous years, if a declaration is made to the tax authority before August 17, 1965. The rate of tax is reduced from 10% to 5% when the capital is invested in undertakings engaged in the field of agriculture, fishery, cattle breeding, mining, manufacturing industry or transportation.

The normal tax rates are much higher. But by applying the 10% lump sum tax no further tax claim on that capital will be made.

The corporate income tax is levied at 10% of the profit up to Rp 2.500.000 to a maximum rate of 52.5% for profits exceeding Rp 500 million. The normal individual income tax ranges up to approximately 40% for income exceeding Rp 24 million. The net worth tax is 0.5% of net worth over Rp 25 million.

It is stipulated in the regulation that even money-lenders (he who possesses, controls, uses the capital) are obliged to declare, register and pay tax on the capital.

Taxpayers declaring their hidden capital are not required to inform the tax authority of its origin.

Taxpayers who do not take advantage of this amnesty are subject to imprisonement for 5 years or a fine to 100 million rupiahs.

INTERNATIONAL

TAX NEWS

RESOLUTION ON THE SECOND SUBJECT OF THE HAMBURG CONGRESS IN 1964

The International Fiscal Association Congress, Hamburg September 1964, passed the resolution on the second subject of the convention.

"The delimitation between the country of residence and other countries of the power to tax corporations and/or their shareholders".

A. Having taken into account the recommendations of previous IFA-Congresses and those of the OECD concerning a model tax convention, the Congress is of the opinion that the fiscal sovereignty of states over the income and capital of corporations and their shareholders should be delimited in accordance with the following principles:

1. Corporations are to be treated as independent entities for the purposes of the taxation of income and capital.
2. The right to tax the income and capital of corporations is primarily reserved to the state in which the corporation has its centre of management, its seat, or its place of incorporation (country of residence). In case of conflict, the decisive determining factor is the centre of management.
3. If a corporation which is a resident of one state receives income from another state or possesses assets there, the

other state should be entitled to levy taxes to the extent that the asset or source of income is real estate or a permanent establishment. In such cases, double taxation of the income and assets taxed in the country of source is to be avoided by tax credit or tax exemption in the country of residence of the corporation.

4. The right to tax distributions or profits by a corporation to its shareholders should be basically reserved to the country of residence of the shareholder.
   At the same time, the country of residence of the corporation should be allowed to impose a limited rate of taxation, which should then be credited against the domestic tax liability of the shareholder.
5. If the shareholder is a corporation which owns a substantial holding in the capital of another corporation, in particular the parent corporation of a subsidiary, the country of residence of the parent corporation should exempt the dividends received by the latter from further taxation. Correspondingly, the dividends should be tax exempt or only taxed at low rates in the country of source. In this connection, reference is made to the resolutions on the Second Subject of the 1961 Congress at Jerusalem.
6. In special cases, for example, if the rate of corporate income differs for distributed and retained profits (split corporate income tax rate), the restrictions on taxing power recommended under 4. and 5. above are only conditionally applicable.
   The Congress is of the opinion that the application of the principles outlined above which are also contained in the majority of double taxation conventons, renders possible not only a usable delimitation of fiscal sovereignty, but also conforms to the requirements of the clarity and predictability of law. It also guarantees an acceptable avoidance of international double taxation for the taxpayer, and is therefore designed to encourage international economic relationships.

B. Cases have arisen in practise in which the profits of foreign corporations have been taxed in the country of residence of the controlling individual or corporate shareholders, either through direct taxation of the foreign corporations as such or by subjecting the shareholders to taxation based upon the non-distributed profits of the foreign corporation.

The congress is of the opinion, in view of the principles set out above (under A 1 and 2) and because of the difficulties arising in the use of special methods of taxation, that the application of such special methods is only justified in exceptional circumstances, particularly when they are needed for the prevention of serious abuse. Such methods should only be applied after all existing legal procedures have been exhausted.
Furthermore, in all cases where such methods of taxation are applied, the following requirements should be observed:

a) Contractual obligations between states, in particular those resulting from double taxation conventions, should not be unilaterally revoked; such a breach of contract would mean a profound disturbance of the basis of international law, with unforeseeable consequences.
b) Effective steps should be taken to

avoid international double taxation which may result from such measures.

c) Bona-fide direct and indirect shareholders other than the controlling shareholders of the foreign corporation should not be affected by such measures.

d) No obligations should be imposed on tax payers, which could bring them into conflict with mandatory legal provisions of the foreign state concerned.

ITALY

BIBLIOGRAPHY

Archivio Finanziario (Annali degli Studi Tributari a cura dell' Istituto di Finanza dell' Università di Ferrara), Volume XII, MASELLI, E., CEDAM- Casa Editrice Dott. Antonio Milani, Padova, 1964, pp. 329, lire 4500.

This is the twelfth volume in a regularly published series on various important tax laws, with reviews of recently published books and articles. It also contains a study of Nicola d'Amati on taxable income.

Elementi per un'analisi degli effetti economici di una modificazione del regime di imposizione sugli scambi, Quaderno n. 11, Prof. VALERIO SELAN, Istituto per l'economia Europea, Via Vincenzo Bellini 22, Roma, 1964, pp. 383.

This publication analyzes the influence of turnover tax on the economic development in a country, especially in the six member countries of the common market, and it discusses the consequences of a harmonization of turnover tax systems in these countries, as proposed by the EEC.

Prontuario Imposta Entrata, Riepilogo delle Principali Disposizioni, L. di G. Pirola, Milano, 1964, pp. 64, 500 lire.

This booklet gives the most important information on the turnover tax law, the texts of the laws of December 16, 1959, no. 1070 and October 31, 1961, no. 1196 plus tax tables.

Racolta delle circolari ed istruzioni ministeriali relative all'imposta di R.M. e complementare progressiva sul reddito, Quinto fascicolo di aggiornamento (dal 1° gennaio 1961 al 31 dicembre 1962), COCIVERA, Dott. A. Giuffrè, Milano, 1963, pp. 321, lire 1000.

Annual publication of a compilation of a recent ministerial circular letter and instructions with regard to the schedular tax on income from movable capital, business and labour (Imposta sui redditi di Ricchezza Mobile) and the individual complementary income tax. The publication updates the series to January 1, 1963.

LEBANON

TAX NEWS

Taxation and investments in Lebanon

1. The Tax on income in Lebanon is levied under Legislative Decree No. 144 enacted on June 12, 1959. Income tax is

charged on three sources of income, viz:

(i) Profits of industrial, commercial and non-commercial occupations.
(ii) Salaries, wages and pensions.
(iii) Income of movable capital.

2.1 The tax on the profits of industrial, commercial and non-commercial occupations is imposed on natural or juristic persons, resident in Lebanon or abroad, on the profits realized in Lebanon. Hence, profits realized abroad, by residents in Lebanon, is not subject to tax in Lebanon. The distinction between profits realized in Lebanon and those realized abroad is a very fine technical distinction. A juristic person resident in Lebanon is not subject to tax in Lebanon on profits realized abroad through a branch office or through an agency. Otherwise, such income may attract tax in Lebanon. In so far as individuals are concerned, the distinction becomes more subtle and elusive.

2.2 The tax on such profits is imposed on the net profit realized during the year immediately preceding the year of assessment.

2.3 The tax imposed on the above profits, whether the assessee is an individual or a corporation incorporated in Lebanon or abroad, is as follows:

	Commercial Occupations	Non-Commercial Occupations
First LL5,000 of taxable income	5%	4%
Excess over LL 5,000 up to LL15,000	7	5
Excess over LL 15,000 up to LL25,000	9	7
Excess over LL 25,000 up to LL35,000	13	10
Excess over LL 35,000 up to LL50,000	17	13
Excess over LL 50,000 up to LL75,000	22	17
Excess over LL 75,000 up to LL100,000	27	22
Excess over LL100,000 up to LL250,000	32	27
Excess over LL250,000 up to LL750,000	37	32
Any excess over LL750,000	42	37

10% of the tax is added to the income tax for the benefit of Municipalities.

2.4 Individuals enjoy reliefs not exceeding LL3,000 per assessee, depending on marital status.

3.1 The tax on salaries, wages and pensions, is likewise assessed on the basis of the net income accrued to the assessee during the year immediately preceding the year of assessment. Such tax is to be withheld by the employer and settled to the tax authorities by April 1, or June 1 of each year, depending on whether the employer is an individual or partnership, or a corporation (société anonyme).

3.2 The rates of tax on the yearly income from salaries, wages and pensions is as follows:

Net chargeable income not exceeding	
LL4,800	2%
Excess over LL 4,800 to LL 8,400	3
Excess over LL 8,400 to LL12,000	4
Excess over LL12,000 to LL24,000	5
Excess over LL24,000 to LL36,000	6
Excess over LL36,000 to LL48,000	8
Any excess over LL48,000	10

3.3 The assessee is entitled to a relief not exceeding LL3,000 per annum,

depending on his marital status.

4.1 The tax on movable capital covers the various incomes, profits, interests and benefits of such capital, whatever their designation may be or the nationality of the undertaking deriving such income or the domicile of the persons to whom it accrues, if occurring in Lebanon or passing to a resident therein.

4.2 This income covers, inter alia, dividends on shares, interest on bonds, bank interest received, directors remuneration from profits, interest on loans, and the like.

4.3 Dividends declared by a Lebanese corporation (société anonyme), are exempt from the tax under this Part, in so far as such dividends are declared from profits realized in Lebanon and charged to tax under Part I.

4.4 The rate of movable capital income tax is fixed at 10% of the gross income, plus 10% thereof for the benefit of Municipalities.

5.1 It will be observed that domestic corporations and foreign corporations are taxed according to the aforementioned bases on equal footing.

5.2 It is incumbent upon every juristic assessee to keep books of account and likewise every merchant or trader from a certain level is required to keep proper books of account.

5.3 Industrial enterprises established in Lebanon, when complying with certain conditions, enjoy a tax holiday for six years from the date of production. The conditions to be met are:

(i) The production or organization of a new industry differing from existing industries, with a view to increasing the national production.

(ii) Capital employed in Lebanon should not be less than one million Lebanese Pounds (about $330,000).

(iii) Total annual payroll of Lebanese labour should not be less than LL100,000

5.4 Hotels of certain level enjoy also duty free importation of building materials fixture and other items required by the hotel, upon establishment.

5.5 Foreign capital can be invested in Lebanon, either directly through a branch or indirectly through the formation of a Lebanese société anonyme. There are no restrictions on the amount of foreign capital invested in a Lebanese société anonyme. The only restriction is that at least half of the members of the board of directors should be of Lebanese citizenship. Such directors may only hold the qualification shares as prescribed in the statutes of the société anonyme. Should the enterprise wish to own real estate, for its purposes, then at least one third of the capital stock should be held nominatively by Lebanese citizens.

6. Foreign corporations may establish branches in Lebanon. The requirements are:

6.1 Authenticated copy of the constitution or memorandum and articles of association of the corporation.

6.2 Authenticated copy of the resolution of the corporation to establish a branch in Lebanon, such resolution to name the legal representative in Lebanon.

6.3 Legalized power of attorney in favour of the legal representative granting him full powers to manage the branch.

6.4 Lists of other branches of the corporation abroad and of local boards of directors and of the home board of directors.

6.5 All the above documents are to be translated into Arabic, when in any other language.

6.6 The legal representative should obtain a work visa prior to his entry to the country, and then obtain a residency permit.

7. Beirut harbour has a free zone, in which imported goods may be reprocessed, repackaged or otherwise manipulated without attracting customs duty. Moreover, there are inter-Arab states treaties which grant reliefs in customs duty for products produced in and exchanged between these states. Hence Arab markets are more accessible from Lebanon.

8. Problems encountered in starting business in Lebanon are the natural problems to be faced in starting any new business, and there are no undue hardships or problems.

Reported by: Karim G. Khouri, Beirut

MEXICO

TAX NEWS

It has been decided that the reimbursement for travel expenses of foreign technicians coming into Mexico to render services, are not to be considered as salary, but rather reimbursement for expenses.

Instalment sale of immovable property in Mexico

In the Boletin de Información Fiscal del Instituto Mexicano de Estudios Fiscales, S.C. presents the calculation of the tax on such sale as follows:

1. from the sales price the cost of the building and ground is deducted;
2. on the resulting difference the corresponding tariff will be applied (see Bulletin July 1964, p. 284);
3. the resulting tax will be divided into as many instalments as the sales price is to be paid, and the tax will be paid by stamps which must be affixed to the purchase voucher.

NETHERLANDS

BIBLIOGRAPHY

Nieuwe overzichten van vervroegde afschrijving en investeringsaftrek, RULLER, D. van, Amsterdam, Prinsengracht 721, Nederlandse Orde van Accountants, 1964, pp. 6, free on request.

This booklet gives an updated survey of accelerated depreciation and investment allowances on such business assets such as buildings, ships, aircraft and machines.

Registratiewet 1917, Nederlandse Staatswetten, Editie Schuurman en Jordens no. 83, Zwolle, N.V. Uitgeversmaatschappij Tjeenk Willink, 1964, 10e druk, eerste aanvulling, pp. 10, Fl. 1.30.

First supplement bringing the main volume on Registration Duties up to date. Contains the text of the laws and ruling on matters such as the exemption of registration duty in case of mergers and internal reorganization of a corporation.

PERU

TAX NEWS

Peru has introduced a system of appraising the wealth of an individual for the purpose of determining his income when he does not submit his complementary tax return. Houses, cars, yachts and other watercrafts, luxury horses, aeroplanes, servants and membership to country clubs are valued for the fixing of taxable income from which no deduction will be granted.

A new custom tariff has been introduced through High Decree 139-H of July 23, 1964. This tariff follows the nomenclature of Brussels of 1955 which is in force.

The different "taxes ad valorem" have been consolidated, and the new custom tariff is divided into specific duties and ad valorem duties. In addition a 6% freight tax will be levied. The issuance of this new custom tariff does not affect the existing exemptions granted under the Peruvian incentive laws.

PUERTO RICO

TAX NEWS

The Company Income Tax for Foreign Corporation.

Foreign corporations are taxed only on their income from sources within Puerto Rico whereas domestic corporations are taxed on income from both national and foreign sources.

The following are deemed to be income from sources within Puerto Rico:

1. Interest on bonds, notes, or other interest, bearing obligations of residents, corporate or otherwise but not including:

   a. Interest on deposits with persons carrying on the banking business paid to persons not engaged in business within Puerto Rico;

   b. Interest received from a resident individual, a foreign partnership or corporation engaged in trade or business in Puerto Rico, or a domestic corporation or partnership when it is shown to the satisfaction of the Secretary of the Treasury that less than 20% of the gross income of such payer has been derived from sources within Puerto Rico for the 3 year period ending with the close of the taxable year of such payer preceding the payment of such interest, or for such part of such period as may be applicable;

   c. Income derived by a foreign central bank of issue from banker's acceptances;

2. Dividends or profits received from a domestic corporation or partnership in analogous conditions to the immediatuly aforementioned, or from a foreign corporation or partnership, unless less than 20% of the gross income of such foreign corporation or partnership for the 3 year period ending with the close of its taxable year preceding the declarion of such dividends or distribution of said profits, or for such part of such period as the corporation or partnership has been in existence, was derived from sources within Puerto Rico; but only in an amount which bears the same ratio to such dividends

and profits as the gross income of the corporation or partnership for such period derived from sources within Puerto Rico bears to the gross income from all sources;

3. Rentals and royalties from property located in Puerto Rico or from any interest in such property including rentals or royalties for the use of, or for the privilege of using in Puerto Rico, patents, copyrights, secret processes and formulas, goodwill, trade marks, trade brands, franchises and other like property;
4. Gains, profits, and income from the sale of real property located in Puerto Rico;
5. Compensation for personal services performed in Puerto Rico.

It must be noted that from the preceding items of gross income may be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income, to obtain the net income from sources in Puerto Rico.

Gains, profits and income from transportation or the services rendered partly within and partly without Puerto Rico or from the sale of personal property produced in whole or in part by the taxpayer within and sold without Puerto Rico, or produced in whole or in part by the taxpayer without and sold within Puerto Rico, shall be treated as derived partly from sources within and partly from sources without Puerto Rico.

Gains, profits and income derived from the purchase of personal property in cases analogous to the immediately abovementioned shall be treated as derived entirely from sources within the country in which sold.

Items of gross income other than interest, rentals or royalties, gains, profits and income as indicated or compensation for labor or personal services, shall be allocated or apportioned to sources within or without Puerto Rico.

Where items of gross income are separately allocated to sources within Puerto Rico, there shall be deducted for the purpose of computing the net income therefrom, the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within Puerto Rico.

In the case of gross income derived from sources partly within and partly without Puerto Rico, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deduction which can not definitely be allocated to some items or class of gross income.

Generally speaking, in the case of a foreign corporation or partnership the deductions shall be allowed only if, and to the extent that, they are connected with income from sources within Puerto Rico; and the proper apportionment and allocation of the deduction with respect to sources within and without Puerto Rico shall be determined under rules and regulations especially issued by the Secretary of the Treasury.

Non-domestic corporations shall receive the benefit of deductions and credits allowed to it only by filing or causing to be filed with the Secretary of the Treasury a

true and accurate return of its total income received from all sources in Puerto Rico, including therein all the information which that Secretary may deem necessary for the calculation of such deduction and credits.

In case of a non-domestic corporation not engaged in trade or industry in Puerto Rico, income derived from Puerto Rican sources is taxed at a flat rate of 29% which is generally withheld at source.

SWEDEN

BIBLIOGRAPHY

Omsättningskatten, ÅQVIST, N.E., K. EDSTRÖM and H.R. FRIDOLIN, third revised edition by G.B. Allström and H.G. Lundin, Stockholm, P.A. Norstedt & Söners Förlag, 1964, pp. 194, Skr. 12.75.

A practical survey of the Swedish turnover tax system, containing a useful commentary on and the text of the Decree and Regulations.

SWITZERLAND

BIBLIOGRAPHY

Gutachten über Änderung des kantonalen und eidgenössischen Steuerrechts im Hinblick auf Umwandlungen und Fusionen geschäftlicher Unternehmungen (Änderung der Rechtsform) *und auf Holdingverhältnisse*; herausgegeben von der Schutzorganisation der privaten Aktiengesellschaften—Basel, Schulthess & Co AG, 1964, Zürich, pp. 126.

Critical survey of some tax consequences brought about by reorganizations and mergers. Comparison of the federal and the cantonal taxation of the above with proposals for modifications.

Die steuerliche Belastung der verschiedenen Unternehmensformen in der Schweiz und der Bundesrepublik Deutschland, Handelskammer Deutschland-Schweiz, 1963, pp. 48, "The taxation of different forms of enterprises in Switzerland and Germany".

Articles by Dr. Meyer-Marsilius appear on the relevancy of the tax burden in estimating the costs of establishing an enterprise and in choosing the country of location. Dr. Dober's article compares the tax burden in various cantons of Switzerland and Dr. Herzberger discusses the German taxation of Swiss enterprises operating in Germany.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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The I.F.A. was founded on the 12th of February 1938 by tax experts of a number of countries. Purpose and working-method are defined as follows in the Articles:

(*art.* 2) the object of the Association is the study of international and comparative public finance and fiscal law, especially international and comparative law of taxation, together with the financial and economic problems connected therewith.

(*art.* 3) The Association shall endeavour to realise this object by
- *a*) organizing Congresses
- *b*) issuing a periodical
- *c*) founding one or more libraries and a documentation bureau
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TAX AND OTHER INCENTIVES TO CAPITAL INVESTMENT IN THE UNITED KINGDOM

by

T.W. ELLIOTT

Since 1945, a feature of the United Kingdom economy has been the use of tax measures to influence investment in fixed assets. These measures appear to have reached a peak in 1963 when, in addition, the U.K. government began to use direct monetary subsidies as an inducement to particular forms of capital expenditure.

The features of the present system are as follows: —

(i) Direct government grants where expenditure in particular geographical areas leads to the creation of employment.

(ii) The withholding of depreciation allowances for tax purposes in respect of certain assets and the provision of accelerated allowances in those cases where depreciation is recognised for tax purposes.

(iii) A tax allowance in addition to depreciation allowances. This is the so-called "Investment Allowance". It will be seen that whereas accelerated depreciation merely redistributes over time an allowance of 100%, the investment allowance enables a trader to receive relief in excess of 100% of the cost of an asset. For this reason it is often said that accelerated depreciation gives a trader an interest-free loan whereas the investment allowance is by comparison more in the nature of a "gift".

(i) *The direct grant*

Certain geographical areas of the United Kingdom "where a high rate of unemployment exists . . . and is likely to persist . . ." are designated as Development Areas. Where expenditure is incurred by a trader in these areas on buildings or plant, it is possible to receive a grant which in the case of a building can amount to 25% of the cost of the building and, in the case of plant, can be 10% of the cost. There are certain limitations as to what can be included in the cost of a building—the cost of the site is excluded—and not all plant qualifies. Thus readily movable items, such as vehicles and office machinery, are excluded.

There is one overriding condition to the award of a grant, which springs from the prime purpose of the legislation which is to reduce unemployment in the development areas. In deciding whether to give a grant in connection with a particular item of expenditure, the Minister has to have regard "to the relationship

between the expenditure involved and to the employment likely to be provided". This condition is referred to as the "cost per job". Clearly the U.K. Treasury is not prepared to assist in the creation of employment regardless of cost,—there is an unspecified maximum "cost per job" which governs the response of the Minister to claims for grants.

The grants can be received by anyone carrying on "any trade or business or any other activity providing employment", and it should be added that the Minister is also empowered to make loans either alternative or additional to the grants.

The grant reduces the cost of the asset concerned for tax purposes so that tax allowances are based on net cost after grant.

(ii) *Accelerated depreciation for tax purposes*

Historically the United Kingdom tax system starts from the view that depreciation, being a "running down" of capital, is not allowable at all as a business expense. This rigid view has long been abandoned but its influence remains in that an allowance for depreciation has to be specifically covered by legislation. This means, firstly, that only certain assets are granted depreciation allowances for tax purposes,—for example no tax allowances are due for depreciation in the case of office buildings, shops, hotels and showrooms, and secondly, that the rate of allowance has been varied both over time and between different assets. It is fair to say that the U.K. "capital allowances" pay only lip service to commercial depreciation. They are used quite deliberately to stimulate or retard capital expenditure.

Where assets do rank for tax allowances, the basic principle has been to allow the cost of the asset to the trader over a period of years. There is an exception to this. In the case of an industrial building, allowances are always based on the original cost of construction no matter at what price a building may change hands subsequently. This apart, when an asset is acquired, allowances are given on the basis of the cost to the trader. If it is subsequently sold, a balancing adjustment is made with the intention that the total allowances received by the trader are equal to the net cost of the asset to him (original cost less proceeds).

The granting of accelerated allowances means simply that the allowances tend to be relatively large in the early years of the asset's life, the allowances in later years being much smaller. The degree of acceleration is achieved in several ways.

Firstly, in the case of Plant and Machinery and of Motor Vehicles, what is known as the Annual Allowance is usually given on a 'reducing value' basis. The annual allowance in year 1 is based on cost, the annual allowance in year 2 on cost less the allowances of year 1 and so on. The alternative method is to use what is known as the straight line method by which the annual allowance is always

a fixed percentage of original cost. The trader has a choice. An example will show the degree of acceleration brought about by the reducing value basis. In the case of a motor vehicle, the straight line rate is 11¼% whereas the reducing balance percentage is 25. Thus the allowance per £100 of expenditure is £25 in year 1 and approx. £19 in year 2 on the reducing value basis, whereas it is £11.25 in each case on the straight line basis. Within a system which aims to give 100% allowance over a period, the reducing value basis brings an appreciable degree of acceleration.

Secondly, acceleration is accomplished by what is known as the Initial Allowance. The annual allowance rate is given, at its prescribed rate, annually. The Initial Allowance is given as an extra allowance in the first year only. However, it is really an advance instalment of the total allowances—it enables the trader to anticipate some of his annual allowances. In the case of a motor car used for trade purposes, the initial allowance at present is 30%. Over the years, the trader can expect to receive allowances totalling 100% of the cost of the asset. He receives an annual allowance of 25% plus the initial allowance of 30% in the first year—a total allowance equal to 55% of original cost. The remaining 45% falls to be allowed at the rate of 25% (reducing value basis) in later years.

Not only has the initial allowance varied from time to time as the economic situation has required, it has also varied according to the type of asset concerned. For example, it is higher for plants than it is for industrial buildings.

Under the heading of accelerated depreciation, mention should be made of a recent development. In the case of two classes of expenditure, accelerated depreciation has been carried to the limit in that 100% of the cost of an asset can be written off in the first year. This is possible in the case of any asset used for scientific research purposes whether the asset is land, buildings, plant or vehicles. It is also possible in the case of any new plant or machinery used in a development area. This latter allowance is meant of course to reinforce the grant system noted earlier. However, there is no employment test in the case of the tax allowance.

(iii). *The "tax gift"*

In respect of expenditure on new assets where those assets rank for normal depreciation allowances and with the exception of motor cars used other than for scientific research, the U.K. tax law provides for an investment allowance. The trader is allowed to write off for tax purposes more than 100% of the cost of the asset. Like the initial allowance, the investment allowance is given in the first year but, unlike the initial allowance, it is not an anticipation of the allowances of later years—it is an extra allowance. Thus in the case of a new ship, the investment allowance is 40% and the annual allowance is 15%. The combined allowances in the first year total 55% of cost and the annual allowance in the second year is approximately 13% (i.e. 15% of 85%) of cost, and so on. The investment allow-

ance varies from 15% for industrial buildings to 30% for plant and commercial vehicles, and to 40% for ships.

In the case of buildings, plant and commercial vehicles, the investment allowance is reinforced by an initial allowance.

Conclusion

The U.K. system gives cash grants and tax allowances which fall very unevenly over the various types of capital expenditure with which a businessman may be

Table 1

Type or location of asset	Gross outlay	Maximum direct grant	Minimum net outlay	Investment allowance	Initial allowance	Annual allowance (First year)	Net cost after discounted tax allowances
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Revenue expenditure	100	NIL	100	NIL	NIL	100 in effect	51
Land, shops, offices, showrooms and hotels	100	NIL	100	NIL	NIL	NIL	100
Industrial buildings	100	NIL	100	15	5	4*	66
Cars	100	NIL	100	NIL	30	25	58
Industrial building in a development area	100	25	75	11.25	3.75	3*	50
Plant located outside a development area	100	NIL	100	30	10	15 say	48
Commercial motor vehicles	100	NIL	100	30	10	25	44
New scientific research assets	100	NIL	100	30	NIL	100	37
New plant located in a development area	100	10	90	27	9	81	34

* Straight line basis

concerned. This is deliberate. The U.K. Government aims to influence business decisions and a businessman concerned with maximising his revenue and minimising his costs would do well to heed this. Particularly should he have in mind the effect of grants and tax allowances on the NET cost of capital expenditure. Table 1 *supra* selects various types of expenditure and indicates how the net cost varies. For comparative purposes, the opening figure relates to an item of revenue expenditure, e.g. wages. The end column (H) is the most significant. It rests on the assumption that a given asset is used in the business until worthless and on the assumption that the business earns sufficient profits to use the capital allowances as they fall due. It represents the minimum net outlay less the flow of the tax relief discounted back to present value at an arbitrary though not unreasonable rate of 7%. The figures are approximate but sufficiently accurate to illustrate the wide spread of net costs.

MAJOR TAX REFORMS IN ISRAEL

by

DR. E.W. KLIMOWSKY

Simultaneous with adapting of the personal and social relief provisions in the Income Tax Law to the present purchasing power of the Israel currency, the system of direct taxation in Israel has undergone a considerable change in the direction of a full-scale property gains tax and the liability of profits. An interesting attempt to induce the workers to stay for long periods in the same enterprise is the exemption of severance pay from workers' benevolent funds which have accumulated during the employment of the same worker for at least ten years with the same enterprise or the same fund. The exemption for severance pay has been absolutely limited to IL 2000 for every year of employment.

The most important changes, however, affect the tax system of Israel as such. Liability to income tax is based on the geographical source of income in Israel and not on the residence of the taxpayer. As regards the progressively graduated income tax proper, this source-concept has now been widened. The place of income is not only where the business is being conducted and controlled, but in the case of a profession also if the taxpayer is "usually active" in that profession in Israel or, in the case of income from employment—if the non-resident employee is working in Israel for more than 90 days and his repective income therefrom exceeds 5000 Israeli Pounds (1650 US$). On the other hand, if the employer is an Israeli resident, his employee outside Israel is deemed to have derived his income from Israel for a period of at least four years which becomes indefinite if his employer is either the State of Israel or one of the National Funds or another public body.

Depreciation granted in Israel still adheres to a very rigid system, viz. the respective property must be listed with a certain percentage of yearly depreciation fixed beforehand in a list which is very rarely enlarged, and the depreciation as such is based on the historic value of acquisition which only in recent years has on occasion been increased due to the declining purchasing power. The transfer of the depreciable assets without transfer of control does not change that reference to the historic value. In order to counteract the circumvention of the transfer of control, the concept of "control" has been very much widened so that even if the direct influence has been transferred, but control is retained even indirectly, it is nevertheless considered not to have changed hands. If in fact it has changed hands but is being returned within three years, the transfer of the control is disregarded.

In order to cut down deductible expenses, the previous provision that the Income Tax Commissioner might not recognise superfluous expenditure, has

been retained and, moreover, the Finance Minister has been authorised with the consent of the Finance Committee of the Legislative Assembly to issue rules for deducting of expenditures and also for the means of proof of such expenditures.

The most striking novelty concerns the capital gains tax. This tax had been restricted to depreciable assets used in the taxpayer's trade or business. Now it is general, except for personal effects of the taxpayer and his immediate family and those assets, which are already subject to the Land Appreciation Tax and the tax on registered securities on the Tel-Aviv Stock Exchange and, of course, goods and merchandise subject to regular income tax. Here might develop deviation from the source-of-income concept inasmuch as the new law also includes profits from property outside Israel if the sale has been made outside Israel, the owner is a non-resident and the property concerned consists directly or indirectly of a right to property in Israel. The previous distinction between long- and short-term capital gains has been abolished and substituted by a general maximum of 25 %: for 16 years, 5 % of the tax (25 %) is deducted each year from the previous percentage balance; after 18 years there is complete exemption.

Profit which would qualify as capital income as well as business income, shall be taxed as business profit.

The previous tax exemption on gain from the distribution of assets in the liquidation of a corporation or other legal body has been abolished, and the Assessing Officer has been authorised to tax any profits if the liquidation has not been terminated within two years, provided an extension has not been granted.

Stock dividends and shares acquired as consideration for the transfer of an asset to a company in which the transferor has 90 % voting power are taxable only on the sale of the respective shares, which are then given a value on equal to the original shares or the property at the time of the transfer.

New immigrants have been granted a four (instead of two) years tax holiday for profit bought about from the sale of property owned prior to their immigration.

The Income Tax Commissioner may, in order to aid in the tax collection, require banks and holders of securities for other persons to supply full information on those securities and the respective business transactions; for the same purpose, graduated fines have been introduced for the delay in filing tax returns or in deducting tax from wages.

TAXATION OF CORPORATIONS IN THE HASHEMITE KINGDOM OF JORDAN

by

SA'AD I. NIMRY*

The system of taxation in Jordan has undergone a series of changes in recent years and yet it still has some vestiges of Ottoman origin. It really needs a full recasting to come into line with modern developments that are taking place in the country.

The chief sources of Government revenue are the following:

A *Taxes*

1. Customs Duties (1) & the Additional Tax on imported goods
2. Excise Duties (different rates)
3. The National Guard Tax (2)
4. Income Tax (3)
5. Building & Urban Land Tax (4)
6. Social Services Tax (5)
7. Animal Tax (6)
8. Agricultural Land Tax (7)

B *Licences*

1. Import Licence Fees (8)
2. Road Transport Fees (9)
3. Trade Licence Fees (10)
4. Registration Fees of Motor Vehicles
5. Miscellaneous Fees

* Author is a graduate of the American University of Beirut, Lebanon in Economics. Sometimes he was the undersecretary of the Ministry of Finance, Jordan and later the Secretary General of the Development Board, Jordan. He was also, when in Government Service, the Governor of the International Bank for Jordan. Presently he is the Regional Partner and Manager of the well known Audit Firm of Saba & Co. & Fellow of the Middle East Institute of Associated Public Accountants.

1. Law No. 1, 1962 & the tariff of 1962
2. Law No. 33, 1954
3. Law No. 12, 1954 up to March 31, 1963 & Law No. 25, 1964 thereafter
4. Law No. 11, 1954
5. Law No. 89, 1953 & Law No. 15, 1954
6. Law No. 18, 1963
7. Law No. 5, 1952
8. Regulations No. 2, 1956
9. Law No. 53, 1959 & Regulations No. 2, 1960
10. Law No. 36, 1958 & Law No. 37, 1960

C *Fees*
1. Additional Fees and Charges (11)
2. Stamp Duty (12)
3. Land Registration Fees (13)
4. Court Fees
5. Veterinary & Quarantine Fees
6. Passport Fees
7. Miscellaneous Fees

D Posts, Telephones & Telegraphs Services
E Revenue of State Domain
F Interest and Dividends
G Royalties & Miscellaneous Revenue

Foreign Capital

Jordan needs capital for development, and therefore, it welcomes foreign investment. And for this reason, Law No. 28, 1955 entitled "The Encouragement of Investment of Foreign Capital" was put into operation.

According to this Law any interested party may apply to a Committee of Development giving full details of the project they intend to finance and the amount or nature of capital they propose to bring in.

The Committee will then consider the application on three grounds:

(1) That the project is economically feasible
(2) That the project does not injure any existing industry or project.
(3) That the coming foreign capital does not carry with it any objectives contrary to public interest.

Once they assure themselves of these matters, the Committee will approve the request and assign the proportion of foreign capital that is needed. They will also instruct the Government Department's concerned to facilitate the conclusion of formalities and the issuing of work permits for foreign officials, consultants and skilled labour.

The Committee shall forward the decision to the Council of Ministers for Final approval.

Article 5 of the Law gives Foreign investments the following facilities:

1. Exemption of customs duties and taxes in accordance with article 6 of Law No. 27, 1955 "The Encouragement and Direction of Industry".

11. Law No. 11, 1948 & Regulations No. 2, 1950
12. Law No. 27, 1952 and amendments: Law Nos. 6 & 8, 1953, Law No. 25, 1956, Law No. 5, 1957 & Law No. 46, 1958
13. Law No. 26, 1958 & amendments: Law No. 5, 1961 & Law No. 6, 1963

2. Treatment of foreign capital invested in development projects other than those governed by Law 27 in the same way local capital is treated.
3. The right of repatriation of profits.
4. The right of repatriation of capital by instalments after one year of operation.

Registration

Foreign Companies or branches are required to register with the Controller of Companies at the Ministry of National Economy in accordance with the provisions of the Compagnies Law No. 12, 1964.

Chapter 12 of the Law deals with foreign companies. For registration purposes the application should be supplemented by the following statements:

1. A certified copy of the Memorandum of Association & Articles of Association of the Company in the Home Country.
2. Evidence to prove that the Company has had the approval of the responsible authority in the Hashemite Kingdom of Jordan to conduct business and invest capital in accordance with any laws, Regulations or instructions in force.
3. A list of names of the Board of Directors and citizenship of each director.
4. A certified Power of Attorney by which the Company authorises a person normally resident in Jordan to run its business and to receive notices.
5. Any information or statements the controller of Companies may require.

The application together with statements will then be submitted to the Minister of National Economy. The Minister may approve or refuse the registration.

The foreign registered company shall submit to the Controller within three months of the close of its financial year a report on its operations and one copy of its Balance Sheet signed by auditors. The controller has the right to inspect the registers and books of the company if he deems advisable.

Taxation

Taxation of foreign companies is the same as that of Jordanian Companies. They are subject to a Trade Licence Fee payable every year. The fee differs in relation to the nature of business the Company is undertaking but generally the amount involved is insignificant. Companies are also subject to Income Tax. The rate is 25 % of the yearly profits plus 2.5 % of profits for Social Services. Companies are required to withhold such taxes and pay them to the Income Tax Authorities. The new Income Tax Law which comes into force as from April 1, 1965 does not differ from the old Law of 1954 in this respect. But according to the old Law there was a refund of Company Tax for individuals whose rate of tax is less than 25 % or additional payment by individuals whose rate of tax exceeds 25 %. The Income Tax on oil producing companies is 50 % of profits less royalties.

The Income Tax Law charges the companies with deducting from the salaries of employees income tax payable by them according to rates. The rates according to the old and the new Laws are set hereunder:

	Law No. 12, 1954			*Law No.* 25, 1964	
	J.D.	%		J.D.	%
First	400	5	First	400	5
Next	400	7	Next	400	7
Next	400	10	Next	400	10
Next	400	15	Next	400	15
Next	400	20	Next	400	20
Next	400	26	Next	400	25
Next	400	32	Next	400	30
	Remainder	40	Next	200	35
			Next	2000	40
			Next	2000	45
				Remainder	50

Persons are given family relief and other relief as follows:

	J.D.
Personal relief	150
Wife	100
1st Child	25
2nd Child	20
3rd Child	15
4th Child	10
Provided children are below 20 years of age	
University Education of a child	200
Life Insurance (Maximum)	150

Companies are liable to other fees and taxes. For instance, the financial papers and vouchers of companies are subject to Stamp Duty according to the official schedule of duty. Registration fees are paid in proportion to the capital of the Company and fees for publication of registration in the Official Gazette. Certain Companies are liable to payment of excise duties if they manufacture liquers or cigarettes or the like. The one Company which manufactures cement in Jordan pays for each ton produced J.D. 3.200 fils to the Government as National Guard Tax. Of course, customs duties and Additional Tax on imported goods are also payable by companies on an ad valorem basis. They also pay Import Licence fees at the rate of 2 % of the CIF value and 2 % on foreign exchange permits. But if a

company deals with the importation of agricultural equipment it is not subject to duty. Likewise, if a company is engaged in agricultural produce or cattle breeding it is not subject to Income Tax. Companies occupying rented premises have to pay 3 % of the rent as Educational Tax. If they own premises they have to pay a property tax which is 15 % of the rent, a third of which goes to municipalities. Motor vehicles used by a company are subject to Registration & Road transport fees. All these dues except Income Tax on the profits are charged to expenses of the company.

II

WORLD TAX REVIEW

COMMON MARKET

BIBLIOGRAPHY

Was ist was im Gemeinsamen Markt, HEIDELBERG F.C., D. SCHNITZIUS, Köln, Carl Heymanns Verlag KG, 1964, pp. 127.

A book with references to the history, the aim, the organizations of the Common Market, established by the Treaty of Rome January 1, 1958. The book contains an alphabetical glossary of terms.

GERMAN DEMOCRATIC REPUBLIC

BIBLIOGRAPHY

Das Steuersystem in der sowjetischen Besatzungszone Deutschlands, KITSCHE A., Buersche Druckerei Dr. Neufang KG, Gelsenkirschen-Buer, 1960, pp. 178.

A study of the tax system in Eastern Germany and its financial and economic background. The author explains the purposes of taxation according to the political ideas governing Eastern Germany and shows the formation of the tax administration. He then gives a survey of the various taxes levied and concludes with a series of statistical appendices.

GERMANY

BIBLIOGRAPHY

Die Fehlerberichtigung durch Neuveranlagung der Vermögensteuer gemäss § 13 Abs. 1 Ziff. 1 VStG, WOLF, N.G., Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 49, 1964, pp. 124.

This book discusses the correction of mistakes made in assessing the networth tax. There is a provision in the Valuation Act (Bewertungsgesetz § 22(1)1) that assets having a value which is subject to fluctuations will be valued twice within the period of assessment if the fluctuation exceeds certain limits. A similar provision is included in the Net-Worth Tax Act (Vermögensteuergesetz § 13(1)1). These provisions are analyzed by the author who selects the latter as the most appropriate manner of correcting mistakes in a net-worth tax assessment.

Die Grundsätze ordnungsmässiger Buchführung, LEFFSON U., Verlagsbuchhandlung des Institutes der Wirtschaftsprüfer GmbH, Düsseldorf, 1964, pp. 300.

This book is published because associations of accountants in the United States and

Germany expressed the need for the principles underlying the whole activity of accounting and operation of enterprises. The author who is a professor at the University of Mainz, first explains the theory of ordinary accounting; he then discusses the principles of documentation: i.e. to be just, clear, complete, limited to a fixed period, comparative and guarded.

Die Steuern, Grundlinien eines Rationalen Systems Offentlicher Abgaben, HALLER H., J.C.B. Mohr (Paul Siebeck), Tübingen, 1964 pp. 431.

A study of the principles of a rational system of levying duties, especially taxes. The author considers that discussion about "why taxes" and "what taxes" is not relevant since the first half of this century. Most discussions pertain to rates and practical application of taxes.

The author analyses the thinking of the principles of taxation, as they have developed by experience over many years. He aims to show the principles of a modern, rational system of taxation. He concludes by discussing the possibility of tax harmonization between several countries.

Entwicklungshilfe—Steuergesetz Kommentar, BÖRNSTEIN U., Verlag August Lutzeyer, Baden-Baden, Schriftenreihe zum Handbuch der Entwicklungshilfe Heft 12, 1964, pp. 84.

This booklet gives the text of the act of December 23, 1963 and the explanation thereto which provides for tax incentives for the investment in developing countries. The investment may be done either in supplying capital or in supplying machines and other business assets. The incentive includes both an accelerated depreciation and a tax-free reserve. The author is an employee of the Ministry for Economic Cooperation.

Entwicklungstendenzen des Handels- und Steuerrechts, Bericht über die Fachtagung des Instituts der Wirtschaftsprüfer in Deutschland e.V. am 30. und 31. Januar 1964 in München, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 1964, pp. 143.

This is a report of the lectures held by various experts on "developments in commercial and tax law" on January 30 and 31, 1964 in Munich before the German association of accountants.

Kommentar zur Einkommensteuer und Körperschaftsteuer, HERMANN C., G. HEUER, A. HEINING und O. VON SCHILLING, Köln, Verlag Dr. Otto Schmidt KG, loose-leaf publication.

A review of supplement 59 to this highly valued commentary on German Income Tax appeared on p. 273 of Volume XVIII no. 7 of the Bulletin. Since that time we received supplements 60 and 61. Supplement 60, published in August, contains 212 pages. The price is DM 16.—. It includes developments in the taxation on income from leasing and renting and the developments in the taxation of non-residents. Supplement 61, published in October, contains 324 pages. The price is DM 24.40. It includes developments in the provisions for the valuation of business assets and mergers.

Steuererlasse in Karteiform, FELIX G., D. CARLE, Köln, Verlag Dr. Otto Schmidt KG, 1964, loose-leaf publication of 7 volumes.

Since our review on page 273 of this volume of the Bulletin, we have received the supplements 32 to 37 inclusive. They contain decrees within the field of all important German taxes, bringing the main volume up to date to September 1964 inclusive.

Steuervariationen aus aller Welt; neue Trostbilder für Steuerzahler aus 5 Erdteilen, PAUSCH, Alfons, Köln-Marienburg, Verlag Dr. Otto Schmidt KG, 1964, pp. 72, DM 8,80.

"Capita selecta" of taxation from all over the world both in ancient and modern times is reproduced with 30 photographs and a commentary. The two previous pocket editions published by the same author (Steuerkuriosa seit Menschengedenken; Steuerseufzer mit Dekor) consisted primarily of humour and curiosities in European and Near Eastern history. This pocket edition gives sketches from all continents. These books are suitable as Christmas, birthday gifts, etc., to persons interested in taxation by virtue of their profession or merely as long suffering tax payers.

INDIA

BIBLIOGRAPHY

Direct Tax Laws 1964-65, DASTUR S.E., H.M. DAMANIA, J.E. DASTUR, Published by A.S. Pandya for N.M. Tripathi Private Ltd., Princess Street, Bombay-2, 1964, pp. 680, Rs. 20.

This book concerns the amendments of the Direct Tax Acts enacted by the Finance Act 1964. The latter is the longest Finance Act in Indian tax history. The amendments encompass the Income Tax Act 1961, Estate Duty Act 1953, Wealth Tax Act 1957, Expenditure Tac Act 1957, Gift Tax Act 1958, Compulsory Deposit Scheme Act 1963 and the enactment of the Companies (Profits) Surtax Act 1964.

Part I of this book provides the full text of the Income Act Tax 1961 as updated by the amendments made by the Finance Act 1964, the latter being shown in italics. Commentary is confined to the amendments only.

Part II prescribes the rates of income tax, super tax and the annuity deposit.

Part III contains the amendments made in the other Direct Tax Acts stated supra.

Part IV is devoted to the Companies (Profits) Surtax Act 1964.

The amendments to the Income Tax Rules 1962 appear in Appendix V.

The present book must be considered as a supplement to the book "The Law and Practice of Income Tax" by the authors, J.B. Kanga and N.M. Palkhivala. That book discusses the Income Tax Act 1961 as updated to November 19, 1963 in detail. Another supplement which is expected to be ready shortly, to wit, Supplement to Direct Tax Laws 1964-65 by the same authors of the present book must again be considered as a supplement to the main work. The expected supplement will consider in detail the other amendments, such as the Surtax Rules, Annuity Deposit Scheme 1964, Direct Taxes (Amendments) Act 1964.

ISRAEL

TAX NEWS

Widened powers for Assessing Officer to obtain in-formation

Recent original and delegated legislation has considerably increased the authority of the Assessing Officer to obtain information about the income of the assessee and other persons.

a) Professional secrecy of lawyers.

Under section 90 of the Chamber of Advocates' Law, 1961, "an advocate shall not disclose in any legal proceeding or in any inquiry or search any communication or document passed between him and a client and substantively connected with the professional service rendered by him to the client, unless the client has waived the secrecy thereof." This provision led to a vehement discussion of the right of the Assessing Officer to obtain information from advocates about the various transactions of their clients, conducted with the professional assistance of their lawyers. The outcome is the Fourth Amendment Law of the Income Tax Ordinance, 1964 (Book of Laws No. 423 of April 2, 1964, pp. 86-87). Under the new Amendment the Assessing Officer may ask a lawyer for the delivery of a certain document and if the lawyer claims the privilege of professional secrecy which, in fact, is a privilege of his client and under the Chamber of Advocates Law can only be waived by the client himself, then the Assessing Officer may, nevertheless, take the document without inspecting it and deliver it in a closed envelope either to the District Court in the area in which the lawyer's office is situated or to a single magistrate or judge who has to deliver it to the respective District Court. Within 7 days after the filing of the respective document in the sealed envelope the President or Relieving President of the District Court has to hear the case and he is bound to hear the pleadings of the advocate; he is also entitled to hear the pleadings of the Assessing Officer. Then decision will be given as to whether the document is privileged or not. In the latter case it would be handed over to the Assessing Officer, and in the former case returned to the advocate. This procedure applies also to a document which is only partly privileged.

b) The Ministry of Police in an Order published in the Kovetz Hataknoth No. 1560 of March 19th, 1964, p. 979, has authorized the Assessing Officers who, under section 227 of the Income Tax Ordinance, were entitled to conduct criminal investigations and searches, to arrest any person under the same circumstances under which a policeman may make an arrest. This means that without a warrant of arrest this may be done if the Assessing Officer has reason to believe that the respective person has committed a crime or has in his presence committed an offence punishable with imprisonment exceeding 6 months, or if he obstructs the Assessing Officer or tries to escape or refuses to give his name and address. Under the Income Tax Ordinance (sections 217, 219 and 220) especially the rendering of false account without justification and the failure to pay deducted tax to the Assessing Officer and all the income tax offenses committed wilfully and with the intent to evade tax are punishable with more than 6 months imprisonment.

Estate Duty Law (Amendment No. 3),

1964, *published in Book of Laws* 434 of 7.8.1964.

Though called an Amendment, the new law practically replaces the previous law of 1949 with the two Amendments of 1965 and 1957. Whilst the Israeli Income Tax Law still adheres to the principle of the geographical source of income, the Estate Tax follows the system of residence, namely the estate of a permanent resident of Israel is liable to Israeli Estate Duty all over the world whilst the estate of a non-resident is liable only inasmuch as it is situated within Israel. Every heir is liable to tax on his share of the estate; and the administrator of the estate is liable for the tax of the whole estate. The same principle applies to persons having possession of the whole estate or any part thereof without being heirs. The taxable estate is the net residue of the estate, namely the estate after deduction of the general and personal allowances. General allowances are those under the Law for the Encouragement of Investments and all expenses as well as the first 10.000,- Pounds, whilst personal allowances are 5000,- Pounds for the surviving spouse and 15.000,- Pounds for a son of less than 22 years, 10.000,- Pounds for a son above that age and 17.500,- or 22.500,- Pounds for a younger or older son who is unable to support himself, also 5000,- Pounds for each of the parents of the deceased.

The tariff rises from 5% on the first 35.000,- Pounds to 10% for the next 35.000,- IL, 15% for the next 40.000,- IL, 20% for the next 45.000,- IL, 25% for the next 45.000,- IL, 30% for the next 50,000,- IL, 35% for the subsequent 50.000-, IL, 40% for the next 100.000,- IL, 45% for the next 100.000,- IL, 50% for the next 250.000,- IL, 55% for the next 250.000,- IL and 60% for any balance.

Certain provisions tend to increase the extent of the taxable estate, by nullifying certain tax avoidance transactions e.g. where the estate is jointly held, the deceased in contemplation of death cannot transfer his interest in the estate to the others without consideration. Any gift made within five years prior to the death belongs to the estate as well as marriage gifts in an exaggerated degree to a son or another person. If the deceased has paid insurance premiums, the insurance money belongs to the estate as well as superannuation payments by the employer. No deduction is allowed for maintenance payments. Debts are deductable. But, if the deceased is a non-resident and the creditor is also a non-resident, such deb is deductable only if arose from a mortgage for the non-resident creditor, except in cases where a special permit by the director of Estate Tax is granted.

Tax is payable within 60 days and no Order of Succession will be issued without confirmation that the estate tax return has been submitted, and on application by the Director of Estate Duty, even guaranites for the payment of the tax may be necessary.

Objection and appeal may be taken against the decision of the Director for the immediate payment of the tax, due to the fact that 1 year extension (with interest) can be granted.

Fictitious or coloured transactions may be disregarded by the Director, who in such cases bears the burden of proof.

Reported by: Dr. E.W. Klimowsky

NETHERLANDS

BIBLIOGRAPHY

De Nieuwe Belastingontwerpen, MULLER D.J., N.V. Uitgeversmaatschappij AE. E. Kluwer, Deventer-Antwerpen, 1964, pp. 48.

This booklet discusses the changes which will be brought about by the new bills in Parliament re the new individual, wage and property tax. The analysis is in the form of a compact survey of the proposed changes regarding these taxes.

Nederlandse Belastingwetten, verzameld en bewerkt door Mr. W.E.C. de Groot, van 1 mei 1963 af bewerkt door A.J. Engelberts en A.A. Verdenius, 6e ed., N. Samsom, Alphen aan den Rijn, Holland, 1965.

The well-known collection of Dutch tax laws has appeared in a new form. Instead of the old small size handy eight volumes, a normal size two-volume edition now includes the complete new tax legislation of the Netherlands. This 6th edition is organized under a new and rather complicated code system which requires much attention of those who insert supplements. Practice must prove whether this is an improvement.

The publisher announces that the most important tax laws will be preceded by a short introduction which, according to the preface, are meant to contribute to a good understanding of the provisions. It is doubtful whether such introductions should be added in a text edition. Users of the collection are supposed to be tax consultants and to know what the law means in general. For a more comprehensive study they should use a commentary, so that the introductions seem to be superfluous.

A definite improvement is that each article in this new edition is given a short title for ready reference.

SWITZERLAND

BIBLIOGRAPHY

Die Besteuerung der Aktiengesellschaften in der Schweiz, einschliesslich Holding-, Beteiligungs-, Domizil- und Hilfsgesellschaften, ALTORFER W., Handelskammer Deutschland-Schweiz, Talacker 41, Zürich, Verlag "Die Aktiengesellschaft" Trede & Co., Hamburg 11, July 1964, pp. 168, für Mitglieder der Kammer Fr. 8, für Nichtmitglieder Fr. 25.

In a condensed form Dr. Altorfer has compiled much useful information on the taxation of companies in Switzerland. Part I of this book discusses the Swiss company and company taxation in general, including the establishment of a company and the tax concessions granted to holding companies, domiciliary and service companies.

Part II lists all the cantonal taxes, the surcharges of the canton and the capital city for 1963.

Part III gives a survey of the avoidance of international and intercantonal double taxation and emphasizes the provisions of the German-Swiss tax treaty.

In an Annex, tables, rulings and official circular letters are reproduced.

III

TREATIES

CONVENTION **entre la France et la Belgique tendant à éviter les doubles impositions et à établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur les revenus.**

Le Président de la République Française, et Sa Majesté le Roi des Belges.

Désireux de mettre au point et de compléter, compte tenu des enseignements de l'expérience, des modifications apportées aux législations fiscales des deux Etats et des exigences que pose l'équitable répartition des charges fiscales, la Convention signée le 16 mai 1931 entre la Belgique et la France pour éviter les doubles impositions et régler certaines autres questions en matière fiscale.

Ont décidé de conclure à cette fin une nouvelle convention appelée à se substituer à la précédente et ont nommé à cet effet, pour leurs plénipotentiaires, savoir:

Le Président de la République Française;

Son excellence Monsieur Henry Spitzmuller,

Ambassadeur extraordinaire et plénipotentiaire de France à Bruxelles;

Sa Majesté le Roi des Belges;

Son Excellence Monsieur P.-H. Spaak,

Ministre des Affaires Etrangères.

Lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes:

ARTICLE I

1. La présente Convention a pour but de protéger les résidents de chacun des Etats contractants contre les doubles impositions qui pourraient résulter de l'application simultanée de la législation fiscale de ces Etats.

2. Une personne physique est réputée résident de l'Etat contractant où elle dispose d'un foyer permanent d'habitation.

a) Lorsqu'elle dispose d'une foyer permanent d'habitation dans chacun des Etats contractants, elle est considérée comme un résident de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits, c'est-à-dire de l'Etat contractant où elle a le centre de ses intérêts vitaux.

b) Si l'Etat contractant où la personne a le centre de ses intérêts vitaux ne peut être déterminé, elle est considérée comme un résident de l'Etat contractant où elle séjourne de façon habituelle.

c) Si cette personne séjourne de façon habituelle dans chacun des Etats contractants ou qu'elle ne séjourne de façon habituelle dans aucun d'eux, elle est

considérée comme un résident de l'Etat contractant dont elle possède la nationalité.

d) Si cette personne possède la nationalité de chacun des Etats contractants ou qu'elle ne possède la nationalité d'aucun d'eux, les autorités compétentées des Etats contractants tranchent la question d'un commun accord.

3. Les personnes physiques dont le foyer permanent d'habitation se trouve à bord d'un navire exploité en trafic international sont considérées comme des résidents de l'Etat contractant où se trouve le siège de direction effective de l'entreprise. Il en est de même des personnes physiques qui ont leur foyer permanent d'habitation à bord d'un bateau servant à la navigation intérieure et dont l'activité s'étend au territoire des deux Etats contractants.

Si le siège de direction effective d'une entreprise de navigation maritime ou intérieure est à bord d'un navire ou d'un bateau, ce siège est réputé situé dans l'Etat contractant où se trouve le port d'attache ou, à défaut de port d'attache, dans l'Etat contractant dont l'exploitant a la nationalité.

4. Une personne morale est réputée résident de l'Etat contractant où se trouve son siège de direction effective.

Il en est de même des sociétés de personnes et des associations qui, selon les lois nationales qui les régissent, n'ont pas la personnalité juridique.

ARTICLE 2

1. La présente Convention est applicable aux impôts sur le revenu perçus pour le compte de l'Etat, des Provinces et des Collectivités locales, quel que soit le système de perception.

2. Sont considérés comme impôts sur les revenus, les impôts perçus sur le revenu total sur des éléments du revenu ou sur les bénéfices provenant de l'aliénation de biens mobiliers ou immobiliers.

3. Les impôts actuels auxquels s'applique la Convention sont:

A—En ce qui concerne la Belgique:

1° l'impôt des personnes physiques;

2° l'impôt des sociétés;

3° l'impôt des personnes morales;

4° l'impôt des non-résidents,

y compris la partie de ces impôts perçue par voie de précomptes ou de compléments de précomptes.

5° les centimes additionnels et taxes annexes établis sur la base ou sur le montant de ces impôts.

B—En ce qui concerne la France:

1° l'impôt sur le revenu des personnes physiques;

2° la taxe complémentaire;

3° l'impôt sur les bénéfices des sociétés et autres personnes morales;

4° la contribution foncière des propriétés bâties et des propriétés non bâties et les taxes annexes à ces contributions.

4. La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue y compris les centimes additionnels et taxes annexes établis sur la base ou sur le montant de ces impôts qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, à la fin de chaque année, les modifications apportées à leur législation fiscale.

5. Si des modifications à certaines règles d'application de la Convention sont reconnues opportunes, soit dans le cas d'une extension visée au paragraphe précédent, soit en raison de changements n'affectant pas les principes généraux de la législation fiscale de l'un des Etats contractants, tels qu'ils ont été pris en considération pour l'élaboration de la présente Convention, les ajustements nécessaire feront l'objet d'accords complémentaires à réaliser dans l'esprit de la Convention par voie d'échange de notes diplomatiques.

ARTICLE 3

1. Les revenus provenant de biens immobiliers, y compris les accessoires ainsi que le cheptel mort ou vif des entreprises agricoles et forestières, ne sont imposables que dans l'Etat contractant où ces biens sont situés.

2. La notion de bien immobilier se détermine d'après les lois de l'Etat contractant où est situé le bien considéré.

3. Les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, les droits d'usufruit sur les biens immobiliers et les droits à des redevances variables ou fixes pour l'exploitation de gisements minéraux, sources et autres richesses du sol sont considérés comme des biens immobiliers au sens du présent article.

4. Les dispositions des paragraphes 1 à 3 s'appliquent aux revenus procurés par l'exploitation directe, par la location ou l'affermage, ainsi que par toute autre forme d'exploitation de biens immobiliers, y compris les revenus provenant des entreprises agricoles ou forestières. Elles s'appliquent également aux bénéfices résultant de l'aliénation de biens immobiliers.

5. Les dispositions des paragraphes 1 à 4 s'appliquent également aux revenus des biens immobiliers d'entreprises autres que les entreprises agricoles et forestières, ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

ARTICLE 4

1. Les bénéfices industriels et commerciaux ne sont imposables que dans l'Etat contractant où se trouve situé l'établissement stable dont ils proviennent.

L'expression «bénéfices industriels et commerciaux» ne comprend pas les revenus visés aux articles 3, 7, 8, 9, 11, 15 et 16. Ces revenus sont, sous réserve des dispositions de la présente Convention, taxés séparément ou avec les bénéfices industriels et commerciaux, conformément aux lois de chacun des Etats contractants.

2. Les participations d'un associé aux bénéfices commerciaux d'une entreprise constituée sous forme de société civile ou de société en nom collectif, ainsi que les participations aux bénéfices commerciaux des sociétés et associations sans existence juridique, ne sont imposables que dans l'Etat contractant où l'entreprise en question possède un établissement stable, proportionnellement à l'importance des droits de cet associé dans les bénéfices dudit établissement: il en est de même des participations d'un associé commandité dans les bénéfices d'une société en commandite simple.

3. Le terme «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.

4. Constituent notamment des établissements stables:

a) un siège de direction;
b) une succursale;
c) un bureau;
d) une usine;
e) un atelier;
f) une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
g) un chantier de construction ou de montage dont la durée dépasse six mois;
h) les installations dont disposent dans l'un des deux Etats les organisateurs ou entrepeneurs de spectacles, divertissements ou jeux quelconques, ainsi que les forains, les marchands ambulants, les artisans ou autres personnes exerçant une activité entrant dans le cadre du présent article, lorsque ces installations sont à leur disposition dans cet Etat pendant une durée totale d'au moins trente jours au cours d'une année civile.

5. One ne considère pas qu'il y a établissement stable si:

a) il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
b) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
c) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
d) une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;
e) une installation fixe d'affaires est utilisée aux seules fins de publicité, de fourniture d'informations, de recherches scientifiques ou d'activités

analogues, qui ont pour l'entreprise un caractère préparatoire ou auxiliaire.

Lorsqu'il est constaté qu'à l'égard d'une même entreprise plusieurs des cas visés sur a) à e) peuvent être invoqués, les autorités compétentes des Etats contractants se concerteront pour déterminer si cette situation n'est pas de nature à caractériser l'existence d'un établissement stable de l'entreprise.

6. Une personne—autre qu'un agent jouissant d'un statut indépendant, visé au paragraphe 8 ci-après—agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme «établissement stable» dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement, lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne ne soit limitée à l'achat de marchandises pour l'entreprise.

Est notamment considéré comme exerçant de tels pouvoirs, l'agent qui prélève habituellement sur un stock appartenant à l'entreprise des produits ou marchandises qu'il vend et livre à la clientèle.

7. Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant que, par l'intermédiaire d'un représentant n'entrant pas dans la catégorie des personnes visées au paragraphe 8 ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situés sur ce territoire.

8. On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle effectue des opérations commerciales dans cet autre Etat par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

9. Le fait q'une société résidente d'un Etat contractant contrôle ou est contrôlée par une société qui est résidente de l'autre Etat contractant ou qui effectue des opérations commerciales dans cet autre Etat, que ce soit ou non par l'intermédiaire d'un établissement stable, ne suffit pas, en lui-même, à faire de l'une quelconque de ces sociétés un établissement stable de l'autre.

ARTICLE 5

1. Les bénéfices industriels ou commerciaux de l'établissement stable sont ceux qui proviennent de l'ensemble des opérations traitées par cet établissement ainsi que de l'aliénation totale ou partielle des biens investis dans ledit établissement.

2. A défaut de comptabilité régulière ou d'autres éléments probants permettant de déterminer exactement le montant effectif des bénéfices de l'établissement stable, les autorités compétentes des deux Etats contractants s'entendent, s'il est nécessaire, pour déterminer la quote-part des bénéfices de l'ensemble de l'entreprise qui peut être équitablement attribuée à cet établissement.

3. Les bénéfices de l'établissement stable, tels qu'ils sont définis au paragraphe 1 ci-dessus, comprennent notamment tous profits et avantages qui, suivant des pratiques commerciales normales, n'auraient pas été accordés à des tiers et qui sont attribués ou consentis par l'établissement stable de quelque manière que ce soit directement ou indirectement, soit à l'entreprise elle-même ou à d'autres établissements de cette entreprise, soit à ses dirigeants, ses actionnaires, associés ou autre participants à ou des personnes ayant avec eux des intérêts communs.

4. Lorsqu'une entreprise exploitée par un résident de l'un des deux Etats contractants est sous la dépendance ou possède le contrôle d'une entreprise exploitée par un résident de l'autre Etat contractant, ou que les deux entreprises se trouvent sous la dépendance d'une même personne ou d'un même groupe, et que l'une de ces entreprises consent ou impose à l'autre entreprise des conditions différentes de celles qui seraient normalement faites à des entreprises effectivement indépendantes, tous bénéfices qui auraient dû normalement apparaître dans les comptes de l'une de ces entreprises mais qui ont été de la sorte tranférés, directement ou indirectement, à l'autre entreprise, peuvent être incorporés aux bénéfices imposables de la première entreprise. Dans cette éventualité, la double imposition des bénéfices ainsi transférés sera évitée conformément à l'esprit de la Convention et les autorités compétentes des Etats contractants s'entendront, s'il est nécessaire, pour fixer le montant des bénéfices transférés.

5. Pour la détermination des revenus de l'établissement stable qu'une entreprise de l'un des deux Etats contractants possède dans l'autre Etat contractant, il est tenu compte:

—d'une part, des charges et des dépenses réelles supportées par l'entreprise dans l'Etat contractant où se trouve l'établissement stable grevant et directement et spécialement l'acquisition et la conservation de ces revenus;

—d'autre part, de la fraction normalement imputable à l'établissement stable dans les autres frais, y compris les frais normaux de direction et d'administration générale, exposés pour l'ensemble de l'entreprise au siège de sa direction effective.

ARTICLE 6

Par dérogation à l'article 4:

1° Les bénéfices de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant où se trouve le siège de la direction effective de l'entreprise.

1° Les bénéfices de l'exploitation des bateaux servant à la navigation intérieure ne sont imposables que dans l'Etat contractant où se trouve le siège de la direction effective de l'entreprise.

ARTICLE 7

1. Les revenus ou profits, qu'un résident d'un Etat contractant tire de l'exercice

d'une profession libérale ou d'autres activités personnelles et dont le régime n'est pas spécialement fixé par les dispositions de la présente Convention, ne sont imposables dans l'autre Etat contractant que si, pour l'exercice de son activité, ledit résident y dispose d'une installation fixe qu'il utilise de façon régulière. Dans cette éventualité, les revenus ou profits provenant de l'activité exercée dans ce dernier Etat ne sont imposables que dans cet Etat.

2. Est notamment visée par le paragraphe 1 l'activité des médecins, avocats, architectes et ingénieurs-conseils, ainsi que l'activité scientifique, artistique, littéraire, enseignante ou pédagogique; il en est de même de l'activité des professionnels du spectacle ou du sport, des musiciens et autres personnes, qui se produisent en public au cours de manifestations organisées par eux-mêmes ou pour leur propre compte.

ARTICLE 8

1. Les redevances et autres produits provenant soit de la concession de l'usage de biens mobiliers incorporels, tels que les brevets d'invention, modèles, formules et procédés-secrets, marques de fabrique et autres droits analogues, soit de la vente de ces biens les droits d'auteur et de reproduction, ainsi que les revenus tirés de la location des films cinématographiques, ne sont imposables que dans l'Etat contractant dont le bénéficiaire est un résident.

Toutefois, lorsque le bénéficiaire de ces redevances ou produits possède dans l'autre Etat contractant un établissement stable ou une installation fixe qui intervient à un titre quelconque dans les opérations génératrices de ces revenus, ceux-ci ne sont imposables que dans cet autre Etat.

Ces dispositions s'appliquent également aux produits et redevances qui rémunèrent l'usage ou la vente de biens mobiliers corporels.

2. Nonobstant les dispositions du paragraphe 1 ci-dessus, les redevances, produits et droits y mentionnés sont également imposables dans l'Etat contractant sur le territoire duquel est située l'entreprise qui en supporte la charge:

a) lorsque et dans la mesure où, suivant les pratiques de cet Etat, ces redevances produits et droits excèdent un montant normal, compte tenu des usages commerciaux, de la valeur intrinsèque des biens visés audit paragraphe et du rendement global produit par l'utilisation de ces biens;

b) lorsque et dans la mesure où ces redevances, produits ou droits excèdent la quote-part—augmentée d'un profit normal—imputable à l'entreprise débitrice dans les dépenses et charges réelles assumées par l'entreprise bénéficiaire, pendant la période d'imposition, pour l'acquisition, le perfectionnement ou l'amortissement et la conservation des droits concédés ou cédés, dans le cas où l'une de ces entreprises est en fait sous la dépendance ou sous le contrôle de l'autre, ou encore lorsque ces deux entreprises sont en fait

sous la dépendance ou sous le contrôle d'une tierce entreprise ou d'entreprises dépendant d'un même groupe;

c) en cas de paiement desdits produits ou redevances à des sociétés ou associations, lorsque et dans la mesure où les droits visés leur ont été apportés ou concédés, directement ou indirectement par l'entreprise débitrice des redevances ou par ses dirigeants, actionnaires, associés ou autres participants ou par des personnes ayant avec ceux-ci des intérêts communs.

3. Dans les cas particuliers ou il apparaît qu'il y a lieu de faire application des dispositions du paragraphe 2 ci-dessus, les autorités compétentes des deux Etats contractants s'entendent pour fixer la fraction du montant des redevances, produits et droits qui peut être considérée comme normale et pour éviter, conformément à l'esprit de la Convention, la double imposition de la fraction desdits revenus qui a été soumise à l'impôt dans l'Etat contractant autre que celui dont le bénéficiaire est résident.

ARTICLE 9

1. Les rémunérations quelconques, fixes ou variables, attribuées en raison de l'exercice de leur mandat, aux administrateurs, commissaires, liquidateurs, associés gérants et autres mandataires analogues des sociétés anonymes, des sociétés en commandite par actions et des sociétés coopératives ainsi que des sociétés françaises à responsabilité limitée et des sociétés belges de personnes à responsabilité limitée, ne sont imposables que dans celui des deux Etats contractants dont la société est résidente.

2. Toutefois, les rémunérations normales que les intéressés touchent en une autre quaité sont imposables, suivant le cas, dans les conditions prévues soit à l'article 7, soit à l'article 11, paragraphe 1, de la présente Convention.

ARTICLE 10

1. Les rémunérations allouées sous forme de traitements, salaires, appointements, solde et pensions par l'un des Etats contractants ou par une personne morale de droit public de cet Etat ne se livrant pas à une activité industrielle ou commerciale, sont imposables exclusivement dans ledit Etat.

2. Cette disposition pourra être étendue par accord de réciprocité aux rémunérations du personnel d'organismes ou établissements publics ou d'établissements juridiquement autonomes constitués ou contrôlés par l'un des Etats contractants ou par les provinces et collectivités locales de cet Etat, même si ces organismes ou établissements se livrent à une activité industrielle et commerciale.

3. Toutefois, les dispositions qui précèdent ne trouvent pas à s'appliquer lorsque les rémunérations sont allouées à des résidents de l'autre Etat possédant la nationalité de cet Etat.

ARTICLE 11

1. Sous réserve des dispositions des articles 9, 10 et 13 de la présente Convention, les traitements, salaires et autres rémunérations analogues ne sont imposables que dans l'Etat contractant sur le territoire duquel s'exerce l'activité personnelle source de ces revenus.

2. Par dérogation au paragraphe 1 ci-dessus:

a) Les traitements, salaires et autres rémunérations ne peuvent être imposés que dans l'Etat contractant dont le salarié est le résident, lorsque les trois conditions suivantes sont réunies:

1° le bénéficiaire séjourne temporairement dans l'autre Etat contractant pendant une ou plusieurs périodes n'excédant pas 183 jours au cours de l'année civile;

2° sa rémunération pour l'activité exercée pendant ce séjour est supportée par un employeur établi dans le premier Etat;

3° il n'exerce pas son activité à la charge d'un établissement stable ou d'une installation fixe de l'employeur, situé dans l'autre Etat;

b) Les rémunérations afférentes à une activité exercée à bord d'un navire ou d'un aéronef en trafic international ou à bord d'un bateau servant à la navigation intérieure sur le territoire des deux Etats contractants, ne sont imposables que dans celui de ces Etats où se trouve le siège de la direction effective de l'entreprise; si cet Etat ne perçoit pas d'impôts sur lesdites rémunérations, celles-ci sont imposables dans l'Etat contractant dont les bénéficiaires sont des résidents.

Les rémunérations des personnes qui sont en service sur d'autres moyens de transport circulant sur le territoire des deux Etats contractants ne sont imposables que dans celui de ces Etats où est situé l'établissement stable dont ces personnes dépendent, ou, à défaut d'un tel établissement, dans l'Etat contractant dont ces personnes sont résidentes.

c) Les travailleurs frontaliers qui justifient de cette qualité par la production de la carte frontalière instituée par les conventions particulières intervenues entre les Etats contractants ne sont imposables sur les traitements, salaires et autres rémunérations qu'ils perçoivent à ce titre que dans l'Etat contractant dont ils sont les résidents.

3. Les dispositions du paragraphe 2 ne sont pas applicables aux rémunérations visées à l'article 9 de la présente Convention.

ARTICLE 12

Les pensions autres que celles qui sont visées à l'article 10 de la présente Convention, ainsi que les rentes viagères, ne sont imposables que dans l'Etat contractant dont le bénéficiaire est un résident.

ARTICLE 13

Les professeurs et autres membres du personnel enseignant de l'un des deux Etats contractants qui se rendent dans l'autre Etat contractant exclusivement pour y professer, pendant une période n'excédant pas deux années, dans une université, un lycée, un collège, une école ou tout autre établissement d'enseignement, sont exemptés d'impôt dans ce dernier Etat pour la rémunération qu'ils y perçoivent du chef de leur enseignement pendant ladite période.

ARTICLE 14

Les étudiants et les apprentis de l'un des deux Etats contractants, qui séjournent dans l'autre Etat contractant à seule fin d'y faire leurs études ou d'y acquérir une formation professionelle, ne sont soumis à aucune imposition dans ce dernier Etat sur les subsides qu'ils reçoivent de provenance étrangère.

ARTICLE 15

1. Les revenus et produits d'actions, de parts de fondateur, de parts d'intérêts et de commandite dans les sociétés anonymes, les sociétés en commandite par actions, les sociétés en commandite simple, les sociétés coopératives, les sociétés à responsabilité limitée de droit français et les sociétés de personnes à responsabilité limitée de droit belge sont imposables dans l'Etat contractant dont le bénéficiaire est un résident.

2. Le paragraphe 1 ne s'applique pas lorsque le bénéficiaire des revenus et produits possède un établissement stable dans l'autre Etat contractant et que les actions ou parts génératrices de ces revenus et produits font partie de l'actif de cet établissement: dans ce cas, lesdits revenus et produits ne sont imposables que dans cet autre Etat.

3. L'Etat contractant où les revenus et produits ont leur source conserve le droit de soumettre ces revenus et produits à un impôt prélevé à la source dont le taux ne peut excéder dix-huit pour cent du nontant des dividendes: dans ce cas, l'impôt ainsi perçu est imputé, dans les conditions prévues à l'article 19, sur celui qui est exigible dans l'autre Etat contractant.

Les autorités compétentes des deux Etats s'entendent sur les modalités d'application de cette limitation.

4. La source des revenues et produits visés au paragraphe 1 ci-dessus est située dans l'Etat contractant dont le débiteur de ces revenus et produits est un résident.

5. La distribution gratuite d'actions ou de parts sociales faite en contrepartie de l'incorporation de réserves à son capital social par une société résidente de l'un des deux Etats contractants n'est pas considérée dans l'autre Etat contractant, quelles que soient les modalités de cette opération, comme donnant lieu à une distribution

par cette société de dividendes ou autres revenus d'actions ou de parts quelconques.

6. En cas de fusion de sociétés résidentes d'un seul des deux Etats contractants, les attributions gratuites d'actions ou de parts sociales de la société absorbante ou nouvelle, résidente du même Etat, ne sont pas considérées dans l'autre Etat contractant comme constituant des distributions de revenus.

ARTICLE 16

1. Les intérêts et produits d'obligations ou autres titres d'emprunts négociables, de bons de caisse, de prêts ,de dépôts et de toutes autres créances sont imposables dans l'Etat contractant dont le bénéficiaire est un résident.

2. Le paragraphe 1 ne s'applique pas lorsque le bénéficiaire des intérêts et produits possède un établissement stable dans l'autre Etat contractant et que la créance ou le dépôt fait partie de l'actif de cet établissement. Dans ce cas, lesdits intérêts et produits ne sont imposables que dans cet autre Etat.

3. L'Etat contractant où les intérêts et produits ont leur source conserve le droit de soumettre ces intérêts et produits à un impôt à la source, dont le taux ne peut excéder quinze pour cent. Dans ce cas, l'impôt ainsi perçu est imputé, dans les conditions prévues à l'article 19, sur celui qui est exigible dans l'autre Etat contractant.

La limitation à 15 pour cent du taux de l'impôt perçu à la source n'est pas applicable à la partie des intérêts qui excède un taux juste et raisonnable compte tenu de la créance pour laquelle ils sont versés. Dans ce cas, les autorités compétentes des deux Etats contractants s'entendent pour fixer la fraction des intérêts qui peut être considérée comme normale.

4. La source des intérêts et produits visés au paragraphe 1 ci-dessus est située dans l'Etat contractant dont le débiteur de ces intérêts et produits est le résident. Toutefois, les interêts et produits des obligations et des emprunts quelconques qu'un résident de l'un des deux Etats contractants émet ou contracte dans l'autre Etat contractant pour les besoins propres de ses établissements stables situés dans ce dernier Etat sont considérés comme ayant leur source dans cet autre Etat.

ARTICLE 17

1. Les sociétés résidentes de la Belgique qui possèdent un établissement stable en France restent soumises en raison de cet établissement et en ce qui concerne les répartitions de bénéfices qu'elles effectuent à l'application d'une retenue à la source au titre de l'impôt sur le revenu des personnes physiques, dans les conditions prévues à l'article 109-2 du Code général des impôts.

Toutefois, la fraction des répartitions de bénéfices effectivement passible de cette retenue ne peut dépasser le quart du revenu taxable selon l'article 109-2 précité,

ledit revenu ne pouvant lui-même excéder le montant des bénéfices industriels et commerciaux réalises par l'établissement stable français tel que ce montant est retenu, dans les conditions prévues par les dispositions de la présente Convention pour l'assiette de l'impôt qui frappe les bénéfices de cette nature.

Si la société peut justifier, dans des conditions qui auront reçu l'accord des autorités compétentes des deux Etats contractants, que plus des trois quarts de l'ensemble de ses actions, de ses parts de fondateur ou de ses parts sociales appartiennent à des résidents de la Belgique, la fraction des répartitions de bénéfices passible de l'impôt français d'après l'alinéa qui précède est réduite à due concurrence.

2. Une société résidente de la Belgique ne pourra être soumise en France à la retenue visée au paragraphe 1 ci-dessus en raison de sa participation dans la gestion ou dans le capital d'une société résidente de la France ou à cause de tout autre rapport avec cette société, mais les bénéfices distribués par cette dernière société et passibles de cette retenue seront, le cas échéant, augmentés pour l'assiette de ladite retenue, de tous les bénéfices ou avantages que la société belge aurait indirectement retirés de la société française dans les conditions prévues à l'article 5, paragraphe 4, la double imposition étant évitée en ce qui concerne ces bénéfices et avantages conformément aux dispositions de l'article 19.

3. Les sociétés résidentes de la France possédant un établissement stable en Belgique sont soumises dans ce dernier Etat, du chef des bénéfices qu'elles y réalisent, au régime applicable aux sociétés étrangères similaires.

Toutefois, l'imposition exigible sur ces bénéfices suivant la législation belge ne peut être supérieure au total des divers impôts calculés au taux normal qui seraient dus par une société similaire résidente de la Belgique sur ses bénéfices et sur les revenus distribués à ses actionnaires ou associés, dans le cas où ces bénéfices recevraient la même affectation que ceux de la société résidente de la France.

Pour l'application de cette disposition, l'impôt qui frapperait les bénéfices distribués d'une société similaire résidente de la Belgique est calculé sur une fraction du bénéfice de l'établissement stable belge de la société résidente de la France, correspondant au rapport entre le bénéfice distribué par cette dernière société et son bénéfice total sans que cette fraction puisse excéder le quart des bénéfices réalisés par l'établissement stable belge tels qu'ils sont retenus, dans les conditions prévues par les dispositions de la présente Convention, pour l'assiette de l'impôt des sociétés.

ARTICLE 18

Dans la mesure où les articles précédents de la présente Convention n'en disposent pas autrement, les revenus des résidents de l'un des Etats contractants ne sont imposables que dans cet Etat.

ARTICLE 19

La double imposition est évitée de la manière suivante:

A—*En ce qui concerne la Belgique*:

1. Les revenus et produits de capitaux mobiliers relevant du régime défini à l'article 15, paragraphe 1, qui ont effectivement supporté en France la retenue à la source et qui sont recueillis par des sociétés résidentes de la Belgique passibles de ce chef de l'impôt des sociétés, sont, moyennant perception du précompte mobilier au taux normal sur leur montant net d'impôt français, exonérés de l'impôt des sociétés et de l'impôt de distribution dans les conditions prévues par la législation interne belge.

Pour les revenus et produits visés à l'alinéa précédent, qui sont recueillis par d'autres résidents de la Belgique, ainsi que pour les revenus et produits de capitaux mobiliers relevant du régime defini a l'article 16, paragraphe 1, qui ont effectivement supporté en France la retenue à la source, l'impôt dû en Belgique sur leur montant net de retenue française sera diminué, d'une part, du précompte mobilier perçu au taux normal et, d'autre part, de la quotité forfaitaire d'impôt étranger déductible dans les conditions fixées par la législation belge, sans que cette quotité puisse être inférieure à 15 o/o dudit montant net.

2. Les revenus autres que ceux visés au paragraphe 1 ci-dessus sont éxonorés des impôts belges mentionnés à l'article 2, paragraphe 3, A, de la présente Convention, lorsque l'imposition en est attribuée exclusivement à la France.

3. Par dérogation au paragraphe 2, les impôts belges peuvent être établis sur des revenus dont l'imposition est attribuée à la France, dans la mesure où ces revenus n'ont pas été imposés en France parce qu'ils y ont été compensés avec des pertes qui ont également été déduites, pour un exercice quelconque, de revenus imposables en Belgique.

4. Nonobstant les dispositions qui précèdent, les impôts belges visés par la présente Convention peuvent être calculés, sur les revenus imposables en Belgique en vertu de ladite Convention, au taux correspondant à l'ensemble des revenus imposables d'après la législation belge.

B—*En ce qui concerne la France*:

a) Lorsqu'ils ont leur source en Belgique et bénéficient à des résidents de France, les revenus et produits de capitaux mobiliers soumis au régime défini à l'article 15, paragraphe 1, de la présente Convention ainsi que les intérêts et produits d'obligations ou autres titres d'emprunts négociables dont l'imposition est réglée à l'article 16, paragraphe 1, sont passibles en France, sur leur montant brut, de la retenue à la source exigible au titre de l'impôt sur le revenu des personnes physiques, mais le taux de cette retenue, qui est perçue dans les conditions du droit commun, est, pour tenir compte de l'impôt effectivement prélevé en

Belgique sur les mêmes revenus, diminué de dix-huit points pour les revenus et produits visés à l'article 15, paragraphe 1, et de quinze points pour les intérêts et produits visés à l'article 16, paragraphe 1.

b) Les revenus de créances soumis au régime défini à l'article 16, paragraphe 1, qui ont leur source en Belgique et qui bénéficient à des résidents de France sont passibles en France, sur leur montant brut, de l'impôt sur le revenu des personnes physiques et de la taxe complémentaire ou de l'impôt sur les sociétés, selon le cas, mais le montant de l'imposition y afférente est diminué de quinze points pour tenir compte de l'impôt effectivement prélevé en Belgique sur les mêmes revenus.

2. Les revenus autres que ceux visés au paragraphe 1 ci-dessus sont exonérés des impôts français mentionnés à l'article 2, paragraphe 3. B. de la présente Convention, lorsque l'imposition en est attribuée exclusivement à la Belgique.

3. Nonobstant les dispositions qui précèdent les impôts français visés par la présente Convention peuvent être calculés, sur les revenus imposables en France en vertu de ladite Convention, au taux correspondant à l'ensemble des revenus imposables d'après la législation française.

ARTICLE 20

1. Les autorités compétentes des deux Etats contractants échangeront sous conditions de réciprocité, les renseignements qui sont susceptibles d'être obtenus, conformément à leurs lois fiscales respectives, pour la détermination des revenus imposables des contribuables visés à l'article 1er de la présente Convention et qui seront nécessaires, dans le domaine des impôts faisant l'objet de ladite Convention, soit pour en exécuter les dispositions, soit pour assurer l'exacte perception de ces impôts ou appliquer les dispositions légales tendant à éviter l'évasion fiscale.

2. Les renseignements obtenus en exécution du paragraphe 1 seront considérés comme secrets: ils ne seront révélés, en dehors du contribuable ou de son mandataire, à aucune personne autre que celles qui s'occupent de l'établissement et du recouvrement des impôts faisant l'objet de la présente Convention, ainsi que des réclamations et des recours y relatifs, et ils ne pourront être utilisés ni directement ni indirectement à des fins autres que l'établissement et le recouvrement desdits impôts.

3. Les autorités compétentes de l'un des deux Etats contractants ne fourniront aux autorités compétentes de l'autre Etat contractant aucun renseignement susceptible de porter atteinte à un secret commercial ou industriel; elles pourront refuser tous renseignements dont elles estimeraient que la communication n'est pas réalisable pour des motifs d'ordre public ou qui, en raison de leur nature, ne sont pas susceptibles d'être obtenus dans l'autre Etat contractant d'après la législation fiscale de cet autre Etat. En outre, elles pourront refuser de fournir, en ce qui concerne leurs propres ressortissants ou les sociétés et autres personnes

morales constituées sous l'empire de leur propre législation, tous renseignements autres que ceux qui sont nécessaires pour la ventilation des revenus de ces contribuables conformément aux articles 4 et 5, ainsi que pour le contrôle de leurs droits aux exemptions ou réductions d'impôt prévues par le présente Convention.

4. L'assistance définie au présent article pourra, moyennant accord de réciprocité, être étendue dans les limites et aux conditions prévues aux paragraphes 1 à 3, aux renseignements nécessaires pour l'assiette ou la perception de tous autres impôts directs, annuels ou exceptionnels, déjà établis ou qui seraient établis ultérieurement par l'un des deux Etats contractants.

ARTICLE 21

1. Les Etats contractants s'engagent, sur la base de la réciprocité, à se prêter concours et assistance aux fins de recouvrer, suivant les règles de leur propre législation, les impôts definitivement dus faisant l'objet de la présente Convention, ainsi que les suppléments, majorations, intérêts et frais relatifs à ces impôts.

2. Les poursuites et mesures d'exécution ont lieu sur production d'une copie officielle des titres exécutoires, accompagnés éventuellement des décisions passées en force de chose jugée.

3. Les créances fiscales à recouvrer ne sont pas considérées comme des créances privilégiées dans l'Etat contractant requis et celui-ci ne sera pas obligé d'appliquer un moyen d'exécution non prévu par la législation de l'Etat contractant requérant.

4. Si une créance fiscale est encore susceptible d'un recours, l'Etat contractant requérant peut demander à l'Etat contractant requis de prendre des mesures conservatoires, auxquelles sont applicables *mutatis mutandis* les dispositions précédentes.

5. Les dispositions de l'article 20, paragraphe 2, s'appliquent également aux renseignements portés, en exécution du présent article, à la connaissance des autorités compétentes de l'Etat contractant requis.

ARTICLE 22

Tout terme non spécialement défini dans la présente Convention aura, à moins que le contexte n'exige une autre interprétation, la signification que lui attribue la législation régissant, dans chaque Etat contractant, les impôts faisant l'objet de la Convention.

ARTICLE 23

1. Le terme «France», au sens de la présente Convention, désigne la France métropolitaine et les départements d'outre-mer (Guadeloupe, Guyane, Martinique et Réunion).

Le terme «Belgique», au sens de la présente Convention, désigne le territoire du Royaume de Belgique.

2. La présente Convention pourra être étendue, telle quelle ou avec les modifications nécessaires, aux territoires d'outre-mer de la République française ou à l'un ou plusieurs d'entre-eux, à condition que ces territoires perçoivent des impôts de caractère analogue à ceux auxquels s'applique ladite Convention. Une telle extension prend effet à partir de la date, avec les modifications et dans les conditions (y compris celles relatives à la cessation d'application) qui sont fixées d'un commun accord entre les Etats contractants par échange de notes diplomatiques.

3. A moins que les Etats contractants n'en soient convenus autrement, la dénonciation de la présente Convention en vertu de l'article 28 ci-après par l'un d'eux met fin à l'application de ces dispositions à tout territoire auquel elle a été étendue conformément au présent article.

ARTICLE 24

1. Les autorités compétentes des deux Etats contractants se concerteront au sujet des mesures administratives nécessaires à l'exécution des dispositions de la présente Convention et notamment au sujet des justifications à fournir par les résidents de chaque Etat pour bénéficier dans l'autre Etat des exemptions ou réductions d'impôt prévues à la présente Convention.

2. Dans le cas où l'exécution de certaines dispositions de la présente Convention donnerait lieu à des difficultés ou à des doutes, les autorités compétentes des deux Etats contractants se concerteront pour appliquer ces dispositions dans l'esprit de la Convention. Dans des cas spéciaux, elles pourront d'un commun accord appliquer les règles prévues par la présente Convention à des personnes physiques ou morales qui ne sont pas résidentes de l'un des deux Etats contractants, mais qui possèdent dans l'un de ces Etats un établissement stable dont certains revenus ont leur source dans l'autre Etat.

3. Si un résident de l'un des Etats contractants estime que les impositions qui ont été établies ou qu'il est envisagé d'établir à sa charge ont entraîné ou doivent entraîner pour lui une double imposition dont le maintien serait incompatible avec les dispositions de la Convention, il peut, sans préjudice de l'exercice de ses droits de réclamation et de recours suivant la législation interne de chaque Etat, adresser aux autorités compétentes de l'Etat dont il est résident une demande écrite et motivée de révision desdites impositions. Cette demande doit être présentée avant l'expiration d'un délai de six mois à compter de la date de la notification ou de la perception à la source de la seconde imposition. Si elles en reconnaissent le bien-fondé, les autorités saisies d'une telle demande s'entendront avec les autorités compétentes de l'autre Etat contractant pour éviter la double imposition.

4. S'il apparaît que, pour parvenir à une entente, des pourparlers soient opportuns, l'affaire sera déférée a une commission mixte dont les membres seront désignés par les autorités compétentes des deux Etats contractants.

ARTICLE 25

1. Les nationaux de chaque Etat contractant ne sont soumis dans l'autre Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

2. Le terme «nationaux» désigne pour chaque Etat contractant:

a) toutes les personnes physiques qui possèdent la nationalité de cet Etat;

b) toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation dudit Etat.

3. En particulier, les nationaux de l'un des deux Etats contractants qui sont imposables sur le territoire de l'autre Etat contractant bénéficient dans les mêmes conditions que les nationaux de ce dernier Etat, des exemptions, abattements de base, déductions et réductions d'impôts ou taxes quelconques accordés pour charges de famille.

ARTICLE 26

1. La présente Convention sera ratifiée et les instruments de ratification seront échangés à Paris dans le plus bref délai possible.

2. La Convention entrera en vigueur dès l'échange des instruments de ratification et ses dispositions s'appliqueront pour la première fois;

1° En ce qui concerne les revenus visés à l'article 8, aux impôts dont le fait générateur se sera produit:

a) à partir du 1er janvier 1960 dans l'éventualité où lesdits impôts ont été effectivement retenus à charge du bénéficiaire des revenus, étant entendu que, dans ce cas, la Convention s'appliquera également, par dérogation à l'article 2, paragraphe 3, A, à la taxe mobilière exigible en Belgique sous l'empire de la législation antérieure à la loi du 20 novembre 1962.

b) après l'expiration d'un délai de trois mois compté à partir de l'échange des instruments de ratification dans les autres cas;

2° En ce qui concerne les revenus visés aux articles 15 et 16, aux impôts dus à la source dont le fait générateur se produira après l'expiration d'un délai de trois mois compté à partir de l'échange des instruments de ratification;

3° En ce qui concerne les autres revenus, aux impôts dus sur les revenus afférents soit à l'année de cet échange, soit aux exercices clos au cours de l'année suivante.

3. Par dérogation au paragraphe 2, 1°, l'article 8 s'appliquera également aux impôts effectivement à charge des bénéficiaires des revenus qui restaient impayés à la date du 31 mars 1961 et dont le fait générateur s'était produit avant 1er janvier 1960, même si ces impôts ne sont plus susceptibles de révision suivant la législation de l'un quelconque des Etats contractants. Dans ce cas, la Convention s'appliquera également, par dérogation à l'article 2, paragraphe 3, A, à la taxe mobilière exigible en Belgique sous l'empire de la législation antérieure à la loi du 20 novembre 1962.

ARTICLE 27

1. Les dispositions de la Convention signée entre la France et la Belgique le 16 mai 1931 pour éviter les doubles impositions et régler certaines autres questions en matière fiscale telles qu'elles ont été adaptées par l'accord du 31 décembre 1963 s'appliqueront pour la dernière fois:

1° En ce qui concerne les revenus visés à l'article 9, paragraphe 2, de cette Convention, aux impôts dont le fait générateur se sera produit jusqu'à l'expiration d'un délai de trois mois compté à partir de l'échange des instruments de ratification de la présente Convention;

2° En ce qui concerne les revenus visés aux articles 4, 5 et 6 de cette Convention, aux impôts dus à la source dont le fait générateur se sera produit jusqu'à l'expiration d'un délai de trois mois compté à partir de l'échange des instruments de ratification de la présente Convention;

3° En ce qui concerne les autres revenus, aux impôts dus sur les revenus afférents soit aux exercices clos au cours de l'année de l'échange des instruments de ratification, soit à l'année précédant celle de cet échange.

2. A partir du jour où la présente Convention entrera en vigueur et aussi longtemps qu'elle le demeurera, les dispositions de la Convention conclue par la Belgique et la France le 7 octobre 1929, en vue d'éviter la double imposition des revenus des entreprises de navigation maritime des deux pays, et de l'Accord entre la Belgique et la France visant à éviter la double imposition des bénéfices ou revenus de la navigation aérienne, conclu par échange de lettres le 10 décembre 1955, cesseront de s'appliquer.

ARTICLE 28

La présente Convention restera en vigueur aussi longtemps qu'elle n'aura pas été dénoncée par l'un des deux Etats.

Toutefois, chaque Etat contractant pourra, moyennant un préavis de six mois, la dénoncer pour la fin d'une année civile quelconque à partir de la quatrième année suivant celle de la ratification.

Dans ce cas, la Convention s'appliquera pour la dernière fois:

1° En ce qui concerne les revenus visés aux articles 8, 15 et 16, aux impôts dus à la source dont le fait générateur se produira au plus tard le 31 décembre de l'année civile pour la fin de laquelle la dénonciation aura été notifiée;

2° En ce qui concerne les autres revenus, aux impôts dus sur les revenus afférents à l'année pour la fin de laquelle la dénonciation aura été notifiée ou aux exercices clos au cours de ladite année.

En foi de quoi les plénipotentiaires des deux Etats contractants ont signé la présente Convention et y ont apposé leur sceau.

Fait à Bruxelles, le 10 mars 1964, en double exemplaire.

Pour la France:
Signé: H. SPITZMULLER

Pour la Belgique:
Signé: P.H. SPAAK

PROTOCOLE FINAL

Au moment de procéder à la signature de la Convention tendant à éviter les doubles impositions et à établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur les revenus, conclue ce jour entre la France et la Belgique, les plénipotentiaires soussignés sont convenus des dispositions suivantes, qui formeront partie intégrante de la Convention:

1. Aussi longtemps que le complément de précompte immobilier exigible en Belgique sur le revenu cadastral des immeubles imposables en Belgique conformément à l'article 3 de la Convention, sera perçu à un taux fixe dépassant 10 o/o.

a) ledit complément de précompte immobilier dû par des résidents de la France soumis à l'impôt des non-résidents conformément à l'article 37, paragraphes 4 et 5, de la loi du 20 novembre 1962, sera remboursé dans la mesure où il dépasse l'impôt des non-résidents dû par les intéressés;

b) ledit complément de précompte immobilier dû par d'autres résidents de la France sera éventuellement limité de manière telle que la charge globale constituée par ce complément de précompte et par la fraction du précompte immobilier imputable sur l'impôt des personnes physiques, n'excède pas la quotité de l'impôt des non-résidents calculé fictivement sur l'ensemble des revenus produits ou recueillis en Belgique, qui correspondrait proportionnellement audit revenu cadastral.

2. L'article 15, paragraphe 1, ne s'oppose pas à ce que la France, conformément aux dispositions de sa loi interne, considère comme ces biens immobiliers, au sens de l'article 3 de la Convention, les droits sociaux possédés par les associés ou

actionnaires des sociétés qui ont, en fait, pour unique objet, soit la construction ou l'acquisition d'immeubles ou de groupes d'immeubles en vue de leur division par fractions destinées à être attribuées à leurs membres en propriété ou en jouissance, soit la gestion de ces immeubles ou groupes d'immeubles ainsi divisés. La Belgique pourra toutefois imposer, dans les limites fixées aux articles 15, paragraphes 1 et 2, et 19—A, paragraphe 1, les revenus tirés par des résidents de la Belgique de droits sociaux représentés par des actions ou parts dans lesdites sociétés résidentes de la France.

3. L'article, 15, paragraphe 3, de cette Convention n'empêche pas la Belgique de prélever:

a) le précompte mobilier calculé, conformément aux dispositions de sa législation interne, au taux de 15 o/o sur un montant imposable correspondant à 85/70 des revenus et produits visés à l'article 15 de la Convention, qui sont attribués par des sociétés résidentes de la Belgique à des résidents de la France;

b) la cotisation spéciale exigible, en vertu de l'article 29 de la loi du 20 novembre 1962, portant réforme des impôts sur les revenus, sur une fraction des sommes réparties en cas de partage de l'avoir social de sociétés résidentes de la Belgique;

c) la cotisation spéciale due par les mêmes sociétés, conformément à l'article 28 de ladite loi, en cas de rachat de leurs propres actions ou parts.

4. Pour l'application de l'article 17, paragraphe 3, 2° alinéa, de la Convention, le taux normal, en principal, de l'impôt des sociétés est, dans l'état actuel de la législation belge, celui de 30 o/o.

5. Compte tenu de la législation fiscale en vigueur dans les deux Etats contractants, les revenus et produits relevant du régime prévu à l'article 15, paragraphe 1, sont, pour l'application de l'article 19, A-1 et B-1-a, réputés avoir été effectivement soumis à une retenue d'impôt à la source dans l'Etat dont la société débitrice est un résident.

6. Pour l'application des dispositions de la Convention:

a) Sous réserve, le cas échéant, des dispositions plus favorables qui leur seraient accordées en vertu des règles générales du droit des gens ou de conventions particulières, les membres d'une réprésentation diplomatique ou consulaire de l'un des deux Etats, qui résident dans le second Etat ou dans un Etat tiers et possèdent la nationalité de l'Etat accréditant, sont considérés comme des résidents de ce dernier Etat s'ils y sont astreints au paiement de l'impôt normalement dû sur l'ensemble de leurs revenus;

b) Les organisations internationales, leur organes et fonctionnaires, ainsi que les personnes faisant partie d'une représentation diplomatique ou consulaire d'un Etat autre que les Etats contractants, qui sont domiciliés ou

résident dans l'un des deux Etats et n'y sont pas soumis à l'impôt normalement dû sur l'ensemble de leurs revenus, ne sont pas considérés comme des résidents de cet Etat.

Fait à Bruxelles, le 10 mars 1964, en double exemplaire.

Pour la France:
Signé: H. SPITZMULLER

Pour la Belgique,
Signé: P.H. SPAAK

PROJET DE LOI

autorisant la ratification de la Convention signée à Bruxelles le 10 *mars* 1964 *entre la France et la Belgique, tendant à éviter les doubles impositions et à établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur les revenus.*

EXPOSE DES MOTIFS

Mesdames, Messieurs,

Les rapports entre la France et la Belgique étaient jusqu'alors réglés, sur le plan fiscal, par la Convention du 16 mai 1931.

Or, cette Convention, du fait même de son ancienneté, ne tenait pas compte de l'évolution des législations fiscales respectives des deux Etats. Plus spécialement, elle n'était pas applicable à l'impôt personnel sur le revenu global et elle laissait ainsi subsister de nombreux cas de double imposition.

Il était donc indispensable de remédier à cet état de choses.

A cette fin, des négociations avaient été engagées depuis plusieurs années avec le Gouvernement belge. Elles avaient abouti à la signature à Bruxelles, le 19 janvier 1962, d'une Convention destinée à se subister à celle du 16 mai 1931.

En fait, cette Convention du 19 janvier 1962 n'a pu être soumise à la procédure d'approbation; le texte en ayant été rendu inapplicable en l'état par une réforme fiscale qui était intervenue depuis cette date en Belgique et avait profondément modifié le système fiscal de cet Etat, en instituant dans celui-ci un régime analogue à celui en vigueur en France depuis 1959.

Les négociations ont donc dû être reprises sur ces nouvelles bases: elles ont permis de mettre au point une nouvelle Convention, signée à Bruxelles le 10 mars 1964, tendant à éviter les doubles impositions et à établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur les revenus.

Les dispositions essentielles de cette nouvelle Convention sont analysées ci-dessous.

L'article premier énonce l'objet de la Convention qui est de protéger les résidents de France et de Belgique contre les doubles impositions et précise ce qu'il faut entendre par «résident» au sens de cette disposition.

L'article 2 donne la liste des impôts dont le cumul doit être évité, des dispositions étant prises en vue d'adapter cette liste aux modifications législatives postérieures à la signature de la Convention.

Les articles 3 à 19 posent les règles suivant lesquelles la matière imposable est répartie entre les deux Etats et énoncent les méthodes qui sont employées pour que la double imposition soit effectivement éliminée.

Comme il est d'usage, l'imposition des revenus immobiliers ainsi que des bénéfices des exploitations agricoles est—aux termes de l'article 3—réserveé à l'Etat où sont situés les immeubles dont proviennent ces revenus. Aux revenus immobiliers sont assimilées les redevances afférentes à l'exploitation de mines, carrières et autres ressources naturelles.

Une dispositon du Protocole annexé à la Convention précise d'ailleurs à cet égard que la France se réserve le droit d'imposer en tant que biens immobiliers, au sens de cet article, les produits et plus-values de cessions des actions et parts des sociétés immobilières visées à l'article 30 de la loi n° 63-254 du 15 mars 1963.

D'autres part, une autre disposition de ce protocole prévoit en faveur des résidents de France une réduction du complément de précompte immobilier frappant d'une manière générale en Belgique les revenus des propriétés possédées par des non-résidents.

Les articles 4, 5 et 6 règlent l'imposition des bénéfices des entreprises industrielles et commerciales. Ces bénéfices sont rattachés à l'Etat où est situé l'établissement stable à l'activité duquel ils sont imputables, compte tenu, le cas échéant, des redressements motivés par des transferts indirects de bénéfices. De même, ne sont imposables que dans l'Etat où les entreprises constituées sous forme de sociétés civiles ou de sociétés en nom collectif ou encore des sociétés et associations sans existence juridique ont un établissement stable, les bénéfices provenant des participations ou des droits dans ces sociétés ou associations.

Il est toutefois dérogé à la règle de l'imposition par établissement stable pour les profits tirés de l'exploitation de bateaux, navires et aéronefs, lesquels ne sont imposables que dans l'Etat où se trouve le siège de la direction effective de l'entreprise.

C'est à l'Etat où s'exerce l'activité rémunératrice que l'article 7 réserve le droit d'imposer les revenus des professions libérales et, en général, du travail indépendant, à la condition que l'activité en question ait pour support une installation fixe dans ledit Etat. Si, cette condition n'est pas remplie, l'imposition a lieu dans l'Etat de la résidence de l'intéressé.

L'article 8 prévoit que les revenus provenant de la concession de l'usage de

droits de propriété industrielle (brevets, marques de frabrique, etc.), les droits d'auteur et de reproduction ainsi que les revenus provenant de la location de films cinématographiques sont imposables dans l'Etat de la résidence du bénéficiaire, à moins que ces revenus ne se rattachent, soit à l'exploitation d'un établissement stable, soit à l'exercice d'une profession libérale ou d'une activité indépendante dans le cadre d'une installation fixe, auxquels cas l'imposition a lieu dans l'Etat où sont situés l'établissement stable ou l'installation fixe en question. La même règle est applicable aux produits et redevances qui rémunèrent l'usage ou la vente de biens mobiliers corporels.

Cet article présente l'avantage de définir de façon beaucoup plus précise que ne le fait la Convention du 16 mai 1931 le régime fiscal des redevances et autres produits provenant de la concession, de la location ou de la vente de divers biens mobiliers corporels ou incorporels. Alors que cette dernière Convention donne de ces biens une liste incomplète, dans laquelle n'ont pas figuré expressément les marques de fabrique et les films cinématographiques en sorte que les redevances provenant de la concession de l'usage de marques de fabrique ou de la location de films sont restées jusqu'alors soumises à une double imposition, le nouveau texte vise les biens dont il s'agit sans équivoque possible. Une disposition insérée dans l'article 26 de ce texte prévoit au surplus une certaine application rétroactive du régime ainsi défini en l'assortissant en quelque sorte, pour les marques de fabrique et les films, d'un caractère interprétatif. Ce régime s'appliquera, en en ce qui concerne les revenus provenant de la concession ou de la location de ces biens, aux impôts dont le fait générateur se sera produit, à partir du 1er janvier 1960, s'ils ont été payés, ou même antérieurement à cette date, s'ils sont encore dus, à la condition toutefois qu'ils aient été affectivement retenus ou doivent effectivement demeurer à la charge des bénéficiaires des revenus.

Le droit d'imposer les rémunérations, fixes ou variables, que les administrateurs, commissaires, liquidateurs, gérants, de société de capitaux reçoivent en cette qualité est dévolu, par l'article 9, à l'Etat où se trouve le siège de la direction effective.

Les articles 10 à 14 fixent les règles d'imposition des salaires, traitements, pensions et rentes viagères.

Sous réserve de diverses dérogations ayant trait aux marins, mariniers et personnels navigants des transports aériens, aux travailleurs en mission temporaire ainsi qu'aux frontaliers, les traitements, salaires et autres rémunérations versées par des employeurs du secteur privé sont exclusivement imposables dans l'Etat où s'exerce l'activité rémunérée. Les pensions privées et les rentes viagères le sont dans l'Etat dont le bénéficiaire est le résident.

Quant aux traitements, salaires et pensions du secteur public, l'imposition en est réservée à l'Etat de l'organisme débiteur, sauf si le bénéficiaire est résident et a

la nationalité de l'autre Etat, auquel cas c'est ce dernier Etat qui perçoit son impôt.

Des dispositions spéciales sont prévues qui exonèrent les membres de l'enseignement et les étudiants ou apprentis dans l'Etat où ils séjournent temporairement pour enseigner ou étudier.

Les articles 15 à 17 et 19 règlent le mode d'imposition des revenus de capitaux mobiliers.

En principe, l'imposition des dividendes et des intérêts obligataires encaissés par des résidents de France ou de Belgique est réservée à l'Etat dont le bénéficiaire est le résident. Toutefois, si le débiteur de ces revenus est résident de l'autre Etat—c'est-à-dire s'il a dans cet autre Etat le siège de sa direction effective—l'Etat en question conserve le droit de percevoir son impôt par voie de retenue à la source aux taux limites de 18 o/o pour les dividendes et de 15 o/o pour les intérêts obligataires. Il est tenu compte du prélèvement ainsi effectué à la source dans les conditions suivantes:

a) En Belgique, les dividendes recueillis par des sociétés belges qui ont supporté en France la retenue à la source sont, moyennant la perception du précompte mobilier au taux normal (actuellement 30 o/o) sur leur montant net, exonérés d'impôt sur les sociétés et de l'impôt de distribution.

Quant aux dividendes recueillis par d'autres résidents belges et aux intérêts, l'impôt dû en Belgique est diminué d'une somme égale au précompte mobilier perçu au taux normal et d'une déduction forfaitaire égale à 15 o/o du montant net du dividende;

b) En France, le montant de l'impôt perçu sur le revenu brut est diminué forfaitairement de dix-huit points pour les dividendes et de quinze points pour les intérêts.

Le régime ainsi défini comporte néanmoins une dérogation lorsque le bénéficiaire des revenus, résident de l'un des Etats contractants, possède dans l'autre Etat un Etablissement stable et que les titres générateurs de ces revenus font partie de l'actif de cet etablissement; dans ce cas, lesdits revenus sont imposables dans ce dernier Etat.

Des règles analogues sont prévues pour les revenus de créances.

Enfin, des dispositions spéciales règlent l'imposition en France à la retenue à la source afférente aux revenus des capitaux mobiliers des sociétés belges qui y exercent une activité par l'entremise d'un établissement stable. Les obligations de ces sociétés au regard de la retenue à la source susvisée sont limitées dans des conditions analogues à celles que la France a déjà été amenée à consentir à divers pays. Cette retenue sera exigible non sur la base de la quotité imposable du capital des sociétés belges, mais sur un revenu limité au quart des sommes taxables d'après cette quotité et qui ne pourront elles-mêmes excéder le montant du bénéfice réalisé par l'établissement stable français. En outre, si la société peut justifier que

plus des trois-quarts de l'ensemble de ses titres appartient à des résidents de Belgique, la fraction imposable de ces distributions est réduite à due concurrence. Réciproquement, les sociétés françaises qui ont un établissement stable en Belgique ne peuvent être soumises à une imposition supérieure au total des divers impôts au taux normal qui seraient dûs par une société similaire résident de Belgique.

Tout revenu qui n'entrerait pas dans l'une des catégories définies par la Convention serait, en vertu de l'article 18, imposable exclusivement dans l'Etat de la résidence du bénéficiaire.

La double imposition étant évitée par application des règles qui viennent d'être précisées, l'article 19 prévoit que lorsque l'un des Etats se trouve conventionnellement privé du droit d'imposer certains revenus, il conserve néanmoins la possibilité de calculer ses impôts d'après le taux correspondant à l'ensemble des revenus imposables d'après sa propre législation.

Enfin, les articles 20 à 28 renferment les clauses diverses qu'il est d'usage d'insérer dans les accords de cette nature au sujet:

—de l'assistance administrative réciproque pour le contrôle et le recouvrement des impôts (art. 20 et 21);

—de l'extension éventuelle de la portée territoriale de la Convention (art. 23);

—de garanties accordées aux contribuables contre le risque de double imposition (art. 24);

—de l'égalité de traitement fiscal entre nationaux des deux Etats (art. 25);

—les modalités suivant lesquelles la Convention entrera en vigueur (art. 26), se substituera à celle du 16 mai 1931 ainsi qu'aux accords particuliers du 7 octobre 1929 et du 10 décembre 1955 concernant respectivement les entreprises de navigation maritime et aérienne (art. 27) et pourra être éventuellement dénoncée (art. 28).

La Convention dont les dispositions viennent d'être analysées permettra, en apportant à l'ensemble des problèmes de doubles impositions des revenus entre la France et la Belgique des solutions comportant des sacrifices réciproques équilibrés, de mettre un terme aux irritantes difficultes qui se faisaient jour, dans de nombreux cas particuliers, lors du règlement de la situation des contribuables français qui ont des intérêts en Belgique, et, notamment, de celles des entreprises françaises qui perçoivent de source belge des redevances pour marques de fabrique.

Pour ces motifs, le Gouvernement vous demande d'en autoriser la ratification.

PROJET DE LOI

Le Premier Ministre,

Sur le rapport du Ministre des Affaires étrangères et du Ministre des Finances et des Affaires économiques,

Vu l'article 39 de la Constitution,

Décrète:

Le présent projet de loi, délibéré en Conseil des Ministres, après avis du Conseil d'Etat, sera présenté à l'Assemblée Nationale par le Ministre des Affaires étrangères, qui est chargé d'en exposer les motifs et d'en soutenir la discussion.

Article unique

Est autorisée la ratification de la Convention signée à Bruxelles le 10 mars 1964 entre la France et la Belgique tendant à éviter les doubles impositions et à établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur les revenus, convention dont le texte est annexé à la présente loi.

Fait à Paris, le 28 octobre 1964.

Signé: GEORGES POMPIDOU

Par le Premier Ministre:

Le Ministre des Affaires étrangères,

Signé: MAURICE COUVE DE MURVILLE

Le Ministre des Finances et des Affaires économiques,

Signé: VALERY GISCARD D'ESTAING

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

INTERNATIONAL FISCAL ASSOCIATION

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		Prof. G. Vedel	

The I.F.A. was founded on the 12th of February 1938 by tax experts of a number of countries. Purpose and working-method are defined as follows in the Articles:

(*art.* 2) the object of the Association is the study of international and comparative public finance and fiscal law, especially international and comparative law of taxation, together with the financial and economic problems connected therewith.

(*art.* 3) The Association shall endeavour to realise this object by
- *a*) organizing Congresses
- *b*) issuing a periodical
- *c*) founding one or more libraries and a documentation bureau
- *d*) any other appropriate measures.

In the following countries there are National Groups. Members living in one of these countries can approach the secretary of their group, whose address is stated below.

AUSTRALIA	C.J. Berg Commercial Bank Chambers (9th Floor) 62 Margaret Street, Sydney	AUSTRALIE
AUSTRIA	Dr. Robert Bechinie, Gumpendorferstrasse 26, Wien VI	AUTRICHE
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Vol. XIX 1964 No. 4

Contributions in French or German are followed by an English summary.
Correspondence should be addressed to Prof. Dr. P. Senf. Universität des Saarlandes. Saarbrücken 15. Germany. Orders may be placed with the Administration, 122 Gradaland, The Hague, Netherlands. Subscription rate for 1 year: $ 10.90.

I

INTERNATIONAL ASPECTS OF TAXATION OF PENSIONS IN ITALY

by

GIANCARLO CROXATTO*

It is frequent that foreigners after their retirement decide to transfer their residence to Italy. It may therefore be interesting to examine the Italian tax treatment of the pensions which they receive from abroad.

Income Taxes

The Italian tax system includes two national and one local tax on the income of persons: the tax on movable wealth, the progressive complementary tax and the family tax.

For the purposes of the first tax, only income from employment for services rendered in Italy is taxable (art. 82 of the unified text for direct taxation January 29, 1958, n. 645). The same rule is applicable for pensions, although they are not income in connection with present services (art. 85).

On the bases of the above mentioned provisions it can be stated that pensions received in Italy by resident pensioners for past services rendered outside of Italy are not subject to the tax on movable wealth in Italy.

As regards the progressive complementary tax, art. 133 of the Unified text provides that the taxable amount includes:

a) income produced in Italy, without consideration of the residence of the person to whom the income pertains;

b) income produced abroad and enjoyed (at disposal) in Italy by persons there resident;

c) income produced abroad by individuals resident in Italy, provided it is not taxable in another State under the provisions of an international tax agreement.

Therefore in compliance with the above mentioned article, for the purposes of the progressive complementary tax, pensions paid by a nonresident corporation to a resident of Italy are taxable in Italy, because the pensions are enjoyed (at disposal) by the beneficiary in Italy, no consideration being given to the fact that the services were rendered abroad.

Under the same art. 133 of the unified text it is stated that individuals who have been living in Italy for at least one year are considered residents of Italy.

* University of Genoa

For the taxation of the pensions in Italy no consideration is given to the fact that the pensioner was not subject to the complementary progressive tax at the time the services were rendered.

The family tax is a progressive tax levied by Municipalities and applies to income produced in Italy and on income produced abroad but remitted to Italy.

The fact that part of the pension is a return of the pensioner's earlier contribution has usually no influence on the taxation in Italy of the mentioned pensions.

It would have an influence only in the case that pensioner's contribution had no connection with the services rendered. In that case that part of the pension would be considered a return of capital and it would not be taxable.

In general however in the staff retirement plans it is provided that the participants shall contribute to the plan with a percentage of their remunerations. In that case there is no doubt that the entire pension is to be considered income for the purposes of the Italian income taxes.

No consideration is also given to the fact that the pensioner's earlier contributions were never used to reduce income for purposes of Italian income taxes.

In the case of a pension paid to a widow upon the death of a retired employee the income taxes are applied to the widow's pension under the same principles explained above, with the assumption that the widow is also a foreigner residing in Italy. No consideration is given to the fact that the beneficiary did not render personally the services to which the pension is connected. In fact under Italian legislation, the classification of income and in consequence its taxation depends on the source of income without consideration of the person who receives it. This has been ruled by the Central Commission with the decision November 28, 1955 n. 75636, which has been accepted by the Italian Tax Administration with ruling March 7, 1956, n. 300770. The widow's pension is therefore considered income derived from labour and not from capital.

It is necessary now to examine if the above mentioned rules are modified by the tax conventions entered into by Italy for the avoidance of international double taxation.

Art. X point 2) of the convention between Italy and the United States, signed on March 30, 1955 and entered into force on October 25, 1956, provides that "private pensions and life annuities received from sources within one of the contracting States by individuals residing in the other contracting State shall be exempt from taxation in the former State".

Unter point 3) of art. X it is stated that the term pensions, as used in the article, means periodic payments made in consideration for past services rendered.

Therefore in compliance with the exposed provisions for the purposes of income taxes, pensions should be taxable only in Italy.

However in view of the reservation contained in art. XV, the exemption from

the United States tax does not apply to pensions received from United States sources by United States citizens residing in Italy.

In fact art. XV provides that the United States in determining its income tax in the case of its citizens or corporations may, regardless of any other provision of the convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if the convention had not come into effect.

The United States shall, however, deduct from its taxes the amount of Italian income taxes, subject to the provisions of the Internal Revenue Code.

Therefore if the pensioner residing in Italy is a U.S. citizen, his pension is taxable in Italy and in the United States, which has to grant a tax-credit for the complementary progressive tax paid in Italy.

As regards the municipal family tax, it is to be considered that the convention does not apply to local taxes and therefore the tax credit for this tax, for the purposes of the U.S. income tax, depends only on the provisions of the U.S. Internal Revenue Code.

In the conventions entered into by Italy with Germany (1925, art. 7 and 11) and with Sweden (1956, art. 11) it is provided that private pensions are taxable only in the State in which the past services were rendered. Therefore the Italian income taxes are not applicable to pensions paid to a citizen of those States who is resident in Italy, where the pension is connected with services he rendered in his home country.

The agreements with France (1930, art. 12), Belgium (1931, art. 11), Netherlands (1957, art. 14), Great Britain (1960, art. 13), Norway (1961, art. 15) provide that private pensions are taxable only in the country where the recipient is resident. Therefore the pensions received by citizens of those countries who are resident in Italy will be subject to the Italian income taxes.

In all the above mentioned conventions it is agreed that each contracting State retains the right to tax the pensions paid by the State itself or by one of its political subdivisions.

Estate and Inheritance taxes

We examine now the fiscal consequences of the death of the pensioner in the case that a pension is allowed to the widow also resident of Italy, or a lump sum death benefit is to be paid to her or to a beneficiary designated by the deceased stipulated by him in a life insurance contract.

Transfers of property "mortis causa" are subject in Italy to two separate taxes both applied at progressive rates: an inheritance tax imposed upon each beneficiary's share of property received from the deceased and an estate tax levied on the entire net estate of the deceased.

Both taxes are governed by the same rules, as far as the determination of the taxable amount is concerned, and are levied on the estate which is situated in Italy at the moment the succession takes place, without consideration of the place where the deceased died or of the fact as to whether or not he was an Italian or foreign citizen.

Transfers of real and personal property situated outside of Italy are not subject to the death taxes. These taxes are in fact based on the principle of "territoriality" (as they are levied only on estate situated in Italy) and "objectivity" (as it is not taken into consideration the Italian or foreign citizenship of the deceased and of his heirs).

As regards the case of a pension paid to a widow upon the death of a retired employee no tax is to be applied under the present Italian legislation. In this case in fact there is no transfer of a right from the deceased to the widow. She acquires directly the right to the pension "jure proprio" and not "jure successionis", because the pension to which she is entitled is a different one from the pension enjoyed by the deceased, which ended at the moment of his death.

For the purposes of the death taxes in Italy, the fact that a part of the contributions made by the deceased has not been recovered by him, in our opinion, has no importance.

In the case that a lump sum death benefit is to be paid to a person designated by the deceased, this sum will not be subject to the Italian death taxes. In fact that sum has never been property of the deceased and therefore there is no transfer from him to the beneficiary at the moment of the death. In this respect the fact that the beneficiary has been designated by the deceased is not important.

The amount of any life insurance is also not taxable under the present Italian legislation for the purposes of death taxes. A life insurance, which was stipulated by the deceased for the benefit of third persons, even if they are his heirs, is not subject to the death taxes, because the amount insured was never property of the deceased. The beneficiaries have a personal autonomous right, attributed to them directly by the law (art. 1920 of the Italian Civil Code), to receive the insured amount. The right is acquired by the beneficiaries in force of an "inter vivos" deed and not of a transfer "mortis causa" and therefore it is not to be included in the estate of the deceased.

Since all the above items are not taken into account in computing Italian Estate and Inheritance taxes, it is not necessary to review the provisions of the death tax conventions entered into by Italy for the avoidance of international double taxation.

DOCUMENTS

L'HARMONISATION DES IMPOSITIONS INDIRECTES SUR LES MOUVEMENTS DES CAPITAUX

Résolution
adoptée par la XVIème Assemblée plénière
le 13 novembre à Bruxelles

La conférence permanente des chambres de commerce et d'industrie de la communauté économique européenne,

Après avoir pris connaissance des travaux du groupe de travail n° VI auprès de la Commission européenne sur l'imposition des mouvements de capitaux dans les pays de la Communauté économique européenne,

Consciente de la nécessité d'éviter des différences d'imposition pouvant nuire à la liberté des mouvements de capitaux entre les pays de la Communauté économique européenne,

Considérant:

– que l'existence dans plusieurs pays de la C.E.E. de droits de timbre sur les valeurs mobilières dont l'assiette et les taux ne sont pas identiques, ainsi que la multiplicité des impositions en cas de circulation dans plusieurs pays, contrarient le transfert et font obstacle aux arbitrages et à l'unification souhaitable des cotations dans les bourses des différents pays;

– que les différences de structure des régimes de droit d'apport entraînent des doubles impositions et sont en outre nuisibles si les droits d'apport perçus dans les différents Etats sont éloignés les uns des autres;

Emet le voeu:

que la Commission, dans ses propositions au Conseil des ministres relatives à l'harmonisation des droits indirects frappant les mouvements de capitaux:

– retienne les suggestions du groupe de travail n° VI relatives à la suppression du droit de timbre sur les titres représentatifs de capitaux émis par les sociétés;

– se prononce pour l'unification du droit d'apport à un taux faible.

*L'HARMONISATION DE L'IMPOSITION DES REPARTITIONS DE BENEFICES ENTRE SOCIETES**

Résolution
adoptée par la XVIème Assemblée plénière
le 13 novembre 1964 à Bruxelles.

* à l'exclusion des sociétés de placement qui méritent un traitement particulier.

La conférence permanente des chambres de commerce et d'industrie de la Communauté économique européenne

Constate que le régime fiscal des répartitions de bénéfices entre sociétés diffère dans les pays de la Communauté économique européenne, ce qui provoque des distorsions de concurrence;

Estime

– que les impositions multiples de bénéfices par la taxation des répartitions entre sociétés sont inéquitables.

– que le régime fiscal applicable à ces répartitions de bénéfices doit être régi de la même façon dans tous les pays de la Communauté économique européenne dans l'intérêt de l'égalisation des conditions de concurrence et de la clarté des situations;

– que le régime fiscal des répartitions de bénéfices entre les sociétés doit être neutre et identique quelle que soit la nationalité des sociétés en cause;

Souhaite

– que, dans le sens des mesures, soumise à l'approbation du Parlement néerlandais, les répartitions faites par une société à une autre société, déjà imposée au titre des bénéfices et des distributions, soient exemptées de toute imposition supplémentaire;

– que le nouveau régime soit appliqué, quelle que soit la nationalité de la société en cause, sans considération de l'importance des participations et pour l'intégralité des répartitions.

LES DOUBLES IMPOSITIONS ENTRE LES PAYS DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE ET LES PAYS EN VOIE DE DEVELOPPEMENT ET LES CONDITIONS PROPRES A FAVORISER L'INVESTISSEMENT

Résolution
adoptée par la XVIème Assemblée plénière
le 13 novembre 1964 à Bruxelles.

La conférence permanente des chambres de commerce et d'industrie de la communauté économique européenne

Considérant,

– que les superpositions d'impôts frappant les mêmes opérations ou les mêmes revenus dans deux pays différents au titre de deux législations fiscales nuisent à l'intégration économique en empêchant les ressortissants de chacun des pays en cause d'étendre leurs activités dans l'autre pays ou tout au moins en pénalisant ces extensions;

– que la signature entre Etats indépendants de conventions visant à éviter les doubles impositions constitue le moyen le plus efficace pour favoriser la recherche de la meilleure implantation des activités et des entreprises en limitant l'incidence des droits fiscaux nationaux;

– que l'expérience montre les résultats satisfaisants qui peuvent être obtenus par l'application de telles conventions lorsqu'elles sont bien conçues et loyalement appliquées;

– que les efforts tant des entreprises de la Communauté économique européenne qui veulent établir des succursales, des filiales ou, d'une manière générale, des établissements stables dans des pays en voie de développement que des gouvernements de ces mêmes pays qui cherchent à provoquer des investissements étrangers sur leurs territoires ne manqueront pas d'être encouragés par une convention éliminant les doubles impositions;
– que la suppression de la double imposition est conforme aux aspirations de la Communauté économique européenne relatives à l'égalisation des conditions de la concurrence et aux objectifs de l'Organisation de coopération et de développement économique (O.C.D.E.);
– qu'en outre, il serait désirable de parvenir à une harmonisation des dispositions des législations nationales tendant à favoriser les investissements dans les pays en voie de développement;
– qu'une telle politique est conforme aux intérêts des pays associés,

Exprime de voeu
– qu'une négociation tendant à l'établissement d'une convention type réglant les doubles impositions soit engagée le plus rapidement possible entre la Communauté économique européenne et les pays en voie de développement;
– que cette négociation soit conduite en collaboration avec la commission fiscale de l'O.C.D.E. qui étudie actuellement les problèmes spéciaux posés par les relations entre les pays industrialisés et les pays en voie de développement;
– que les législations internes des pays en voie de développement soient toujours guidées par le souci d'encourager l'investissement, l'apport d'initiative et de travail;
– qu'en particulier soit évitée toute taxation excessive ou anormale par rapport aux dispositions frappant les activités similaires dans les pays européens et assurée sur le plan fiscal la protection juridique des investisseurs;
– qu'en vue de rendre effectives les mesures prises dans ce cadre par les pays en voie de développement, les pays industrialisés:

a) rejettent toutes mesures visant à réserver au seul Trésor du pays du domicile le bénéfice des mesures prises par les pays en voie de développement en vue de faciliter les investissements sur leur territoire,

b) prennent en considération les efforts de leurs entreprises dans les pays en voie de développement et tiennent compte des exigences spéciales de ces investissements en matière d'amortissement et de provisions;
– que les représentants des intérêts industriels et commerciaux soient consultés sur l'ensemble de ces initiatives.

AUSTRIA

BIBLIOGRAPHY

Umsatzsteuergesetz 1959, Textausgabe oesterreichischer Gesetze und Verordnungen, Abgabengesetze, Band II/1, Eisenstadt, Prugg Verlag, 1964, pp. 80, ÖS. 40.–.

The turnover tax act of 1959 as amended up to november 1, 1964, is contained in this booklet with some explanation thereto footnoted. The appendices contain the most important decrees and excerpts of the turnover tax amending acts from 1959 to 1964.

BELGIUM

BIBLIOGRAPHY

L'Impôt des personnes physiques, Linard de Guertechin, Bruxelles – Louvain Paris, 1) Société d'Etudes morales, sociales et juridiques, 2) Maison Ferdinand Larcier, S.A., 3) Editions Nauwelaerts, 1964, pp. 398.

This book is one of the few handbooks on the new Belgian income taxes introduced by the 1962 tax reform. It especially focuses on the taxation of resident individual taxpayer, the various prepayments which may be levied and the individual income tax ("impôt des personnes physiques") against which the prepayments may be credited. Also discussion centers around the assessment and the collection of the tax as well as court procedure. A special feature of this book is the many examples indicating the manner in which taxes should be computed. The new income tax law and the most significant Royal Decrees have been included at the end of the book.

GERMANY

BIBLOGRAPHY

Untersuchungen zum Einkommensteuerrecht, Schriftenreihe des Bundesministeriums der Finanzen, Heft 7, Bericht der Einkommensteuerkommission, Bonn, Wilhelm Stollfuss Verlag, 1964, pp. 483.

In 1958 the Minister of Finance formed a commission to investigate the language in which the Individual Income Tax Act was written, to check the consistency of the underlying system and to suggest simplification of the law. The commission finished its report in October 1963. The first section of the report contains the mandate to the commission, the development of the commission's activities, and its difficulties. The second part and most extensive deals with the opinions of the commission re-formulation, equity and appropriateness of the articles of the Act 1961. Finally the existing text of the Income Tax Act 1961 is compared with the text as proposed by the commission.

Wirtschaftsprüfer-Handbuch 1963. Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 1964, pp. 192.

In Bulletin volume XVII, no. 5, page 285-286, we reviewed the first part of this reference work for tax consultants. This part is devoted to the law and the rules pertaining to the different types of professionals who operate in the field of giving aid and advice in accounting and tax matters. The reason why this 1963 handbook is published in October 1964 is that the applicable law provisions have been modified during the last year. As a result the pocket-edition gives up to date information in a systematical manner.

INDIA

TAX NEWS

1. On the 24th December, 1964, the Indian Finance Minister announced three tax concessions intended to break the sluggishness of the capital market and to revive investment activity.

The first and most important of the concessions is the tax certificate scheme, which is intended to encourage individuals to invest their savings in equity shares issued for the first time by new companies. The scheme is stated to be the first of its kind introduced anywhere in the world. Under the scheme, tax certificates will be offered to individuals who invest up to Rs. 35,000 in the ordinary shares issued for the first time by new companies belonging to certain specified industries after 23rd December, 1964. For investments of up to Rs. 15,000 tax certificates will be issued for an amount equal to 5 percent of the value of the investment each year for four years. For the next Rs. 10,000 of investments, the assistance will be 3 percent a year for four years: and for the next slab of Rs. 10,000, the assistance will be 2 percent a year for four years. Thus, on a total investment of Rs. 35,000, the individual could get tax certificates worth Rs. 1,250 a year for four years – the return averaging out to a little over 3.57 percent per annum. The certificates will be given only as long as the shares are held by the original investor or his inheritors. They can be used for discharging all income-tax liabilities; and where the liabilities are less than the value of the certificate, the difference will be paid to the investor 12 months after the certificate is issued.

The tax certificates will be granted in respect of ordinary equity shares issued by public limited companies satisfying the following conditions:-

(i) that the company is a public limited company formed and registered in India for the purpose of manufacture or production of the articles in any one or more of the industries specified in the first schedule to the Industries (Development and Regulation) Act, 1951, and any other industry as may be notified by the Central Government from time to time;

(ii) that the ordinary equity capital of the company issued for subscription is not less than Rs. 20 lakhs; and

(iii) that the company has, since the date on which it was registered, issued ordinary equity capital for the first time after December 23, 1964.

The second concession is intended to persuade individuals to put their money in Government securities. Income from such securities will henceforward be exempt from the tax sur-charge levied on unearned income.

The third concession is aimed at encouraging non-residents to deposit in banks in India the funds which they may not be needing immediately. The interest earned on such deposits will be made tax-free.

The above concessions will be incorporated in the next Finance Bill but are being implemented with immediate effect.

2. With a view to attract foreign private capital the Indian Government announced on 15th January 1965 its decision to permit foreign investors to establish

industries with Indian partnership of their choice or even without it. The only stipulation is that the foreign investor should form an Indian company before getting the license or opening the subscription list to the Indian public. According to this decision, the letter of intent will be given directly to foreign investors with sound industrial projects but the actual license will be issued only on the formation of an Indian company. If the foreign investor is not able to find suitable Indian partners in the Indian business circles, industrial finance institutions like the Industrial Development Bank will assist foreign investors in providing the necessary rupee finance.

Generally it will be ensured that Indian capital remains predominant, but exceptions may be made allowing foreign investors a higher percentage of equity capital.

Reported by K.C. KHANNA

INDONESIA

TAX NEWS

On November 25, 1964 the following important tax changes were enacted and their statutes were to come into force the same day.

(I) *Corporation income tax*

1. Profit Distributions to members of the the Board of Directors, supervisors, or partners are deductible in computing the taxable profit.
2. The rate of tax is

(i) for corporations and legal entities (except for cooperative societies)

Rp	2.500.000 – and less	10 %
more than	2.500.000 – up to including Rp. 5.000.000	20 %
more than	5.000.000 – up to including Rp. 20.000.000	26 %
more than	20.000.000 – up to including Rp. 40.000.000	32 %
more than	40.000.000 – up to including Rp. 100.000.000	38 %
more than	100.000.000 – up to including Rp. 250.000.000	44 %
more than	250.000.000 – up to including Rp. 500.000.000	50 %
exceeding	500.000.000	52.5 %

(ii) for cooperative societies

Rp	1.000.000 – and less	5 %
more than	1.000.000 – up to including Rp. 5.000.000	10 %
more than	5.000.000 – up to including Rp. 10.000.000	15 %
exceeding	Rp. 10.000.000	20 %

3. Contributions to charitable and social institutions approved by the Minister of "Revenues, Defrayment and Control Affairs" are deductible; but limited to 3 per cent of the taxable profit.
4. A prepayment tax for the assessment year 1965 will be levied. Government enterprises are permitted to calculate and pay the tax on their own initiative.
5. The interest on delayed tax payments is 5 per cent per month.

6. Adjustment of incorrect assessments may be carried out now by the tax authorities.
7. The above amendments are applicable starting with fiscal years after June 30, 1964.

Source: *Law* No. 22 of 1964, *Official Gazette* No. 113, 1964.

(II) *Income tax*

1. Profits derived from the alienation or exchange of immovable goods are exempt from tax where the sales price or value of the property does not exceed Rp. 5 million.
2. With respect to movable goods the exempt sales price or value referred under (1) amounts to Rp. 1. million.
3. Pension premiums, insurance premiums and interest are no longer deductible.
4. Where a wife is employed and income tax is withheld on her salary, then her income is not to be added to the income of her husband.
5. Personal allowance for a taxpayer is Rp. 180.000 per annum.
   For each wife Rp. 84.000 per annum
   For each child (maximum of 10) Rp. 60.000 per annum
6. The rate of Tax

Taxable amount	Tax payable	Levied on every Rp. 3.000.- exceeding the previous bracket of taxable amount
Rp. 600.000.-	Rp. 60.000.-	10%
1.200.000	150.000	15%
3.600.000	630.000	20%
7.200.000	1.530.000	25%
12.000.000	2.970.000	30%
24.000.000	7.170.000	40%

7. Contributions to charitable and social institutions pointed out by the Minister of Revenues, Defrayment and Control Affairs, are deductible, but limited to 3 per cent of the taxable income.
8. Profits derived from the alienation or exchange of movable or immovable property are taxed at a special rate of 10%.
9. The income tax amendments are effective as of January 1, 1965.

Source: *Law* No. 23 of 1964, *Official Gazette* No. 114, 1964.

(III) *Net wealth tax*

1. Precious metals, diamonds and other precious gems are exempt from net wealth tax where their value is less than Rp. 5 million.
2. Where the taxpayer resides in his own home, the taxable net wealth of that house is computed as follows:
   the first Rp. 20 million of the value 10%
   the next Rp. 20 million of the value 20%
   the exceeding value 50%

Example:
House and land the total value of which is less:

	Rp. 78.000.000		
(1)	,, 20.000.000	10% is	Rp. 2.000.000
	Rp. 58.000.000		
(2)	,, 20.000.000	20% is	Rp. 4.000.000
	Rp. 38.000.000	50% is	Rp. 19.000.000
	Total net wealth on the house		Rp. 25.000.000

3. Where the taxpayer can prove that he is not entitled to enjoy the fully fruits of a certain part of his net wealth or in case his capital is used for activities in accordance with the development policy of the Government, the net wealth shall be computed within rules set out by the tax authorities; for example, house whose rental price is controlled.

4. The tax rate.
   Net wealth less the value of which is less than Rp. 30 million is exempt. However, where net wealth exceeds Rp. 30 million the rate is 0.05% levied on each Rp. 1.000 of net wealth exceeding Rp. 25 million.

Source: *Law* No. 24 of 1964, *Official Gazette* No. 125, 1964.

(IV) Special rulings are given with respect to *depreciation allowances*.
No depreciation allowances are granted for
(i) luxory motor cars (station-wagons, sedan cars etc.)
(ii) luxory assets e.g. airconditioning,
(iii) bungalows.

Source: *Law* No. 28 of 1964, *Official Gazette* No. 119, 1964.

(V) *Tax holiday* from 3 to 5 years is granted to new established Indonesian enterprises engaged in agriculture, fishing, cattle-breeding, mining, manufacturing, transporting and other enterprises approved by the Minister of Revenue, Defrayment and Control Affairs.
The tax holiday is effective as of January 1, 1965 and is applicable likewise to production sharing plans whereby foreign enterprises contribute machinery and equipment to Indonesian enterprises.*

Source: *Law* No. 27 of 1964, *Official Gazette* No. 118, 1964.

(VI) Special *tax incentives* by way of granting deduction of a part or the entire taxable income from investments made in agriculture, cattle-breeding, mining, manufacturing, transportation and other enterprises approved by the Minister of Revenues, Defrayment and Control Affairs.

Source: *Law* No. 26 of 1964, *Official Gazette* No. 117, 1964.

(VII) *Stamp duties* on certain documents have been increased by approximately ten times the duty due prior to the increase.

Source: *Law* No. 25 of 1964, *Official Gazette* No. 116, 1964.

ITALY

BIBLIOGRAPHY

Il fondamento teorico dell' imposta di registro – Applicazione pratica e problemi relativi. Author: Dott. WALTHER ALO-SI, Milano 1963, 95 pp.

After a few general remarks on the basic legal principals of taxation the author gives a theoretical as well as practical survey of the Italian registration duty, with particular emphasis on sham transactions, the valuations of goods transferred the valuation of services rendered and the valuation of lease holds.
The author sums up his analysis with some critical remarks and proposals for modification of the registration duty, and suggests in particular a reduction of the number of transactions which are subject to the registration duty.
The appendix contains a survey of the relevant case law.

* See: Foreign Investment Policy and Taxation in Indonesia by K.S. Jap in 18 (Bulletin) 334, 1964.

LEBANON

TAX NEWS

INCREASE IN GOVERNMENT FEES FOR REGISTRATION OF INDUSTRIAL PROPERTY

The Lebanese Council of Ministers has approved a draft law, effecting a 50 per cent increase in government fees on trademarks, patents and designs. The said increase will also apply to all pending applications which are not completed before the promulgation of the said law.

It is expected that the Lebanese Parliament will approve the said increase, when the Bill comes on the agenda.

The said increase in government fees will necessitate an increase in our existing Tariffs and will also entail a similar increase on pending applications. The amount of the increase in the usual items of the Tariff would be approximately as follows:

	£ s.d.	U.S. $
Trade mark application	1.10.0	4.20
Assignment	0.10.0	1.40
Patent application	1. 0.0	2.80
Assignment	0.10.0	1.40
Design application	1.10.0	4.20

A new Tariff will be issued upon the final promulgation of the law; but it should be remembered that all our previous Tariffs stipulate that the rates "are subject to variation upon changes in official fees, without notice".

Reported by *Saba & Co.*, Beirut.

MALAYA

BIBLIOGRAPHY

Personal Income Tax in the Federation of Malaya (now known as States of Malaya) with Foreword by the Hon. Mr. Tan Siew Sin, Minister of Finance, by H.W.T. PEPPER, Director of Tax Planning and Research.

Obtainable: Government Printer, Kuala Lumpur 50 cents Malayan currency(U.S. 17 cents, U.K. 1s.2d).

NETHERLANDS

BIBLIOGRAPHY

Anderhalve eeuw belastingen, SCHUTTEVAER, H. en J.G. DETIGER, Deventer, Kluwer, 1964, pp. 100.

The tax development in the Netherlands during the last 150 years is the subject of this book. Professor Schuttevaer centers his discussion around the 19th century developments when the foundation for a tax system was laid. Professor Detiger directs his attention to modern trends within the 20th century.

Tarief van invoerrechten, Deel I: Douane-overeenkomst BeNeLux; Deel II: Tariefbesluit 1960, Nederlandse Staatswetten No. 100, I en II, Schuurman & Jordens, HOOGEVEEN, W., Zwolle, Tjeenk Willink, 1964, pp. 682 and 489, Dfl. 6,25 and 4,75.

Seventh edition of Volume I, including the BeNeLux treaty of 1944 and its 1958 and 1960 Protocols, as amended up to January 1, 1964; Third edition of Decrees and Regulations to the forementioned treaty on import duties, up to April 1, 1964.

De detailhandel en de omzetbelasting, Den Haag, Hoofdbedrijfschap detailhandel, 1964, 35 pp.

Brochure discussing the consequences for the retail trade in the Netherlands if the added value tax on turnover should be introduced in this country.

Fiscale Verhalen, SMITS R.M., Amsterdam, F.E.D., 1964, 151 pp. Dfl. 9.—.

A hundred tax problems and their solutions, written for students on the income, net worth and turnover tax.

Dubbele belastingheffing van dividenden, Fiscale Monografieën, ROELOFFS L., Deventer, Kluwer, 1964, 171 pp. Dfl. 11,50.

Thesis for a doctorate degree at the University of Groningen. The author discusses the problem of double taxation of corporate profits; i.e. once of the corporate profits and then of the dividends at the stockholder level. The author's opinion is that the system as it exists in the United Kingdom, whereby the income tax assessed on the company is considered to have been paid by the stockholder, would be preferable. The book concludes with a comparison between the United States, the Swiss, Italian, French and Belgian legislation. A summary is presented in English.

Voorkoming van dubbele belasting, BOUWSMA J., N.V. Uitgeverij FED, Amsterdam, 1964, 2nd edition, Fiscale Studieserie nr. 3, pp. 151.

This book is concerned with the Dutch tax consequences with respect to income and property which is also liable to foreign taxes. It describes the unilateral measures to avoid double taxation, the rules for the settlement of tax matters between the various parts of the Kingdom (which are autonomous in tax matters) and the treatment of international and diplomatic officers with respect to the Dutch income tax.

PAKISTAN

TAX NEWS

The following proposals concerning direct taxes were included in the *Budget Speech* of 1964-65:

Income-tax (and super-tax).

The following change will be introduced:

(i) The additional 5% super-tax rebate presently granted to companies whose income does not exceed Rs. 25,000 is to be extended to industrial companies whose income does not exceed Rs. 50,000.

Also the following rebates will be introduced:

(ii) for companies engaged in mining 10%

(iii) on foreign income of Pakistan enterprises remitted to Pakistan 15%

Note that the present income-tax rate for companies is 30%; the present company super-tax rate on dividends from other Pakistan companies is 20%, but reduced to 15% if received by a public company. The present super-tax rate for companies is 30% on the remainder of total income (excluding bonus shares).

Capital gains tax
Where an asset is disposed of within six months, normal tax rates will apply. Where it is held for more than six months but less than five years, existing rates will apply. Where it is held for five years or more, half existing rates will apply; they would also apply to dealers in shares whose profits from such transactions are normally treated as income but who retained assets for five years or more.

New industrial undertakings
The existing provisions are extended until June 30, 1970 but from July 1, 1965 the tax holiday period would be reduced by two years, i.e. to 2 years, extended to 4 or 6 in certain areas. For a number of industries, the requirement that mainly Pakistan raw materials be used is to be relaxed.

Exemptions
The first Rs. 500 of savings bank interest (Post Office savings bank interest is already exempt is to be exempt. The present exemption for certain residential houses, due to expire June 30, 1965 is extended for five years. The present exemption for certain foreign technicians is extended from two to three years.

Educational expenses
The Unit of Rs. 300 per child is removed, but the maximum allowance of Rs. 900 remains.

Foreign tax credit
Tax credit for income from branches in various countries may be aggregated instead of being limited on a country basis.

Assessment and payment
All salaried and certain other taxpayers will be required to calculate and pay tax due when making their return of income.

Net Wealth tax
Private companies are to be exempt.
Rates on individuals become:

First Rs. 400,000	Nil
Next Rs. 1,000,000	1 %
Next Rs. 2,000,000	1½%
Over Rs. 3,400,000	2 %

Net Wealth tax would be limited to 15% of total income.

Source: *International Accountants' Journal* Vol. 34. no. 3, p. 89.

TOGO

TAX NEWS

The 1965 Finance Act (enacted December 31, 1964) introduced new rates for direct taxes.

As of January 1, 1965 the schedule for the individual income tax is set forth as follows:

Taxable income (in Frs.)	dependents						
	1	2	3	4	5	6	7
	% Tax Payable on Taxable Income						
0 – 7,000	0	0	0	0	0	0	0
7,001 – 20,000	6	5	4	3.5	3	2.5	2
20,001 – 40,000	7	6	5.5	5	4.5	4	3
40,001 – 80,000	12	7	6	5.5	5.5	5	5
80,001 – 160,000	25	15	11	10	8.5	7	6
160,001 – 320,000	35	26	21	18	14	12	11
over 320,000	45	35	32	30	28	27	26

240 Togo francs = $ 1.

The employer's payroll tax (versement forfaitaire sur les traitements et salaires) is decreased from 1.5% to 1%.

Taxes must be paid before the 15th of the month for the preceding three month tax period.

UNITED STATES

BIBLIOGRAPHY

The federal tax system: facts and problems, 1964.* A Staff Study Prepared for the Joint Economic Committee, Congress of the United States. Paper; Superintendent of Documents, U.S. Government Printing Office, Washington, 1964, $1.00.

Where the seat of authority over tax legislation lies, there the inquiry into tax problems and tax policy will generally be centered. Take the case of Parliamentary democracies like Sweden or Great Britain, for example. There the Cabinet, the executive branch of the Government, generally originates tax legislation, presenting the Finance Act or its equivalent to the legislature, as a matter of confidence, for adoption or rejection. And there as a result it is the executive branch which carries the burden of inquiry into tax questions, for example through the device of the Royal Commission or the expert committee of inquiry.[1] But in a Congressional democracy like the United States, the

* The Bulletin feels that this book review, which explains the workings of the U.S. legislature system as it pertains to fiscal legislation, would be of interest to our readers.

1 For recent examples of Swedish expert committee reports, see *Internationella Skattefragor,* Staten Offentliga Utredningar (SOU) 1962:59; *Nytt Skattesystem,* SOU 1964-25 (for a discussion of the contribution of these expert committees to tax scholarship, see Harvard Law School, World Tax Series *Taxation in Sweden* 51).

For an example of a recent British report, see *Report of the Committee on Turnover Taxation,* (Cmnd. 2300, 1964). In Britain, the wisdom is often in the dissent. Subsequent developments in capital-gains taxation for example, depend not on the view of the majority of the *Royal Commission on the Taxation of Profits and Income (Final Report(* (Cmnd. 9474, 1955) but on the *Memorandum of Dissent by Mr. G. Woodcock, Mr. H.L. Bullock and Mr. N. Kaldor* (Cmnd. 9474, p. 365).

excutive proposes but Congress disposes.[2] Under the American system, the legislative branch is supreme in tax matters; as a result it is the legislative branch which carries much of the burden of inquiry.

To many abroad, the image of Congress may be formed by the likes of Senators Joe McCarthy or Barry Goldwater or Strom Thurmond. But this image is only a part of the story. Congress and its agencies make a major intellectual contribution to the solution of the problems that face the United States. To assist it in its consideration of legislation, the Congress and its powerful committees hold hearings, solicit the view of taxpayers and their representatives, publish multivolume studies including papers by business and academic experts.[3]

For novel or especially troublesome questions, the Congress may retain outside experts to carry on research on its behalf. A notable example, a landmark in United States fiscal history, is the recent study, for the House Committee on the Judiciary, of the Advisory Group on the State Taxation of Interstate Commerce headed by Professor Ernest J. Brown of the Harveard Law School.[4]

This is not to say that in the United States it is only the legislative branch that inquires into tax problems. Perhaps a reflection of our traditional system of checks and balances, there is on the executive side a top Treasury official, the Assistant Secretary of the Treasury for Tax Policy, who has the aid of legal advisors (the Office of Tax Legislative Counsel) and economists (the Office of Analysis).

Sometimes the Treasury succeeds in convincing the Congress, sometimes it does not.[5] And again in the American tradition, the inquiries of the legislative and executive

2 "In the American congressional tradition, the tax-writing committees of Congress often prefer to follow their own ideas rather than adopt presidential suggestions, and, thus, their role is of great significance." Harvard Law School, World Tax Series, *Taxation in the United States* 88 (1963).

3 See, for example, *Tax Revision Compendium* (Compendium of Papers on Broadening the Tax Base), 3 volumes, House Committee on Ways and Means 86th Congress, 1st Session, 1959; *Excise Tax Compendium* (Compendium of Papers on Excise Tax Structure), House Committee on Ways and Means, 88th Congress, 2d Session, 1964.

4 *State Taxation of Interstate Commerce* (Report of the Special Sub-committee en State Taxation of Interstate Commerce of the Committee on the Judiciary), 2 volumes, House Report no. 1480, 88th Congress, 2d session 1964. This study, still continuing, arose out of the decisions of the Supreme Court in *Northwestern States Portland Cement Co. v. Minnesota*; *Williams v. Stockham Valves & Fittings Inc.*, 358 U.S. 450 (1959), *Brown-Forman Distillers Corp. v. Collector*, 359 U.S. 28 (1959), and related cases. In one of them, *International Shoe Co. v. Fontenot*, 359 U.S. 984 (1959) the Supreme Court refused to review the decision of a lower court (236 La. 279, 107 So. 2d 640 (1958)), upholding a state income tax on a foreign corporation which had no permanent establishment in the taxing state; its only activity there was the regular solicitation of orders, followed by the shipment of its shoes into the taxing state. (In the *Interstate Commerce Tax Act*, Public Law 86-272, Congress exercised authority, at least on a temporary basis, to delay application by the states of this concept of their income tax jurisdiction). How far the *International Shoe* rule, permitting an importing state to tax the income of outsiders who merely solicit orders and export into that state, may be extended from the interstate to the international level is an interesting question for the future.

5 Compare the success of the Treasury in persuading Congress to adopt its anti-tax-haven proposals (in the Revenue Act of 1962) with its subsequent failure to persuade Congress to adopt a number of proposed domestic reforms (in the Revenue Act of 1964). For the 1962 Act, see *Taxation in the United States* 1042.

branches into tax policy are supplemented by the work of those great semi-public institutions, the private foundations, often acting in conjunction with the universities.[6]

But important though the work of the executive branch, the foundations, the universities, and the outside experts may be, at least as important as the steady, day-by-day contribution of the permanent staffs of Congressional committees. The study here reviewed, for example, is the work of the Staff of the Joint Economic Committee of the Congress, a committee whose Chairman, the distinguished Senator from Illinois, Paul H. Douglas, is a former Professor of Economics. Prepared primarily by Dr. Alan P. Murray, a staff economist, the study brings up-to-date a similar 1961 study now out of print.[7] The new study is available from the U.S. Government Printing Office for one dollar. No greater bargain can be imagined for the lawyer or economist, in the United States or abroad, seeking a succinct summary of present U.S. tax law and of major current issues in Federal tax policy.

Successive chapters deal with the general characteristics of the United States tax structure (including an explanation of such matters as the administrative budget, the cash budget, the Government's trust fund receipts, and how these all differ from the national income accounts), the individual and corporation income taxes, the taxation of capital gains, depreciation and the new investment credit, income from natural resources, retirement plans, income from foreing sources, excise taxes, estate and gift taxes, payroll taxes, and federal-state tax relations.

With foreign countries moving increasingly toward the taxation of capital gains *à l'Américaine,* let us take the chapter on capital gains as an example. The chapter begins with an outline of present law, first the general provisions and then the provisions dealing with timber, livestock, employee stock options, oil royalties, gain on the sale of a personal residence, and similar special matters. Then come several pages on the history of changes in our treatment of capital gains, and finally a section on „Issues and Proposals." This deals with current equity and economic issues in the capital gains area, including (and this may be of most interest to those abroad concerned with tax policy) current proposals for change in the tax treatment of capital gains—reductions of rate, changes in holding periods, taxation of gains on assets transferred at death, "rollover" averaging, taxation of capital gains on an acrual rather than a realized basis, and so on. And the invaluable statistical appendix has seven pages of tables on capital gains taxation -the amounts of gain (and loss) reported for each year (with an index of stock prices), the number of individuals reporting gain, the size of their gains and of their incomes, the source of their gains (in 1959, for example, 41.5 per cent from corporation shares, 18 per cent from real property), and the estimated yield from capital gains taxation from 1948 to 1961.

Dr. Murray takes no stand on the merits of each issue presented. Proper though this is,

6 For a recent example, see *The Role of Direct and Indirect Taxes in the Federal Revenue System,* a Conference Report of the National Bureau of Economic Research and the Brookings Institution (1964). This study is part of a tax research program financed by the Rockefeller Brothers Fund, the Life Insurance Association of America, and the Ford Foundation.

7 *The Federal Revenue System: Facts and Problems* 1961 (materials assembled by the Staff, Joint Economic Committee, 87th Congress, 1st session).

it leads to a certain monotony of presentation—the bite that an author's bias gives to his writing is missing. In each chapter, we have "proponents of this view argue that," "opponents on the other hand content that", and so on. But the balance is fair, if not stimulating; it is left to the reader to judge. We can only admire Dr. Murray's impartiality.

It is perhaps this very impartiality which gives the reader the impression that there are few tensions in the United States tax system today. There seem to be few issues to produce such arguments as those provoked by the introduction—at the initiative of the executive branch, by the way, not the legislative—of the anti-tax-haven provisions that became the Revenue Act of 1962.[8] Perhaps the success of these new rules has quieted those who may have cried "wolf!" once too often; despite their predictions, the heavier tax burden imposed on taxhaven corporations has not prevented a continuing increase in American investment overseas. Not only is U.S. investment abroad rising in absolute terms; it is rising faster than domestic investment.[9]

But if old problems lie down, new ones arise.

There is a brief discussion here, for example (page 41), of Senator Russell Long's current proposal to establish an alternative, and lower, tax rate schedule for individual taxpayers who agree to forego the special credits, exclusions, and deductions that mark the United States tax structure. But the book appeared too late to take account of a controversial new tax proposal. This is the scheme of Walter Heller, a Minesota economist and late Chairman of the President's Council of Economic Advisors, to give away to the states every year a fixed portion of the Federal government's tax receipts—perhaps up to $3,000,000,000 a year. These free gifts, to be made, for example, on a per capita basis, would not be loans or grants-in-aid[10], tied to such specific projects as schools, or hospitals, or the retraining of the unemployed, or the fight on poverty. The states could do with their Heller gifts as they saw fit. At the extreme, the State of Mississippi could use its free gift to "beef up" the State Highway Patrol. To avoid charges of regional prejudice, let me add that my own State of Massachusetts (where a former governor and a former commissioner of public works have recently been indicted on charges of misconduct in office) could use its gift to finance what is alleged to have happened before—the purchase from state officials, for state use, at exorbitant prices, of land recently sold them by the state, at bagrain prices, as surplus to the state's needs!

8 See *Taxation in the United States* 1042.

9 "U.S. Companies Lifing Overseas Outlays Faster than Rate Here," *The Wall street Journal,* October 27, 1964, p. 3 (Commerce Department survey shows U.S. companies expected to invest $5.9 billion in plant and equipment overseas in 1964, an increase of 16 per cent, against expected increase of only 13 per cent domestically; in manufacturing alone, overseas investment expected to increase 26 per cent in 1964, against 16 per cent domestic increase; "notable upturn" in overseas spending expected to continue into 1965).

10 According to the work under review (page 198), "grants-in-aid from the Federal Government to the States and their subdivisions have played an increasingly important role in intergovernmental fiscal relations... The Federal-aid system has grown out of a consciousness that certain functions normally viewed as primarily State or local responsibilities but having a national interest (for example, highways and assistance to the needy aged), were not being performed, or were being performed inadequately, at the State and local level. Generally to promote nationwide uniformity in minimum standards of service, Federal aid has been granted, conditional upon matching or related State and local expenditures."

The Treasury Department opposes the scheme and doubts its legality;[11] the power of Congress to tax and to spend under the Constitution (Article I, sections 8, 9) may not be unlimited.[12]

It may be an indication of changing trends in American thought that an idea that seems a relic of the Populism of the 1890s[13] is hailed by Senator Goldwater in the 1960s as "entirely conservative economic policy."[14] Or is only that extremes tend to meet? Proponents of the Heller plan advance a tax-policy reason in its support—the Federal money to be given away comes from "progressive" taxes (the Federal revenue system is based primarily on the individual income tax) while the States' tax sources are "regressive" (primarily sales and real property taxes). Ironically, to take Massachusetts again as an example, this is a state which for years has resisted effort of such "liberal" organizations as the *League of Women Voters* and *Americans for Democratic Action* to enact a progressive state income tax (like those in New York or California, for example). This new tax proposal is regarded as conservative, and gets Senator Goldwater's approval, because the Federal Government will tie no strings to the money it gives away—exert no authority, that is.[15] The common lawyer, however, will recall the rule that he who takes the King's shilling is thereafter subject to the King's discipline. Dr. Murray gives us the arguments for and against Federal grants-in-aid (pages 198 and 199); it is too bad that he could not also apply his iron impartiality to the new and more controversial question of Federal give-aways.

It may be the ultimate reflection of the affluent society that the Government's chief tax problem today is how to give money away, not how to take it in. In a country considering whether to give away $3,000,000,000 a year, no strings attached, it is old-fashioned of me to return to the fact this book costs only a dollar. (This no doubt reflects Disraeli's rule that little things attract little minds). But I suggest that the practising tax consultant or economist or professor of public finance seeking information on the U.S. tax system will find more value for money in this admirable work than is available anywhere else.

MARTIN NORR

11 "Sharing Revenues: A Plan to Divert Part of Federal Tax Take to States Hits Snags", *The Wall Street Journal,* November 17, 1964, p. 1.

12 See *United States v. Butler,* 297 U.S. 1 (1936), especially the dissenting opinion of Mr. Justice Stone (297 U.S. 1, 78, 83): „The Constitution requires that public funds shall be spent for a defined purpose, the promotion of the general welfare. Their expenditure usually involves payment on terms which will insure use by the selected recipients within the limits of the constitutional purpose. Expenditures would fail of their purpose and thus lose their constitutional sanction if the terms of payment were not such that by their influence on the action of the recipients the permitted end would be attained."

13 The Populists were a radical mid-western political group who believed that "the bankers were hoarding gold and that the circulation of more money would help the situation." *Columbia Encyclopedia* 1701 (3d ed. 1963).

14 "More Government or Less?", *The Economist* (London), October 24, 1964, 353, 354. See also "Johnson's Course", *The Wall Street Journal,* October 30, 1964, p. 10, describing this "conservative-style gesture" as "in quiet tune with keep-the-money-spinning economics."

15 At the moment of writing this review, "it is far from clear, however, that Johnson, his Cabinet chiefs, or Congress will buy the idea of unconditional grants. Johnson himself has been sceptical about the dependability of state governments in executing programs or in spending money on the right things." "Planning to Keep the Ball Rolling," *Business Week,* November 14, 1964, 23, 24.

Michie's (formerly Alexander's) Federal Tax Handbook, DRYSDALE, D.D., Charlottesville, Virginia, The Michie Company, 1964, pp. 1730.

The non American tax attorney who finds that he must sit down and wrestle with the American tax structure soon finds himself suffering from a severe case of "sectionitis". Oftentimes wading through the sections of the Internal Revenue Code, the Regulations, the Revenue Rulings etc. leaves one no further apprised of his problem than when he first started.

This voluminous treatise simplifies the chore that the European attorney often faces. The book not only gives one the appropriate sections with which he must familiarize himself in order to communicate his tax problem intelligently to his American counterpart, but the book gives one examples precisely as to how the law may be implemented.

Although taxation problems are not answered from this book, it does make the European attorney less apprehensive about viewing his client's tax problem from all sides.

Full employment or stagnation, CULBERTSON J.M., McGraw-Hill, 1964, pp. 252.

Professor Culbertson in his most enlighting book, lashes out at the "misguided government economic policies." The high unemployment level and the weak economic growth of the United States come as no surprise to the author. He claims that the errors of policy are not accidental but they are based upon fallacious economic theories. The author also expresses his concern that the leaders of these fallacious policies are not retiring in any way from their leadership, and grave concern is expressed of the fate to come.

The way to correct this downhill slide, states the Professor, is by arousing the public to the economic turmoil that is brought about by the tenacious ideas of our economic leaders. The author first leads the reader through the various economic theories and policies to the present economic condition of the United States. He next speaks to the causes of unemployment and its cost to society. He then directs his attention to various policies that are used to alleviate the unemployment condition, i.e. debt management, monetary management and mismanagement, restrive policies etc. Lastly, the author warns the intellectural leaders to have reason prevail in our economic society.

The Professor is of the opinion that economic policy can be put on a secure foundation only through an aroused public discussion—one that stirs the intellectual leaders of the nation to meet their responsibilities, to bring government economic policy under the sway of modern thought. The purpose of this book is to contribute to such a discussion. Whether or not one is in accord with the theories set forth by Professor Culbertson, one is certainly set to think about the American economic problems.

The Professor is a well known American economist having been in the government service for a number of years. Presently he is Professor of Economics and Commerce at the University of Wisconsin.

URUGUAY

TAX NEWS

Major summaries of company taxation in Uruguay

Domestic Companies

1. Tax on income from industry and commerce
   taxable base:
   income from industry and commerce adjusted according to law or 20% of gross income in other cases.
   tax rate: 6%
2. Corporation tax on undistributed profits
   taxable base:
   undistributed net income less 15% of net income
   tax rate: 15%
3. Tax on excess profits
   taxable base:
   greater than 20% of the net worth
   tax rates:
   income exceeding 20%
   net worth, 10%
   income exceeding 25%
   net worth, 15%
   income exceeding 30%
   net worth, 25%
   income exceeding 35%
   net worth, 35%
   income exceeding 40%
   net worth, 50%
   income exceeding 50%
   net worth, 65%
4. Net worth taxes
   taxable base:
   difference between assets and liabilities as adjusted
   tax rate: 1.33%
5. Substitute inheritance tax
   taxable base: capital and reserves
   tax rate: 0.85%

Permanent Establishment of Foreign Companies

The same as for domestic corporations, but the permanent establishment must, in addition, withhold 20% of the profits remitted or credited to the head office.

Non-resident Foreign Companies

taxable base: income from Uruguayan sources as adjusted
tax rate: 20%

Taxation of Dividends

taxable base: dividends less 5% of the gross dividends
tax rates:

a. for shareholders whose indentity is not disclosed or non-resident 20% withheld (8% in case of profits subjected to the corporation tax on undistributed profits)
b. for resident stockholders whose identity is known: the progressive rates of the income tax assessed are as follows:

up to 25.000.000	5%
between 25.000.000 and 100.000.000	10%
between 100.000.000 and 250.000.000	15%
between 25.000.000 and 500.000.000	20%
between 500.000.000 and 750.000.000	30%
between 250.000.000 and 1.000.000.000	40%
over 1.000.000.000	50%

Taxation of Interest
taxable base: amount of interest (for tax purposes the minimum rate is 12% of the capital)
tax rates: the same as for dividends

Taxation of Royalties
taxable base: amount of the royalties less up to 50% for justified and verified expenses
tax rates: the same as for dividends

VENEZUELA

TAX NEWS

Domestic Companies
1. Schedular business income tax
taxable base: business income from Venezualan sources
tax rate: 5% (mining 2½% farming 4%)
2. Complementary tax
taxable base: net income from Venezualan sources subject to schedular taxes
tax rate: progressive from 10% for the first 100,000 bolivares to 45% for the excess of 28,000,000
3. Additional tax 50-50
taxable income: income from exploitation of mining hydrocarbons, royalties from concessions for the exploitation of the above when directly received by taxpayers engaged therein. Taxes paid thereon and expenses incurred may be deducted.
tax rate: 50%

Foreign Companies
Taxes mentioned at 1., 2., and 3. supra

Taxation of Dividends
In order to avoid double taxation, dividends are not taxed

Taxation of Interest
taxable base: amount of interest due (for tax purposes the minimum interest rate is deemed to be at least 6% of capital)
tax rate: 6%

Taxation of Royalties
taxable base: royalties received less depreciation for the acquisition cost
tax rate: 6%

WESTERN EUROPE

BIBLIOGRAPHY

Taxation in Western Europe 1964, A Guide for Industrialists, Federation of British Industries, 21 Tothill Street, London S.W. 1, October 1964, pp. 281, 30 shillings.

This useful guide to taxation in the 17 West European countries is a must for the desk of every individual who is concerned with taxation in Western Europe. The book analyses each country's tax system of the basis of taxes based on income or profits, taxes based on capital, sales or turnover taxes, taxes based on payroll or numbers employed and local taxes. Within these broad categories one finds discussions on tax incentives, depreciation allowances etc. All in all, the book is a handy practical guide to European taxation.

III

TREATIES

JAPAN—THAILAND

CONVENTION BETWEEN JAPAN AND THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Signed at Bangkok, March 1, 1963

The Government of Japan and the Government of Thailand.

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their respective Plenipotentiaries:

The Government of Japan:

Mr. Hisanaga Shimadzu, Ambassador Extraordinary and Plenipotentiary of Japan to Thailand

The Government of Thailand:

Mr. Thanat Khoman, Minister for Foreign Affairs of Thailand

Who, having communicated to one another their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I

1. The taxes which are the subject of the present Convention are:

(a) In Japan: The income tax and the corporation tax.

(b) In Thailand: The income tax.

2. The present Convention shall also apply to any other tax on income or profits which has a substantially similar character to those referred to in the preceding paragraph and which may be imposed in either Contracting State after the date of signature of the present Convention.

ARTICLE II

1. In the present Convention, unless the context otherwise requires:

(a) The term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced.

(b) The term "Thailand" means the Kingdom of Thailand.

(c) The term "one of the Contracting States" and "the other Contracting State" mean Japan or Thailand, as the context requires.

(d) The term "Japanese tax" means the income tax, the corporation tax and such other tax on income or profits of a substantially similar character as referred to in paragraph 2 of Article I; and the term "Thai tax" means the income tax and such other tax on income or profits of a substantially similar character as referred to in paragraph 2 of Article I.

(e) The term "tax" means Japanese tax or Thai tax, as the context requires.

(f) The term "Japanese corporation" means a company or any other kind of juridical person created under the law of Japan or any organization without juridical personality treated for the purposes of Japanese tax as a juridical person created under the law of Japan; and the term "Thai corporation" means a company or any other kind of juridical person created under the law of Thailand or any other body or group of persons without juridical personality which is taxed in a substantially same manner as a juridical person created under the law of Thailand.

(g) The terms "corporation of one of the Contracting States" and "corporation of the other Contracting State" mean a Japanese corporation or a Thai corporation, as the context requires.

(h) The term "resident of Japan" means any individual who is resident in Japan for the purposes of Japanese tax and not resident in Thailand for the purposes of Thai tax and any Japanese corporation; and the term "resident of Thailand" means any individual who is resident in Thailand for the purposes of Thai tax and not resident in Japan for the purposes of Japanese tax and any Thai corporation.

(i) The terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Japan or a resident of Thailand, as the context requires.

(j) The term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and the term "Thai enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Thailand.

(k) The terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Japanese enterprise or a Thai enterprise, as the context requires.

(l) The term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on.

(i) The term "fixed place of business" shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources.

(ii) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State, if

(aa) it carries on in that other Contracting State a construction, installation or assembly project or the like;

(bb) it carries on in that other Contracting State a business which consists of providing the services of public entertainers referred to in paragraph 2 of Article X.

(iii) The use of mere storage facilities or the maintenance of a fixed place of business by an enterprise of one of the Contracting States exclusively for the purchase or display of goods or merchandise in the other Contracting State and not for any processing of such goods or merchandise therein shall not constitute a permanent establishment.

(iv) A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the former Contracting State, but only if

(aa) he has and habitually exercises in the former Contracting State an authority to negotiate and conclude contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for or on behalf of the enterprise, or

(bb) he habitually maintains in the former Contracting State a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or

(cc) he habitually secures orders in the former Contracting State wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

(v) A broker, commission agent or other agent of genuinely independent status who merely acts as an intermediary between an enterprise of one of the Contracting States and prospective customer in the other Contracting State shall not be deemed to be a permanent establishment of the enterprise in that other Contracting State.

(vi) The fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation of the other Contracting State or which carries on a trade or business in that other Contracting State shall not of itself constitute either corporation a permanent establishment of the other.

(m) The term "industrial or commercial profits" includes manufacturing, mercantile, agricultural, fishing, mining and insurance profits as well as profits from banking and security dealings, but does not include income in the form of dividends, interest, rents, royalties, capital gains, or remuneration for personal services.

(n) The term "competent authorities" means, in the case of Japan, the Minister of Finance or his authorized representative; and in the case of Thailand, the

Minister of Finance or his authorized representative.

2. In the application of the provisions of the present Convention by either Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the tax.

ARTICLE III

1. The industrial or commercial profits (excluding the profits derived from the operation of ships or aircraft) of an enterprise of one of the Contracting States shall not be subject to tax in the other Contracting State unless the enterprise carries on a trade or business in that other Contracting State through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits in that other Contracting State, but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other Contracting State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing on an independent basis with the enterprise of which it is a permanent establishment.

3. In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. In determining the tax of one of the Contracting States, no account shall be taken of the mere purchase of goods or merchandise therein by an enterprise of the other Contracting State for that enterprise.

ARTICLE IV

Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other Contracting State, or

(b) the same individuals or corporations participate directly or indirectly in the managerial or financial control of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

1. Profits which an enterprise of one of the Contracting States derives from the operation of aircraft shall be exempt from tax of the other Contracting State unless the aircraft are operated wholly or mainly between places within that other Contracting State.

2. The amount of tax imposed by one of the Contracting States on profits which an enterprise of the other Contracting State derives from the operation of ships shall be reduced by an amount equal to 50 per cent thereof unless the ships are operated wholly or mainly between places within the former Contracting State.

ARTICLE VI

1. Subject to the provisions of paragraph 2 of this Article, the rate of tax imposed by one of the Contracting States on dividens paid by a corporation of that Contracting State to its parent corporation which is a corporation of the other Contracting State shall not exceed 25 per cent.

2. The rate of tax imposed by one of the Contracting States on dividends paid by a corporation of that Contracting State engaged in an industrial undertaking to a resident of the other Contracting State shall not exceed 20 per cent:

Provided that where such resident is a parent corporation of the corporation which pays the dividends, such rate of tax shall not exceed 15 per cent.

3. Where a corporation of one of the Contracting States derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the corporation unless paid to a resident of that other Contracting State, or any tax in the nature of undistributed profits tax on undistributed profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

4. Dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a resident of one of the Contracting States has a permanent establishment situated in the other Contracting State and such dividends are attributable to that per-

manent establishment, that other Contracting State may, in accordance with the provisions of its tax law, impose tax on such dividends as if they were industrial or commercial profits to which the provisions of Article III are applicable.

6. In paragraphs 1 and 2 of this Article, the term "parent corporation" means a corporation which owns not less than 25 per cent of the entire shares with voting power of the corporation paying the dividend for at least six months immediately prior to the date when the dividend becomes payable.

7. In paragraph 2 of this Article, the term "industrial undertaking" means an undertaking falling under any of the classes mentioned below—

(a) manufacturing, assembling and processing;

(b) construction, civil engineering and shipbuilding;

(c) electricity, hydraulic power, gas and water supply;

(d) plantation, agriculture, forestry and fishery; and

(e) any other undertaking which may be declared to be an "industrial undertaking" for the purposes of this Article by the competent authorities of the Contracting State in which the undertaking is situated.

ARTICLE VII

1. Interest received by the Government (including a local government) of one of the Contracting States from sources within the other Contracting State shall be exempt from tax of that other Contracting State.

2. Interest received by any financial institution fully owned by one of the Contracting States from sources within the other Contracting State shall be exempt from tax of that other Contracting State.

3. Interest received by a resident of one of the Contracting States on bonds issued by the Government (including a local government) of the other Contracting State shall be exempt from tax of that other Contracting State.

4. The rate of tax imposed by one of the Contracting States on interest received by any financial institution (including an insurance company) which is a corporation of the other Contracting State on debentures issued by, or on loans made to, an enterprise of the former Contracting State engaged in an industrial undertaking referred to in paragraph 7 of Article VI shall not exceed 10 per cent.

5. Interest paid by the Government (including a local government) of one of the Contracting States or by an enterprise of one of the Contracting States shall be treated as income from sources within that Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft) paid—

(a) by an enterprise of one of the Contracting States with a permanent establish-

ment outside both Contracting States to a resident of the other Contracting State, or

(b) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State

directly out of the fund of such permanent establishment on indebtedness incurred for the use of, or on banking deposits made with, such permanent establishment in the conduct of its trade or business shall be treated as income from sources within the State where such permanent establishment is situated.

6. Notwithstanding the provisions of paragraphs 3 and 4 of this Article, where a resident of one of the Contracting States has a permanent establishment situated in the other Contracting State and such interest is attributable to that permanent establishment, that other Contracting State may, in accordance with the provisions of its tax law, impose tax on such interest as if it were industrial or commercial profits to which the provisions of Article III are applicable.

7. In this Article, the term "interest" means interest on bonds, securities, notes, debentures or any other form of indebtedness.

ARTICLE VIII

1. The rate of tax imposed by one of the Contracting States on royalty derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 15 per cent.

2. In this Article, the term "royalty" means any royalty and other amount paid as consideration for using, or for the right to use, any copyright, patent, design, secret process and formula, trademark or other like property; but does not include any royalty, rental and other amount paid in respect of a motion picture film and the operation of a mine, quarry or any other place of extraction of natural resources.

3. Royalty shall be treated as income from sources within the Contracting State in which the property referred to in the preceding paragraph is to be used.

4. The rate of tax imposed by one of the Contracting States on income derived from sources within that Contracting State from the alienation of the property referred to in paragraph 2 of this Article by a resident of the other Contracting State shall not exceed 15 per cent of the gross amount received.

5. Income derived from the alienation of the property referred to in paragraph 2 of this Article shall be treated as income from sources within the Contracting State in which such property is to be used.

6. Notwithstanding the provisions of paragraphs 1 and 4 of this Article, where a resident of one of the Contracting States has a permanent establishment situated in the other Contracting State and such royalty or income is attributable to that

permanent establishment, that other Contracting State may, in accordance with the provisions of its tax law, impose tax on such royalty or income as if it were industrial or commercial profits to which the provisions of Article III are applicable.

ARTICLE IX

1. Salaries, wages, pensions or similar remuneration paid by the Government (including a local government) of one of the Contracting States, or paid out of funds to which such Government contributes, to an individual who is a national of that Contracting State (other than an individual who has been admitted to the other Contracting State for permanent residence therein) in respect of services rendered in the discharge of governmental functions shall be exempt from tax of that other Contracting State.

2. The provisions of this Article shall not apply to salaries, wages, pensions or similar remuneration paid in respect of services rendered in connection with any trade or business carried on by such Government for the purposes of profit.

ARTICLE X

1. An individual who is a resident of one of the Contracting States shall be exempt from tax of the other Contracting State on remuneration or profits for personal (including professional) services performed within that other Contracting State in any taxable year, if—

(a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 180 days during that taxable year,

(b) the services are performed for or on behalf of a resident of the former Contracting State, and

(c) the remuneration or profits are not deducted in computing the profits of an enterprise chargeable to tax in that other Contracting State.

2. The provisions of this Article shall not apply to the remuneration or profits of public entertainers, such as theatre, motion picture, radio or television artists, musicians and athletes.

ARTICLE XI

An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and who at the invitation of the Government of the other Contracting State, or of a recognized university, college, school or other educational institution in that other Contracting State, visits that other

Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at such educational institution in that other Contracting State, shall be exempt from tax of that other Contracting State in respect of the remuneration for such teaching or research.

ARTICLE XII

1. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State solely—

(a) as a student at a recognized university, college or school in that other Contracting State,

(b) as a recipient of grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organization, or

(c) as a business apprentice,

shall be exempt from tax of that other Contracting State in respect of—

(i) remittances from abroad for the purposes of his maintenance, education, study, research or training.

(ii) the grant, allowance or award, and

(iii) remuneration for personal services in that other Contracting State not exceeding the sum of 360,000 Yen or 20,000 Baht, as the case may be, during any taxable year.

2. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the former Contracting State, or an organization referred to in paragraph 1 (b) of this Article, solely to acquire technical, professional or business experience from a person other than such enterprise or organization, shall be exempt from tax of that other Contracting State on the remuneration for such period for his services directly related to the acquisition of such experience, if the total amount received from abroad and paid in that other Contracting State does not exceed the sum of 1,000,000 Yen or 55,000 Baht, as the case may be, during any taxable year.

3. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State under arrangements with the Government (including a local government) of that other Contracting State, solely for the purpose of study, research or training shall be exempt from tax of that other Contracting State on remuneration for his services directly related to such study, research or training,

if the total amount received from abroad and paid in that other Contracting State does not exceed the sum of 1,000,000 Yen or 55,000 Baht, as the case may be, during any taxable year.

4. The benefits of paragraph 1, 2 or 3 of this Article shall not be concurrently cumulative.

ARTICLE XIII

For the purposes of the present Convention:

(a) Income derived from immovable property (including profits or gains derived from the alienation of such property), and royalties in respect of the operation of mines, quarries or any other places of extraction of natural resources shall be treated as income from sources within the Contracting State in which such immovable property, mines, quarries or any other places of extraction of natural resources are situated.

(b) Remuneration or profits for personal (including professional) services shall be treated as income from sources within the Contracting State in which are rendered the services for which such remuneration or profits are paid, and the services performed in ships or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be rendered in that Contracting State, unless the ships or aircraft are operated wholly or mainly between places within the other Contracting State.

ARTICLE XIV

1. The laws in force in either Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in the present Convention.

2. *(a)* Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Thai tax payable, whether directly or by deduction, in respect of income from sources within Thailand shall be allowed as a credit against Japanese tax payable in respect of that income. Where such income is a dividend paid by a Thai corporation to a Japanese corporation which owns not less than 25 per cent of the entire shares with voting power of the Thai corporation, the credit shall take into account Thai tax payable by the Thai corporation in respect of its profits.

(b) For the purposes of the credit referred to in subparagraph (a) of this paragraph, there shall be deemed to have been paid the amount of Thai tax reduced or exempted under the provisions of paragraph 2 of Article VI or para-

graph 3 of Article VII of the present Convention, or the provisions of Sections 19 (4) and 35 of the Promotion of Industrial Investment Act, B.E. 2505 (1962), of Thailand. However, such exemption under the said provisions of the Promotion of Industrial Investment Act, B.E. 2505 (1962), as is to be taken into account in allowing as a credit against Japanese tax shall not exceed the scope of the benefit accorded under the provisions of the said Act as in effect on the date of signature of the present Convention.

(c) For the purposes of this paragraph, the term "Japanese tax" includes the inhabitant taxes.

3. The amount of Japanese tax payable, under the laws of Japan and in accordance with the provisions of the present Convention, whether directly or by deduction, by a resident of Thailand, in respect of income from sources within Japan which has been subjected to tax both in Japan and Thailand, shall be allowed as a credit against Thai tax payable in respect of such income, but in an amount not exceeding that proportion of Thai tax which such income bears to the entire income chargeable to Thai tax. For the purpose of determining such entire income, a loss incurred in any country shall not be taken into account.

ARTICLE XV

1. The competent authorities of both Contracting States may exchange such information available under their respective tax laws in the normal course of administration as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the tax. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court, concerned with the assessment and collection of the tax or the determination of appeal in relation thereto. No information shall be exchanged which would disclose any trade, business, industrial or professional secret.

2. Each of the Contracting States may collect for the other Contracting State the tax imposed by that other Contracting State (as though such tax were tax of the former Contracting State) as will ensure that exemptions, reduced rates of tax or any other benefit accorded under the present Convention by such other Contracting State shall not be enjoyed by persons not entitled to such benefits.

ARTICLE XVI

Any taxpayer, who shows proof that the action of the taxation authorities of either Contracting State has resulted or will result in double taxation contrary to the

provisions of the present Convention, may make a representation to the competent authorities of the Contracting State of which the taxpayer is a resident. Should the representation be deemed justified, such competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to avoidance of the double taxation in question.

ARTICLE XVII

1. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, the competent authorities of the Contracting States may settle the question by mutual agreement; it being understood, however, that this provision shall not be construed to preclude the Contracting States from settling by negotiation through diplomatic channels any dispute arising under the present Convention.
2. Details including procedures for the implementation of the present Convention may be agreed upon through consultation between the Governments or between the competent authorities of the Contracting States.

ARTICLE XVIII

1. The provisions of the present Convention shall not affect the right to benefit by any more extensive exemptions which have been conferred, or which may hereafter be conferred, on diplomatic and consular officials in virtue of the general rules of international law.
2. The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.
3. The competent authorities of either Contracting State may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.
4. In the event of a substantial change in the tax law of either Contracting State, the competent authorities of both Contracting States may consult with each other to consider whether such change makes it appropriate to amend the provisions of the present Convention.

ARTICLE XIX

1. Nationals of one of the Contracting States shall not be subjected in the other

Contracting State to any taxation or any requirement connected therewith which it other, higher or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. Enterprises of one of the Contracting States, the capital of which is wholly or partly owned by one or more residents of the other Contracting State, shall not be subjected in the former Contracting State to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which other enterprises of the former Contracting State, the capital of which is wholly or partly owned by one or more residents of that former Contracting State, are or may be subjected.

4. In this Article, the terms "nationals of one of the Contracting States" and "nationals of the other Contracting State" mean all individuals possessing the nationality of Japan and all Japanese corporations, or all individuals possessing the nationality of Thailand and all Thai corporations as, the context requires.

5. In this Article, the term "taxation" means taxes of every kind.

6. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to nationals of the other Contracting State not resident of the former Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that former Contracting State.

ARTICLE XX

1. The present Convention shall be approved by Japan and Thailand in accordance with their respective legal procedures, and shall enter into force upon the date of exchange of notes indicating such approval.

2. The present Convention shall be applicable—

(a) In Japan: As respects income for the taxable years beginning on or after the first day of January of the calendar year in which the exchange of notes takes place.

(b) In Thailand: As respects income for the taxable years or accounting periods beginning on or after the first day of January of the calendar year in which the exchange of notes takes place.

3. Either Contracting State may terminate the present Convention at any time after a period of five years from the date on which the present Convention enters

into force, by giving to the other Contracting State notice of termination, provided that such notice shall be given on or before the 30th day of June, and, in such event, the present Convention shall cease to be effective—

(a) In Japan: As respects income for the taxable years beginning on or after the first day of January of the calendar year next following that in which the notice is given.

(b) In Thailand: As respects income for the taxable years or accounting periods beginning on or after the first day of January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed the present Convention.

DONE in duplicate at Bangkok this first day of March, one thousand nine hundred and sixty-three, in the English langue.

For the Government of Japan:
Hisanaga Shimadzu
For the Government of Thailand:
Thanat Khoman

EXCHANGE OF NOTES

(Japanese Note)

1st March, 1963

Excellency,

I have the honour to refer to the Convention between Japan and Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today.

The following is the understanding of the Government of Japan pertaining to the interpretation and implementation of the Convention:

1. The term "installation" as used in subparagraph (1) (ii) (aa) of paragraph 1 of Article 11 is understood not to include such project which is considerably small in scale or short in duration as the fixing, and testing of the operation, of small machinery carried out by the seller thereof.

2. The term "almost wholly" as used in subparagraph (1) (iv) (cc) of paragraph 1 of Article 11 is understood to mean that the person's activities for enterprises other than those referred to therein are of such minor importance as compared with his activities for the enterprises mentioned therein that for all practical purposes such person may be regarded as working solely for the latter enterprises. Enterprises controlled by the same person shall be treated as one enterprise.

3. The term "a broker, commission agent or other agent of genuinely independent status" as used in subparagraph (1) (v) of paragraph 1 of Article II is understood not to include a person who is engaged in one of the Contracting States in such activities as prescribed in subparagraph (1) (iv) (aa), (bb) and (cc) of the said paragraph wholly or almost wholly for or on behalf of an enterprise of the other Contracting State or for or on behalf of such enterprise and other enterprises which are controlled by or have a controlling interest in such enterprise.

In this paragraph, the term "almost wholly" means the same as is provided in paragraph 2 of this understanding.

4. In the application of the provisions of paragraph 1 of Article III, the competent authorities of the Contracting State in which a permanent establishment is situated may—

(a) deem to be attributable to the permanent establishment all profits arising from such activities as have usually been performed by the permanent establishment, and

(b) unless proved to the contrary, treat as attributable to the permanent establishment all profits arising from the activities which the permanent establishment is capable of performing,

but only in so far as such profits are derived from sources within that Contracting State.

5. Any undertaking other than those mentioned in subparagraphs *(a)*, *(b)*, *(c)* and *(d)* of paragraph 7 of Article VI which is entitled to the privileges accorded under the laws of Thailand on promotion of industrial investment shall be deemed to have been declared to be an "industrial undertaking" by the competent authorities of Thailand under the provisions of subparagraph (e) of paragraph 7 of of Article VI.

Accept, Excellency, the assurances of my highest consideration.

H. Shimadzu
(Hisanaga Shimadzu)
Ambassador Extraordinary
and Plenipotentiary of Japan

His Excellency
Thanat Khoman,
Minister of Foreign Affairs,
BANGKOK

(Thai Note)

1st March, B.E. 2506

Excellency,

I have the honour to refer to the Convention between Thailand and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today.

The following is the understanding of the Government of Thailand pertaining to the interpretation and implementation of the Convention:

1. The term "installation" as used in subparagraph (1) (ii) (aa) of paragraph 1 of Article II is understood not to include such project which is considerably small in scale or short in duration as the fixing, and testing of the operation, of small machinery carried out by the seller thereof.

2. The term "almost wholly" as used in subparagraph (1) (iv) (cc) of paragraph 1 of Article II is understood to mean that the person's activities for enterprises other than those referred to therein are of such minor importance as compared with his activities for the enterprises mentioned theirein that for all practical purposes such person may be regarded as working solely for the latter enterprises. Enterprises controlled by the same person shall be treated as one enterprise.

3. The term "a broker, commission agent or other agent of genuinely independent status" as used in subparagraph (1) (v) of paragraph 1 of Article II is understood not to include a person who is engaged in one of Contracting States in such activities as prescribed in subparagraph (1) (iv) (aa), (bb) and (cc) of the said paragraph wholly or almost wholly for or on behalf of an enterprise of the other Contracting State or for or on behalf of such enterprise and other enterprises which are controlled by or have a controlling interest in such enterprise.

In this paragraph, the term "almost wholly" means the same as is provided in paragraph 2 of this understanding.

4. In the application of the provisions of paragraph 1 of Article III, the competent authorities of the Contracting State in which a permanent establishment is situated may—

(a) deem to be attributable to the permanent establishment all profits arising from such activities as have usually been per formed by the permanent establishment, and

(b) unless proved to the contrary, treat as attributable to the permanent establishment all profits arising from the activities which the permanent establishment is capable of performing,

but only in so far as such profits are derived from sources within that Contracting State.

5. Any undertaking other than those mentioned in subgraphs *(a)*, *(b)*, *(c)* and *(d)* of paragraph 7 of Article VI which is entitled to the privileges accorded under the laws of Thailand on promotion of industrial investment shall be deemed to have been declared to an "industrial undertaking" by the competent authorities

of Thailand under the provisions of subparagraph (e) of paragraph 7 of Article VI.

Accept, Excellency, the assurances of my highest consideration.

T. Khoman
(Thanat Khoman)
Minister of Foreign Affairs

His Excellency
Mr. Hisanaga Shimadzu,
Ambassador Extraordinary and
Plenipotentiary of Japan,
BANGKOK

U.S.A.—NETHERLANDS ANTILLES

PROTOCOL MODIFYLING AND SUPPLEMENTING THE EXTENSION TO THE NETHERLANDS ANTILLES OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CERTAIN OTHER TAXES

The Government of the United States of America and the Government of the Kingdom of the Netherlands,

Desiring to conclude a further Protocol modifying and supplementing the Extension to the Netherlands Antilles of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and certain other taxes signed at Washington on April 29, 1948, as supplemented by the Protocol signed at Washington on June 15, 1955, and as extended to the Netherlands Antilles by Exchanges of Notes dated at Washington on June 24 and August 7, 1952, September 15 and November 4 and 10, 1955,

Have accordingly appointed their respective representatives for this purpose, who have agreed as follows:

ARTICLE I

Articles VII, VIII, and IX of the Convention shall not apply to income derived from sources within the United States by any investment or holding company, corporation, limited partnership or other entity entitled to any of the special tax benefits provided under Article 13, Article 14, or Article 14A of the Netherlands Antilles' National Ordinance on Profit Tax of 1940, as in effect on September 1, 1963, or to substantially similar tax benefits granted under any law of the Netherlands Antilles enacted after such date.

2 Notwithstanding the provisions of paragraph (1) of the present Article, Articles VII, VIII and IX of the Convention shall continue to apply to dividends, interest, and royalties derived by any entity, to which the provisions of paragraph (1) of this Article would otherwise apply, if either

(a) the payer of such income is a United States corporation (other than a United States corporation, 60 percent or more of the gross income of which is derived from interest except to the extent derived by a corporation the principal business of which is the making of loans, dividends, royalties, rents from real property, or gain from the sale or other disposition of stock, securities, or real property), 25 percent or more of the stock of which is owned by such entity; or

(b) all of the stock of such entity is owned

(i) solely by one or more individual residents of the Netherlands Antilles in their individual capacities,

(ii) solely by one or more individual residents of the Netherlands in their individual capacities, or

(iii) solely by one or more corporations of the Netherlands.

ARTICLE II

In the application to the Netherlands Antilles of the Convention, Article X shall be deleted and replaced by the following:

Article X

"A resident or corporation of one of the Contracting States, deriving from sources within the other Contracting State royalties in respect of the operation of mines, quarries, or natural resources, or rentals from real property, may elect for any taxable year to be subject to the tax of such other Contracting State on such income on a net income basis."

ARTICLE III

1. The present Protocol shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. The present Protocol shall come into force on the date of exchange of instruments of ratification.

3. Article I of the present Protocol shall be applicable with respect to payments made on or after the first day of January of the year immediately following the year in which the exchange of instruments of ratification takes place. Article II of the present Protocol shall be applicable with respect to elections made for taxable years beginning on or after the first day of January of the year immediately following the year in which the exchange of instruments of ratification takes place.

4. Notwithstanding the provisions of paragraph (3) of this Article, the following provisions shall apply with respect to dividends and interest paid to a corporation or other entity which is organized in the Netherlands Antilles under a notarial deed of incorporation dated on or before May 14, 1963, if Articles VII and VIII of the Convention would not be applicable to such dividends and interest by reason of Article I of the Present Protocol:

(a) In the case of a dividend

(i) paid during the period of two years beginning on the first day of January, 1964, the provisions of Article VII of the Convention shall continue to apply as though the present Protocol had not yet come into force;

(ii) paid during the year beginning on the first day of January, 1966, United States tax with respect to such dividend shall be imposed at a rate not exceeding 20 percent; and

(b) In the case of interest paid during the period of three years beginning on the first day of January, 1964, the provisions of Article VIII shall continue to apply as though the present Protocol had not yet come into force.

IN WITNESS WHEREOF the undersigned representatives, duly authorised for that purpose, have signed the present Protocol.

Done in duplicate, in the English and Dutch languages, the two texts having equal authenticity, at The Hague, this 23d day of October, 1963.

For the Government of the United States of America:

JOHN S. RICE

For the Government of the Kingdom of the Netherlands:

L. DE BLOCK

REMARKS

Brief notice of this protocol was given in the Bulletin, January issue 1964, p. 25, (in German). The protocol became effective on September 28, 1964, the date that instruments of ratification were exchanged. In general it applies to payments of dividends, interest, and royalties made after various subsequent dates, starting January 1st, 1965.

On December 1964, representatives of the Governments of the U.S. and of the Netherlands Antilles agree upon the procedures to be followed under the protocol in establishing exemption from or reduction in the rate of U.S. tax to be withheld at source.

The Netherlands Antilles amended its tax law on December 1963 permitting corporations enumerated in the articles 13, 14, 14A of the ordinance on Profits tax (see art. I of the Protocol) to elect to be taxed at the rate of 15 % with respect to U.S. source dividends and at the applicable normal rate (24 or 30 %) with respect to U.S. source interest and royalties. It was agreed a Netherlands Antilles corporation to be taxed at these rates with respect to all of its U.S. source income would be entitled to the exemptions from, or reductions in the rate of the U.S. tax provided in the articles VII, VIII and IX of the treaty. The U.S. withholding tax must be withheld at the full statutory rate unless, prior to the payments, the withholding agent receives a certificate issued by the office of the Inspectorate of Taxes of the Netherlands Antilles stating either:

(1) That such corporation is not entitled with respect to any of its U.S. income to any of the special Netherlands Antilles tax benefits mentioned in Art. I (1) or

(2) That all the stock of such corporation is owned solely by one or more individuals resident in the Netherlands Antilles, solely by one or more individuals resident in the Netherlands or solely by one or more corporations of the Netherlands. (details in *C.C.H. Tax Treaties*: New Developments, December 28th, 1964.)

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. As of January, 1965, European Taxation is published monthly and the number of pages has been considerably increased. A new loose-leaf magazine *"Tax News Service"* was started, bringing rapid information of tax events all over the world. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7500 volumes on national and international tax matters, as well as more than 300 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the cooperative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

INTERNATIONAL FISCAL ASSOCIATION

Executive Committee

Honorary President	C.W. Bodenhausen	Dr. Paul Gmür	vice-presidents
President	Dr. Mitchell B. Carroll	Prof. E. Schreuder	
General Secretary	Dr. K.H. Dronkers	Prof. C. Cosciani	members
General Treasurer	F. de Vries	Dr. C. Ganser	
		Prof. G. Vedel	

The I.F.A. was founded on the 12th of February 1938 by tax experts of a number of countries. Purpose and working-method are defined as follows in the Articles:

(*art.* 2) the object of the Association is the study of international and comparative public finance and fiscal law, especially international and comparative law of taxation, together with the financial and economic problems connected therewith.

(*art.* 3) The Association shall endeavour to realise this object by
- *a*) organizing Congresses
- *b*) issuing a periodical
- *c*) founding one or more libraries and a documentation bureau
- *d*) any other appropriate measures.

In the following countries there are National Groups. Members living in one of these countries can approach the secretary of their group, whose address is stated below.

AUSTRALIA / AUSTRALIE
C.J. Berg
Commercial Bank Chambers (9th Floor) 62 Margaret Street, Sydney

AUSTRIA / AUTRICHE
Dr. Robert Bechinie, Gumpendorferstrasse 26, Wien VI

BELGIUM / BELGIQUE
A. van Cauter, 191, Avenue du Roi, Bruxelles 6

BRAZIL / BRESIL
Dr. Gilberto de Ulhôa Canto, Av. Almirante Barrosso, 81-2° andar, salas. 1.236 e 1.238, Rio de Janeiro

CUBA / CUBA
Dr. David Masnata do Quesada, Bufete Lazo y Cubas, Edif. Ambar Motors, Calle 23, esq. a P., Vedado, La Habana

EGYPT / EGYPTE
Prof. Nagib Yousef, 46 Falaky Street, Cairo

FRANCE / FRANCE
A. Jacot, 5 rue du Cardinal Mercier, Paris

GERMANY / ALLEMAGNE
Dr. Carl Ganser, Bundesverband der Deutschen Industrie, Habsburgerring 2-12, Köln, 10

GREAT BRITAIN / GRANDE BRETAGNE
C.J. Bellenie, 6, St. James' Square, London S.W. 1

GREECE / GRECE
Dem. Tsingris, 9, Rue D. Soutsou, Athènes (6)

ISRAEL / ISRAEL
Dr. L. Berger c/o Jewish Agency, 17, Kaplanstreet, Tel-Aviv

ITALY / ITALY
Prof. Cesare Cosciani, Viale Pinturicchio 24, Roma

NETHERLANDS / PAYS-BAS
J.F. Spierdijk, Alex. Gogelweg 30, The Hague

SPAIN / ESPAGNE
Prof. Narciso Amoros Rica, General Mola 15, Madrid

SWEDEN / SUEDE
B. Villard, c/o Swedish Institute of Foreign Law, Fack Stockholm 1

SWITZERLAND / SUISSE
Dir. Eugen Isler, c/o Schweiz. Treuhandgesellschaft, Freie Strasse 90, Basel

UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE
Dirck van R. Vreeland, 280 Park Avenue, New York, 10017, N.Y.

URUGUAY / URUGUAY
Dr. Paul Ibarra San Martin, Ministerio de Hacienda

CONDITIONS OF MEMBERSHIP OF TH IFA:

I. (individuals): Fl. 16.50 p.a. $4.50

II. (corporations etc.): Fl. 75.— p.a. $ 20.—

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I

LIBERALIZATION OF U.S. DEPRECIATION RULES

by

Dr. OTTO L. WALTER*

A Treasury Announcement ("T.A.") dated February 19, 1965, liberalizing if not simplifying U.S. depreciation rules brought a sigh of relief to a large number of U.S. Tax executives who had dreaded the approach of July 12, 1965, the day when the grace period of Revenue Procedure ("R.P.") 62-21 was expected to end.

In order to understand the impact of the new T.A., one has to recall what the much heralded and much criticized R.P. 62-21 has done or tried to do to change depreciation procedures.

The introduction of this R.P. proclaimed with pride that "it sets forth simpler standards and more objective rules which will facilitate adoption of rapid equipment replacement practices in keeping with current and prospective economic conditions". While there is little "simplification" to be noticed, the procedure undoubtedly encourages early retirement and frequent replacement of machinery and equipment. It also does set up tighter rules to ascertain the propriety of depreciation practices.

Prior to the proclamation of R.P. 62-21, the only objective standard to measure the propriety of depreciation write-offs was Bulletin F, a more or less haphazard empirical compilation of the expected service life of depreciable property on an item by item basis. Part I of R.P. 62-21 replaced Bulletin F by a set of new, shorter guideline lives set up in four groups:

1) Business in General,
2) Nonmanufacturing Activities excluding Transportation, Communications and Public Utilities,
3) Manufacturing and
4) Transportation, Communications and Public Utilities.

Part II of R.P. 62-21 established the procedures to be followed in connection with examinations of income tax returns due after July 12, 1962. The basic rule was that taxpayers were free to continue the rates used in their past depreciation practices or to adopt the class lives prescribed in the new guideline classes; moreover they were free to continue their past habits of itemizing or grouping assets or to regroup them according to the new rules. If they chose not to follow the new

*) Dr. Otto L. Walter is attorney at law, New York.

system, the reasonableness of their depreciation procedures may nevertheless be tested under the rules of R.P. 62-21. The R.P. set forth the procedures to be followed if the taxpayer was found to use a class life longer or shorter than the prescribed guideline life. For this purpose it introduced a fairly complex system called the Reserve Ratio Test, designed to establish "objectively" (i.e. by use of tables reflecting the results of mathematical formulae) whether the taxpayer's replacement and retirement practices were in line with the depreciation ratio claimed. Separate tables for the use of straight line method, double declining balance method, 150% declining balance method (for assets predating the 1954 Revenue Code), and Sum of the years digit method (SYD) were published (in Publications 456 and 457 of 1962) to determine first the taxpayer's "Rate of Growth" and thereupon the "Reserve ratio percentage" applicable to the test life used considering the established rate of growth. ("Rate of Growth" is an index rate established from a table based on the service life used and the "Growth Ratio". "Growth Ratio" is established by dividing the assets presently on hand by the assets at the beginning of a replacement cycle. "Reserve Ratio" is the percentage computed by dividing —separately for each class or group—accumulated reserves by total cost of assets).

A leeway based on a 10% shorter and 20% longer service life rounded to the nearest full percent was worked into the table to soften the rigidity of the test.

Enough ink has been spilled to extoll the merits and to deride the complexity and impracticality of this approach to permit us to dispense with the details which practitioners and masochists can find in the aforementioned publications.

The example from the Treasury Release may suffice as illustration of the new method:

A taxpayer using straight line depreciation is found to use a ten year class life. His return shows Cost of assets $ 10.000.-; depreciation reserve $ 5.200.-; Cost of assets in use one replacement cycle earlier $ 8.200.-:

Procedure:

a) Establish Reserve Ratio $\frac{5200}{10000} = 52\%$;

b) Establish Growth Ratio $\frac{10000}{8200} = 1.219$;

c) Find Growth rate for 10 years and 1.219 from Table 1): 2%

d) Find Reserve Ratio in Table 2) Section I (Straight Line) at the crossing point of the Growth Ratio vertical column of 2% and Test Life horizontal line of 10 years; this reserve ratio is shown to be 48% with a leeway bracket of 44-56% shown underneath.

Therefore the taxpayer's Reserve ratio established under a) above is adequate.

A taxpayer whose Reserve Ratio is found to be in line presents no problem. Unfortunately, it was obvious from the beginning that many, if not most taxpayers would deviate from this Procrustean measuring system. Taxpayers who are new in business and are faced either with losses or low but rising tax brackets, are interested in slow depreciation; other taxpayers hoping for tax decreases or interested in maximum preservation of working capital prefer to accelerate depreciation.

Apart from these deviations brought about by tax savings considerations, it was obvious from the beginning that major distortions of growth and reserve ratio were bound to result in cases of new taxpayers, old taxpayers entering new fields, creation of new facilities while continuing the old ones on a standby basis, and other practical considerations not fitting into the primitive pattern of renewal and replacement.

In order to soften the impact of these deviations and to enable taxpayers to adapt their practices to the new rules, R.P. 62-21 contained various safeguards and transitory liberalization rules:

Thus a taxpayer was free to demonstrate by means other than use of the formulae that his write-off system is in line with his replacement practices, or that he intends to follow in the future replacement practices consistent with the write-off system used. Special circumstances such as abnormally intensive use of assets, inclusion of second hand items in a guideline class, extraordinary technological or economic obsolescence could be demonstrated and recognized to justify depreciation at below guideline rates.

Above all the R.P. contained a 3 year transitional period, during which the Revenue Service was to refrain from interference with the service life used by taxpayers (Tax writers called this the "hands-off" period).

Even after the expiration of the 3 year period, taxpayers could avoid changes by demonstrating that their reserve ratio was closer to the applicable standard than in one of the three antecedent periods; if a taxpayer, initially in violation, *meets this test in the fourth year and each year thereafter*, he will be permitted a full guideline period to catch up with the next reserve ratio range. This exception, known in Washingtonese as the "Trending Rule exception" was to become unavailable if a year intervened in which the trend was broken.

Once it was established that a taxpayer's depreciation practice after the "hands-off" period could not be justified by demonstration of special circumstances or compliance with the "Trending Rule", the Revenue Service will be permitted to proceed with an adjustment of the class life used by the taxpayer.

Contrary to the practice existing before R.P. 62-21, the Revenue Service could not extend the write-off rate to make up for past excess depreciation by imposing "Penalty rates"; nor could expected deviations based on projection of present

ratio into future years be taken into consideration. The lengthening (or in rare cases shortening) of class lives in use could only be predicated on the conditions existing during the year under review, and could not exceed the adjustment necessary to bring the depreciation rate within the marginal limits appropriate for such year.

Even within these constrictions R.P. 62-21 imposed a percentage limitation of 25% on the upwards side, and 15% on the downwards side on the change of class life, which a taxpayer may be required to make for any one year in order to make the impact of an adjustment more gradual. A table added to Publication 457 reflected the permissible adjustments rounded up or down to the nearest $\frac{1}{2}$ year life.

In spite of these safeguards and adjustment provisions, it soon became obvious that the system would not work and that the projections on which it was based were unrealistic.

A survey made by the Office of Business Economics, Department of Commerce, and published two years ago in an article by Lawrence Bridges in Survey of Current Business (July 1963) under the title "New Depreciation Guidelines and the Investment Credit, Effect on 1962 Corporate Profits and Taxes" showed that the majority of corporations would use the Guideline procedure, but apparently few of them worried about the remote year 1965, which would bring the showdown.

However, a survey undertaken in fall 1964 by the National Industrial Conference Board (NICB) showed that 87% of the responding companies using the guideline procedure expected to fail the basic reserve ratio test; in addition, 68% of the 87% expecting to fail the test did not expect to be saved by the trending rule.

The additional tax burden threatening taxpayers as a result of such failure, was estimated to exceed 500 Million dollars per annum.

Nobody familiar with Washington's ways of doing things expected the Treasury Department to admit the failure of R.P. 62-21 and to replace it by a less cumbersome and more common-sense procedure, but it was obvious that something had to be and would be done to come to the aid of the victims.

The expected help came in the form of Treasury Department Release dated February 19, 1965, announcing three major and some minor liberalizing relief measures.

The principal change is the introduction of a new *Guideline Form* which will permit each taxpayer to compute a reserve ratio patterned to his own individual circumstances in lieu of the rigid arithmetical pattern which did not make allowance for dispersion of assets over the test life or other special circumstances.

The taxpayer is entitled each year to choose between the use of the guideline

form and the reserve ratio table. Moreover, the taxpayer may use the form for only part of his guideline classes and the tables for other classes.

In order to use the guideline form, the taxpayer has to establish the gross amount of equipment acquired in each preceding year of the test life (usually guideline life), augmented by one fifth of the test life period. This feature provides for the guideline form the same 20% margin of tolerance which was—as we saw—built into the "up" side of the reserve ratio.

The Treasury announcement is supplemented by a table of "Annual Factors" showing multiples for test lives from 3 to 22 years, augmented by 20 percent (i.e. from 4 to 27 years). Each table is divided into a separate column for straight line, double declining balance, 150% declining balance, sum of the years digits, and even double declining balance with shift to straight line.

By entering the assets alongside the multiples on the guideline form and adding the results, the taxpayers arrive at an overall "computed reserve". (If necessary — e.g. if various depreciation methods were used during the period—several forms may be used and summarized). This computed reserve divided by the total cost of assets results in the taxpayer's individual Reserve Ratio limit.

In addition to giving the taxpayer the opportunity to tailor the reserve ratio to his special circumstances, the new Release contains two new transitional rules liberalizing the Reserve Ratio test, the "Transitional Allowance Rule" and the "Minimal Adjustment Rule".

The first of these, the "Transitional Allowance Rule", raises the upper limit of the reserve ratio, whether determined from the reserve ratio table or from the guideline form, by an annually decreasing number of percentage points (not percent). For 1965, 15 additional percentage points are allowed. This additional allowance decreases gradually over one guideline period; one third of the allowance will taper off ratably over the first half of the transitional period; the remaining ten points will taper off ratably over the remaining half until it reaches zero at the end of the chosen guideline life.

Example: If the guideline life is 10 years, the transitional allowance decreases by one point for 5 years from 15 in 1965 to 10 points in 1970; from then on to 1975 it decreases by 2 points ($15 \times 2/3 : 5$) until it reaches zero in 1975.

Regardless of the new transitional allowance rule, taxpayers may continue the trending rule described above. If the trending rule is of no avail under either the Revenue Ratio Table or the Guideline Form, or once the trending rule is failed in any year which makes it inapplicable for future years, the transitional allowance rule remains as a possible last remedy.

If both the trending rule and the transitional allowance limit fail (and no

special circumstances can be shown justifying a different treatment), the rules prevailing under R.P. 62-21 would have permitted the Internal Revenue Service to impose increases of the adopted Guideline life and corresponding reductions in depreciation allowances by 25%. The new minimum adjustment rule decreases the permissible increase to 10% of the adopted guideline life if the margin of deviation is 10 percentage points or more; by 5% of the adopted guideline life, if the margin of deviation is below 10 percentage points. Moreover, no adjustment will be made for any two years in a row.

The intertwining of these rules may be best illustrated by the following example taken from the Treasury explanations to the Minimal Adjustment Rule:

Example: Taxpayer A, who reports on the calendar year and uses a 10-year guideline life, makes the following calculations:

Year	Upper limit of the standard reserve ratio range	Transitional Allowance	Transition limit	Actual Reserve Ratio	Margin of Failure
1962	50			53	
1963	51			55	
1964	51			55	
1965	50	15	65	55	

For 1965, the trending rule is not met since the margin of failure in 1965 is not lower than it was in any one of the three preceding years. (Thus, A may not rely on the trending rule for any future year.) However, no lengthening adjustment will be made since the actual reserve ratio (55 percent) does not exceed the transition limit (65 percent).

1966	49	14	63	72	9
1967	51	13	64	68	4

For 1966, since the actual reserve ratio exceeds the transition limit by less than 10 points, the useful life for 1966 may be lengthened by 5 percent to 10.5 years. Since an adjustment was made for 1966, no adjustment may be made for 1967.

1968	51	12	63	73	10
1969	50	11	61	68	7
1970	51	10	61	70	9
1971	49	8	57	69	12

For 1968, since the transition limit is exceeded by 10 points and since no adjustment was made for 1967, the useful life for 1968 may be lengthened by 10 percent to 11.5 years (10.5 years plus 10% × 10 = 11.5). Since an adjustment was made for 1968, none may be made for 1969.

For 1970, since the margin of failure is less than 10 points the useful life for 1970 may be lengthened by 5 percent to 12 years (11.5 plus 5% × 10 = 12).

No adjustment may be made for 1971 since one was made for 1970.

Once the lengthening adjustments made over the years aggregate or exceed 25 percent prior to the expiration of the transitional period, a taxpayer may elect to terminate the application of the minimum adjustment rule. In case this election is

made, there will be a grace period of four years, during which no further adjustment will be made. Once the four years are over, the limitations of the minimum adjustment rule are no longer applicable.

Similarly there is a four year grace period after the last adjustment once the traditional period of one guideline life has expired.

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It is obvious that the above article can only set forth the highlights of the new liberalizing rules against the general background of the original over 30.000 word Revenue Procedure; it is expected that the revised R.P. 62-21 incorporating the changes will be published shortly.

For the sake of completeness, it may be added that the new rules also bring about certain limitations on calculation techniques using avenues which were opened up by the complexities of R.P. 62-21. The elimination of these procedures limiting mainly the use of open end multiple asset accounts (except in connection with declining balance methods) will have only a minor impact on the overall impact of the new depreciation rules. But the new limitations demonstrate not less than the new liberalizations that the Treasury Department—at least at this juncture—prefers ad hoc adjustments to a thorough reform of the hopelessly inadequate and complex set-up it created three years ago.

RECENT INTERNATIONAL TAX POLICY IN THE U.S.

Remarks by
RICHARD O. LOENGARD JR.

Special Assistant for International Tax Affairs United States Treasury Department before the Tax Executives Institute, Washington, D. C. March 9, 1965

Last September in Montreal Assistant Secretary Surrey reviewed before this audience the changes in international tax policy which the United States has made in recent years*). Today I will discuss some of the developments that have occurred since that speech.

Tax Treaties

I will not repeat Mr. Surrey's emphasis on our tax treaty program, because there have been few developments in the last six months that were not forecast in Mr. Surrey's speech. We are continuing to make steady progress in bringing our treaty program up to date. For example, only last week we signed a treaty with Thailand, the first treaty to be signed with a developing country extending the seven percent investment credit to U.S. private investment in that country.

In less than two weeks, representatives of the Government of India will be in Washington to negotiate a tax convention. A treaty between India and the United States, containing a tax sparing provision, was signed in 1959, but later it was decided that such provisions were undesirable and the treaty was withdrawn from consideration by the U.S. Senate. We will attempt to incorporate in our new treaty with India the same seven percent investment credit included in the Thai treaty.

Last month Treasury representatives went to Lisbon to discuss the possibility of negotiating a tax convention with Portugal. These discussions gave us every reason to believe that a convention with that country can be worked out, and representatives of the Portuguese Government will probably come to Washington late this year to work on a draft of such a convention.

In April, a Treasury delegation, headed by Assistant Secretary Surrey, will go to The Hague to discuss with the Government of the Netherlands possible revisions in our tax convention with that country. Revision of that convention has been requested by the Dutch in the light of proposed changes in their domestic corporate income tax law which they are presently considering.

*) See Bulletin Vol. XVIII, No. 11 and 12 in which the text of Mr. Surrey's talk has been printed. For the benefit and information to our readers, the Bulletin now publishes the entire text of Mr. Loengard's talk.

In May, representatives of the French Government plan to come to Washington to discuss a complete re-examination of our convention with that country, in view of the time that has elapsed since it was negotiated. Since this will be the first negotiation of an entire treaty with a major developed country since publication of the model income tax convention proposed by the Organization for Economic Co-operation and Development, its results may largely serve as a basis for future negotiations with other OECD member countries. We have some reservations about both the language and substance of this draft, and they will have to be discussed with the French.

We have requested taxpayers to send us any suggestions which they wish to make relevant to all these negotiations. In view of the unusual significance of the French negotiation, we hope taxpayers will give us their comments and suggestions so that we can conduct this negotiation with as thorough a knowledge of the problem involved as possible.

The Investment Credit for Developing Nations

The seven percent investment credit provision in the Thai treaty is also included in the proposed treaty with Israel, and we hope it will be incorporated in most of our future treaties with developing countries. This credit is intended to equalize the tax treatment of investments in developing countries with that of investment in the United States.

U.S. investment in depreciable personal property was granted a seven percent tax credit by the Revenue Act of 1962, and this has helped to spur investment and strengthen our economy. Encouragement of private investment in the developing countries has long been part of United States' policy. The purpose of extending the credit to these countries is to increase such investment and thus foster the economic development of these countries. Furthermore, extension of the credit benefits all U.S. taxpayers with interests in the country with which we enter into a treaty. A conventional tax treaty lowers the rate of tax at the source on investment income as well as limiting a country's power to tax trading income derived within its borders. Since citizens of a developing country are unlikely to have substantial investments or trading activities in the United States, that country receives fewer initial benefits from a conventional treaty than the United States and its citizens who have substantial investments and trade throughout the world. Also, a developing country must seriously weigh any loss of revenue that may result if its tax base is narrowed by treaty.

Consequently, unless the United States extends the investment credit to U.S. investors, the developing country may think it is unlikely to gain sufficient benefit from a tax treaty and therefore may be unwilling to sign one. Thus, the seven percent credit provision in the treaty benefits not only new investors in the

developing country involved but all U.S. taxpayers with interests in that country.

Section 482 Changes

The most significant development in U.S. international tax policy during the past six months has been the publication by the Internal Revenue Service of Revenue Procedure 64-54, which was announced in TIR 663 dated December 10, 1964. This Procedure set forth rules for applying section 482 to years prior to January 1, 1963.

Section 482 gives discretion to the Commissioner of Internal Revenue to allocate income among affiliated corporations if he deems it necessary to do so in order to properly reflect their income for tax purposes. The section is couched in general terms, and it has always been difficult to formulate specific rules for its application. As a result, the regulations for many years past have not been much more specific than the statute. They have indicated that transactions between affiliated taxpayers should be carried out so that the income arising from them would be the same as if the transactions were between unrelated taxpayers, but the regulations have not contained specific guidelines indicating exactly how this broad general rule should be applied.

For years prior to 1963, there was in some situations a great deal of confusion as to when and how section 482 should be applied. Some taxpayers believed that it was not applicable to cases in which funds were advanced or intangible assets made available to related corporations which were operating as independent entities.

As a result, when the Internal Revenue Service, through its Office of International Operations (OIO), first scrutinized in detail transactions between U.S. taxpayers and their foreign affiliates, it found many cases in which it believed allocations of income under section 482 were proper. But in many of those cases, the income which had been allocated to the foreign subsidiary had already been subjected to tax abroad and there was little, if any, chance that this tax would be refunded to the foreign affiliate. In July, 1963, the Service published a revenue ruling suggesting to taxpayers that adjustments might be made under section 482 with respect to prior years and that taxpayers with foreign affiliates should protect themselves by having those affiliates file refund claims abroad.

As audits proceeded, many section 482 allocations were proposed by the OIO. These frequently related to typical section 482 cases in which goods had been sold between affiliates at prices which were not arm's length. But in many other cases they related to situations such as those I previously mentioned: patents were licensed to foreign manufacturing affiliates without suitable compensation on funds were advanced to such affiliates for long periods of time without any payment of interest. Many taxpayers complained that such application of section 482

was novel and retroactive in effect. Furthermore, they stated that refund claims by foreign subsidiaries would be wholly ineffectual in almost every case. As a result, such section 482 allocations would cause double taxation. Since some of the section 482 allocations involved transactions between U.S. companies and affiliates located in high-tax areas abroad, the total tax could in some cases wipe out the profits realized.

Revenue Procedure 64-54 recognized these problems. To avoid double taxation, it granted taxpayers an offset against the United States tax on reallocated income for the taxes paid by the foreign affiliated corporation with respect to such income. It also announced that the allocations would not be made under circumstances in which the Treasury recognized that the application of section 482 might be novel and retroactive in effect.

The Revenue Procedure does not, however, eliminate all pre-1963 section 482 allocation cases. The Revenue Procedure does not generally apply to cases in which goods were sold between affiliates, nor to cases involving base companies, and the impact of the offset allowance for foreign taxes will vary with each individual case. The regulations have always clearly indicated that sales transactions were subject to section 482 and that the prices charged in such transactions must be arm's length. We therefore did not believe that any taxpayer could claim surprise or unfair treatment because of the application of this section to such transactions. Obviously, there are difficulties in determining what is an arm's length price. As any businessman realizes, it is not easy to determine a "fair" price. Despite this difficulty, the Service is charged with the responsibility under section 482 for determining the correct income of a U.S. company and if to do so requires a review of the prices at which it sells or buys goods from an affiliate, it must be carried out. Obviously, it is not sensible policy to argue over small amounts. Where the price is a reasonable approximation of a correct price determined by management in the exercise of its best judgment, no section 482 allocation should be made. Unfortunately in years prior to 1963 there appear to be cases in which no real effort was made by the taxpayer to find the correct price. Goods were sold at cost or less than cost with all of the profit being allocated to the foreign subsidiary. Under section 482, this has not been proper and an allocation is required.

An exception was also made in the Revenue Procedure for base company operations because in many such cases the base company had as its major function a reduction in tax and was not organized primarily for business reasons. We believe taxpayers knew even prior to 1963 that the income of such companies would be carefully scrutinized and would be reallocated under section 482 where it was artificially inflated.

The primary effect of Revenue Procedure 64-54 where a foreign affiliate is controlled by a domestic company was either to speed receipt of tax credits in

cases in which section 482 was applied or if, because of the Revenue Procedure, it was not to be applied, to postpone realization of income. To extend the Revenue Procedure to cases in which the foreign corporation controlled the domestic corporation would have been to "create" tax credits not otherwise available to the U.S. company or to permanently reduce income rather than to defer it.

The extension of the Revenue Procedure to cases involving Western Hemisphere Trade Corporations is still under consideration. To cease to prosecute cases involving Western Hemisphere Trade Corporations would, however, not have the effect of deferring the realization of income but rather would permanently reduce the rate of tax on that income from 52 percent to 38 percent. Consequently, such cases are not comparable to those to which the Revenue Procedure applied. Cases involving allocation between domestic corporations and their domestic affiliates with foreign operations were considered few in number. Since each case probably involved a somewhat unique set of circumstances—in the usual instance, allocation of income from one fully taxable United States company to another produces no revenue effect—it was considered desirable to treat them individually.

Upon publication of Revenue Procedure 64-54, the Internal Revenue Service began preparing guidelines to be used by agents in applying it. Because the Revenue Procedure's concepts were new, it was felt desirable to temporarily suspend action on cases to which it would apply until it was certain that it was understood by agents in the field. This educational process has been completed, and processing of pre-1963 section 482 cases is now being resumed. With the help of the Revenue Procedure, it is hoped that settlement of these cases can be arrived at quickly. We recognize that as the Revenue Procedure is applied in the field unforeseen problems and situations may arise. We hope that these can be dealt with individually in the spirit of the Revenue Procedure or, if a particular problem of general interest should develop, through a revenue ruling or similar announcement.

One particular question which has been raised deserves comment. It has been suggested that the Revenue Procedure applies only to section 482 cases and will not apply if the same issue is raised under other sections of the Code, for example section 61. I can assure you that this is not the case. The Revenue Procedure is to have broad application and covers any case to which section 482 is properly applicable even though the deficiency is or was asserted under some other section of the law.

Revenue Procedure 64-54, however, does not set forth rules for deciding the cases which remain under section 482. Thus, even in those cases where an offset is to be allowed, the amount of the deficiency remains to be determined. As you know, we have been working on section 482 regulations. It is not easy, however,

or always possible to draft detailed guidelines. Each rule must be applicable in a wide variety of circumstances and yet not work injustice either to the taxpayer or to the Government. In preparing these rules, we have had discussions with people outside Treasury and they have rendered us valuable assistance. We expect that these rules will furnish taxpayers with sufficient guidance to enable those who follow the principles set forth in the regulations to carry out intercompany transactions without fear of adjustment on audit. Again, we are not trying to collect small amounts and good faith efforts to meet the regulatory standards will be respected.

Our experience has indicated that most cases involving section 482 concern four types of allocation: interest, general and administrative expenses, use of intangibles, and intercompany pricing. Further, our experience shows that the latter two problems are related; the most serious disputes over price arise where intangibles are involved. At the present time, we are nearing completion of regulations dealing with the proper method of allocating general and administrative expenses and interest allocations. These regulations are expected to be published by the end of this month. Unfortunately, we are not as far along as repects the provisions on intercompany pricing and the use of intangibles, but we do not wish to delay those regulations on which consideration has been completed any longer. We now hope that regulations on pricing and the use of intangible property will be ready by the end of May.

We have not yet determined the extent to which these new rules will apply to years prior to 1965. Of course, taxpayers will be allowed to invoke these rules if they wish to do so. On the other hand, application prior to 1965 may in certain circumstances work hardship if the rules are less favorable to taxpayers than preexisting law was thought to be. We will review each regulation as it appears and determine whether under all the facts and circumstances application to the years prior to 1965 would be equitable. If not, special interim rules will be promulgated.

Another part of the section 482 problem concerns "repatriation" of the amount allocated. By repatriation, I mean the right of the taxpayer to receive a distribution from its foreign affiliate in an amount equal to the section 482 allocation without having to pay tax on such distribution. A few rulings have been issued allowing taxpayers to do this. However, the problem is now undergoing thorough review and rulings have been held up pending its completion, which is expected this month. An announcement of our policies in this area will be issued at about the same time as our first group of section 482 regulations. It seems likely that this announcement will take the form of a technical information release by the Internal Revenue Service.

In addition to our consideration of whether repatriation should be allowed, we

are also considering subsidiary questions which will arise if repatriation should be allowed. Some taxpayers have criticized the rulings which have been issued because they required repatriation within a short period of time after the date of the ruling. Other taxpayers have suggested that dividends paid in the year of the allocation should be treated as repatriated amounts if the taxpayer so desires. We are looking into both of these suggestions.

Tax Treaties and Section 482

Meanwhile we are continuing to work toward development of an international mechanism for handling cases involving inconsistent determinations by two governments as to the proper allocation of income. In our most recently negotiated bilateral tax treaties, we are expanding the scope of the relevant provision to eliminate procedural barriers to implement any agreement that is reached between the two governments. I do not think we can expect miracles in this area —the system for handling such controversies will only work if both countries involved recognize the seriousness of the problem and are eager to work for its solution. On our side, we are taking steps to improve our handling of such controversies. We expect to publish rules indicating how a taxpayer may bring relevant cases to the attention of the Internal Revenue Service and how such requests for government intervention will be handled. However, the ultimate success of this program will in part depend on the attitude of other nations. We have reason to believe that as restrictions on the free movement of capital imposed by foreign countries diminish, those countries become faced by problems similar to those with which this country has had to deal in the last ten years, including problems of the type covered by section 482. We believe that as these countries are forced to develop rules to protect their revenues, they will be interested in developing international methods of eliminating or settling conflicts arising from inconsistent application of internal tax rules.

Section 367 *Guidelines*

We are also working on guidelines governing the application of section 367 of the Code, the section which requires prior Treasury approval for tax-free incorporations and reorganizations involving foreign corporations. We recognize that the application of section 367 in the past has caused taxpayers some difficulty. This has been in part the result of the lack of published guidelines in the area. The Service has, of course, developed rules to be used in reaching its decisions on section 367 ruling applications, but these have not been published. As a result, taxpayers have frequently learned of them either by heresay or when application of these rules led to a denial of their section 367 application. Consequently, there has been considerable confusion in this area which has made

tax planning difficult and delayed consummation of international transactions.

The guidelines are intended to solve this problem by setting forth specific rules for passing upon section 367 applications. They will therefore have the effect of substituting objective criteria for determining whether a ruling is to be issued for the subjective criterion presently in use. We believe that these proposed rules will be generous and will not interfere with international transactions which do not involve tax avoidance. However, the guidelines may possibly result in some loss of flexibility. On balance we believe that this possible loss of flexibility is far outweighed by the advantages which the guidelines will provide in eliminating confusion and delay.

I might mention that these guidelines will not deal with the problem arising under section 351 of the definition of the word "property". While we recognize that the definition of this term has given rise to problems where transfers of know-how to foreign corporations are at issue, it is not truly a section 367 problem and will therefore not be covered in this ruling.

Regulations under the Revenue Act of 1962

Another area of concern to you on which we are currently working is promulgation of regulations under the 1962 Revenue Act. With few exceptions regulations have already been published under all of the sections of Subpart F of the Act—the portion of the Act which passes certain types of income received by a foreign corporation through to its United States stockholders. We anticipate that regulations under the remaining sections will be issued by the end of the month, or at any rate before April 15. I would like to express again the appreciation of the Treasury Department for the cooperation which it has received from taxpayers in promulgating these regulations. We hope as we near the end of the task that we will continue to receive your help. We also realize that the tax returns which you are currently preparing are, in many instances, the first which truly involve the application of Subpart F. Perhaps problems may arise during the course of their preparation which had not previously been foreseen and are not specifically covered by the regulations. If this occurs, we hope that you will bring these questions to our attention.

Foreign Investment in the United States

Finally, I would like to comment briefly on the draft bill which the Secretary of the Treasury sent to Congress on March 8, 1965, relating to foreigners investing in the United States.*) It is an outgrowth of the report of the so-called "Fowler Task Force" and is intended to remove some of the hardships and complexities in our tax law which have in the past served to prevent foreigners from investing in

*) See p. 164 of the Bulletin.

this country. The major change proposed is a sharp reduction in the hitherto extremely high estate tax payable by foreigners on their United States assets —a tax which is at present higher than that payable by United States citizens owning a comparable estate. In addition, the draft bill would eliminate unnecessary complexities in the taxation of foreigners' United States source income. These provisions in current law raise very little revenue for the United States and deter investment by foreigners.

We have also included in the draft bill a provision which would permit the President to reimpose higher taxes if he finds that foreign countries in the situations covered by the bill are imposing burdensome taxes on United States investors within their borders and refusing to reduce those taxes when requested to do so in the course of treaty negotiations. This will both permit initial reduction of taxation of foreigners and at the same time preserve our power to protect our taxpayers with activities or assets abroad.

The changes in our taxation of foreigners just described are not solely designed to improve our balance of payments but are desirable in and of themselves. The time had come for a thorough review of the application of our tax law to foreigners and to their investments here.

Conclusion

In recent years we have been engaged in the task of revising the rules of international taxation affecting not only the foreign income of United States citizens and corporations but also the United States source income of foreigners. This revision was in large part the result of a changing world—a world of a far greater freedom in international capital movements and of international trade.

This task of revision is now nearing completion. The Revenue Act of 1962 has been enacted and the regulations under it will soon have all been issued. Enforcement activities under section 482, which began to be intensified in 1960, have given us information as to how taxpayers had, in fact, been dealing with their foreign affiliates and indicated to us both the need for clearer rules and the possible forms those rules might take. This initial enforcement effort caused confusion and some hardship and we have therefore taken steps to ameliorate them in Revenue Procedure 64-54.

The emphasis will now shift from rule making to implementation of the existing rules. Our major problem in the next few years will be to assure that these rules operate effectively and sensibly and to improve them wherever possible by using the knowledge gained through enforcement experience. Some of these rules are novel and complex. We recognize this, and that as a consequence, enforcement will have to be both understanding and flexible. It is toward this end that our efforts over the coming years will be concentrated.

SUBVENTION PAYMENTS IN THE U.K.

by

H. L. DUNCAN*

As U.K. companies are separate legal entities they are treated separately for Income Tax purposes. A consequence of this was that groups of companies could not set the profits of one company against the losses of another. Section 20 of the Finance Act 1953 introduced a scheme, the effect of which is that within limits profits and losses of companies within a Group may be utilised against each other for tax purposes, thereby reducing the immediate tax liability of the profit-making companies. A group consisting of a principal and subsidiary, or one or more co-subsidiaries and a common parent, may make an agreement pursuant to which a company of the group making a surplus during an accounting period shall make payments to a company or companies of the group incurring a deficit in its or their corresponding accounting periods. Such a payment will be regarded as a trading expense of the paying company, and as a trading receipt of the recipient company, as of the last day of the relevant accounting period of the recipient company.

A payment is only a subvention payment if made under an agreement, not necessarily written, for the paying company to bear or share in losses or a particular loss of the recipient company. The payment must be made in pursuance of a contract (in re the Bestwood Company Limited) (41 A.T.C. 282), as distinct from being an uncovenated gift. It must not be a payment which would otherwise be taken into account in computing the profits or gains or losses of either company, or on which the payee company would be liable to bear tax by deduction or otherwise. A difficulty was shown to exist here, following the House of Lords decision in British Commonwealth International News Film Agency Limited v. Mahany (40 T.C. 550). In that case, a payment to meet the losses of a trading company was held to be a trading receipt of the recipient company, and was therefore not pure income profit when made under a Deed of Covenant, but Section 20 (2) Finance Act, 1953, provides that a payment shall be a subvention payment "if, but only if, it is made under an agreement providing for the paying company to bear or share in losses or a particular loss of the payee company, and is not a payment which (apart from this section) would be taken into account in computing profits or gains or losses of either company". The question now is: Under what circumstances can a payment to meet losses be other than a trading receipt of the payee? Some distinction must presumably be drawn between the facts in any particular

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instance and those in Mahany for a subvention payment to be valid. It is sometimes far from clear what the distinction can be.

The payment must be made in or before the second year of assessment following that in which the period ends (Section 23, Finance Act 1958).

The amount of the deficit or surplus for a period is ascertained by aggregating the adjusted trading profits arising in the period, and any other income for the year of assessment in which the period ends, computed in accordance with the provisions of the Income Tax Acts, and taking from that sum the aggregate amount of losses sustained in the period in the trade, any capital allowances in respect of the trade for the year of assessment in which the period ends (other than those given by deduction, and excluding allowances carried forward) and most payments made in the year of assessment under Section 169 or 170, Income Tax Act 1952 (i.e. payments made under deduction of tax). Where the period is longer or shorter than a year, all the amounts except the trading profits or losses are pro-rated accordingly.

There are provisions whereby the amount of the subvention payment must, in certain circumstances, be adjusted. If a company receives subvention payments from associated companies for a particular accounting period of an aggregate amount in excess of its deficit, or if a company makes subvention payments of an aggregate amount exceeding its surplus in the corresponding period, the excess is ignored. Where the payments are to or from more than one company, the payments are abated in some manner agreed by the companies concerned, or, in default of agreement, by the Commissioners of Inland Revenue. Adjusting provisions apply where periods overlap.

Where a subvention payment is made to a company in respect of more than one accounting period, or is made to or by a company carrying on more than one trade, the payment is apportioned in such manner as appears to the Commissioners concerned to be "just", in order to determine the part to be attributed to any period or trade. The Revenue considers as "just" an apportionment of a payment made in respect of more than one accounting period, according to the respective deficits of the accounting periods; and an apportionment of a payment made by or to a company carrying on more than one trade, according to the respective surpluses or deficits of the trades. In the case of a dispute, the final decision on a "just" apportionment lies with the Appeal Commissioners, and the Revenue would not necessarily reject a reasonable apportionment on some other basis.

The "corresponding period" of the paying company, if any of its accounting periods coincide with the accounting period of the payee company, is that period; otherwise, the Commissioners of Inland Revenue have discretion as to what period is to be regarded as the "corresponding period", so long as the period is the same length as the accounting period of the payee company. The Revenue usually

accept either the accounting period of the payee (though not the accounting period of the paying company, whose profits will be computed by apportionment); or the paying company's accounting period ending in the year of assessment in which the payee's accounting period ends; or the paying company's accounting period ending in the year preceding the year in which the payee's accounting period ends, in cases where the dates are nearer. Once the corresponding period has been determined, it will normally be regarded as binding for all years.

The normal basis of assessment for companies for any year of assessment is the profit of the accounting period ending in the previous year of assessment. Special provisions operate however in the opening and closing years of a company's trade which have the effect, in the case of the opening years, of including certain profits in more than one assessment, and in the case of the closing years, of omitting certain profits from assessments altogether. Where the whole or a part of the profits of the paying company for the period in which the subvention payment is treated as made forms the basis period of more than one year of assessment or no basis period at all, then adjustments are made so that the aggregate amount of the assessments made on the paying company is reduced by an amount equal to the subvention payment. This prevents an allowance to the paying company of an amount exceeding the subvention payment. There is no provision to cover the reverse case, namely where the accounting period of the recipient company in which a subvention payment is received forms the basis period more than one year of assessment, or no years of assessment at all. Thus, where the recipient company's accounting period forms the basis period of more than one year of assessment, a subvention payment received in that period will be included in more than one assessment, although allowed only once to the payer. This condition might occur where, in the first accounting period of a new company, a loss occurred which it was required to clear by a subvention payment from an established company. Likewise, where the recipient's accounting period forms the basis period of no years of assessment, such a payment would escape inclusion in an assessment altogether, although allowed to the payer. This condition might occur where the payment fell to be regarded in the recipient company's accounts as a trading receipt in a period within the scope of the cessation provisions, where there is inevitably part or a whole of an accounting period which is not used as the basis of an assessment.

The same position applies where a paying company makes a change of accounting date. In this event, where a subvention payment is made during any of the accounting periods which enter into an expansion or contraction computation, the subvention payment is added back before the expansion or contraction is effected, and subsequently deducted from the figure of expanded or contracted profit. In this way the subvention payment is allowed once and no more nor less.

Where, on the other hand, a company receives a subvention payment in an accounting period which enters into an expansion or contraction computation, there is no provision to exclude the receipt from the computation. Thus, the subvention receipt would be included in assessable profits more than once, if an expansion computation was appropriate, and less than once, if a contraction computation was appropriate, although in both cases, the payment would be allowed exactly once to the payer.

The situation should be noted where a subvention payment is receivable by a company subject to the commencing provisions, were, for example, a company whose accounting date is not 5th April (i.e. the last day of the fiscal year) incurs capital expenditure which is treated as being incurred between its commencing date and the following 5th April, the full amount of capital allowances claimed for the first year of assessment in respect of that expenditure will not fall into a deficit calculation for subvention purposes.

The subvention provisions apply not only to companies but to any body corporate. However, that body must be resident in the U.K., and must also carry on a trade wholly or partly in the U.K.

As regards Overseas Trade Corporations it is implicit in Section 25 (1) of the 1957 Finance Act that the subvention provisions do not apply, since an Overseas Trade Corporation is treated as if its trade were carried on wholly outside the U.K. by a person not resident in the U.K. The Fourth Schedule to that Act, in Paragraph 3 (2) provides specifically that Overseas Trade Corporations are excluded from the definition of "company" given in Section 20 (9) of the 1953 Act. Clearly, to allow subvention payments to be made in a case where an Overseas Trade Corporation was a member of a group which included some companies without that status would be to contradict one of the principles of the Overseas Trade Corporation legislation.

The question of the residence of companies, and its connection with subvention payments, arose in the case of Bullock v. Unit Construction Co. Ltd. (38 T.C. 712). A U.K. - resident company formed three subsidiary companies with the intention that they should be resident in East Africa. Each subsidiary had its registered office in East Africa, and carried on its business there. The Articles of Association of each company provided for the management and control to be in the hands of the directors, whose meetings could be held anywhere outside the U.K. In fact, the directors were elected and removed on the instructions of the parent company. No director was a director of the parent company. The parent company decided in 1950 to take over the management and control, the decision being notified informally to the company's representative in East Africa. From then all decisions on major matters and also on many minor matters were made by the parent company. The East African directors never met as Boards, although

they made decisions locally on day-to-day matters. In 1952 and 1953 Unit, which was resident in the U.K. and was another subsidiary of the parent company, made payments to the African subsidiaries. On appeal to the Special Commissioners against Schedule D assessments for 1953/4 and 1954/5, the company claimed that the African subsidiaries were resident in the U.K. within the meaning of Section 20 (9), Finance Act, 1953. It was common ground that, if they were resident, the company could deduct the payments in computing its assessable profits. It was held by the House of Lords that the subsidiaries were resident in the U.K. and that therefore the payments to the African companies qualified as subvention payments. It was a matter of fact where the real business was carried on; real business was carried on where the management and control were actually located. Certainly the management of the business was not excercised in the manner contemplated, and it followed that it was carried on in a manner irregular, unauthorised and perhaps unlawful. But the company's residence was determined by the facts, not by its constitution.

For the purposes of the subvention legislation, companies are associated companies if one of these companies is a subsidiary of the other, or both are subsidiaries of a third company. "Subsidiary" has the same meaning as for Profits Tax purposes in Section 42 of the 1938 Finance Act, i.e. the principal must hold at least 75% direct or indirect beneficial interest in Ordinary Share Capital of the subsidiary. For a payment to be a subvention payment, the relationship of principal and subsidiary must have existed at all times between the beginning of the payee company's accounting period for which the payment is made, and the making of the payment.

The Finance Act, 1960, Section 20 (2) restricts the allowances and losses available for subvention purposes by excluding those applicable to trades not carried on on a commercial basis and with a view to the realisation of profits. This section applies to allowances in respect of expenditure incurred after 5th April, 1960, other than allowances for agricultural land and buildings, and to losses for acccounting periods ending in the fiscal year 1960/1 or thereafter.

The subvention provisions apply also to companies whose activities consist mainly in the making of investments, and whose profits arise mainly from investments. In this case, the subvention receipts are treated as payments chargeable to tax under Schedule 'D', Case VI, and the subvention payments are treated as management expenses, and allowable for tax purposes.

Provisions exist for the making of such additional assessments, reductions of assessments and repayments of tax as are necessary to give effect to the subvention arrangements. Any over-repayment under Section 341 (Loss Relief) is recoverable under Schedule D, Case VI. The Finance Act, 1954, Section 18 and Paragraph 3 of the Fourth Schedule extend these provisions, so that they also apply to terminal losses.

II

WORLD TAX REVIEW

INDIA

TAX NEWS

FINANCE BILL, 1965

1 *Corporate Tax*

1. The list of articles relating to priority industries contained in Part IV of the First Schedule to the Finance Act, 1964, will be enlarged by including therein limestone, flame and drip proof motors, malleable iron and steel castings, calcium ammonium nitrate and ships. This means that companies engaged in the manufacture of these articles will be entitled to the lower rates of tax both in respect of income-tax and surtax by the grant of a rebate of 10% on income-tax and 20% on surtax.
2. under the existing law the first Rs. 2 lakhs of income of closely-held companies which are mainly or wholly engaged in the manufacturing or processing of goods is liable to tax at 50% provided their total income does not exceed Rs. 5 lakhs; the balance of the income is taxed at 60%. It is now proposed to extend this concession so that the closely-held manufacturing companies will pay tax at 50% on the first Rs. 10 lakhs of their income irrespective of the size of their total income.
3. penal tax payable by closely-held non-trading companies for non-distribution of profits will be reduced from 37% to 25%; such companies will not be required to distribute 90% of their net profits after tax until the accumulated profits and reserves exceed twice the amount of the paid up capital including loan capital, or the value of fixed assets, whichever is greater.
4. section 2 (18) of the Income-tax Act is proposed to be changed to provide that if in a public company equity shares carrying not less than 50% of the voting power are held by another company in which the public are substantially interested or by a 100% subsidiary of such a company, the first mentioned company shall be regarded as one in which the public are substantially interested.
5. development rebate will be increased from 20% to 25% on new plant and machinery installed after 31.3.1965 by priority on basic industries; in the case of others it will be reduced from 20% to 15% with effect from 1.4.1967. For ships and coal-mining industry the existing rates of 40% and 35% respectively will continue.
6. the Finance Act, 1964 added a provision whereby the expenditure incurred by a company in providing perquisites to employees in excess of 20% of the salary was not allowed as a deduction from taxable income. It is now proposed to apply the provision only in the case of employees having annual income above Rs. 7,500.

7. foreign individuals or companies will be exempt from tax on capital gains arising from sale or transfer of shares held by them in an Indian company provided the sale proceeds are reinvested in an approved investment within a period of two years from the date of transfer of shares.
8. interim dividends shall be liable to tax in the hands of the receiver in the year in which they are actually paid and not in the year in which they are declared as at present.
9. it is proposed to restrict the aggregate tax burden on a company to a maximum of 70%. This "ceiling" applies only to an Indian public company or a public company which declares and pays dividends in India (including a 100% subsidiary of such companies) if the pai-dup share capital is not less than 25% of the aggregate of capital and reserves. Branches of foreign companies or closely-held corporations which are not covered by section 108 of the Income-tax Act are not brought under the ceiling. The maximum rate of 70% shall be calculated without including the 12½% tax levied on any bonus shares issued by the company.
10. a new chapter under the heading "Tax Credit Certificates" is proposed to be added to the Income-tax Act. Briefly, it envisages the issue of tax-free tax credit certificates in five instances. First, in order to encourage subscriptions to equity capital issued by public limited companies engated-in important industries, tax credit certificates will be issued to individuals subscribing to any eligible issue of equity capital. Secondly, tax credit certificates will be issued to persons who export goods out of India after 28th February, 1965 and receive the sale proceeds thereof in India in accordance with foreign exchange regulations. Thirdly, tax credit certificates will be issued to provide relief to public limited companies owning an industrial undertaking from tax on the capital gains arising to them from the transfer of lands and buildings situated in urban area where such transfer has been made with a view to shifting to another area, subject to certain conditions and limitations. Fourthly, with a view to stimulate production of goods it is proposed to grant certificates to a manufacturer who produces goods during any one or more of the years in the five year period 1965/66 to 1969/70 in excess of his production during the "base year" 1964/65. Lastly, to encourge the expansion of industry in the corporate sector, it is proposed to issue tax credit certificates to companies engated in the manufacture of specified articles for a five year period – assessment years 1966/67 to 1970/71. The amount shown on a tax credit certificate granted to any person under the above provisions will be adjusted against any existing liability of such person under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 or any such liability arising within a period of twelve months from the date on which the certificate is produced before the Income-tax Officer, and the amount, if any, remaining after such adjustment will be refunded to the person on the expiry of that period.

The Central Government will frame a scheme or schemes making detailed provisions for the implementation of

the provisions relating to grant of tax credit certificates for various purposes. The Scheme will contain provisions as to the manner in which and the authority by whom the certificate will be issued.

11. wealth-tax Act is being amended to provide for exemption of individuals from wealth-tax in respect of the value of equity shares in a new industrial company, where such shares have been subscribed and paid for by the assessee and form part of the initial issue of the equity capital made by the company after 28th February, 1965.

11 *Personal taxation*

Taxation on personal income has been lowered at all levels.

The highest marginal rate on unearned income will come down from 88.25% to 81.25% and that on earned income from 82.5% to 74.75%. The maximum tax rate will be reached on earned income above Rs. 3 lakhs and on unearned income above Rs. 70,000. Some of the important proposals are given below:

(a) income-tax and super-tax have been integrated and will, in future, be known as "income-tax";

(b) a revised schedule of tax rates (attached) has been prescribed simplifying calculation of tax considerably and eliminating the need for calculating marginal relief etc;

(c) no income-tax is payable by an individual whose total income does not exceed Rs. 3,000;

(d) if the total income is Rs. 20,000 or less, the income-tax payable shall not exceed 40% of the amount by which the total income exceeds Rs. 3,000.

(e) no surcharge is payable on earned income up to Rs. 100,000; on earned income above this amount surcharge at rates varying between 5% to 15% is levied. Unearned income up to Rs. 15,000 is exempt from surcharge;

(f) personal allowances of fixed amounts, given below, are allowed as deduction from tax payable:

	Rupees
(i) Unmarried individual	100
(ii) Married individual with no dependent child	175
(iii) Married individual with one dependent child	195
(iv) Married individual with more than one dependent child	215

(g) relief on insurance premia, pension/provident fund contributions and post office cumulative time deposits will be given by deducting 50% of the aggregate of these sums, subject to prescribed limits, from the total income. The prescribed monetary limit of the aggregate sum has been enhanced from Rs. 10,000 to Rs. 12,500; the percentage limit is retained at 25 but will be calculated on total income before deduction of annuity deposits therefrom;

(h) a deduction of a specified amount, not exceeding Rs. 2,400, will be allowed, subject to certain conditions, from the total income of an individual resident in India in respect of expenditure incurred on the medical treatment of a physically or mentally

handicapped dependent relative, provided the individual's total income before deduction of annuity deposits. does not exceed Rs. 20,000;

(i) there is no change in the rates or provisions relating to annuity deposits The changes, if approved by Parliament, will be effective from assessment year commencing on 1st April, 1965, but for income from salaries, will apply to salaries payable during the financial year 1.4.65 to 31.3.66.

(j) non-residents will be taxed on their total income in India at rates applicable to such income, without grant of any personal allowances or initial exemption; tax at source will be withheld at the rate applicable to total income or at 30%, whichever is higher.

FINANCIAL YEAR 1965/66

Rate of income-tax

(1) where the total income does not exceed Rs. 5,000 5 per cent. of the total income.

(2) where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000 Rs. 250 plus 10 per cent, of the amount by which the total income exceeds Rs. 5,000.

(3) where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000 Rs. 750 plus 15 per cent. of the amount by which the total income exceeds Rs. 10,000.

(4) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000 Rs. 1,500 plus 20 per cent. of the amount by which the total income exceeds Rs. 15,000.

(5) where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000 Rs. 2,500 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000.

(6) where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000 Rs. 4,000 plus 40 per cent. of the amount by which the total income exceeds Rs. 25,000.

(7) where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000 Rs. 6,000 plus 50 per cent. of the amount by which the total income exceeds Rs. 30,000.

(8) where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000 Rs. 16,000 plus 60 per cent. of the amount by which the total income exceeds Rs. 50,000.

(9) where the total income exceeds Rs. 70,000 Rs. 28, 000 plus 65 per cent. of the amount by which the total income exceeds Rs. 70,000.

Surcharge: No surcharge on the first slab of earned income up to Rs. 100,000; next Rs. 100,000 will bear surcharge at 5%; next Rs. 100,000 at 10%; the balance at 15%.

Reported by: K.C. KHANNA

IN THE NEXT ISSUE:

FINANCE BILL, 1965, INDIRECT TAXES, *reported by* K.C. KHANNA

JAPAN

TAX NEWS

TAX REVISION IN 1965

Japanese Government decided on January 19, 1965, the substance of national tax amendments which will be presented to the ordinary session of the Diet for their approval*). The followings are the summary of the substance.

1. *Individual Income Tax*

(1) Basic exemption is raised to 130,000 yen (120,000 yen at present)

(2) Exemption for spouse is raised to 120,000 yen (110,000 yen at present)

(3) With respect to Exemption for dependents,
   i) Exemption for each dependent less than 13 years of age is raised to 50,000 yen (40,000 yen at present)
   ii) Exemption for each dependent 13 years or over is raised to 60,000 yen (50,000 yen at present)
   iii) Exemption for the first dependent in case no exemption for spouse is allowed is raised to 80,000 yen (70,000 yen at present).

(4) With respect to employment income deduction,
   i) fixed amount of deduction is raised to 30,000 yen (20,000 yen at present)
   ii) 20% of the reduction rate becomes to be applied up to 500,000 yen (400,000 yen at present) after deducting the fixed amount, and the ceiling of the amount of deduction is raised to 150,000 yen (140,000 yen at present).

(5) With respect to deduction for family employees,
   i) in case a taxpayer files a blue return the maximum deduction is raised to 180,000 yen (150,000 yen at present) for a family employee not less than 20 years of age and to 150,000 yen (120,000 yen at present) under 20 years of age
   ii) in case a taxpayer files a white return, the deduction for family employee is raised to 120,000 yen (90,000 yen at present).

(note): The tax reduction mentioned in (1) to (5) above is effective on and after April 1, 1960. (The tax reduction as the initial effect for the 1960 calendar year is three-quarter of the full calendar year).

(6) The maximum deduction for medical expenses is raised to 300,000 yen (150,000 yen at present).

2. *Corporation Tax*

(1) Tax rates applicable to the undistributed income of an ordinary corporation for annual income of not more than 3,000,000 yen and for annual income of more than 3,000,000 yen are reduced to 31% (33% at present) and 37% (38% at present) respectively.

(2) Tax rate applicable to special corporations (Cooperative Association etc.) and corporation of public welfare (including Medical Corporation) is reduced to 26% (at present 28%).

(3) The deducting amount from the retained earnings of the family corporation to compute the taxable standard for special additional tax becomes 25% (20% at present) of the net income for the

*) Approved March, 31, 1965.

accounting period or 1,000,000 yen per year, whichever is larger.

3 *Special Measures*

(1) With respect to the special measures which are to be terminated at the end of 1964 fiscal year or at the end of 1965 calendar year.

i) the special measure by which interest income (including dividend income from the distribution of gains of a securities investment trust) is segregated from other income and is taxed at the special rate of 5% is extended for another two years with amendment that the special tax rate is raised to 10% and the ceiling of a "small savings Tax Exemption" is raised to 1,000,000 yen (500,000 yen at present)

ii) the special measure by which the dividend income is subject to the withholding tax at the special rate of 5% is extended for another two years with amendments that the special rate is raised to 10% and the following measures are incorporated.

(a) the dividend income received from each company not exceeding 500,000 yen per year is not required to be included in the aggregate income subject to tax return, and

(b) the dividend income is separa tely taxed at source at the special rate of 15% at a taxpayer's choice, except for the dividend income received by a taxpayer whose shares of the paying company are 5% or more of the total shares, or the amount of dividend income received by a taxpayer from a company which is 500,000 yen or more per year.

(2) With respect to the deductibility of expense account, the undeductible ratio of social expenses and entertainment expenses in excess of the total of 4 million yen plus 0.25 per cent of capital is raised to 50 per cent (at present 30 per cent).

(3) Establishment of special reserve for mine exploration

A corporation or individual who carries on mining industries is allowed to credit the amount which is the smaller of the following in the account of reserve for mine exploration (The amount is deductible for the tax purpose.).

i) 15% of the gross amount of the sale from specific kinds of mining products

ii) 50% of the net income derived from the sale.

(Remarks): If the amount credited in the above account remains unused for the three years after the credit was made, the balance should be reverted into the taxable income of the fourth year. The use of this reserve is limited to the actual expenditure for mine exploration. With this measure, the measure of the special depreciation for equipments to explore natural resources which is to be terminated at the end of 1964 F.Y. is, in principle, abolished.

Submitted by our CORRESPONDENT

IN THE NEXT ISSUE:

TAXATION OF FOREIGN ENTERPRISES CARRYING ON BUSINESS OPERATIONS IN JAPAN, *by* MASATAKA OKURA

SWITZERLAND

BIBLIOGRAPHY

Handkommentar zum revidierten bernischen Steuergesetz by R. KELLERHALS and H. GRUBER.

Verlag Herbert Lang & Cie, Munzgraben 2, Berne, 1965 280 pp. Price Sfrs. 30.—.

This manual on the direct taxes levied by the canton of Berne and its municipalities. A useful guide for those who seek practical information on taxation in Berne. The book contains not only the law on the direct cantonal and municipal taxes of October 29, 1944, as amended on June 28, 1964, but also a commentary on each article. In an Appendix some Regulations are reproduced. This book, that was published at the end of January 1965, is updated to December 1, 1964.

Die Steuern der Schweiz, IV. Teil: Sammlung schweizerischer Gesetze über die direkten Steuern - Band I.

Published by Verlag für Recht und Gesellschaft AG, Bundesstrasse 15, Basel. Loose leaf publication 1964.

This well known looseleaf publication on Swiss federal, cantonal and municipal taxes, edited by the federal tax administrations, has recently been expanded by a fourth section, which contains the texts of direct taxation laws applicable in the confederation and the cantons. This collection will include laws on the taxation for both the individual and corporation of income, net worth, capitals gains, real property, and death taxes.

At present only the laws of the cantons of Glarus, Schaffhausen and Valais are reproduced, but subsequent additions will follow in the next few months.

U.S.A.

TAX NEWS

TAX PROPOSALS BY PRESIDENT JOHNSON

President Johnson presented to the United States Congress a balance of payments message on February 10, 1965. The message contained a number of tax proposals which will have international ramifications if adopted by Congress.

In addition to these tax proposals, President Johnson announced that he was imposing the interest equalization tax act as of February 10 on bank loans abroad with maturities of one year or more, with appropriate exemption for borrowers in less developed countries. This implementation of the "Gore amendment" to the interest equalization tax will result in a one per cent net increase in United States interest rates for borrowings by foreigners which are covered by the act.

President Johnson's three-tax proposals contained in the balance of payments message included the extension of the interest equalization tax until December 31, 1967, the broadening of its coverage to include non-bank credit of one-to-three year maturity, and increased incentives for foreigners to invest in U.S. corporate securities.

The interest equalization tax is schedul-

ed to expire at the end of this year. It is President Johnson's opinion that circumstances require it to remain in effect until December 31, 1967. The interest equalization tax has effectively reduced the purchases of foreign securities by Americans since the legislation was submitted to Congress July 19, 1963. President Johnson stated that "it has encouraged the broadening and deepening of capital markets in Europe—markets which can make a lasting contribution to the economic growth of the free world." Most press reports are confident that this extension will be enacted. For security transactions covered by the interest equalization tax, this would mean that the 1% increase in interest rates and 15% penalty on equity acquisitions, will be effective for more than two and one half years, with a fair chance of its being around even longer if the dollar remains hard pressed.

President Johnson's request that Congress broaden the coverage of the interest equalization tax to non-bank credit with one-to-three year maturity was prompted by his use of the Gore amendment in reducing one-to-three year bank loans. As he stated in his message to Congress, "if the tax did not apply to foreign credits made by non-bank lenders, it would discriminate against and invite an outflow of untaxed funds through non-banking channels."

The country which would apparently be subject to the greatest difficulties by the broadened coverage of the interest equalization tax is Japan. In order to soften the blow, President Johnson is planning to exempt purchases by U.S. residents of new securities issued or guaranteed by the government of Japan up to an aggregate amount of $100,000,000 each year. It is President Johnson's opinion that the application of the tax to bank loans of over one year will create a sufficient threat to the international monetary system to justify a limited exemption.

The last recommendation by President Johnson had to do with enhancing the United States tax climate for investment by foreigners. President Johnson feels that the truly worldwide market for capital among the industrialized nations requires a two-way flow of investments. In order to stimulate a greater inflow of capital from advanced industrial companies, the President has instructed the Secretary of the Treasury to request legislation, generally along the lines recommended by a Presidential task force, to remove tax deterrents to foreign investment in U.S. corporate securities.

The Presidential task force, referred to above, submitted their views on ways and means of promoting increased foreign investment in securities of U.S. private companies on April 27, 1964. The task force was made up of leading financial and business personalities. It is impossible to predict how closely the Treasury will follow these recommendations nor to guess what technical problems may be involved in the proposed legislation.

Nevertheless, it is useful to catalogue the recommendations by the Presidential task force, so that interested persons can begin to evaluate what impact such amendments to the Internal Revenue Code might have on themselves or their clients.

There were six recommendations, as follows:

1. Eliminate U.S. estate taxes on all intangible personal property of nonresident alien decedents.

2. Eliminate (with respect to income not connected with the conduct of the trade or business) the provisions for the pro-

gressive taxation of United States source income of non-resident alien individuals in excess of $19,000 and provide that no non-resident alien whose tax liability is fully satisfied by withholding shall be required to file returns.

3. Eliminate the provision for taxation of capital gains realized by a non-resident alien individual when he is physically present in the United States; extend from 90 to 183 days during a taxable year the time that a non-resident alien individual may spend in the United States before becoming subject to tax on all capital gains realized during such year.

4. Provide that a non-resident alien individual engaged in business or trade within the United States be taxed at regular rates only on income connected with such trade or business.

5. Amend the definition of personal holding companies appearing in the Internal Revenue Code so that foreign corporations owned entirely by non-resident alien individuals are excluded from the definition.

6. Clarify the definition of engaging in a trade or business to make it clear: (i) that a non-resident alien individual or foreign corporation investing in the United States will not be deemed to be engaged in trade or business because of activity in an investment account or granting a discretionary investment power to a U.S. bank, broker or adviser; (ii) a non-resident alien individual or foreign corporation will not be deemed engaged in trade or business by reason of mere ownership of real property, by reason of a strict net lease, or by reason of an agent's activity in connection with the selection of real estate investments in the United States.

If the United States Internal Revenue Code were amended to include such changes, it should have a salutary effect on the flow of foreign investment into the United States via the purchase of U.S. corporate securities.

President Johnson's ten-point program to strengthen the dollar has relied heavily on taxation as a tool both to contain the out-flow of U.S. investment dollars, and also to serve as an incentive for investment in the United States by foreigners. It will be of interest to follow the course of the Treasury's proposed amendments after they are submitted to the Congress.

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DOCUMENTS

PROPOSED TAX LEGISLATION TO INCREASE FOREIGN INVESTMENT IN THE UNITED STATES

On March 8th, 1965, the Treasury submitted to the Congress a Bill (HR. 5916) of proposed tax legislation designed to increase foreign investment in the United States. The total annual revenue loss from enactment of the proposed legislation is estimated to be less than $5 million.

Foreign purchases of U.S. corporate securities are the greatest single source of long-term capital inflow for the United States. Between 1956 and 1963, such purchases averaged $190 million a year. During that time the value of foreign-held stocks outstanding more than doubled—going from $6.1 billion to $12.5 billion. There is no estimate of the immediate benefit from the proposed legislation in terms of increased investment, but over time it is expected that the legislation would result in increased purchases of such securities of roughly $100 million to $200 million a year.

The bill proposes three major tax changes affecting foreigners and foreign corporations and a number of minor changes. The major changes are:

1. Reduction of the rate of U.S. estate tax applicable to foreigners to bring the tax treatment of foreigners more in line with the rates usually paid by American citizens, and with general international practice. The reduction would replace the present maximum rate of 15 percent, and replace the present $2,000 exemption with a $30,000 exemption.
2. Elimination of the provision in the present law which makes foreigners' non-business income, such as dividends and interest, subject to tax at regular U.S. individual tax rates if it exceeds $21,200. The tax on such income would be limited to the flat 30 percent withholding rate provided by statute or any lower withholding rate which may be provided by treaty. Business income would continue to be taxed at regular U.S. rates if the foreigner is engaged in business here.
3. Elimination of the present provision for taxation of capital gains realized by a foreigner simply because he was present in the United States at the time of the particular transaction. At the same time, the period that a foreigner may spend in the United States without becoming subject to tax on all U.S. capital gains for the taxable year, would be extended from 90 days to 183 days.

Since the application of the U.S. estate tax to foreigners is one of the biggest barriers to foreign investment in the United States, its reduction is probably the most important of the major changes. For example, the proposed change would reduce the estate tax for a foreigner with a U.S. gross estate of $100,000 from about $17,300 to about $3,000. A U.S. citizen would pay about the same tax on such an estate if he did not claim the marital deduction, and would pay no tax if he did. (Foreigners are not allowed to claim the marital deduction.)

The proposed legislation also contains provisions dealing with former U.S. citizens who in the future give up their citizenship and live outside the United States in order to avoid U.S. taxes. It would require such former citizens to pay regular U.S. income and estate

taxes on income from or property in the United States, if they gave up their U.S. citizenship less than 10 years before. This would not apply to former citizens who could show that the surrender of their citizenship was not tax motivated.

There are also other provisions designed to contribute to more rational and consistent tax treatment of foreigners and foreign corporations.

IN THE NEXT ISSUE:

EXPLANATION BY THE TREASURY DEPARTMENT ON BILL H.R. 5916

BIBLIOGRAPHY

Montgomery's Federal Taxes, RONALD PRESS COMPANY, New York, 1964, 39th Edition, pp. 600.

As in earlier editions, this book gives a presentation of a clear and concise explanation of the rules of federal income taxation, along with comments, analysis aund suggestions for business and family tax planning. Although the entire income tax field has been covered, emphasis has been placed on the selection of material which should be of interest and value to managers and owners of business enterprises, corporate executives, investors and their professional advisors.

Business and Professional Income under the Personal Income Tax, NATIONAL BUREAU OF ECONOMIC RESEARCH, New York, C. Harry Kahn, Princeton University Press, 1964, pp. 177.

This summarizes and interprets extensive information on income and tax liabilities attributable to the proprietors of unincorporated businesses and professions. The chief purpose of this study is to provide a detailed examination of the general characteristics of unincorporated business income and its individual income tax treatment.

The enterprises considered in this volume represent nine tenths of the total business population and account for more than a fifth of total business receipts.

Alternatives to Present Federal Taxes, TAX INSTITUTE OF AMERICA, Princeton, N.J., 1964, pp. 257.

Each year the Tax Institute of American conducts a symposium to focus attention on a major problem of taxation. This publication consists of the points of view presented by the informed participants. This particular symposium is devoted to a ten year look ahead in the federal tax field with plans and thoughts that might be carried out within the next ten years.

Before attempting the forward look, the symposium presents an appraisal of the present federal income tax as it applies to individuals and also an appraisal of the tax as it applies to corporations. Next, alternations are presented and an analysis of the experience that these alternations met in other countries.

III

TREATIES

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF THE PHILIPPINES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Republic of the Philippines, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose their respective Plenipotentiaries:

The Government of the United States of America:
Dean Rusk, Secretary of State of the United States of America,

The Government of the Republic of the Philippines:
Mauro Mendez, Secretary of Foreign Affaires of the Republic of the Philippines, and

Rufino G. Hechanova, Secretary of Finance of the Republic of the Philippines, who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I

Taxes Covered

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States, the Federal income tax, including surtax, imposed by Subtitle A of the Internal Revenue Code (but not including the tax on improperly accumulated earnings or the personal holding company tax).

(b) In the case of the Philippines, the income tax imposed by Title II of the National Internal Revenue Code (but not including the tax on improperly accumulated earnings or the personal holding company tax).

(2) The present Convention shall also apply to taxes substantially similar to those covered by paragraph (1) of this Article which are subsequently imposed in addition to, or in place of, existing taxes.

(3) For the purpose of Article 6, this Convention shall also apply to taxes of every kind, and to those imposed at the national, state, or local level.

ARTICLE II

General Definitions

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States thereof, the District of Columbia, and Wake Island;

(b) The term "Philippines" means the Republic of the Philippines, and when used in a geographical sense means the territories comprising the Philippines;

(c) The terms "one of the Contracting States" and "the other Contracting State" mean the United States or the Philippines, as the context requires;

(d) The term "person" comprises an individual, a corporation and any other body of individuals or persons;

(e) The term "corporation" means any body corporate, association or joint stock company or other entity which is treated as a body corporate for tax purposes;

(f) The term "United States corporation" means a corporation created or organized under the laws of the United States or of any State thereof or the District of Columbia;

(g) The term "Philippine corporation" means a corporation created or organized under the laws of the Philippines;

(h) The terms "resident or corporation of one of the Contracting States" and "resident or corporation of the other Contracting State" mean a resident or corporation of the United States or a resident or corporation of the Philippines, as the context requires;

(i) The term "competent authority" means:

(1) in the United States, the Secretary of the Treasury or his delegate;

(2) in the Philippines, the Secretary of Finance or his delegate.

(2) As regards the application of the present Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the present Convention.

ARTICLE III

General Rules of Taxation

(1) A resident or corporation of one of the Contracting States shall be taxable by the other Contracting State only on income derived from sources within that other Contracting State.

(2) A resident or corporation of one of the Contracting States shall be taxed by the other Contracting State on income taxable under paragraph (1) in accordance with the limitations set forth in the present Convention. Any income to which the provisions of the present Convention are not expressly applicable shall be taxable by each of the Contracting States in accordance with its own law. The provisions of the present Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded (a) by the laws of one of the Contracting States in the determination of the tax imposed by that State or (b) by any other agreement between the Contracting States.

(3) Except as provided in paragraph (4), a Contracting State may tax an individual who is a citizen or resident of that Contracting State (whether or not such person is also a resident of the other Contracting State) or a corporation of that Contracting State (whether or not also a corporation of the other Contracting State) as if the present Convention had not come into effect.

(4) The provisions of paragraph (3) shall not affect—

(a) the benefits conferred by a Contracting State under Articles 4 and 6;

(b) the benefits conferred by the United States under Article 18; and

(c) the benefits conferred by a Contracting State under Articles 14, 15, 16 and 17 upon individuals other than citizens of, or individuals having immigrant status in, that Contracting State.

ARTICLE IV

Relief from Double Taxation

Double taxation of income shall be avoided in the following manner:

(1) The United States shall allow as a credit against its tax specified in subparagraph (1) (a) of Article 1 the appropriate amount of taxes paid to the Philippines. Such appropriate amount shall be based upon the full amount of tax paid to the Philippines, and such credit shall, in other respects, be allowed in accordance with the applicable revenue laws of the United States. It is agreed for this purpose that the Philippine tax specified in subparagraph (1) (b) of Article 1 shall be considered to be an income tax, and that by virtue of the provisions of paragraph (2) of this Article the Philippines satisfies the similar credit requirement prescribed by section 901 (b) (3), Internal Revenue Code of 1954, with respect to taxes paid to the Philippines.

(2) The Philippines shall allow to a resident or corporation of the Philippines as a credit against its tax specified in subparagraph (1) (b) of Article 1 the appropriate amount of taxes paid to the United States. Such appropriate amount shall be based upon the full amount of tax paid to the United States, and such credit shall, in other respects, be allowed in accordance with the revenue laws of the Philippines. It is agreed for this purpose that the United States tax specified in subparagraph (1) (a) of Article 1 shall be considered to be an income tax and that by virtue of the provisions of paragraph (1) of this Article the United States satisfies the similar credit requirement prescribed by section 30 (c) (3) (B), National Internal Revenue Code, with respect to taxes paid to the United States.

ARTICLE V

Source of Income

For purposes of Articles 3 and 4:

(1) Income from the performance of personal services (including private pensions

and annuities paid in respect of such services) or the furnishing of personal services shall be treated as income from sources within the State in which such services are performed. Compensation for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State and, in the case of the United States, registered in the United States (including private pensions and annuities paid in respect of such services) shall be treated as income from sources within that Contracting State, if rendered by a member of the regular complement of the ship or aircraft.

(2) The source of any item of income to which the provisions of this Article are not expressly applicable shall be determined by each of the Contracting States in accordance with its own law.

ARTICLE VI

Nondiscrimination

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than is a citizen of that other Contracting State who is resident therein.

(2) A permanent establishment which a citizen or corporation of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than is a citizen or corporation of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging either Contracting State to grant to citizens of the other Contracting State who are not residents of the former Contracting State any personal allowances or deductions which are by its law available only to residents of that former Contracting State.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned by one or more citizens or corporations of the other Contracting State, shall not be subjected in the former Contracting State to more burdensome taxes than is a corporation of the former Contracting State, the capital of which is wholly owned by one or more citizens or corporations of that former Contracting State.

ARTICLE VII

Business Profits

(1) A resident or corporation of one of the Contracting States shall be subject to tax in the other Contracting State with respect to its industrial or commercial profits only if that resident or corporation has a permanent establishment in that other Contracting State.

(2) In the imposition of such tax—

(a) there shall be allowed as deductions ordinary and necessary expenses, wherever incurred, which are allocable, to the reasonable satisfaction of the competent authority of that Contracting State, to income from sources within that Contracting State; and

(b) no profits shall be deemed to be derived from sources within that Contracting State merely by reason of the purchase of goods or merchandise.

(3) For purposes of paragraph (1) the term "industrial or commercial profits" means income derived from the active conduct of a trade or business. It includes profits from manufacturing, mercantile, agricultural, fishing and mining activities, and from the furnishing of personal services. It does not include income from the performance of personal services, dividends, interest, royalties, income from the rental of personal property, income from real property, insurance premiums, or gains derived from the sale or exchange of capital assets.

ARTICLE VIII

Definition of Permanent Establishment

(1) The term "permanent establishment" means a fixed place of business through which a resident or corporation of one of the Contracting States engages in trade or business.

(2) The term "a fixed place of business" includes, but is not limited to, a branch; an office; a store or other sales outlet; a workshop; a factory; a warehouse; a mine, quarry or other place of extraction of natural resources; a building site, or construction or installation site, which exists for more than three months.

(3) The term "permanent establishment" shall not be deemed to include any one or more of the following:

(a) facilities used for the purpose of storage, display or delivery of goods or merchandise belonging to the resident or corporation;

(b) the maintenance of a stock of goods or merchandise belonging to the resident or corporation for the purpose of storage, display and/or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the resident or corporation for processing by another person;

(d) a fixed place of business maintained for the purpose of purchasing goods or merchandise, and/or for the collection of information, for the resident or corporation;

(e) a fixed place of business maintained for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident or corporation.

(4) Even if a resident or corporation of one of the Contracting States does not have a permanent establishment in the other Contracting State under paragraphs

(1)-(3) of this Article, nevertheless he shall be deemed to have a permanent establishment in the latter State if he engages in trade or business in that State through an agent who—

(a) has an authority to conclude contracts in the name of that resident or corporation and regularly exercises that authority in the latter State unless the exercise of the authority is limited to the purchase of goods or merchandise;

(b) regularly secures orders in the latter State for that resident or corporation; or

(c) maintains in the latter State a stock of goods or merchandise belonging to that resident or corporation from which he regularly makes deliveries or fills orders.

(5) Notwithstanding paragraph (4) of this Article, a resident or corporation of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it uses the services in that State of a bona fide broker, general commission agent, forwarding agent, indentor or other agent of independent status acting in the ordinary course of its business. For this purpose, an agent shall not be considered to be an agent of independent status if it acts as an agent exclusively or almost exclusively for the resident or corporation (or for that resident or corporation and any other person controlling, controlled by or under common control with that resident or corporation) and carries on any of the activities described in paragraph (4) of this Article.

(6) The fact that a corporation of one of the Contracting States controls or is controlled by or is under common control with (a) a corporation of the other Contracting State or (b) a corporation which engages in trade or business in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether the activities or fixed place of business of either corporation constitutes a permanent establishment of the other corporation.

(7) A resident or corporation of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if that resident or corporation provides the services in the latter State of public entertainers referred to in Article 13, paragraph (3).

(8) If a resident or corporation of one of the Contracting States has a permanent establishment in the other Contracting State at any time during the taxable year, it shall be considered to have a permanent establishment in that other Contracting State for the entire taxable year.

ARTICLE IX

Related Persons

(1) Where a resident or corporation of a State deriving commercial and industrial

profits in one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, then any income which would, but for those arrangements or conditions, have accrued to such resident or corporation but, by reason of those arrangements or conditions, has not so accrued, may be included in the income of such resident or corporation for purposes of the present Convention and taxed by that Contracting State accordingly.

(2) *(a)* A person other than a corporation is related to a corporation if such person participates directly or indirectly in the management, control or capital of the corporation.

(b) A corporation is related to another corporation if either participates directly or indirectly in the management, control or capital of the other, or if any person or persons participate directly or indirectly in the management, control or capital of both corporations.

ARTICLE X

Interest

Interest received by the Government of one of the Contracting States or any agency or instrumentality wholly owned by that Government shall be exempt from tax by the other Contracting State.

ARTICLE XI

Income from Real Property

A resident or corporation of one of the Contracting States subject to tax in the other Contracting State on income from the rental of buildings or from real property which is improved with buildings, including gains derived from the sale or exchange of such property, or on royalties in respect of the operation of mines, quarries, or other natural resources may elect for any taxable year to compute that tax on such income on a net basis.

ARTICLE XII

Gains upon Transfers to Controlled Corporations

A resident or corporation of one of the Contracting States shall be exempt from tax in the other Contracting State with respect to gain realized upon the transfer of property to a corporation in exchange for stock in such corporation—

(1) If immediately thereafter such resident or corporation, or such person together with any other persons making similar transfers as part of the same transaction, owns stock of such corporation possessing at least 80 percent of the total

combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation; and

(2) Where the transferee corporation is a Philippine corporation, if the property is transferred and recorded on the books of account of the corporation at a value not exceeding the value at which such property was recorded on the books of account of the transferor.

ARTICLE XIII

Income from Personal Services

(1) An individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State with respect to income from personal services if—

(a) he is present within the latter Contracting State for a period or periods not exceeding in the aggregate 90 days during the taxable year, and

(b) such income is not deducted in computing the profits of a permanent establishment of a resident or corporation of the former Contracting State subject to tax in the latter Contracting State, and

(c) in the case of employment income, the services are performed as an employee of a resident or corporation of the former Contracting State, and

(d) the aggregate amount of such income does not exceed $3,000 (or its equivalent in Pesos).

(2) For purposes of paragraph (1) of this Article, the term "income from personal services" includes employment income and income earned by an individual from the performance of personal services in an independent capacity. The term "employment income" includes income from services performed by officers and directors of corporations. Income from personal services performed by partners shall generally be treated as income from the performance of services in an independent capacity, but a salary or other fixed amount paid by a partnership to an active partner shall be considered income from employment by the partnership, if similar payments are not made to inactive partners.

(3) Notwithstanding paragraph (1) of this Article, the income from personal services of public entertainers, such as athletes, musicians and actors, from their activities as such, may be taxed in the Contracting State in which the services are performed if such income exceeds either $100 (or its equivalent in Pesos) for each day the individual is present in the latter Contracting State or an aggregate amount of $3,000 (or its equivalent in Pesos).

(4) Compensation received by any individual for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State (and, in the case of the United States, registered in the United States) shall,

subject to paragraph (3) of Article 3, be exempt from tax by the other Contracting State, if the services are rendered by a member of the regular complement of the ship or aircraft.

ARTICLE XIV

Teachers

An individual who is a resident of one of the Contracting States at the beginning of his visit to the other Contracting State and who, at the invitation of the Government of the other Contracting State or of a university or other accredited educational institution situated in the other Contracting State, visits the latter Contracting State for the purpose of teaching or engaging in research, or both, at a university or other accredited educational institution shall be exempt from tax by the latter Contracting State on his income from personal services for teaching or research at such educational institution, or at other such institutions, for a period not exceeding two years from the date of his arrival in the latter Contracting State.

ARTICLE XV

Students and Trainees

(1) *(a)* An individual who is a resident of one of the Contracting States at the beginning of his visit to the other Contracting State and who is temporarily present in the other Contracting State for the primary purpose of—

(i) studying at a university or other accredited educational institution in that other Contracting State,

(ii) securing training required to qualify him to practice a profession or professional specialty, or

(iii) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary or educational organization,

shall be exempt from tax by that other Contracting State with respect to—

(A) gifts from abroad for the purposes of his maintenance, education, study, research or training;

(B) the grant, allowance, or award; and

(C) income from personal services performed in the other Contracting State in an amount not in excess of $2,000 or its equivalent in Pesos for any taxable year; or, if such individual is securing training necessary for qualification in a medical profession or medical specialty, including any physician, medical technologist, nurse, pharmacist or other person under the Exchange Visitors Program, not in excess of $5,000 or its equivalent in Pesos for any taxable year.

(b) The benefits under this paragraph shall only extend for such period of time

as may be reasonably or customarily required to effectuate the purpose of the visit, but in no event shall any individual have the benefits of this paragraph for more than five taxable years.

(2) A resident of one of the Contracting States who is present in the other Contracting State for a period not exceeding one year, as an employee of, or under contract with, a resident or corporation of the former State, for the primary purpose of—

(i) acquiring technical, professional, or business experience from a person other than that resident or corporation of the former Contracting State, or

(ii) studying at a university or other accredited educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State with respect to his income from personal services performed in the other Contracting State for that period in an amount not in excess of $5,000 or its equivalent in Pesos.

(3) A resident of one of the Contracting States who is present in the other Contracting State for a period not exceeding one year, as a participant in a program sponsored by the Government of the other Contracting State, for the primary purpose of training, research, or study shall be exempt from tax by that other State with respect to his income from personal services performed in that other Contracting State and received in respect of such training, research, or study in an amount not in excess of $10,000 or its equivalent in Pesos.

ARTICLE XVI

Governmental Salaries

Wages, salaries, and similar compensation, and pensions, annuities, or similar benefits paid by, or directly out of public funds of, one of the Contracting States or the political subdivisions thereof to an individual who is a national of that Contracting State for services rendered to that Contracting State or to any of its political subdivisions in the discharge of governmental functions shall be exempt from tax by the other Contracting State.

ARTICLE XVII

Rules Applicable to Personal Service Articles

(1) For purposes of Articles, 13, 14, 15 and 16, reimbursed travel expenses shall be considered to be income from personal services or compensation, but shall not be taken into account in computing the maximum amount of exemptions specified in Articles 13 and 15.

(2) An individual who qualifies for benefits under more than one of the provisions of Articles 13, 14 and 15 may select the application of that provision most

favorable to him, but he shall not be entitled to the benefits of more than one provision in any taxable year.

ARTICLE XVIII

Deduction for Charitable Contributions

In the computation of taxable income under the United States income tax, a deduction shall be allowed to citizens and residents of the United States and United States corporations for contributions to any organization created or organized under the laws of the Philippines which constitutes a non-profit organization under section 27 (e) of the National Internal Revenue Code of the Philippines if—

(a) such contributions are used entirely within the Philippines and

(b) the recipient organization has qualified as a tax-exempt organization under subsection 501 (c) (3) of the United States Internal Revenue Code.

Such deductions shall not, however, exceed an amount which would have been allowable under the United States Internal Revenue Code if such organization had been created or organized under the laws of the United States and if such contributions were used within the United States.

ARTICLE XIX

Consultation and Taxpayer Claims

(1) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to conventions between one of the Contracting States and any other State, the competent authorities shall endeavor to settle the question as quickly as possible by mutual agreement.

(2) The competent authorities may consult together for the purpose of considering the amendment of this Convention to add provisions dealing with such matters affecting income taxation and not covered in this Convention as may be deemed appropriate.

(3) In particular, the competent authorities of the Contracting States may consult together to endeavor to agree—

(a) to the same apportionment of industrial or commercial profits between a resident or corporation of one of the Contracting States and its permanent establishment situated in the other Contracting State; or

(b) to the same allocation of income between a resident or corporation and a related person, dealt with in Article 9,

and to the appropriate procedures for effectuating such apportionment or allocation.

(4) A taxpayer shall be entitled to present his case to the Contracting State of which he is a citizen or resident, or, if the taxpayer is a corporation of one of the Contracting States, to that State, if he considers that the action of the other Contracting State has resulted, or will result for him in taxation contrary to the provisions of the Convention. Should the taxpayer's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of double taxation contrary to the provisions of the Convention.

ARTICLE XX

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, collection or enforcement of the taxes which are the subject of this Convention (including a court or administrative body).

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation:

(a) to carry out administrative measures at variance with the laws or administrative practices of that Contracting State or the other Contracting State;

(b) to supply particulars which are not obtainable under the laws of, or in the normal course of administration in, that Contracting State or the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to its public policy.

ARTICLE XXI

Assistance in Collection

(1) Each of the Contracting States shall endeavor to collect such taxes imposed by the other Contracting State as will ensure that any exemption granted under the present Convention by the other State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

(2) In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practices of the Contracting State endeavoring to collect the tax or which would be contrary to that State's sovereignty, security or public policy.

ARTICLE XXII

Exchange of Legal Information

(1) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in Article 1, paragraph (1), and of the adoption of any taxes referred to in Article 1, paragraph (2), by transmitting the texts of any amendments or new statutes at least once a year.

(2) The competent authorities of the Contracting States shall exchange the texts of all published material interpreting the present Convention under the laws of the respective States, whether in the form of regulations, rulings or judical decisions.

ARTICLE XXIII

Effective Dates and Ratification

(1) The present Convention shall be ratified and the instruments of ratification exchanged at Manila as soon as possible. *)

(2) After the exchange of instruments of ratification, the present Convention shall have effect with respect to taxable years beginning on or after the first day of January of the year following that in which such exchange takes place.

(3) The present Convention shall continue in effect indefinitely, but it may be terminated by either of the Contracting States, on the initiative of the competent authority of that State, at any time after five years from the date specified in paragraph (2) of this Article, provided that at least six months' prior notice of termination has been given. In such event, the present Convention shall cease to be effective with respect to taxable years beginning on or after the first day of January next following the expiration of the six-month period.

In Witness Whereof, the undersigned Plenipotentiaries have signed the present Convention.

Done at Washington, in duplicate, this fifth day of October, 1964.

For the Government of The United States of America:
Dean Rusk

For the Government of the Republic of the Philippines:
M. Mendez
Rufino G. Hechanova

*) The treaty has not yet been ratified.

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TAXATION OF FOREIGN ENTERPRISES CARRYING ON BUSINESS OPERATIONS IN JAPAN (1)

by MASATAKA OKURA*

CONTENTS OF THE ARTICLE:

* Chief International Tax Affairs Section, Tax Bureau, Ministry of Finance, Tokyo

** To be published in the next issue

A BRIEF OF THE PRESENT TAX SYSTEM

In 1964, the national income of Japan is estimated to have been Y19,895 billion. Total taxes levied by national and local governments were Y4,423 billion for the same fiscal year, so that the total tax burden was roughly 22% of national income, or about 46,000 yen ($128; 360 yen is equivalent to 1 dollar) per inhabitant.

The present tax system of Japan is composed of the following direct taxes and indirect taxes.

Direct Taxes

National Tax:

Income Tax (Individual Income Tax), Corporation Tax (Corporate Income Tax), Inheritance Tax, Gift Tax;

Local Tax:

Prefectural Inhabitants Tax, Enterprise Tax, Municipal Inhabitants Tax, Automobile Tax, Light Vehicle Tax, Mine Lot Tax, Property Tax, City Planning Tax;

Indirect Taxes

National Tax:

Liquor Tax, Commodity Tax, Sugar Excise Tax, Playing Cards Tax, Gasoline Tax, Local Road Tax, Admission Tax, Travel Tax, Customs Duty, Monopoly Profit, Registration Tax, Stamp Tax, Securities Transaction Tax, Bourse Tax, Tonnage Tax, Special Tonnage Tax;

Local Tax:

Prefectural Tobacco Consumption Tax, Local Entertainment Tax, Eating, Drinking & Lodging Tax, Municipal Tobacco Consumption Tax, Light-oil Delivery Tax, Electricity & Gas Tax, Bathing Tax, Real Property Acquisition Tax, Timber Delivery Tax, Hunters License Tax, Hunting Tax, Mineral Product Tax

The following table explains the relative importance of direct and indirect taxes in recent years.

Year	as % of total tax revenue						total taxes as % of national income
	National taxes		Local taxes		Total taxes		
	direct	indirect	direct	indirect	direct	indirect	
1961	55	45	77	23	61	39	22.1
1962	58	42	77	23	64	36	21.8
1963	58	42	76	24	63	37	21.5
1964	59	41	76	23	64	36	22.2

Note. Outline of the major national and local taxes are summarized in the Annex.

B TAXATION ON CORPORATIONS OR BRANCHES IN JAPAN

1 Organizational Arrangements through which foreign enterprises carry on business operations within Japan.

A foreign enterprise which decides to undertake its business operations within Japan will usually follow one of three alternative courses.

First, it might create what is tantamount to a branch in this country, in which case the foreign corporation is defined as a "foreign corporation having business in Japan". The "taxable income" properly attributable to that branch operation would be taxable to the foreign corporation in the year in which the profit is earned, whether or not remitted to the head office located in a foreign country.

Second, the foreign corporation might seek to retain its own status of "foreign corporation without business in Japan" by expanding into Japan through another entity. Thus, it might buy stock in an existing Japanese corporation or it might create its own new subsidiary in Japan, incorporated under its law. The corporation or subsidiary would of course be a domestic corporation taxable on its own profits in the year in which the profits are earned. The foreign parent itself would be subject to a withholding tax of normally 20 percent on the gross amount of dividends paid by its Japanese subsidiary.

Third, a foreign corporation might use in conducting operations within Japan a combination of the first two. A Japanese subsidiary might also be used as an agent of its foreign parent corporation.

In that event, the foreign parent corporation would normally be treated as a "foreign corporation having business in Japan" and subject to Japanese corporation tax on the income from business activities in Japan through the agency capacity of its Japanese subsidiary.

The Japanese subsidiary is naturally subject to Japanese tax on the portion of the profits properly attributable to the subsidiary itself. But that portion would only be taxable to the foreign parent corporation at the point of distribution.

The succeeding part (2) deals with the tax effect where the foreign corporation remains a "foreign corporation without business in Japan" but makes use of a Japanese subsidiary to engage in business within this country. Part (3) will then consider the tax problems if the foreign corporation becomes a "foreign corporation having business in Japan".

Explanation must necessarily be given here of the tests which determines whether a foreign corporation becomes a "foreign corporation having business in Japan" and accordingly it becomes subject to Japanese tax with respect to its income from business.

When a foreign corporation is deemed to have business in Japan

In the case where a foreign corporation comes under any of the following categories, it is deemed to have business in Japan and accordingly taxed on the business income from the sources within Japan.

a. It has a branch, office, factory or other fixed place of business in Japan. The use of facilities solely for the purpose of purchase or storage of goods or merchandise, or solely

for the purpose of advertising, publicity or other activities of an auxiliary nature is not considered as a fixed place of business in this sense;

b. It carries on a construction, installation or assembly project in Japan or business consisting of providing personal services in the nature of the supervision of construction or the like activities in Japan (but only if the constructions, etc. or the business is carried on for more than twelve months); or

c. It has in Japan the following types of agent; namely—

(i) A person who has and habitually exercises an authority to conclude contracts in Japan for or on behalf of the foreign corporation (but not including a person whose activities are limited exclusively to the purchase of goods or merchandise or a person who engages in the same kind of business as the foreign corporation concerned and for whose business the exercising of the authority to conclude contracts for the corporation is indispensable).

(Remarks) An agent "who engages in the same kind of business as foreign corporation concerned and for whose business the exercising of the authority to conclude contracts for the corporation is indispensable", means as an example, the Japanese company carrying on international air transportation, which is required to sell tickets for foreign air lines under the IATA or other agreements.

(ii) A person who habitually maintains in Japan a stock of goods or merchandise from which he regularly fills orders on behalf of the foreign corporation, or

(iii) A person who habitually secures orders, negotiates or performs other important activities in Japan for concluding contracts, exclusively or almost exclusively, for or on behalf of the foreign corporation.

(Remarks) The type of business mentioned in *a* above is referred to as "ordinary type of business", while the business mentioned in *b.* and *c.* is referred to as "special type of business" in the following sections.

Reference to Tax Treaties

Japan has entered into treaty relations with the United States[1], Canada[2], Sweden, Pakistan, Norway, Denmark, India and the State of Singapore, The Republic of Austria[3], New Zealand[4], the United Kingdom[5], Thailand[6] and Malaya[7]. According to these tax treaties, a foreign corporation shall be subject to tax in Japan on its profits if it carries on business through a permanent establishment situated in Japan. And the concept of a permanent establishment is defined somewhat more in detail in each of these tax treaties, but it generally means a branch, office, factory or other fixed place of business. An agency having a general authority to negotiate and conclude contracts on behalf of the principal

1 The Bulletin intend to publish the treaty, signed at Washington, April 16, 1954, as soon as the protocol modifying and supplementing the treaty, signed at Tokyo, August 14, 1962 comes into force.
2 published in Bulletin 1964, p. 473 ff (not yet in force)
3 id. 1963, p. 243 ff
4 id. 1964, p. 386 ff
5 id. 1963, p. 80 ff
6 id. 1965, p. 113 ff
7 id. 1964, p. 428 ff

abroad or having a stock of merchandise from which it regularly fills orders on the principal's behalf, is also considered to come under this concept. However, the mere existence in Japan of a subsidiary, or the use in Japan of an independent agent does not of itself constitute a permanent establishment of its parent company or of the foreign principal.

2 Tax effect where a foreign corporation remains a "foreign corporation without business in Japan" but utilizes a Japanese subsidiary to engage in business within this country.

1. Relation between the parent corporation and its subsidiary corporation

With reference to intercorporate transactions, it would be determined whether prices, allocations etc., as reflected in their separate accounts, correspond to those which would have prevailed had the two corporations been bargaining at arm's length. This principle is reflected in many tax conventions and the OECD draft Convention (Article 9. Associated enterprises).

2. A foreign corporation without business in Japan

(a) Coverages of tax liabilities and pattern of taxation.

By and large, a foreign corporation without business in Japan is exempt from Japanese tax on the business income derived from the source of Japan and only subject to Japanese tax on such income from assets situated in Japan as interest on bonds (public or private) or bank deposits, dividends, distributions of surpluses, royalties, rentals etc.

Japanese income tax on these types of income is deducted at source at the time of payments. The withholding is normally at the rate of 20 percent on the gross amount received. A foreign corporation without business in Japan is however required to make a return and pay Japanese corporation tax on its net income, in case it receives the income from sources within Japan such as;

(i) income from the sale, transfer or exchange of immovable property or rights thereon situated in Japan,

(ii) income from the sale or cutting of timber situated in Japan, or

(iii) income from the sale of forestalled shares of a Japanese corporation or from the sale of the substantial interest in a Japanese corporation considered similar to the sale of the business itself.

Those foreign corporations without business in Japan who are to make self-assessment are advised to designate a resident in Japan an agent to take care of their payment of Japanese tax.

(b) Special Tax Concessions provided for in domestic law

Some concessions are temporarily granted to certain income derived by a foreign corporation without business in Japan. Interest on bonds or debentures issued in denominations of foreign currencies, or loans made from foreign financial institutions is taxed at the reduced rate of 10 percent, if the bonds or debentures are issued before April 1, 1967, or if the interest on the loans is payable during the period from April 1, 1962 to March 31, 1967.

The following table shows how the tax rates are reduced or the tax is exempt by virtue of the provisions of the Tax Treaties.

Resident in	Investment Income		
	Interest	dividends	royalties
U.S.	15%	0	15%
Sweden	15	15	15
Pakistan	0	—(15)	0
Norway	15	15	15
Denmark	15	15	15
India	—	—	—
Singapore	0	15(10)	0
Austria	10	20(10)	10
New Zealand	—	15	—
U.K.	10	15(10)	10
Thailand	10 ❖	20(15)	15
Malaya	—	15(10)	0

(Notes) 1. The figures shown in the brackets are applied to the dividends paid by a Japanese corporation controlled by the receiving corporation through share holding. In this connection, the definition of control (the holding ratio) varies from one to another.

2. The figure with ❖ is only applicable to interest received by a financial corporation of the Thailand on debentures issued by, or on loans made to a Japanese enterprise engaged in such industrial undertaking as manufacturing, construction etc.

Royalties received by the foreign corporation as consideration for providing a certain important technology of foreign countries under a contract concluded by March 31, 1967 are taxed at a reduced rate of 15 percent.

(c) Local Taxes

Neither inhabitants tax (prefectual and municipal) nor enterprise tax is imposed on a foreign corporation without business in Japan.

(d) Effect of Tax Treaties

In most of the conventions, investment income derived by a foreign corporation without business in Japan may be taxed at reduced tax rates or is exempt.

3. A domestic corporation (Subsidiary in Japan)

3-1 Corporation Tax

1) A domestic corporation defined

Under the Corporation Tax Law, a corporation having its head or main office within Japan is classified as a "domestic corporation". Any subsidiary company organized under the Japanese law falls under this category, since it is required under the law to have its head office within Japan. Ownership of the whole or a part of the capital of a company will have no relevance at all in determining whether the company is treated as a domestic corporation for tax purposes.

A domestic corporation is subject to the corporation tax on its entire income irrespective of whether it is derived from within Japan or not, and irrespective of the nature of income.

2) Accounting period

The accounting period is a fixed period for which taxable income of a corporation is computed. It may be freely chosen by a company, but it cannot exceed 12 months under the provisions of the Commercial Code. Therefore most companies usually adopt either a 6 months accounting period or a 12 months accounting period for convenience of computation. The change from one accounting period to another is always required to be reported to the chief of the proper taxation office.

3) Returns and payment

The Corporation Tax Law provides that domestic corporations must file a return and pay the tax within 2 months after the last day of each accounting period. If an accounting period exceeds 6 months, an interim return must be filed and payment made within 2 months after the last day of the first 6 months period. A corporation may choose as the amount of tax to be reported upon the interim return either an amount equivalent to 50 percent of the amount of tax paid for the preceding accounting period (if its accounting period is 12 months), or the amount of tax calculated on the basis of the actual taxable income of that 6 months period.

4) Blue return system

With the approval of the chief of a taxation office, a corporation which is maintaining its books and records according to the methods prescribed by Ministerial Ordinance may file a so-called "blue return". More than 70 percent of corporate taxpayers in Japan are nowadays filing blue returns.

(Remarks):

When a corporate taxpayer desires to file a blue return, it is required to file an application to the proper taxation office for approval ordinarily by the first day of the accounting period for which it is going to file the first blue return. A newly established corporation may file the application by the day three months after the day of its incorporation.

A corporation which obtains permission to use the blue return has the following advantages in computing its taxable income: (i) deduction is allowed for the amount credited against a bad debt reserve account and various other statutory reserve accounts, (ii) special measures are granted for tax exemption regarding the manufacturer of important new products and regarding the exportation of technology, (iii) accelerated depreciation of certain fixed assets is recognized, (iv) carrying forward for 5 years or backward for 1 year of losses is allowed and (v) special reserve (a sort of percentage depletion) for mine exploration is admitted.

5) What is taxable income.

For the purpose of the corporation tax, taxable income means the gross receipts of all kinds (including capital gains) less the gross amount of expenses and losses of a corporation for each accounting period, subject to some exceptions prescribed in the laws and regulations. Thus, it will generally coincide with the difference between the value of the

net assets at the beginning and that at the end of the accounting period, less any additional capital subscribed but with the addition of any amounts withdrawn from the corporation in the course of the accounting period. In practice, the computation of taxable income is broadly in conformity with normal commercial principles for computing the net profits of the corporation. However, with respect to the valuation of inventory, the depreciation of assets, the deductible amount of certain kinds of expenditures, etc., there are special rules governing for tax purposes.

6) How to value inventories

Under the tax regulation there are two bases for valuing inventories, any one of which may be adopted at the corporation's option; (1) cost or (2) cost or market price, whichever is lower. Where inventories are valued by the cost method, F.I.F.O., L.I.F.O. or other rules prescribed by Ministerial Ordinance may be utilized.

An inventory method, once properly adopted, cannot be changed unless permission is obtained from the chief of the proper taxation office.

7) Depreciation

a. Ordinary depreciation

Depreciation is allowed both for tangible assets such as buildings and machinery and for intangible assets such as patents, mineral interests and good will; but not for land or leasehold of land.

Depreciation may be computed, in principle, under the straight line method or the declining-balance method, except that only the straight line method is allowable with intangible assets.

The depreciation allowance must be computed on the basis of the useful life of the assets prescribed by Ministerial Ordinance. The rates of depreciation prescribed by such Ordinance are maximum for the purpose of the tax computation. As a rule, tangible assets may not be depreciated below a salvage value, which is always 5 percent of the cost of the assets.

Before depreciation can be claimed for tax purposes the equivalent provision must be made in the corporation's accounts. If the full amount claimable under the said Ordinance is not written off, the allowance for depreciation is limited to the amount actually claimed in the accounts. In the case of a corporation filing a blue return, the unclaimed depreciation allowances may be carried forward, subject to a maximum of 3 years.

b. Accelerated depreciation

For certain specified industries or for small and medium-sized enterprises, the advantage is granted to write off up to a specified percentage of the cost of property in the initial year. However, this advantage can be taken only by a corporation filing a blue return.

For example, in the following cases, in addition to the normal depreciation allowance, an initial allowance of certain percentages of the cost of the specified machinery and equipment can be claimed.

(i) Specified machinery and equipment of a corporation engaged in one of the important industries designated by Ordinance (e.g. steel, petro-chemical, electronics, automobile, aircraft, machine tool industry, etc.),

(ii) Specified machinery and equipment of a corporation engaged in designated scientific research or experimental work, and
(iii) Specified machinery and equipment of a corporation trying to put new technology on a commercial basis.

8) Loss carry-over and loss carry-back

A corporation filing a blue return may carry over the amount of losses in order to deduct from the taxable income of succeeding accounting periods for five years following the period in which the losses are incurred.

It may also claim a refund of the overpaid tax amount resulting from carrying back such losses to the taxable income of the preceding accounting period for one year.

9) Capital gains

Under the Japanese tax laws, a gain from a sale or exchange of capital assets is normally taxable in the same manner as profits or any other income. The taxable amount of a capital gain is the amount realized less the undepreciated balance of the property and the necessary expenses incurred for the sale. In case any capital loss is incurred, such loss is deductible from the ordinary taxable income. For treatment of the gain realized as a result of fire or compulsory conversion, there are special provisions provided in the regulations.

10) Inter-corporation dividends

Dividends received by a corporation from a domestic corporation may be excluded in full from taxable income of the recipient corporation to the extent that the amount of dividends received does not exceed the amount of dividends which is paid out of taxable income of the recipient corporation itself. If the amount of dividends received exceeds the amount of dividends paid out, the above-mentioned exclusion from taxable income of the recipient does not apply to the full amount of such excess amount, but only to the amount equivalent to 75 percent of such excess amount.

11) Tax rate

The corporation tax rate is 31 percent on the taxable income up to 3 million yen a year, and 37 percent on the taxable income in excess of 3 million yen. However, in order to encourage distribution of profits, the special reduced rates prescribed by the Special Taxation Measures Law are applied to that part of taxable income which is distributed by a corporation. Thus, the corporation tax will be calculated in the following manner (the amount of tax being total of T1, T2, T3 and T4 below).

$$(1)\ \left(\begin{array}{l}\text{the amount distributed}\\ \text{out of taxable income}\end{array}\right) \times \frac{A}{\text{total taxable income}} \times 22 = T_1$$

$$(2)\ \left(\begin{array}{l}\text{the amount distributed}\\ \text{out of taxable income}\end{array}\right) \times \frac{B}{\text{total taxable income}} \times 26 = T_2$$

$$(3)\ \left(\begin{array}{l}\text{the amount undistributed}\\ \text{out of taxable income}\end{array}\right) \times \frac{A}{\text{total taxable income}} \times 31 = T_3$$

$$(4)\ \left(\begin{matrix}\text{the amount undistributed}\\ \text{out of taxable income}\end{matrix}\right) \times \frac{B}{\text{total taxable income}} \times 37 = T_4$$

In the above formulae

If total taxable income is more than 3 million yen,

A is 3 million yen,

B is total taxable income less 3 million yen

If total taxable income is 3 million yen or less,

A is taxable income,

B is zero.

(Remarks) If the accounting period is 6 months, 1.5 million yen $\left(= \frac{3 \text{ million yen}}{12} \times 6\right)$ is used instead of 3 million yen referred to in the above formulae.

The amount distributed out of taxable income means the excess of the amount distributed as dividends out of taxable income of the accounting period of a corporation over the amount of dividends which have been received by that corporation during the accounting period and have been excluded from its taxable income pursuant to the provisions concerning inter-corporation dividends.

Therefore, if the amount of dividends received by a corporation exceeds the amount of dividends paid by that corporation, the special reduced rate is not applicable to the dividends paid by that corporation. In this case, the amount of dividends received in excess of the amount of dividends is taxable by one quarter as was explained in 10) above.

12) Credit for income tax withheld at source

Under the Japanese tax laws, income from interest on government bonds, debentures and deposits or from dividends received by a domestic corporation is subject to a withholding income tax of 20 percent. In filing a corporation tax return, the recipient corporation must include the gross amount of interest in its taxable income (dividends received may be excluded from its taxable income as explained in 10) above). The amount of tax withheld on such interest or dividends can be credited against corporation tax. Where the amount of corporation tax is insufficient to offset the amount of tax so withheld on interest or dividends, the amount of tax thus overpaid may be refunded upon a claim being made.

(Remarks) This withholding rate of 20% is being temporarily reduced to 10% under the provisions of the Special Taxation Measures Law in respect of the interest or dividends to be paid before April 1, 1967.

13) Credit for foreign taxes

a. Ordinary foreign tax credit

Foreign taxes on the corporate profits (including foreign local taxes) may be credited by a domestic corporation against its Japanese tax liability. The foreign taxes are creditable on the accrual basis, i.e., against Japanese corporation tax for the taxable year during

which such foreign taxes are payable. However, any excess over the following limitation is not creditable, unless it becomes creditable in accordance with "the carry-over and carry-back method" stated below.

limitation:

$$\text{Japanese corporation tax} \times \frac{\text{total income from sources without Japan}}{\text{entire income subject to Japanese corporation tax}}$$

carry-over and carry-back:

That part of total foreign taxes in excess of the above limitation may be carried forward for five succeeding years. On the other hand, unused limitation, i.e., the excess of the limitation over the foreign taxes payable, may be carried forward to increase the limitation for five succeeding years.

(Remarks)

1 In computing the total income from sources without Japan, income from sources within a foreign country which does not impose taxes on income may not be included. A net loss incurred in any foreign country is not taken into consideration.

2 In computing the entire income subject to Japanese corporation tax, losses carried over from previous taxable years are not taken into consideration. In other words, the entire income is that before deduction of carried-over losses.

3 Items of the above formula for calculating the limitation are those of the taxable year in which the foreign taxes to be credited are payable.

A domestic corporation may elect to treat such foreign tax paid as "expenses" deductible from gross income, instead of crediting it against its corporation tax.

(Remarks) Whether a taxpayer credits foreign tax against the Japanese tax or deduct it from the taxable income is to be selected with respect to all the foreign taxes on income of the accounting period concerned (partial selection not admitted).

b. Indirect foreign tax credit

If a domestic corporation received dividends from a foreign subsidiary of which not less than 25% of paid-in capital, or not less than 25% of shares with voting powers are owned by the domestic corporation, such amount of foreign tax (i.e. the foreign tax in the nature of tax on income) imposed on the profits of the foreign subsidiary as is corresponding to such dividends received by the domestic corporation shall be deemed to be paid by the domestic corporation for the purpose of foreign tax credit, provided that the domestic corporation includes such amount of foreign tax in its-taxable income (grossing up).

(Remarks) The indirect foreign tax credit, however, will not be allowed if the foreign subsidiary is regarded as foreign holding company, or established solely for tax considerations.

Such amount of foreign tax as is corresponding to the dividends is computed by applying the following formula.

A: foreign tax imposed on the income of the foreign subsidiary.

B: the income of the foreign subsidiary.

$$A \times \frac{\text{dividends received}}{B - A}$$

(Remarks) The income of the foreign subsidiary (B in the above formula) must be either i) or ii) below, whichever is the greater.

(i) income of the foreign subsidiary computed by the subsidiary itself as the basis of dividends distribution.

(ii) income computed according to the foreign corporation tax law; provided that no corporation tax shall be treated as expense, and income exempted from tax for special policy objectives shall be included in its income. Special accounting methods recognized under the foreign tax law shall not be applicable if they deviate extremely from normal accounting principles.

14) Special treatment of "Family Company"

a. Family company defined

Under the Corporation Tax Law, a "family company" is defined as a company in which stock ownership is held in any one of the following patterns.

(i) The aggregate amount of stocks owned by three or less shareholders (including corporate shareholders) and persons having a special relationship with them is equivalent to 50 percent or more of the total amount of outstanding stock of the company.

(ii) Four shareholders and their specially related persons own 60 percent or more of the total amount of stock outstanding.

(iii) Five shareholders and their specially related persons own 70 percent or more of the total amount of stock outstanding.

The persons having a special relationship with a shareholder include not only individuals, such as the spouse, children, parents or other relatives of the shareholder concerned, but also any company, 50% of whose stock is held by the shareholder concerned and his specially related persons.

b. Business transactions of family company

Special statutory provisions apply to a family company dealing with another in which it has an economic interest or which is in a position to influence its management.

If a family company buys or sells goods at prices too high or too low or takes any steps which results in its income being computed arbitrarily lower than would otherwise have been the case, then its income may be computed at the amount which it would have been in the absence of such transactions. Loans with improper interest rates, excessive compensation or fees, services rendered free of charge, and other like transactions which are considered different from the transactions made at arm's length with other enterprises, are the cases in which these provisions may be employed.

(Remarks) The provision is considered as but one of the phases of the so-called principle of substantial taxation aiming at the taxation of income where the income is economically attributed.

c. Surcharge on the retained profits of a family company

A family company is subject to regular corporation tax rates on its taxable income.

In addition, it is subject to a special surcharge on the amount of profits retained out of its profits of each accounting period, if the amount of the retention exceeds the highest of the following three figures:

(i) an amount equal to 25 percent of the income of the accounting period (for this purpose, tax-exempt income e.g. regarding the manufacturer of important new products is to be included).
(ii) an amount equal to 1,000,000 yen per year
(iii) an amount equal to 25 percent of the capital of the family company (as of the end of the accounting period) less the amount of its accumulated retained profits (as of the beginning of the accounting period).

The tax base of surcharge for the family company is the amount of retention out of its profits of each accounting period in excess of the highest amount as mentioned above, and tax rates applicable to that base are as follows:

(i) 30 million yen or less (per year) of the base amount 10%
(ii) over 30 million yen up to 100 million yen of the base amount 15%
(iii) over 100 million yen of the base amount 20%

However, a family company shall not be levied by this surcharge tax, if it comes under the category of a family company by taking into account the stock owned by a parent company which is itself not a family company. (e.g. A subsidiary of a non-family company is exempt from this surcharge.)

3-2 Inhabitants Taxes on Corporation

These are local taxes levied by the prefectures and the municipalities such as cities or towns where an office or a place of business is located.

Each tax consists of two parts:

a Fixed amounts of tax per year per office: 600 yen to the prefecture, and 2,400 yen to the municipality with a population of 500,000 or more. The latter may vary according to the population of the municipalities.
b 5.5 percent of the amount of the corporation tax to the prefecture, and 8.4 percent of the amount of the corporation tax to the municipality. This rate varies somewhat from prefecture (or municipality) to prefecture (or municipality).

3-3 Enterprise Tax

This is a local tax levied by the prefecture where an office or a place of business is located. The rate of tax is as follows:

a In the case of a corporation engaged in the business of supplying electricity or gas or of insurance, an amount equal to 1.5 percent of its gross revenue.
b In the case of any corporation other than those referred to in a. above, the following rates are applied on its net profits (the same as the taxable income for corporation tax purposes),

1,500,000 yen or less (per year)	6%
Over 1,500,000 yen up to 3,000,000 yen	9%
Over 3,000,000 yen	12%

The amount payable as enterprise tax is treated as deductible expense for the purpose of corporation tax on the income of the subsequent accounting period in the normal cases.

3 Tax effect where a foreign corporation becomes a "foreign corporation having business in Japan" (Japanese Branch).

1 *General*

a A foreign corporation which carries on an ordinary type of business as defined in above (1) a., is liable to pay corporation tax on its totals of income from business carried on in Japan and income from assets situated in Japan.

b If a foreign corporation has in Japan only a "special type of business" as defined in (1) b. and c. above, the income attributable to such business is subject to corporation tax, but the kind of income which is subject to withholding income tax and is not attributable to such business is not subject to corporation tax.

c Tax treaties (except for with U.S.A., the three countries of Scandinavia and Pakistan) adopt the principle of attribution to permanent establishment instead of its force of attraction, with the result that the business income solely attributable to P.E. (regardless of ordinary or special type of business) is subjct to corporation tax (investment income is subject to income tax).

2 *Computation of taxable income*

a The Corporation Tax Law provides that the provisions concerning the computation of taxable income of a domestic corporation, if not otherwise specifically prescribed, shall also apply to a foreign corporation as far as its income from Japanese sources is concerned. Therefore, in computing the taxable income, the Japanese branch must follow, as a rule, the same methods as are explained in (2) 3, with respect to inventory valuation, depreciation, or other deductions or credits, etc.

b Special rules provided for in the present law to deal with business carried on concurrently in Japan and abroad are as follows:

(i) Any portion of the profits arising to an enterprise from the sale of goods or merchandise abroad shall not be treated as derived from sources within Japan by reason of the mere purchase of such goods or merchandise in Japan by the enterprise.

(ii) Income from the sale in Japan of goods manufactured wholly or partly in a foreign country shall be treated partly as "domestic income" and partly as "foreign income". Income from the sale in a foreign country of goods manufactured in Japan shall be treated in the similar manner. Such income is allocable between the countries concerned in accordance with the normal "at arm's length" principle.

(iii) Income from the activities such as a construction, installation, assembly project or the like undertaken in Japan is treated as income from sources within Japan, even

if the contract thereof is concluded or necessary labor or materials are procured outside Japan.

(iv) As regards international maritime transportation, income therefrom is allocated to domestic and foreign sources on the basis of receipts in respect of the passengers or cargoes embarked in Japan or abroad. The income from international air transportation is allocated to domestic and foreign sources on the basis of such factors as the receipts, expenditures, value of the assets held in respect of the activities carried on in Japan and abroad or other relevant factors.

(v) In respect of casualty or life insurance business, that part of income which is derived from contracts concluded through a place of business or an agent located in Japan is treated as income from sources within Japan.

(vi) The income from the advertising activities carried on by publishing or broadcasting business is treated as income from sources within Japan to the extent that such advertising is performed within Japan.

(vii) In cases where such auxiliary activities as advertising, publicity or the like are performed in Japan by an enterprise for its own business carried on outside Japan, no portion of the profits are treated as derived from sources within Japan by mere reason of such activities and no expenditures made in connection with such activities are deductible in calculating the income of the enterprise derived from other business activities in Japan.

(viii) In cases where money, industrial proprietorships or other assets pertaining to the business in Japan of an enterprise are made available for its own business outside Japan no interest, royalty or other income is deemed to arise in respect of the business in Japan from providing such assets. No expenditure incurred incidental to the use of such assets are deductible in calculating the income derived from the business in Japan of the enterprise.

3. *Computation of tax amount*

As stated in 2. a. above, the taxable income and the amount of corporation tax of the Japanese branch is computed, in principle, by the same method as a Japanese domestic corporation. However, there are a few exceptional rules as explained below.

a The special reduced rates of tax on the distributed profits of a domestic corporation are not applicable to the Japanese branch of a foreign corporation. As a result, the rate structure is much simpler; namely,

(i) The ordinary corporation:
The amount of income for each accounting period corresponding to annual income of not more than 3,000,000 yen..... 31%
The amount of income for each accounting period corresponding to annual income of more than 3,000,000 yen..... 37%

(ii) The special corporation and the public interest corporation: Income for each accounting period 26%

b Inter-corporation dividends

The Japanese branch may exclude in full the dividends received from Japanese domestic corporations from its taxable income. This treatment differs from the case with a domestic corporation in that the dividends received by the latter will not always be non-taxable (See 2. 3. 3-1 10).

4. *Special rules for accounting period*

As a rule, the accounting period of a Japanese branch shall coincide with that the foreign corporations uses itself in computing its income. However, in the event a Japanese branch discontinued its business activities during the course of its accounting period, the period from the beginning of its accounting period to the day on which it discontinued its business is deemed to constitute one accounting period. If the foreign corporation still derives income from immovable property situated in Japan, the period from the day following the date on which the business was terminated to the last day of the original accounting period is deemed to constitute another separate accounting period.

5. *Withholding, etc. of income tax*

a As mentioned before, a foreign corporation is, as a rule, subject to income tax at the rate of 20% in respect of interest, dividends, royalties, rentals etc., by means of withholding at source when they are paid in Japan. When such income is paid out of Japan to a foreign corporation, and the payer has P.E. or other place of business in Japan, the payer must likewise withhold the tax equal to 20% of such payment. However, the payer is not required to withhold taxes on such income as royalties, interest on loan and rentals, when the recipient corporation obtains from the taxation authority and presents to the payer a certificate that the income concerned is subject to corporation tax together with its income from business in Japan.

(Remarks) If a foreign corporation has only "special type of business in Japan", this certificate procedure is recognized only with respect to the income which is attributable to the "special type of business".

b Taxes withheld at source on income received by a foreign corporation with business in Japan are creditable against the corporation tax payable to it upon filing a return (only withholding tax on dividends is not creditable), as far as the income is subject to the corporation tax.

6. *Inhabitants Taxes and Enterprise Tax*

The Japanese branch is subject to inhabitants taxes and enterprise tax with respect to its income from Japanese sources in a similar manner as a domestic corporation.

To be continued.

CORPORATE TAXATION IN MALAYSIA

by

H. W. T. PEPPER

Introduction

Income Taxation was introduced in the States of Malaya (then Federation of Malaya) and Singapore in 1948 and a little later in Sabah and Sarawak. Singapore, Sabah, and Sarawak joined the 11 states of the Federation of Malaya to form the 4-state federation known as "Malaysia" on 15th September, 1963. Various steps have been taken since that date towards integrating the 4 income tax systems, the most important of which were the 1965 Budget proposals introduced by the Hon'ble Minister of Finance, Mr. Tan Siew Sin, J.P., on 25th November, 1964.

2 Included in these Budget proposals was a reference to the Malaysian Government's intention to introduce a single Pioneer Industries (Relief from Tax) Bill to replace the 4 existing enactments—this is referred to in more detail below. In addition, corporate taxation in the 4 regions was largely harmonised and a major step was taken towards the harmonisation of personal taxation. Ultimately, a single Income Tax law will replace the 4 regional Income Tax laws but this will be a major drafting operation and no precise date has yet been fixed for its completion.

3 Malaysia has an orthodox income tax system on the "unitary" principle whereby all types of income are aggregated for the purpose of computing the income tax liability. Individual taxpayers are entitled to deductions for earned income relief (Malaya and Singapore) and personal reliefs for self, wife, children and for provident fund contributions and life assurance premiums. Donations to approved charitable institutions are deductible for income tax purposes and there is an allowance for wife's earnings where the wife has business or employment income.

4 Sarawak, prior to the 1965 Budget, had a schedular system of taxation under which different types of income were taxed at different rates of tax and personal reliefs were allowed as deductions only in computing income tax on employment income.

5 When Sabah and Sarawak joined the Malaysian federation they were given an undertaking that their tax levels would only be raised to those existing in the States of Malaya in graduated steps. This pledge has been honoured in that no changes were made in the 1964 Budget and those in the 1965 Budget were merely a stage in the harmonisation process. These proposals have incidentally been set out in a Government White Paper on "Tax Changes Within Malaysia" which has been reprinted and made available to the public.[1]

Rates of Tax

6 The tax on corporate incomes is 40%[2] but this tax is in effect regarded as a prepayment by the shareholder when the income of a Malaysian corporation is distributed as

1 Obtainable from the Government Printer, Kuala Lampur, Malaysia. (50 cents Malaysian currency = 17 cents U.S.)

2 Tin mining concerns are to pay additional tax during 1965 the details of which have not yet been finally settled. The tax will not apply to concerns working marginal or low-grade deposits.

dividends.[3] Dividends are normally expressed as a certain gross figure less tax at 40% but the tax paid by the corporation on its income is available to cover the tax deductible from the dividends.

7 The shareholder is assessed[3] to income tax on the gross Malaysian dividends and the 40% tax relating to the dividend is fully allowed as a deduction from the tax payable on his total income.

8 Personal income tax rates range from 6% to 50% throughout Malaysia but in Sabah and Sarawak the personal reliefs are somewhat higher than in Malaya and Singapore and the tax on the first $50,000 of chargeable income is abated by 40%. Further information on personal taxation in Malaysia may be obtained from the booklet "Personal Income Tax in the Federation of Malaya"[4] which will in due course be expanded to cover Malaysia as a whole under the revised title "Personal Income Tax in Malaysia".

9 More detailed information about company taxation in Malaysia will be obtainable from a booklet to be published shortly.[5]

The Taxation of Foreign Corporations

10 There is no basis difference between the treatment of foreign and domestic corporations[6] except in the matter of dividend taxation (referred to below) which is affected by the territorial locus of the dividend.

11 The Malaysian Inland Revenue Department has an agent[7] in London, England, authorised to compute and assess income tax liabilities of corporations and other taxpayers resident overseas who wish to have their tax affairs dealt with in London. This facility is used by some of the corporations operating wholly or mainly in Malaysia which have their residences in the United Kingdom.

Non-resident corporations

12 A non-resident corporation is liable to Malaysian income tax only on the income it derives from Malaysia. There is no Malaysian tax payable on the dividends such a corporation declares out of income which has been subjected to Malaysian tax (except where the dividends are remitted to Malaysia—see paragraph 13). Such dividends represent foreign income and tax has already been paid at 40% on the Malaysian profits from which the dividends are paid.

13 Where a non-resident corporation pays dividends out of Malaysian income to residents of Malaysia which are received by them in Malaysia, these dividends are taxable on the recipient, subject in certain circumstances to an allowance to the shareholders for the tax effectively borne (see paragraphs 27-28).

3 This applies to Malaya, Singapore and Sabah. Sarawak presently has no tax on dividends which in effect are regarded as fully taxed at source but no relief or refund is due to the shareholder.

4 Government Printer, Kuala Lumpur.

5 'Company Taxation in Malaysia' Government Printer, Kuala Lumpur.

6 The word 'corporation' is used in this article for all corporate enterprises to avoid confusion. The word 'company' is however used in Malaysian legislation.

7 The Overseas Territories Income Tax Office, 26, Grosvenor Gardens, London, S.W.1., ENGLAND.

14 The same rate of tax, the same rules regarding income tax returns and payment of tax, and regarding the computation of income for tax purposes apply to non-resident corporations in exactly the same way as to resident corporations.

15 Where a non-resident corporation carries on trade through a branch or agent in Malaysia, the profits allocated to the Malaysian business exclude any profits which are not directly attributable to the operations carried on in Malaysia.

16 In determining the profits of a branch or "permanent establishment", executive and general administration expenses reasonably allocable to the establishment are deducted, whether incurred in Malaysia or not, on normal income tax principles. This principle is formally confirmed in Double Taxation Agreements made by Malaysia with other countries.

17 The U.S.A. and Federal Germany have entered into formal investment guarantee agreements with the States of Malaya but no such formal arrangements have been made with other countries such as the United Kingdom, France, Holland, Japan, Denmark, Sweden and Norway which have had considerable business interests in Malaya for many years. The position regarding overseas remittances of income and capital is referred to in paragraphs 58-62.

18 References to non-resident corporations are to those which have their control and management abroad. The statutory definition in Malaysian income tax law of a resident corporation is one of which the control and management are in Malaysia, regardless of where the corporation was incorporated or registered.

19 Where a non-resident corporation trades in Malaysia through a branch the position is as indicated above. Where however a non-resident corporation sets up a subsidiary corporation which is resident in Malaysia the subsidiary corporation is treated in exactly the same as any other resident corporation (see paragraphs 21 et seq.).

Inter-corporate dividends

20 There is no additional income tax on dividends passing from one corporation to another even when the paying corporation is a resident subsidiary of a non-resident corporation. There is in fact no additional tax on dividends paid by resident corporations to any non-resident shareholder—Malaysia has no with-holding or coupon taxes in respect of such dividends.

Taxation of domestic corporations

21 Domestic, i.e. resident, corporations in the States of Malaya and Singapore are assessable on all income accruing in or derived from Malaysia and on foreign income to the extent that it is remitted to Malaysia. Domestic corporations in Sabah or Sarawak are assessed on their world income from any trade or business controlled or managed in Sabah or Sarawak respectively.

22 The computation of income tax profits in the case of a domestic corporation is made in the same way as the computations of profits of non-corporate businesses. In Malaysia such computations are made on the orthodox lines that generally accepted internationally. Profits taxed are those *earned* in the basis period as calculated on normal accountancy principles.

23 Allowances are made for bad debts finally written off and for reasonable reserves against specific doubtful debts.

24 Capital expenditure is not deductible in arriving at income tax profits but there is a series of percentage allowances for many types of capital expenditure, for example, on factories and machinery, and for expenditure on mines and plantations, which are referred to in paragraphs 35-40.

25 Trading stocks or inventories are normally valued at cost or at market value whichever is the lower.

26 Industrial royalties payable by domestic corporations to patentholders overseas are taxable but where a Double Taxation treaty is made with the country of residence of the patent-holder exemption from Malaysian income tax is normally given. Corresponding full or partial tax-sparing is sought in the other country so as to enhance the value of the tax incentive given for the use of new industrial processes in developing industry in Malaysia.

Relief for foreign tax paid

27 Where the income of a domestic corporation from abroad is taxable in Malaysia and has already been taxed in the country of origin, relief may be due for the foreign tax paid. Where the country of origin is one with which Malaysia has a Double Taxation treaty, a credit for the foreign tax will be given. Where the country of origin is a member of the British Commonwealth of nations, a credit of approximately half the foreign tax is at present due provided the country in question has reciprocal relieving provisions in its own tax legislation.

28 Where neither of these types of relief is due the foreign tax is effectively allowed as a deduction where the foreign income is assessed on the remittance basis because the amount available for remittance is of course reduced by the tax payable in the country of origin.

Basis of Assessment

29 The basis of assessment adopted in Malaysia is favourable to newly formed corporations. In Sabah and Sarawak, a corporation is taxed on its income of the preceding year so that there is in effect a time lag between the accrual of income and the date that tax liability becomes due upon that income.

30 In the States of Malaya and Singapore, tax liability runs concurrently with the existence of the source of income. When a corporation commences business the tax for the period from the date of commencement to the 31st December in the same year is based on the actual profits of that period. The tax for the 2nd assessment year (the assessment year coincides with the calendar year) is based on the profits for the first 12 months' trading.

31 For the 3rd and subsequent years the tax liability is calculated on the profits of the preceding calendar year or the accounting year ended within that year.

32 In the year of cessation the tax is calculated on the actual profits from 1st January to the date of cessation and in the penultimate year the Tax Department will increase the existing assessment to the actual profits of the calendar year if these are greater than the assessment.

33 The corporation may, if the actual profits for the 2nd and 3rd assessment years are less than the assessments for those years (because for example of an exceptionally successful first year's trading), opt to be assessed for those years on the actual profits.

34 Normally of course the profits for the first year or two are at a lower level than those achieved in later years and in such cases the basis of assessment adopted whereby the lower profits form the basis for more than one year of assessment is very favourable to the corporation.

Depreciation

35 Allowances in respect of capital expenditure incurred:—

(a) in providing factories, machinery and vehicles;

(b) in prospecting for and gaining access to minerals and providing the structures, works and plant for extracting them;

(c) in clearing jungle for plantations and planting the cultivated area;

are provided under various provisions which are common (with local variations) to all 4 regions of Malaysia.

36 In general the relief given is on the "100%" basis, i.e. the total allowances due over the life of the asset are equivalent to the total cash "loss", represented by the difference between the purchase price and the final scrap or sale price.

37 "Initial allowances" are given in the first year in respect of building and machinery, in addition to the annual allowances which represent the actual depreciation in value through use.

38 Where an asset is sold for a price below the figure representing cost price less all depreciation allowances due to the date of sale a "balancing" allowance is given so that the total depreciation coincides with the net cash loss. Where the sale price is higher than the value as written down by allowances the matter is adjusted by a balancing charge to achieve the same balance between total net allowances and the cash loss.

Mining: depletion allowances etc.

39 Depletion allowances in respect of capital expenditure incurred in connection with the mining operations are granted in all regions of Malaysia and these allowances extend in Malaya and Singapore to expenditure on acquiring mineral rights. The general rule, however, throughout Malaysia is that minerals are owned by the State Governments and are made available for exploitation under mining leases. Allowances are made for the annual rentals payable under a lease and for the royalties or "tribute" payable when mineral rights are sub-let.

40 Should prospecting operations prove abortive the cost of the operations is wholly deductible against other taxation income.

Dividends: domestic corporations: tax position

41 When paying a dividend a domestic corporation normally deducts income tax at 40%. The tax deducted is accounted for by the tax charged on the corporation's income. No further payment by the corporation is required in respect of tax deducted from dividends unless the total of the tax paid on its income in the current and in previous years

(less the tax relative to previous dividend payments) is less than the current dividend tax.

42 The resident shareholder is taxable on the gross dividend received but receives a credit[8] at the rate of 40%, representing the tax paid by the corporation on its income. Where the shareholder is not chargeable at the highest personal rate of tax (now 50%) the effect of this treatment is that no tax is due from him on his dividends where his top rate is 40%. Where his top rate is below 40% receipt of Malaysian corporate dividends results in a reduction of the tax payable on other income, or a refund, because the 40% tax credit due on the dividends exceeds the marginal rate of tax.

Tax Incentives for foreign investment

43 Each of the 4 regions of Malaysia has its own income tax incentive legislation (see paragraphs 45-53). Requests for tariff protection, where this is claimed as necessary to shield an infant industry, are considered by a Tariff Advisory Board.

44 It has been decided to establish a common market for Malaysia as a whole and consideration is at present being given to the first list of items which it is proposed should have common market treatment. Meantime, the islands of Penang (in the States of Malaya), Singapore, and Labuan (in Sabah) have free port status.

45 Income tax exemption for pioneer enterprises takes the form of a tax holiday[9] for 2, 3, 4, or 5 years according to the amount of expenditure incurred on factory and machinery. These provisions will be applied uniformly to the States of Malaya, Singapore and Sabah by the Pioneer Industries (Relief from Tax) (Variation) Act, 1965, the Bill for which was introduced into the Malaysian Parliament in March 1965. This enactment also given powers to make an Order replacing the existing Sarawak legislation by a law on the lines of those in the rest of Malaysia.

46 The table of expenditure limits[10] for pioneer tax exemption is:—

Capital Expenditure on factory and machinery	Tax holiday period
Up to $ 250,000	2 years
Exceeding $ 250,000	3 ,,
Exceeding $ 500,000	4 ,,
Exceeding $1,000,000	5 ,,

47 As an alternative to tax holiday exemption it is intended to introduce at a later stage a system of enhanced capital allowances. In cases where the maximum relief of this kind is due the enterprise will be able, for income tax purposes to write off its expenditure on factory and machinery at 20% per year over a period of 5 years.

Applications for pioneer status

48 The normal procedure is for the Malaysian Government to publish lists of pioneer products which it would like to have manufactured in Malaysia. The Government may either take the initiative itself or may accept the recommendation of an applicant in giving a particular product pioneer status.

8 This is the case in Malaya, Singapore and Sabah. In Sarawak dividends are not taxed and do not give rise to a tax credit to the shareholder.

9 The manner of computing profits during the tax holiday period and the implications regarding dividends are dealt with in subsequent paragraphs.

49 The second stage is to consider applications for pioneer certificates from particular applicants proposing to commence manufacture of the pioneer products.

50 A very large number of pioneer industries have in fact been set up in Malaysia in the few years since the existing Pioneer legislation become effective, representing corporate capital of approximately $1,000 millions[11] emanating from the United Kingdom, Japan, the U.S.A., Denmark, Sweden, Norway, Hongkong, Taiwan and other countries.

Computation of pioneer profits

51 During the tax holiday period the profits of a pioneer company are computed without any deduction for depreciation of factory or machinery. The whole of the capital expenditure on qualifying assets is regarded as incurred on the day after the end of the tax holiday period. The effects of these provisions are:—

(i) the profits of the tax holiday period, which are exempt from tax, are maximised;
(ii) exceptionally generous income tax treatment is given to the taxation of the company's profits after the end of the tax holiday period by deeming all qualifying capital expenditure incurred in the tax relief period as fully available for capital allowances which are thus wholly deducted from the *taxable* profits;
(iii) the significance of the maximisation of exempt pioneer profits is that these profits are carried to a separate account. Dividends paid from that account, whether paid in the tax holiday period or at any time thereafter, are exempt from Malaysian income tax.

10 The equivalent expenditures in other currencies are:—

Tax Exemption Periods: Qualifying Fixed Expenditure on factory and machinery in various currencies

Tax exemption period	Malayan dollars	U.S. dollars	Sterling	Dutch guilders	French francs	German Deutsch marks	Swedish kroner
2 years	–	–	–	–	–	–	–
3 years	250,000	83,333	30,000	291,250	400,000	321,875	416,875
4 years	500,000	166,666	60,000	582,500	800,000	643,750	833,750
5 years	1,000,000	333,333	120,000	1,165,000	1,600,000	1,287,500	1,667,500

Tax exemption period	Yen (Japan)	Swiss francs	Danish kroner	Norwegian kroner	Italian lire
2 years	–	–	–	–	–
3 years	30 million	350,000	560,625	580,000	50,635,000
4 years	60 million	700,000	1,121,250	1,160,000	101,270,000
5 years	120 million	1,400,000	2,242,500	2,320,000	202,540,000

Note: Figures in foreign currencies are approximate.

11 Authorised capital of all pioneer corporations $1,000,000,000 of which approximately $500,000,000 has been issued.

Tax-sparing Relief in Investment Country

52 In order to make the "pioneer" tax exemption granted in Malaysia effective, as far as non-resident investors are concerned, Malaysia, when negotiating Double Taxation treaties, endeavours as far as possible to obtain tax-sparing relief in the other negotiating country corresponding to the exemption granted in Malaysia. In a number of cases where complete or substantial agreement has been obtained with other countries for treaties not yet promulgated, tax-sparing arrangements form part of the agreement.

53 In cases where no tax-sparing arrangements yet exist and in certain other types of case, it may be more beneficial if the proposed alternative, of enhanced capital allowances applies. In that event capital allowances at enhanced rates will be deducted each year during the tax relief period and any surplus of allowances over the profits of that period will be available to set against the taxable profits of subsequent periods.

Registration, licensing, etc.

54 Apart from registration under the appropriate Companies Ordinance, there are few pre-requisites to the doing of business by corporations in Malaysia. At present there is separate corporate legislation (based on U.K. Company Law) in each of the 4 regions of Malaysia but the drafting of a single Malaysian law to replace the old legislation has reached an advanced stage.

55 Business is done in Malaysia both by locally registered corporations, and by branches of foreign corporations[12] but the increasing tendency is to form a Malaysian subsidiary corporation and this is the normal procedure where pioneer exemption is sought.

56 Statutory requirements for corporations include the usual duties to keep proper books of account, to appoint qualified auditors render annual returns, prepare accounts and balance sheets and hold an annual general meeting of shareholders.

Trade Marks, Patents etc.

57 A registration system is in force to protect trade marks which are duly registered and gazetted, and patents, industrial designs, and copyrights are also protected.

Remittances of profits, capital etc.

58 There are no restrictions on transfers of income or capital between Malaysia and other countries in the Sterling Area. As regards transfers outside the Sterling Area the position is described in the following paragraphs.

59 Remittances to persons resident outside the Sterling Area of dividends, interest, and agreed profits on all bona fide investments are subject to exchange control approval, which, normally, is given freely.

60 The repatriation to *any* country of direct investments in new industrial and development projects that have been granted pioneer status is not restricted. The repatriation outside the Sterling Area of other investments, such as private portfolio investments, is subject to exchange control approval.

12 These branches have to be registered under the respective Companies Ordinances. There were 1244 such branches in the States of Malaya alone during 1964.

Other foreign exchange transactions: convertibility of foreign exchange etc.

61 The accounts of non-residents of the Sterling Area are designated External Accounts. In this category would fall those who normally reside and are in Malaysia for a limited time for business or tourism. Funds standing to the credit of an External Account are freely convertible into any foreign currency.

62 Most imports are on "open general licence" (which means in practice no licence is needed) but some are on specific licences—this applies mainly by point of origin (for example South Africa and Iron Curtain countries). Where a licence is granted foreign exchange is made available to effect the purchase.

Stock Exchange, Company flotations etc.

63 There is a well organised Stock Exchange with branches in the large towns which deals both in local and foreign shares. The techniques of raising capital by making public share issues, by offering shares for tender, and by placements with brokers are all in use. There are local share registers for shares in a number of overseas companies the local registrars usually being the Malaysian branches of international firms of highly reputable chartered accountants.

Labour etc.

64 There are Workmen's Compensation Ordinances providing for payments to workmen who sustain injury at work and in the States of Malaya and Singapore there are Government provident funds in respect of which, broadly speaking, both employer and employee contribute 5% of the employee's pay for lower-paid employees in the under M $500 per month group. In addition a payroll tax of 2% of payroll tax is payable from 1965 and will be extended to Sabah and Sarawak in 1966.

65 The standard of education of the population is high and Government has established apprenticeship schemes and provided technical colleges and univerisites to develop the higher skills. The mobility of labour has been encouraged by the introduction of Government employment exchanges so as to enable employers with vacancies and employees seeking work to make contact.

Communications

66 Communications by air, rail, road, and sea are well developed, the road network being among the best in Asia. Posts and telecommunications are also efficient by international standards and offer good services both internally and abroad. Radio is well established throughout Malaysia and television has recently been introduced in Malaya and Singapore. Advertising media include radio and television and the newspapers which are published in the national language, the English language and the main vernacular languages.

IN THE NEXT ISSUE:

TAX HARMONISATION IN A FEDERATION — THE 1965 BUDGET IN MALAYSIA

by H.W.T. PEPPER

II

WORLD TAX REVIEW

INDIA

TAX NEWS

FINANCE BILL, 1965

INDIRECT TAXES*

Excise:

Excise duty on footwear, cycle parts, cycle tyres and tubes, printing and writing paper used in the publication of registered dailies including their weekly issues to be removed.

Effective rates of fabric duty on price controlled varieties of grey as well as processed coarse and medium cloth are to be reduced by 50 per cent.

Duty on vegetable products to be reduced by 50 per cent.

Cheaper type of printing and writing paper and certain other qualities of typing manifold paper to be reduced by 30 per cent.

Duty on rayon yard of coarser and industrial deniers, cellulosic stable fibre to be reduced and marginal reduction of duty on staple fibre yarn.

Duties on a few other items such silk fabrics, gramphones, cigars, silver are also to be removed. These reductions will mean a loss of revenue of Rs. 29.5 crores. If these reductions of duty on articles of common consumption are not passed on to the consumer, the duty will be re-imposed in the course of the year.

Certain technical adjustments are being made in excise duties mainly in respect of cigarettes and tyres.

The duty on copper and copper alloys in crude form will be raised from Rs. 300 to Rs. 1,000 per tonne and on circles and sheets etc. from Rs. 500 to Rs. 1,500 per tonne.

The duty on steel ingots, plates and rails and sleeper bars will be raised by Rs. 10 per tonne, on semi-finished products and bars, rods and structurals by Rs. 15 per tonne, on black sheets and hoops by Rs. 40 per tonne, on seklp by Rs. 50 per tonne, on strips by Rs. 90 per ton and on galvanised plates and sheets by Rs. 100 per tonne. The effective duty on tin plates and tinned sheets are to be raised from Rs. 165 to Rs. 225 per tonne. The increase of duty on this group will yield an additional revenue of Rs. 15.75 crores.

Customs:

The regulatory custom duty of 10 per cent of the value of imported goods imposed recently will continue.**) The import duty on stainless steel plates and sheets will be raised from 30 per cent. to 100 per cent. ad valorem and the duty on steel tin plates from Rs. 100 per tonne plus

* Direct taxes: see Bulletin april issue 1965

** See TAX NEWS SERVICE, part II Non-Europa, 12 (1965).

5 per cent. to Rs. 325 per tonne continuing the present preference of Rs. 20 per tonne where it is applicable.

The duty on non-cellulosic art silk yarn and thread will be raised from Rs. 7.5 per kilogram or 55 per cent. whichever is higher to Rs. 10,25 per kilogram or 75 per cent. whichever is higher.

The duty on paints, colours and painters' materials not otherwise specified is to be raised from 60 per cent. to 75 per cent., on sodium hydrosulphite from 40 per cent. to 100 per cent., on essential oils and perfumery not otherwise specified, from 75 per cent. to 100 per cent., and on paper not otherwise specified but excluding newsprint and printing and writing paper from 50 per cent. to 75 per cent.

The statutory import duty on raw cotton will be raised to 50 paise per kilogram. The total additional revenue from customs will be Rs. 14.5 crores. The net effect including customs and excise, will be a small increase in revenue of Rs. 1.5 crores in 1965–66.

reported by: K. C. Khanna

U.S.A.

DOCUMENTS

BILL H.R. 5916. TO REMOVE TAX BARRIERS TO FOREIGN INVESTMENT*

EXPLANATION BY THE DEPARTMENT OF THE TREASURY

Introduction:

In his balance of payments message of February 10, 1965, the President proposed a series of measures designed to reinforce the program to correct the balance of payments deficit of the United States. Among the proposals made by the President is one to remove the tax deterrents to foreign investment in U.S. corporate securities so as to improve our balance of payments by encouraging an increase in such investment. The recommended legislation described herein would effectuate this proposal.

The review of the tax treatment of nonresident foreigners and foreign corporations investing in the United States resulting in these legislative recommendations was prompted in large measure by the report of the Task Force on Promoting Increased Foreign Investment in U.S. Corporate Securities. This Task Force, which was headed by the then Under Secretary of the Treasury, Henry H. Fowler, was directed, among other things, to review U.S. Government and private activities which adversely affect foreign purchases of the securities of U.S. private companies. In its report, the Task Force made 39 recommendations designed to help the United States reduce its balance of payments deficit and defend its gold reserves. Among these were several directed at changing the tax treatment of foreign investors so as "to remove a number of elements in our tax structure which unnecessarily complicate and inhibit investment in U.S. corporate securities without generating material tax revenues." The Task Force report cautioned, however, that

* Compare Bulletin april issue 1965, p. 164.

its tax recommendations were not intended to turn the United States into a tax haven, nor to drain funds from developing countries.

The legislation being requested deals with all of the tax areas discussed in the Task Force report, although in certain instances the action suggested differs from the proposals made by the Task Force. Furthermore, the draft bill contains recommendations in areas not mentioned in the Task Force report which deal with problems which came to light in the Treasury Department's study of the present system of taxing nonresident foreigners and foreign corporations. It should be emphasized that the recommendations embodied in the proposed legislation were considered not only from the viewpoint of their impact on the balance of payments, but also to ensure that they contributed to a rational and consistent program for the taxation of foreign individuals and foreign corporations. Thus, all legislative suggestions made herein are justifiable on conventional tax policy grounds.

It is estimated that the adoption of these proposals would result in a net revenue loss on an annual basis of less than $5 million.

Foreign purchases of U.S. stocks constitute the largest single source of long-term capital inflow into the United States, with even greater potential for the future. Net purchases have averaged $190 million a year between 1956 and 1963, while the outstanding value of foreign-held stocks has risen from $6.1 billion to $12.5 billion during this period. It is extremely difficult to measure the precise impact of this proposed legislation on our balance of payments because of the various factors affecting the level of foreign investment in the United States. It is anticipated that, when combined with an expanding U.S. economy, the proposed legislation will result over the years in a significant increase in such investment.

Most provisions of the draft bill are proposed to become effective to taxable years beginning after December 31, 1965. However, those provisions which provide a revised estate tax treatment for the estates of foreigners are made applicable to the estates of decedents dying after the date of the enactment of the proposed legislation. In addition, those special provisions applicable to U.S. citizens who have surrendered their United States citizenship are made applicable if the surrender occurred after March 8, 1965.

Specific recommendations:

The following paragraphs describe the specific changes in the Internal Revenue Code of 1954 which are proposed. For this purpose the technical language of the Internal Revenue Code has been used, e.g., foreigners are described by the technical term "alien."

1 GRADUATED RATES.—Eliminate the taxation at graduated rates of U.S. source income of nonresident alien individuals not doing business in the United States.

Under present law, nonresident aliens deriving more than $21,200 of income from U.S. sources are subject to regular U.S. graduated rates and are required to file returns. However, graduated rates on investment income already are eliminated by treaty in the case of almost all industrial countries, except where a taxpayer is doing business in the United States and has a permanent establishment here. Only a very small amount of revenue is collected from graduated rates at present. For example, for 1962 graduated rates resulted

in the collection of $746,743 above the taxes already withheld. Although graduated rates are rarely applicable they complicate our tax law and tend to frighten and confuse foreign investors.

Thus, graduated rates, whether applied to investment income or such types of income as pensions, annuities, alimony and the like, serve no clearly defined purpose, deter foreign investment, and should be eliminated. The elimination of graduated rates will limit the liability of nonresident aliens not engaged in trade or business to taxes withheld, and where the alien is not engaged in trade or business here no return need be made. (However, graduated rates would be retained for the U.S. business income of nonresident aliens engaged in trade or business here.)

2 SEGREGATION OF INVESTMENT AND BUSINESS INCOME AND RELATED MATTERS.—Provide that (a) nonresident alien individuals engaged in trade or business in the United States be taxed on investment (non-business) income at the 30 percent statutory withholding rate, or applicable treaty rate, rather than at graduated rates; (b) foreign corporations engaged in business in the United States be denied the 85 percent dividends received deduction and be exempt from tax on their capital gains from investments in U.S. stocks; (c) nonresident alien individuals and foreign corporations not be deemed engaged in trade or business in the United States because of investment activity in the United States or because they have granted a discretionary power to a U.S. banker, broker, or adviser; and (d) nonresident alien individuals and foreign corporations be given an election to compute income from real property and mineral royalties on a net income basis and be taxed at graduated rates on such income as if engaged in trade or business in the United States.

Segregation of Business and Investment Income.

Under present law, if a nonresident alien is engaged in trade or business within the United States, he is subject to tax on all his U.S. income (including capital gains), even though some of the income is not derived from the conduct of the trade or business, at the same rates as U.S. citizens.

A nonresident alien individual engaged in trade or business in the United States should be subject to taxation on his investment income on the same basis as a nonresident alien not so engaged. Thus his investment income would be taxed at the 30 percent statutory rate or applicable treaty rate, rather than at graduated rates. For the purpose of determining the applicability of treaty rates the alien will be deemed not to have a permanent establishment in this country. All business income should remain subject to tax at graduated rates, but the rates on business income would be computed without regard to the amount of investment income.

This change conforms to the trend in international treaty negotiations to separate investment income from business income. Whether a taxpayer is helped or harmed by segregating his investment from his business income, separate treatment is proper and equitable. Investment decisions may be made on the same basis whether or not the alien is engaged in business here, since income arising from investments here will not be subject to taxation at graduated rates in either event.

Moreover, a nonresident alien individual engaged in trade or business here should not be taxed on capital gains realized in the United States which are unrelated to the business activity carried on by him in this country, except where he would be subject to tax on those gains under the rules pertaining to nonresident aliens generally.

Tax Treatment of Income from U.S. Stock Investments by Foreign Corporations.

Under present law all the activities of a corporation are treated as part of its trade or business. Thus, for example, all its expenses are treated as deductible as business expenses. Accordingly, it would be inappropriate to segregate a foreign corporation's U.S. "investment" income from its U.S. "business" income. However, there is one abuse in this area which should be eliminated. Frequently, a foreign corporation with stock investments in the United States engages in trade or business here in some minor way (such as by owning a few parcels of real estate) and then claims the 85 percent dividends received deduction on its stock investments in the United States. Such a corporation thereby may pay far less than the 30 percent statutory or treaty withholding rate on its U.S. dividend income, although its position is essentially the same as that of a foreign corporation doing business elsewhere which has United States investment income.

To eliminate this abuse and treat all foreign corporations with investments in U.S. stocks alike, the 85 percent dividends received deduction should be denied to foreign corporations doing business here. Their income from stock investments would be made subject to the 30 percent statutory withholding rate, or any lesser treaty rate applicable to such income, rather than regular U.S. corporate rates. For the purpose of determining whether the treaty rates on dividend income apply, a foreign corporation will be deemed not to have a permanent establishment in this country. To fully equate the tax treatment of stock investments of foreign corporations doing business in the U.S. with that of foreign corporations not doing business here, such corporations are exempted from the U.S. tax on capital gains realized on their U.S. stock investments.

Definition of "Engaged in Trade or Business."

Present law provides that the term "engaged in trade or business" does not include the effecting, through a resident broker, commission agent, or custodian, of transactions in the United States in stocks, securities, or commodities. There is some confusion as to whether the amount of activity in an investment account, or the granting of a discretionary power to a U.S. banker, broker, or adviser, will place a nonresident alien outside of this exception for security transactions so that he is engaged in trade or business in the United States. This uncertainty may deter investment in the United States and is undesirable as a matter of tax policy.

The fact that a discretionary power of investment has been given to a U.S. broker or banker does not really bear a relation to the foreigner's ability to carry out transactions in the U.S.—the discretionary power is merely a more efficient method of operating rather than having the investor consulted on every investment decision and frequently is merely a safeguard to protect him in case of world turmoil. Nor, where the alien is an investor, is the volume of transactions material in determining whether he is engaged in trade or business.

Accordingly, the proposed legislation makes clear that individuals or corporations are not engaged in trade or business because of investment activity in the United States or because they have granted a discretionary investment power to a U.S. banker, broker, or adviser. No legislative change is necessary to provide that the volume of transactions is not material in determining whether an investor is engaged in trade or business in the United States as this is the rule under present law.

Real Estate Income and Mineral Royalties

Under present law it is not clear whether a nonresident alien (or foreign corporation) is engaged in trade or business in the United States by reason of the mere ownership of unimproved real property or real property subject to a strict net lease, or by reason of an agent's activities in connection with the selection of real estate investments in the United States.

If because of such activity a nonresident alien is considered as not engaged in trade or business he becomes subject to withholding tax on his gross rents. Since the consequent tax could exceed his net income, the taxation on a gross basis of income from real property should not be continued where taxation on a net basis at graduated U.S. rates would be more appropriate.

Therefore, a nonresident alien or foreign corporation should be given an election to compute their income from real property (including income from minerals and other natural resources) on a net income basis and at regular U.S. rates as if they were engaged in trade or business in the United States. Such an election is comparable to the one now appearing in many treaties to which the United States is a party. Such an election would not effect the method of taxation applied to his other income.

3. CAPITAL GAINS.—Eliminate the provision taxing capital gains realized by a nonresident alien when he is physically present in the United States, and extend from 90 to 183 days the period of presence in the United States during the year which makes nonresident aliens taxable on all their capital gains.

The underlying policy of U.S. taxation of nonresident alien individuals has been to exempt capital gains realized from sources in this country. This policy has been proper both from a tax policy standpoint and from the viewpoint of our balance of payments. However, existing law has two limitations: U.S. capital gains realized by a nonresident alien while he is physically present in the United States, or realized during a year in which he is present in the U.S. for 90 days or more, are subject to a U.S. tax of 30 percent.

The limitations now contained in our law, especially the physical presence test, contain illogical elements and are likely to have a negative impact on foreigners who are weighing the advantages and disadvantages of investing in the United States. The physical presence test was added to the law after World War II when many nonresident alien traders were frequently present in this country. Since this is no longer true, and moreover, since the tax may be readily avoided by passing title to the property outside the United States, the provision now serves little purpose. However, it does pose a threat to the foreign investor which may deter him from investing in this country and therefore should be eliminated.

The limitation relating to presence in the United States for 90 days or more in a particular year should be retained, but the period should be lengthened to 183 days. This extension will remove a minor deterrent to travel in the United States and help mitigate the harsh consequences which may arise under the existing rule if a nonresident alien realized capital gains at the beginning of a taxable year during which he later spends 90 days or more in the United States.

4 PERSONAL HOLDING COMPANY AND "SECOND DIVIDEND" TAXES.—(a) Exempt foreign corporations owned entirely by nonresident alien individuals, whether or not doing business in the United States, from the personal holding company tax; (b) modify the application of the "second dividend tax" of section 861 (a) (2) (B) so that it only applies to the dividends of foreign corporations doing business in the United States which have over 80 percent U.S. source income.

Under present law any foreign corporation with U.S. investment income, whether or not doing business here, may be a personal holding company unless it is owned entirely by nonresident aliens, and unless its gross income from U.S. sources is less than 50 percent of its gross income from all sources.

The personal holding company tax should not apply to foreign corporations owned entirely by nonresident aliens. The only reason for applying our personal holding company tax to foreign corporations owned by nonresident aliens has been to prevent the accumulation of income in holding companies organized to avoid the graduated rates. With the elimination of graduated rates as suggested in recommendation 1 (and the revision of the second dividend tax, discussed below), U.S. investment income in the hands of foreign corporations will have borne the U.S. taxes properly applicable to it and accumulation of such income will not result in the avoidance of U.S. taxes imposed on the company's shareholders. Hence, there is no longer any reason to continue to apply the personal holding company tax to these corporations.

With respect to the "second dividend tax," section 861 (a) (2) (B) now provides that if a corporation derives 50 percent or more of its gross income for the preceding 3-year period from the United States, its dividends shall be treated as U.S. source income to the extent the dividends are attributable to income from the United States. As a result such dividends are subject to U.S. tax when received by a nonresident alien. This tax is often referred to as the "second dividend tax." However, under section 1441 (c) (1) a foreign corporation is not required to withhold tax on its dividends unless it is engaged in business in the United States and, in addition, more than 85 percent of its gross income is derived from U.S. sources.

It is now proposed to levy this second dividend tax only where the foreign corporation does business in the United States, and 80 percent or more of its gross income (other than dividends and capital gains on stock) is derived from U.S. sources. Where a foreign corporation is not doing business in the United States, it will pay U.S. withholding taxes on all investment income and other fixed or determinable gains and profits derived from the United States, and since that is all the tax its foreign shareholders would owe if they received the income directly, no second tax seems warranted.

With the adoption of the rule that the income from the U.S. stock investments of foreign corporations doing business here be taxed at flat statutory or treaty withholding rates, no further U.S. tax should be imposed on such income. Therefore, in applying the proposed 80 percent test, such income of the foreign corporation, whether from U.S. or foreign sources, should be disregarded and the test applied only to the corporation's other income. Furthermore, if the 80 percent rule is met, the dividends of such corporations should be subject to tax only to the extent that such dividends are from U.S. source income other than income from stock investments in the United States.

Withholding requirements should conform to the incidence of tax, and therefore withholding should be required on dividends paid by foreign corporations doing business in the United States with 80 percent or more U.S. source income to the extent such dividends are from U.S. source income other than income from stock investments in the United States.

With the adoption of the revisions proposed in U.S. system of taxing nonresident aliens and foreign corporations, the regulations dealing with the accumulated earnings tax will be revised to eliminate the application of this tax to foreign corporations not doing business in the United States which are owned entirely by nonresident aliens. The accumulation of earnings by such corporations will not result in the avoidance of U.S. taxes. However, because of possible avoidance of the revised second dividend tax, the accumulated earnings tax will remain applicable to foreign corporations doing business here.

5 ESTATE TAX AND RELATED MATTERS.—(a) Increase the $2,000 exemption from tax to $30,000 and substitute for regular U.S. estate tax rates a 5-10-15 percent rate schedule; (b) provide that bonds issued by domestic corporations or governmental units and held by nonresident aliens are property within the United States and therefore are subject to estate tax; and (c) provide that transfers of intangible property by a nonresident alien engaged in business in the United States are not subject to gift tax.

It is generally believed that high estate taxes on foreign investors are one of the most important deterrents in our tax laws to foreign investment in the United States. Our rates in many cases are higher than those of other countries and in these situations, despite tax conventions and statutory foreign estate tax credits, nonresidents who invest in the United States suffer an estate tax burden. Moreover, under present law a nonresident alien's estate must pay heavier estate taxes on its U.S. assets than would the estate of a United States citizen owning the same assets.

To mitigate this deterrent to investment and to rationalize the estate tax treatment of nonresident aliens, the exemption for estates of nonresident alien decedents should be increased from $2,000 to $30,000 and such estates should be subject to tax at the following rates:

If the taxable estate is:	– The tax shall be:
Not over $100,000	– 5% of the taxable estate
Over $100,000 but not over $750,000	– $5,000, plus 10% of excess over $100,000

Over $750,000	– $70,000, plus 15% of excess over $750,000

The increase in exemption and reduced rates will bring U.S. effective estate tax rates on nonresident aliens to a level somewhat higher than those imposed upon resident estates in Switzerland, Germany, France, and the Netherlands, for example, but substantially below those imposed on resident estates in the United Kingdom, Canada, and Italy. Thus U.S. investment from these latter countries bears no higher estate tax than local investment because of foreign tax credits or exemptions provided in such countries. The proposed tax treatment of the U.S. estates of nonresident aliens is similar to the treatment accorded the estates of nonresidents by Canada, whose rates on the estates of its citizens are comparable to our own. Where additional reductions are justified these may be made by treaty.

These changes should result in more appropriate estate tax treatment of nonresident aliens and thereby improve the climate for foreign investment in the U.S. Particularly in the case of nonresident alien decedents who have only a small amount of U.S. property in their estates, present U.S. rates and the limited exemption provided result in an excessive effective rate of estate tax. The proposed changes correct this situation. The new rates will produce for nonresident aliens' estates an effective rate of tax on U.S. assets which in many cases is comparable to that applicable to U.S. citizens who may avail themselves of the $60,000 exemption and marital deduction (which are not available to nonresident aliens).

The following figures show the effective rates for nonresident aliens under present law, and the effective rates produced by the proposed exemption and rates as compared to those applicable to the estates of U.S. citizens electing and not electing the marital deduction:

U.S. gross estate	Nonresident alien under present law	Nonresident alien under proposed law	U.S. citizen with marital deduction	U.S. citizen without marital deduction
$ 60,000	12.5	2.0	–	–
100,000	17.3	3.0	–	3.0
500,000	25.8	7.4	8.0	22.1
1,000,000	38.8	8.8	11.1	26.7
5,000,000	43.0	12.6	16.9	42.3

As part of this revision of the estate tax, the situs rule with respect to bonds should be changed. The present rule, very frequently modified by treaty, is that bonds have situs where they are physically located. This rule is illogical, permits tax avoidance, and is not a suitable way to determine whether bonds are subject to an estate tax as their location is one of their least significant characteristics for tax purposes. Other intangible debt obligations are presently treated as property within the United States if issued by or enforceable against a domestic corporation or resident of the United States. Accordingly,

it is recommended that our law be amended to provide that bonds issued by domestic corporations or domestic governmental units and held by nonresident aliens are property within the United States and therefore subject to estate tax.

Furthermore, a present defect in the operation of the credit against the estate tax for state death taxes in the case of nonresident aliens should be corrected. Under present law the estate of a nonresident alien may receive the full credit permitted by section 2011 even though only a portion of the property subject to federal tax was taxed by a state. The amount of credit permitted by section 2011 in the case of nonresident aliens should be limited to that portion of the credit allowed the estate which is allocable to property taxed by both the state and the federal government.

Our gift tax law as it applies to nonresident aliens should be revised. Under present law a nonresident alien doing business in the United States is subject to gift tax on transfers of U.S. intangible property. This rule has little significance from the standpoint of revenue and tax equity. Therefore, our law should be amended to provide that transfers of intangible property by a nonresident alien, whether or not engaged in business in the United States, are not subject to gift tax. Gifts of tangibles situated in the U.S. which are owned by nonresident aliens will continue to be subject to U.S. gift taxes.

6 EXPATRIATE AMERICAN CITIZENS.—Subject the U.S. source income of expatriate citizens of the United States to income tax at regular U.S. rates and their U.S. estates to estate tax at regular U.S. rates, where they surrendered their U.S. citizenship within 10 years preceding the taxable year in question unless the surrender was not tax motivated.

As a result of the proposed elimination of graduated rates, taken together with the proposed change in our estate tax as it applies to nonresident aliens, an American citizen who gives up his citizenship and moves to a foreign country would be able to very substantially reduce his U.S. estate and income tax liabilities.

While it may be doubted that there are many U.S. citizens who would be willing to give up their U.S. citizenship no matter how substantial the tax incentive, a tax incentive so great might lead some Americans to surrender their citizenship for the ultimate benefit of their families. Thus, it seems desirable, if progressive rates are eliminated for nonresident aliens and our estate tax on the estates of nonresident aliens is significantly reduced, that steps be taken to limit the tax advantages of alienage for our citizens.

The recommended legislation accomplishes this by providing that a nonresident alien who surrendered his U.S. citizenship within the preceding 10 years shall remain subject to tax at regular U.S. rates on all income derived from U.S. sources. A similar rule would apply for estate tax purposes to the U.S. estates of expatriate citizens of the United States. Thus, the U.S. property owned by expatriates would be taxed at the estate tax rates applicable to our citizens (but without the $60,000 exemption, marital deduction and other such provisions applicable to our citizens), in cases where the alien decedent's surrender of citizenship took place less than 10 years before the day of his death. The $30,000 exemption granted nonresident aliens would be allowed to expatriate citizens.

To prevent an expatriate from avoiding regular U.S. rates on his U.S. income by

transferring his U.S. property to a foreign corporation, or disposing of it overseas, the recommended legislation treats profits from the sale or exchange of U.S. property by an expatriate as being U.S. source income. To preclude the use of a foreign corporation by an expatriate to hold his U.S. property and thus avoid U.S. estate taxes at regular U.S. rates, an expatriate is treated as owning his pro rata share of the U.S. property held by any foreign corporation in which he alone owns a 10 percent interest and which he, together with related parties, controls. Furthermore, the recommended legislation makes gifts by expatriates of intangibles situated in the U.S. subject to gift tax.

These provisions would be applicable only to expatriates who surrendered their citizenship after March 8, 1965, and would not apply if contravened by the provisions of a tax convention with a foreign country. Moreover, they would not be applicable if the expatriate can establish that the avoidance of U.S. tax was not a principal reason for his surrender of citizenship.

7 RETAINING TREATY BARGAINING POSITION.—Provide that the President be given authority to eliminate with respect to a particular foreign country any liberalizing changes which have been enacted, if he finds that the country concerned has not acted to provide reciprocal concessions for our citizens after being requested to do so by the United States.

One difficulty which may arise from the liberalizing changes being proposed in U.S. tax law is that it may place the United States at a disadvantage in negotiating concessions for Americans abroad as respects foreign tax laws. Moreover, the failure to obtain concessions abroad may have an effect upon our revenues since the foreign income and estate tax credits we grant our citizens mean that the United States bears a large share of the burden of foreign taxation of U.S. citizens. To protect the bargaining power of the United States the President should therefore be authorized to reapply present law to the residents of any foreign country which he finds has not acted (when requested by the United States to do so, as in treaty negotiations) to provide for our citizens as respects their United States income or estates substantially the same benefits as those enjoyed by its citizens as a result of the proposed legislative changes. The provisions reapplied would be limited to the area or areas where our citizens were disadvantaged. Furthermore, the provisions reapplied could be partly mitigated, if that were desirable, by treaty with the other country.

It is essential, if we are to revise our system of taxing nonresident aliens as is being suggested, that this recommendation be adopted. Otherwise, we risk sacrificing the interests of our citizens subject to tax abroad and reducing our revenues in an effort to simplify the taxes imposed upon nonresident aliens.

8 QUARTERLY PAYMENT OF WITHHELD TAXES.—Provide that withholding agents collecting taxes from amounts paid to nonresident aliens be required to remit such taxes on a quarterly basis.

Under the present system, withholding agents are required to remit taxes withheld on aliens during any calendar year on or before March 15 after the close of such year. This

procedure varies considerably from that applicable to domestic income tax withheld from wages and employee and employer F.I.C.A. taxes, where quarterly (in some cases monthly) payments are required.

Withholding on income derived by nonresident aliens should be brought more closely into line with the domestic income tax system. There is no reason to permit withholding agents to keep nonresident aliens' taxes for periods which may exceed a full year before being required to remit those taxes, when employers must remit taxes withheld on domestic wages at least quarterly. The Government loses the use of the revenue, which revenue in 1962 exceeded $80 million, for the entire year. Accordingly, section 1461 requiring the return and payment of taxes withheld on aliens by March 15 should be revised to eliminate this specific requirement. The Secretary or his delegate would then exercise the general authority granted him under sections 6011 and 6071 and require withholding agents to return and remit taxes withheld on income derived by nonresident aliens quarterly. However, no detailed quarterly return would be required.

9 EXEMPTION FOR BANK DEPOSITS.—Under present law, an exemption from income taxes, withholding, and estate taxes is provided for bank deposits of nonresident alien individuals not doing business in the United States. By administrative interpretation, deposits in some savings and loan associations are treated as bank deposits for purposes of these exemptions, but such exemptions do not apply to most savings and loan associations. There does not appear to be any justification for this distinction between types of savings and loan associations and it should be eliminated by extending these exemptions to all such associations.

10 FOREIGN TAX CREDIT—SIMILAR CREDIT REQUIREMENT.—Section 901 (b) (3) provides that resident aliens are entitled to a foreign tax credit only if their native country allows a similar credit to our citizens residing in that country. Apparently the provision is designed to encourage foreign countries to grant similar credits to our citizens. However, this requirement works a hardship on refugees from totalitarian governments. For example, the Castro government is not concerned with whether Cubans in this country receive a foreign tax credit. Therefore, it is recommended that the similar credit requirement of section 901 (b) (3) be eliminated, subject to reinstatement by the President where the foreign country, upon request, refuses to provide a similar credit for U.S. citizens. Of course, no request would ordinarily be made in a case, such as Cuba, where the possible reinstatement of the present reciprocity requirement would have little or no effect upon the foreign government's policy toward U.S. citizens.

11 STAMP TAXES ON ORIGINAL ISSUANCES AND TRANSFERS OF FOREIGN STOCKS AND BONDS IN THE UNITED STATES TO FOREIGN PURCHASERS.—Our stamp tax on certificates of indebtedness is imposed on issuances and transfers within the territorial jurisdiction of the United States. The stamp tax on issuances of stock does not apply to stock issued by a foreign corporation, but the transfer tax applies to transfers in the United States. These taxes have forced U.S. underwriters

who handle issuances of foreign bonds and stocks and their original distribution to foreign purchasers to handle closings overseas. In view of the limited association of such issuances and transfers with the United States and the fact that these taxes are ordinarily avoided by moving the transactions outside the United States, our Law should be revised to exempt original offerings of foreign issuers to foreign purchasers from our stamp taxes where only the issuances and transfers take place in the United States. Such an exemption would facilitate such transactions and their handling by U.S. underwriters and is consistent with our balance-of-payments objectives.

12 WITHHOLDING TAXES ON SAVINGS BOND INTEREST:—The Ryuku Islands, the principal island of which is Okinawa, and the Trust Territory of the Pacific, principally the Caroline, Marshall, and Mariana Islands, although under the protection and control of the United States, are technically foreign territory. Thus, the islanders are nonresident aliens and subject to a 30-percent withholding tax on interst on U.S. savings bonds. This interferes with the selling of U.S. savings bonds. Therefore, the 30-percent withholding tax as it applies to the interest income realized from U.S. savings bonds by native residents of these islands should be eliminated.

In addition to the changes discussed above, the proposed legislation makes a number of clarifying and conforming changes to present law.

IV

BIBLIOGRAPHY

1. BOOKS

BELGIUM

LE NOUVEAU REGIME FISCAL DES SOCIETIES, by *Centre d'Etude des Sociétés*, Editor: Imprimerie "IMFI", Rue du Houblon, 47, Brussels. 1964. pp. 136.

This is a brief but practical commentary on Belgian corporate income taxation. The book starts with a discussion of the various types of taxable companies. Computations of income is there discussed, with particular reference to non-resident corporations. The last part of the book is devoted to the calculation of income tax and the system of credit for the prepayments withheld.

CEDULAIRE, GLOBALE EN GEMENGDE TYPES VAN INKOMSTENBELASTINGEN by *Dr. Sylvain Plasschaert*, Universitaire Boekhandel Leuven 1964, pp. 294 Price Bfrs. 320

The author discusses schedular, global and mixed types of income taxation. He examines the income tax systems in the United States, Great Britain and the Netherlands which have a global-type system and France, Italy and Belgium which have a large experience with a mixed system. The study essentially assesses the schedular and global income taxes in terms of equitable income distribution and flexibility. It also examines the administrative aspects such as efficiency of the sytem, nuisance to the taxpayer and the burden tax administration. The author tries to show that the global system is superior to both the schedular system and the mixed system. He considers that the crisis of Income taxation in France, Italy and Belgium was attributable to the schedular system, although it would not have been politically possible to introduce another system. Introduction of the mixed system intensified the problems. Adoption of the global tax system—as carried out in Belgium and France and intended in Italy will probably mitigate the situation. The author thinks that the global income tax has sufficient strength and adaptability to be continued as the proper and only structural type of income tax in a free enterprise economy.

CANADA

THE NATIONAL FINANCES, *Canadian Tax Foundation*, Toronto 1, Canada, pp. 198, $2.$\frac{00}{100}$

The complicated revenue and expenditure structure of the Canadian government is compressed into this publication. In view of the fact that the national budget exerts a considerable influence on the economy, the various aspects involved in the national finances, as presented in this brief analysis, may well be appreciated. This booklet is divided into two main parts, one dealing with revenue, the other with expenditure. Some explanation is also given of the broader concept of the "cash" position, the national debt and the government's calculation of its assets and liabilities on its balance sheet. Organizations outside the ordinary scope of government, such as Crown corporations, are also briefly described.

COMMON MARKET

BIJKANTOREN EN DOCHTER-ONDERNEMINGEN IN DE EEG; JURIDISCHE EN FISCALE ASPECTEN, *Members of the Association Européenne d'Etude Juridiques et Fiscales*, Deventer-Antwerp, Association Européenne d'Editeurs Juridiques et Economiques Eurolibri No. 15, printer: AE. E. KLUWER, Deventer 1964, pp. 162.

A survey on the position in the six member countries of the Common Market of branch establishments and subsidiaries. Both tax law and corporate law are considered. This book has been published simultaneously in German, Italian and French in the other member countries.

THE RIGHT OF ESTABLISHMENT IN THE COMMON MARKET by *Dr. Ulrich Everling*, Commerce Clearing House, Chicago (USA) 1964, pp. 219.

The author attempts to present a comprehensive description of the right of establishment in the E.E.C. under the provisions of the Treaty of

Rome against the background of current political, legal and economic conditions. One of the book's main purposes is to acquaint legal advisers with the developments in the various fields. Although the Treaty provisions deal essentially with relations between the member States a part of the book is devoted to those problems which particularly deal with nationals or firms of non-member States.

COMBINATION OF COUNTRIES

ARGENTINA, AUSTRIA, BULGARIA, GERMANY, GREECE, ITALY, NETHERLANDS, POLAND, CZECHOSLOVAKIA, URUGUAY, YUGOSLAVIA, PORTUGAL

ENQUÊTE SUR LES TARIFS D'IMPÔTS Archives Internationales de Finances Publiques, no. 4, E. Morselli and L. Trotabas, CEDAM, CASA Editrice Dr. A. Milani, 5 Via Jappelli, Padova, 1964, 498 pp, 7000 Lire.

A fiscal survey (history, development and present situation) and the tax rates of the above mentioned countries are presented in this publication. Each survey is written by a prominent tax expert in that country.

UNITED KINGDOM, UNITED STATES, CANADA, INDIA, AUSTRALIA, REPUBLIC OF SOUTH AFRICA, FRANCE, SWITZERLAND

GOVERNMENTS AND THE INVESTOR, *The Federal Trust for Education and Research* 43, Parliament Street, London, England, pp. 55, £. 2.25.

The Federal Trust for Education and Research and the United Kingdom branch of the International Fiscal Association sponsored a two day conference on "Governments and the Investor". The series of lectures pertaining to the United Kingdom, the United States, Canada, India Australia, South Africa, France and Switzerland is set forth in this booklet.

Various international tax experts delivered the lectures and not only did they survey the existing situation, but they also commented upon areas in need of modification. This pamphlet is suggested reading for international investment counselors as well as their clients.

DENMARK

SKATTELOVENE, I and II, *La Cour, Jacob* and *Axel Wass*, Copenhagen, Denmark, Gyldendals Forlagstrykkeri, 1965, pp. 406:I, pp. 349:II, I: kr. 68, II: kr. 59.

The new edition of "La Cour og Wass" gives the complete texts of all acts, regulations etc. regarding the Danish direct taxes. It includes income and net worth taxes, land taxes, death and gift duties and the texts and other documents with respect to tax treaties. For the first time the work is divided into two volumes, the second containing those parts of the legislation which, presumably, will not be subject to frequent changes, so that less reprints will be necessary for this volume. The work is up-to-date to December 14th, 1964.

INDIA

TAXATION OF INDIAN AND FOREIGN COMPANIES IN INDIA, *A. G. Venkataraman,* N.M. TRIPATHI PRIVATE Ltd. BOMBAY, Princess Street, 1964, pp. 148, Rs. 15.

The author as an ex-senior officer of the Indian Investment Centre, is aware of the needs of business executives and advisors of Indian and foreign companies who have the responsibility of managing the tax planning of business operations in India. This book does not purport to be an exhaustive explanation of all the provisions of tax law but must be considered as a useful guide to the essential tax provisions which effect, directly or indirectly, Indian and foreign companies and foreign technicians in India. The rates of tax involved with are included as effective for the assessment year 1964-65.

Part one of this book treatises the basic principles of taxation as set forth in the Income Tax Act of 1961 as amended, the taxation of Indian companies, foreign companies and the taxation of foreign technicians. The second part focusses briefly and clearly on estate duty, gift tax, wealth tax, and expenditure tax. This work is considerably enhanced by the numerous appendices dealing with procedural matters, rules, circulars and an illustrative table showing the various types of income that may be received by foreign corporate entities from Indian companies and the likely incidence of tax under specific circumstances.

INTERNATIONAL

IL CONSIGLIO DI COOPERAZIONE DOGNALE DI BRUXELLES E LE SUE PRINCIPALI CONVENZIONI by *Ugo Calderoni*, published by Cedam, Casa Editrice Dott. Antonio Milani – 1964, XII pp + 213 pp. 2.300 lire.

The author who is General Director of Customs in Italy, has written an excellent treatise on the

international cooperation in the customs duty field, as realized by the customs Co-operation Council of Brussels. The reader receives a clear and detailed insight into the complications of legislation affecting customs duty and the international organizations designed to alleviate the various problems. The book contains the following Sections:

Chapter I General Remarks
Chapter II The Customs Co-operation Council
Chapter III The organization and function of the Council
Chapter IV The Permanent Technical Committee and its activities
Chapter V The Valuation Committee and its activities
Chapter VI The Nomenclature Committee and its activities
Chapter VII Critical Remarks

The relevant Conventions are reproduced in the appendixes.

ITALY

WORLD TAX SERIES—TAXATION IN ITALY by *Charles K. Cobb,* Jr. and *Francesco Forte,* under the direction of the Law School of Harvard University. Publisher: Commerce Clearing House Inc. Chicago (U.S.A.) in 1964. LIV pp + 868 pp. Price $ 19.00.

The World Tax Series is a series of tax surveys per country, published under the direction of the Harvard Law School, Division International Program in Taxation. At present surveys on the taxation in Brazil, the United Kingdom, Mexico Australia, Sweden, India, Germany, the United States and Colombia have been published. To this series the volume on Taxation in Italy is a welcome addition. The editor of this series, Mr. Cobb, seeks to achieve two basic goals:

– to describe each tax system in its own legal and administrative terms, and
– to present each system so it can be compared point by point with other country surveys of this series. For this latter purpose all chapters have been numbered and have numbered subchapters, paragraphs and sub-paragraphs. Each topic is for each country discussed under the same number.

The volume is divided into three parts.
Part I describes the background and the entire tax structure of Italy;
Part II contains a detailed analysis of the national income tax;
Part III analyses all other taxes.
The volume contains an extensive bibliography and an index.

A special chapter called "References" gives tables of important case law, statutes and administrative instructions, which are listed chronologically.

KOREA

YEARBOOK OF TAX STATISTICS 1964, by *Bureau of Taxation,* Ministry of Finance, Republic of Korea, 1964, pp. 426.

1964 Year Book of Tax Statistics.
(review previous issues: Bulletin 1963, p. 369). Year title is based on calender year as is adopted by other year books and annuals. In previous issues year title appeared in each issue was based on the year in which taxes were actually collected. This book may be of help to those who are interested in understanding the economy in the Republic of Korea.

NETHERLANDS

ZAKBOEK SOCIALE VERZEKERING, by *Veraart, J. J. M.* and others, Deventer, AE. E. Kluwer, loose-leaf service, Dfl. 14.95 + 1,95 for binder.

This loose-leaf manual, updated regularly through supplements, contains concise but clear information regarding the dutch legislation on social security and some related matters. It is an invaluable reference work for those who want an immediate answer to all basic questions.

SWITZERLAND

KOMMENTAR ZUR EIDGENÖSSISCHEN WEHRSTEUER 1965-1974. by *Dr. Ch. Perret* and *Dr. J. Masshardt,* published in 1965 by the Polygraphischer Verlag AG, Zürich. pp. 371.

The well-known Commentary on Swiss federal Defense Tax of Perret/Masshardt has been completely re-edited and up-dated to January 1st, 1965, by Dr. Heinz Masshardt,

It is divided into three parts:

Part I: contains the text of the Decree on the levying of a Defense tax. An extensive explanation, illustrated by references to case law and literature is given;
Part II: in this part the text of important Rulings have been reproduced.
Part III: contains Tables on case law and an alphabetical index.

PUERTO RICO

ECONOMY & FINANCES PUERTO RICO, Department of Economic & Financial Research, 1964.

This brochure sets forth the economic activities developed in Puerto Rico in the fiscal year ending in June 30th, 1964.

The Puerto Rican's net income of $ 2.097 million increased by 10 % over the net income in 1963.

In general the economic growth of Puerto Rico continues, and substantial gains were recorded in all sectors of the economy, except agriculture which suffered a minor setback.

The Government receipts were the following:

Property taxes	17,363	million $
Individual income tax	60,630	,,
Company income tax	42,407	,,
Non-resident income tax	5,250	,,
Inheritance and gift taxes	3,348	,,
Excise taxes	126,957	,,
Licenses	12,827	,,
Customs duties	12,550	,,
U.S. excise on offshore shipments	44,951	,,
Federal grant on aids	41,933	,,
Lottery	8,652	,,
Permits, fees and business charges	6,270	,,
Miscellaneous	6,639	,,
Net taxes from net common wealth sources	99,434	,,
total ±	389,776	million $

UNITED KINGDOM

BUTTERWORTHS INCOME TAX HANDBOOK 1964-65, by *Butterworths*, London, 1964, pp. VI + 626 + (9)

An annual handbook containing the main text of the Income Tax Acts in amended form, as operative for the year of assessment 1964-65.

THE LAW OF STAMP DUTIES, *Monroe, J. G.*, London, Sweet & Maxwell, 4th edition, 1964, pp. XXXII + 313, £ 2.10 s.

The new edition contains a treatise on the law of U.K. stamp duties, and includes all changes which have occured since the previous edition of 1956. In the present edition the law is stated as at October 1, 1964.

LEWIN ON TRUSTS, 16th edition, by *Mowbray, W. J.*, London, Sweet & Maxwell, 1964, pp. CL + 883.

A comprehensive treatise on the law of trusts in the United Kingdom; this new edition is up-to-date to June 1st, 1964, incorporating new legislation and case law since the previous edition which was published in 1950.

TAXATION AND PROPERTY TRANSACTIONS, *George, E. F.* London, Taxation Publishing Company, 2nd edition, 1964, pp. XX + 184, £ 1.10 s. net.

This book describes the tax consequences of transactions in immovable property, both for the ordinary investor and the dealer. The important changes caused by the Finance Acts of 1963 and 1964 are fully covered by the present edition.

U.S.A.

ESTATE TAX VALUATION IN THE SALE OR MERGER OF SMALL FIRMS, by *Chelcie C. Bosland,* Simmons—Boardman Publishing Corporation, N.Y. 1963, pp. 287, $ 10.

The purpose of this report is to present the results of a study undertaken to determine the impact of estate tax considerations on the decisions of businessmen to sell out or merge their privately owned enterprises. Under a grant from the Research Studies Division of the Small Business Administration it was possible to make a survey of the reasons that motivated the executives of a large number of selling concerns, with particular emphasis upon one phase of estate taxation that so far has received only passing consideration in several previous competent studies of the effects of taxation on mergers. That phase is the problem of the valuation of closely held ownership interests for estate tax purposes.

This study sought to determine if tax valuation problems have been a leading cause of decisions to merge in the past five years. It then undertook to discover whether these problems arose from faulty valuation practices by the internal revenue service and uncertain or inadequate relief in the courts. An analysis of some 150 decisions of the Tax Court, and other courts, revealed the valuation methods employed by the Service and their validity under court review.

While the purpose was to discover the basic facts about tax valuation as a merger motive, some recommendations for improvement are made, with the expectation that their adoption might remove some artificial and needless incentives to sell out.

2. LOOSE-LEAF SERVICES

Releases received between January 1st, 1965 and April 15th, 1965.

AUSTRALIA

Law Book Company's Taxation Service, releases nos 68-112: The Law Book Co. of Australasie-Sydney.

AUSTRIA

Neue Einkommensteuerrecht, release no. 19: Schmerzeck-Bruch a/der Mur.
Österreichische Steuer- und Wirtschaftskartei, releases nos 1-6: Linde-Wien.

BELGIUM

Documentatie Vandewinckele – De Nieuwe Inkomstenbelasting, releases nos 245-251: Vandewinckele-Brugge.
Guide Fiscal Permanent, releases nos 257-261: Vioburo-Bruxelles.
Handleiding der Inkomstenbelastingen, release no 7: Excelsior-Bruxelles.
Tarief der Overdrachttaksen bij Invoer, releases nos 15-16: Ministry of Finance-Bruxelles.
Tarif des Taxes de Transmission à l'Importation, releases nos 15-16: Ministry of Finance-Bruxelles.

CANADA

Canada Tax Service, releases nos 165-171: De Boo-Toronto.
Canada Tax Service – synopsis of recent tax cases, releases nos 80-83: De Boo-Toronto.
Canada Tax Service Letter, release no 89: De Boo-Toronto.
Canadian Income Tax – McDonald, release no 28: Butterworth-Toronto.
McDonald – Current Taxation, releases nos 1-13: Butterworth-Toronto.
Provincial Taxation Service, releases nos 186-189: De Boo-Toronto.

DENMARK

Skattebestemmelser i Systematisk Fremstilling, release 1965: Skattekartoteket informationskontor - Köbenhavn.

FRANCE

Bulletin de Documentation Pratique des Taxes sur le Chiffre d'Affaires et Contributions Indirectes, releases nos 11-12: Lefebvre-Paris.
Code Annoté des Contributions Directes, releases nos 30-31: Seteca-Paris.
Code Annoté des Taxes sur le Chiffre d'Affaires, release no 26: Seteca-Paris.
Dictionnaire Fiscal Permanent, releases nos 1-8: Ed. Législatives et Administratives-Paris.
Documentation Pratique de Securité Sociale et de Législation du Travail, releases nos 1-4: Lefebvre-Paris.
Feuillets de Documentation Pratique – Enregistrement, releases nos 3-4: Lefebvre-Paris.
Juris Classeur Fiscal – Chiffre d'Affaires, release no 6057/36: Ed. Techniques-Paris.
Juris Classeur Fiscal – Impôts directs, release no 1059/35: Ed. Techniques-Paris.
Memento Lamy, release – ed. spec. 1965: Services Lamy-Paris.
Traité de la Patente, release February 1965: Seteca-Paris.
Problèmes d'Outre Mer, releases January-April 1965: Centre d'étude des problèmes d'outre mer-Paris.

GERMANY

ABC Führer Lohnsteuer, release no 51: Schäffer und Co.-Stuttgart.
Handbuch der Einfuhr Nebenabgaben, releases nos 1-2: V. d. Linnepe-Hagen (Westfalen).
Kommentar Bewertungsgesetz – Vermögensteuergezetz release no 19: Otto Schmidt-Köln.
Kommentar zur Einkommensteuer – Einschl. Lohnsteuer und Körperschaftsteuer, release no 62: Otto Schmidt-Köln.
Praktischer Führer durch das Steuerrecht, releases nos 30-34: Otto Schmidt-Köln.
Schnellkartei des Deutschen Rechts, releases nos 127-128: Otto Schmidt-Köln.
Steuererlasse in Karteiform, releases nos 40-43: Otto Schmidt-Köln.
Steuergesetze, release January 1965: Beck-München,
Steuern und Zölle im Gemeinsamen Markt, release no 4: Nomos-Baden-Baden.
Steuerrechtsprechung in Karteiform, releases nos 156-159: Otto Schmidt-Köln.
Zollgesetze, release 2: C. Gehlsen-Heidelberg.

LUXEMBOURG

Code Fiscal Luxembourgeois, vol. 5: Peiffer-Luxembourg.

MOROCCO

Codes Marocains, releases nos 1-2: Fiduciaire Marocaine-Casablanca.

NETHERLANDS

Beknopte Belastinggids – Smeets en Meihuizen, releases nos 26-27: L. J. Veen, Amsterdam.
Belastingwetgeving Serie – Inkomstenbelasting, releases nos 1-2: Noorduyn-Gorinchem
FED Losbladig Fiscaal Weekblad, releases nos 972-987: FED Amsterdam.
FED's Fiscaal Register, releases nos 8-9: FED Amsterdam.
FED's Fiscaal Repertorium, releases nos 8-9-11: FED Amsterdam.
De Gemeentelijke Belastingen, releases nos 57-59: Vuga Boekerij-Arnhem.
Handboek voor de Europese Gemeenschappen – Verdragstekst en Aanverwante Stukken, releases nos 9-11: Kluwer-Deventer.
Handboek voor de Europese Gemeenschappen – Tarieflijsten voor de E.E.G., releases nos 33-34: Kluwer-Deventer.
Handboek voor in- en uitvoer – Belastingheffing bij invoer, releases nos 44-48: Kluwer-Deventer.
Handboek voor in- en uitvoer – Tarief van invoerrechten, Part B^1 releases nos 66-67, B^2 releases nos 34-36: Kluwer-Deventer.
Kluwer's Fiscaal Zakboek, release no 1: Kluwer-Deventer.
Kluwer's Tarievenboek, releases nos 40-41: Kluwer-Deventer.
De Groot Nederlandse Belastingwetten, releases nos 1-5: Samsom-Alphen a/d Rijn.
Nederlandse Wetboeken – Nederlandse Wetgeving, Part B, releases nos 68-70, Part C, release no 31: Kluwer-Deventer.
Omzetbelasting – Fiscale Handleiding voor de Praktijk, releases nos 81-84: Vuga Boekerij-Arnhem.
De Parlementaire Behandeling van de nieuwe Belastingontwerpen, release no 20: Samsom-Alphen a/d Rijn.
Regelingen Euromarkt, releases nos 56-58: Verman-de-IJmuiden.
Teruggaaf van Omzetbelasting bij uitvoer, releases nos 151-158: Samsom-Alphen a/d Rijn.
Vademecum voor in- en uitvoer, releases nos 307-309: Kluwer/Samsom-Deventer Alphen a/d Rijn.
De Vakstudie – Fiscale Encyclopedie:
- *Algemene Wet Rijksbelastingen,* release no 10: Kluwer-Deventer.
- *Inkomstenbelasting,* release no 78: Kluwer-Deventer.
- *Vennootschapsbelasting,* release no 47: Kluwer-Deventer.
- *Loonbelasting,* releases nos 64-65: Kluwer-Deventer.
- *Motorrijtuigenbelastingwet,* release no 18: Kluwer-Deventer.
- *Omzetbelasting,* releases nos 42-43: Kluwer-Deventer.
- *De Zegelwet,* release no 27: Kluwer-Deventer.
- *Wet op de Vermogensbelasting,* release no 3-Kluwer-Deventer.
- *Wet op de Inkomstenbelasting,* releases nos 1-4: Klúwer-Deventer.

NEW ZEALAND

New Zealand Taxation Board of Review Decisions, releases nos 23-36: Butterworth-Wellington.

NORWAY

Skattelovsammlingen, releases nos 19-21: Jaroy-Skien.

SOUTH AFRICA (REPUBLIC OF)

Law and Practice of South African Income Tax, release no 7: Butterworth-Durban.
Legislation Service of the Rhodesian Income Tax Service, release no 10: Juta-Cape Town.
Taxpayer's Permanent Volume on Income Tax in South Africa and S.W. Africa, release no 4: Taxpayer-Cape Town.

SPAIN

Circulares – Boletines de Informacion, releases nos 70-71: Gabinete de Estudios-Madrid.

SWITZERLAND

Praxis der Bundesbesteuerung, release no 15: Recht und Gesellschaft-Basel.
Die Steuern der Schweiz – Les Impôts de la Suisse, part IV: Recht und Gesellschaft-Basel.

TURKEY

Türk Argüs Ajansi, releases nos 3252-3348: Iş Bankasi Hani Galata-Istanbul.

UNITED KINGDOM

Simon's Income Tax Service, release no 49: Butterworth & Co.-London W.C.2.

UNITED STATES OF AMERICA

Federal Tax Guide Reports, releases nos 13-24: Commerce Clearing House-New York.
Federal Taxes Report Bulletin, releases nos 7-11: Prentice-Hall-Englewood Cliffs.
Federal Taxes Report Bulletin Tax Treaties, releases nos 1-3: Prentice-Hall-Englewood Cliffs.
State Tax Guide C.C.H., releases nos 311-321: Commerce Clearing House, New York.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. As of January, 1965, European Taxation is published monthly and the number of pages has been considerably increased. A new loose-leaf magazine *"Tax News Service"* was started, bringing rapid information of tax events all over the world. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7500 volumes on national and international tax matters, as well as more than 300 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the cooperative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

PUBLICATIONS OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION
PUBLICATIONS DU BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE

EUROPEAN TAXATION (monthly)	Europe	DFL 125
(including TAX NEWS SERVICE)	Non-Europe	US $ 42.50
TAX NEWS SERVICE (bimonthly)	Europe	DFL 30
	Non-Europe	US $ 10
SUPPLEMENTARY SERVICE (monthly)	Europe	DFL 125
	Non-Europe	US $ 37.50

BULLETIN	without supplements	$ 7.50
	with supplements	$ 10.—

Supplements to the Bulletin:

PUBLICATIONS No. 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 14 — out of print

PUBLICATION No. 6:
Dr. F. E. Koch et Jean H. Rothstein: La Convention Fiscale Franco-Britannique du 14 déc. 1950. — $ 3.50

PUBLICATION No. 9: Supplement to No. 3, containing Regulations etc. the Anglo-Dutch Double Taxation Conventions — $ 1.35

PUBLICATIONS No. 10:
Dr. F.E. Koch and Richard Moss: Compilation of the legal provisions, regulations, circulars and forms relating to Double Taxation Relief in the United Kingdom of Great Britain and Northern Ireland, 1957 — $ 2.25

PUBLICATION No. 15 en 15A:
Doppelbesteuerungsabkommen zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande: deutscher und niederländischer Text, 1960 with supplements — $ 1.75

PUBLICATION No. 16:
Dr. E.W. Klimowsky and S.F.W. Bille: The Tax Convention between Israel and Sweden — $ 2.50

PUBLICATION No. 17:
Dr. F.E. Koch and Victor Uckmar: The Convention between the United Kingdom and the Italian Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. — $ 2.85

PUBLICATION No. 18:
Alan R. Rado: United States taxation of foreign investment—the new approach — $ 5.75

PUBLICATION No. 19:
Swiss Measures against Abuse of Tax Conventions — $ 3.50

Studies on Taxation and Economic Development:

VOLUME I:
Georges Constantinou et Pelopidas A. Katopodis: Fiscalité et Développement Economique en Grèce, 1961 — $ 2.85

VOLUME II:
Z.M. Kubinski: Public Finance for Stability and Growth in an Underdeveloped Export Economy (A case Study of the Republic of the Sudan), 1961 — $ 2.85

Special Publications:

—Dr. Albert J. Rädler: Die direkten Steuern der Kapitalgesellschaften und die Probleme der Steueranpassung in den sechs Staaten der Europäischen Wirtschaftsgemeinschaft, 1960 — $ 8.50

—E.E.C. Reports on Tax Harmonization (English Translation) — $11.50

Guides to European Taxation:

VOLUME I:
Taxation of Patent Royalties, Dividends and Interest in Europe

including binder	$30
monthly supplement Service by airmail for 1965	$15

VOLUME II:
Corporate Taxation in the Common Market

including binder	$25
monthly supplement Service by airmail for 1965	$15

Ottmar Bühler †

At the age of 80, one of the most outstanding scholars in the field of international tax law has passed away.

For Germany in particular, the death of Bühler spells the end of an era. The development of tax law as an independent discipline of Law has found in Germany a number of spokesmen who have had an influence on the theoretical study of the legal aspects of a phenomenon which, perhaps more than anything else, has affected the face of modern society. Together with Enno Becker, who drafted the German General Tax Code ('Reichsabgabenordnung'), Bühler was among the most eloquent of those spokesmen, although he could never accept the view that Tax Law should be separated from other branches of Law. From the outset of his career as a scholar, Bühler has taken the view that Tax Law was more than just the administrative relationship between the State and the citizens, and this brought him to defend the interests of those citizens against the State, thus placing Tax Law at the level of general principles of law as they prevail in a modern State.

He was also one of the promotors of the International Fiscal Association, because he realized the need for extensive study of international tax problems. His name ranks with those of Blumenstein in Switzerland, Griziotti in Italy, Adriani in the Netherlands, Trotabas in France; all scholars who have made important contributions toward the development of international and comparative tax law.

Born in 1884 in Zürich, Switzerland, of German parents Bühler became Professor of Law in 1923. A major milestone in his career was his appointment as Professor of National and International Tax Law at the University of Cologne in 1942. This was probably the first chair to be concerned with the study of International Tax Law.

After his retirement he founded the International Tax Research Center at the University of Munich. Until last April he took an active part in the work of the Permanent Scientific Committee of the International Fiscal Association and the Advisory Board to the German Ministry of Finance. Just prior to his 80th birthday he completed a comprehensive book on the Principles of International Tax Law, among his many other books and articles a remarkable piece of work which shortly after its publication in September 1964, had to be reprinted. A man, severely critical in his own work and for that of others, but always constructive in his criticisms, Bühler will be remembered as one of the great masters to whom the world of learning is very much indebted.

J. VAN HOORN JR.

CONTENTS

Mr. H.W.T. Pepper in *"Tax Harmonisation in a Federation—the 1965 budget in Malaysia"* in this issue of the Bulletin, states, that capital gains taxation is to be introduced throughout Malaysia later in 1965. On April 29, 1965, a capital gains tax was enacted in *Ghana*. The tax will be effective from February, 1, 1965. Details of this tax are published in this issue. Dr. E.W. Klimowsky in his article *"Major Tax Reform in Israël"*, published in the February-issue, saw the introduction of a capital gains tax as the most striking novelty of the tax reform. In his annual *budget speech* of April, 6, 1965, the *British Chancellor of the Exchequer* unveiled the proposal for the introduction of a general capital gains tax in the U.K. Since no general capital gains tax has never been levied in the United Kingdom, this measure represents a fact of historical significance! The budget will be discussed in a future issue of European Taxation. On April, 27, 1965, the *Netherlands Government* announced that proposals will be submitted for the introduction of a tax on speculative gains for individuals. A similar tax had been abolished in 1953.

As to the reasons for the introduction of capital gains taxation, Mr. Pepper states that the Malaysian Government has been virtually compelled to introduce some form of capital gains tax because of the public spectacle of untaxed capital gains. The British Chancellor of the Exchequer said that it is unfair to the wage and salary earner that earnings pay tax in full while capital gains go free. It has in the past been a barrier to the progress of an effective incomes policy. Moreover, there is no doubt to the Chancellor that the present immunity from tax of capital gains has given a powerful incentive to skilful manipulators to avoid tax by various devices which turn what is really taxable income into tax-free capital gains.

The E.E.G. is still in the process of developing a common market. One of the essential conditions which must be met in order to achieve the economic union contemplated in the Treaty of Rome of 25-3-1957 is the realization of free capital movement.

The *E.E.G. Commission* prepared a *draft directive concerning harmonisation of taxes on the formation of capital*; this group of taxes includes the duty on capital contributions levied on the equity capital of corporations, the stamp duty on domestic securities, the stamp duty which is levied at the introduction or issue of securities of foreign origin on the domestic capital market, as well as other indirect levies with the same characteristics. The indirect taxes on capital movement, such as the taxes on stock exchange transactions, will be treated in a later draft directive. This important document is reproduced in the official French language in this issue of the Bulletin. In Germany the security tax—*Wertpapiersteuer*—levied on the first transfer in Germany of interest-bearing debt instruments and shares issued by a non-resident company has been abolished as per 1.1.1965, according to the law of March 25, 1965. The official explanation (Begründung) has been published in this issue, together with the official explanation of the new German 25% *"Kuponsteuer"* on interest on bonds paid to non-residents, effective for interest payments on or after June, 28,1965. This tax was introduced to relieve the inflationary pressure caused by the influx of capital resulting from the comparatively high German interest rate structure.

Taxation is a tool often used to achieve certain economic and social objectives. Any doubt on this score should be dispelled by the measures mentioned above.

Capital gains taxation is essentially a social-political measure, the German coupon tax, a fiscal-monetary measure and the E.E.G. directive an incentive towards the creation or strengthening of the international capital market.

J.C.L. Huiskamp

I

TAXATION OF FOREIGN ENTERPRISES CARRYING ON BUSINESS OPERATIONS IN JAPAN (II)*

by MASATAKA OKURA

C PROCEDURES AND LICENSES FOR INVESTMENT IN JAPAN

1 Incorporation of a Subsidiary Company in Japan, and Participation in Management of an Existing Company in Japan.

1 *Regulations*

When a foreign investor establishes a subsidiary or participates in management of an existing enterprise in Japan, he acquires Japanese capital stocks. The acquisition of the stocks is subject to regulations. The sources of regulations are *the Foreign Exchange and Foreign Trade Control Law* (Law No. 228 of 1949, and hereinafter referred to as the Foreign Exchange Law) and *the Law concerning Foreign Investment* (Law No. 163 of 1950, and hereinafter referred to as the Foreign Investment Law).

Validation under the Foreign Investment Law or license under the Foreign Exchange Law is required in principle for acquiring stocks. Nature of the currency used for investment and the pattern of the acquisition is the decisive factors in determining the applicable law. In most cases, the validation under the Foreign Investment Law is required, while, in a few cases, the license under the Foreign Exchange Law should be obtained. The details are as follows:

a Acquisition of stocks by Japanese yen converted from a foreign currency brought into Japan by the foreign investor or its equivalent

The foreign investor must, in principle, obtain validation under the Foreign Investment Law. There are, however, two exceptions.

(i) When a resident foreign investor, not wishing to remit the dividends and principal in the future, acquires stocks of any of the non-restricted industries, there is no restriction on the acquisition.

(ii) When a branch (including business office) in Japan of a non-resident foreign investor acquires stocks of any of the non-restricted industries for operating capital, not wishing to remit the dividends and principal, there is no restriction.

Acquisitions referred to in (i) and (ii) above are made freely. However, a license under the Foreign Exchange Law is to be obtained when a branch office receives funds from its principal for acquisition of capital (see "(2) *Branches*" below).

b Acquisition of stocks by Japanese yen not falling under a. above

When a non-resident foreign investor acquires stocks of a non-restricted industry, a license under the Foreign Exchange Law is required.

When a designated foreign investor acquires stocks of a restricted industry, validation under the Foreign Investment Law is required.

*) The first part of this article has been published in the May 1965 issue, p. 177.

A non-designated foreign investor is prohibited from acquiring stocks of any of the restricted industries.

When a resident foreign investor acquires stocks of a non-restricted industry, there is no restriction.

When a branch office of a non-resident foreign investor acquires stocks of a non-restricted industry, there is no restriction

the terms "resident" and "non-resident" referred to in this Chapter are those for foreign exchange purposes, and are different from those for tax purposes. For instance, an individual residing in Japan for a period of more than 6 but less than 12 months is a resident for foreign exchange purposes, but not a resident for tax purposes.

Note 1. Restricted industries are Bank of Japan and those enumerated below:
Waterworks, railways, track, trusts, banks, marine transportation, fisheries, shipbuilding, broadcasting, mining, harbour transportation, mutual banks, long-term credit banks, air transportation, electric utilities, gas utilities, and foreign exchange banks

Note 2. Designated foreign investor is one having nationality of any of the following countries.
Canada, the Republic of China (Taiwan), Finland, France, the Federal Republic of Germany, Greece, India, Malaysia, the Netherlands, Norway, Pakistan, Sweden, Switzerland, Thailand, the United Kingdom, the United States of America, Uruguay, and Yugoslavia.

2 *Procedure of Validation and Licensing*

Approximately same criteria is applied for validation and licensing. Judgement on whether or not the investment in question exert any adverse influence on the Japanese economy is most important.

In order to obtain validation under the Foreign Investment Law, a foreign investor must submit an application form, through the Bank of Japan, to the competent ministers, i.e., the Minister of Finance and the minister having jurisdiction over the business carried on by the company issuing the stocks in question. The application form should be submitted by the foreign investor or his proxy. The competent ministers examine the application and grant validation if they consider that the investment is in conformity to the criteria. Although minor cases are not submitted to the Foreign Investment Council, the competent ministers must, in principle, hear the opinion of the Council before granting validation. The Foreign Investment Council is attached to the Ministry of Finance.

In order to obtain a license under the Foreign Exchange Law, it is necessary to submit an application form, through the Bank of Japan, to the Minister of Finance. Either the transferor or transferee of the stocks may apply for the license. Non-residents acquiring stocks make application ordinarily. Except for minor cases, the application is submitted to the Foreign Investment Council after being examined by the minister having jurisdiction over the industry.

When the capital is later increased in relation to the investment once validated or licensed, a new validation or license is required for acquisition of new stocks. Simplified procedure is applied to such acquisition.

2 Branches.

Direct investment through branch operations is now regulated under an amendment to the control system made effective on July 1, 1963.

When a foreign enterprise wants to establish a branch, factory or other business office in Japan and carries on business in Japan through such office, the enterprise must submit to the competent ministers including the Minister of Finance a report setting forth such establishment. This report should be submitted through the Bank of Japan.

The aim of this system is to regulate the investment of this kind at the entrance into Japan, and to authorize the remittance abroad of the profits and the capital in future with regard to the foreign investment thus screened at entrance.

A license under the Foreign Exchange Law is required for the remittance to the branch from its principal. The new system is designed to be managed so that the license may be automatically granted up to an amount specified, as a result of the examination of the business plan and the financing plan which are contained in the above-mentioned report.

If these plans are modified substantially, a report must be submitted to the competent ministers who examine the modified plan and decide whether or not it is to be authorized.

In addition, the branches established under the above report system and the branches having already been set up in Japan before enactment of this system are required to submit periodical reports on the situation of business activities carried on in Japan.

Thus, for the purpose of controlling the branches in Japan, the report system requiring a report of establishment and periodical reports and the licensing system regulating remittance to the branch office from its principal are managed integrally by the control authority.

The above regulations are administered solely on the basis of the Foreign Exchange Law, and the criteria applied by the authority is the same as that for subsidiary.

ANNEX

OUTLINE OF THE MAJOR TAXES IN JAPAN

NATIONAL TAX

(1) *Income Tax (Individual Income Tax)*

The national income tax is applicable to individuals. The tax rate ranges from 8% on taxable income not exceeding 100,000 yen to 75% on taxable income above 60,000,000 yen. A basic exemption of 130,000 yen is allowed to the taxpayer. In addition, an exemption for spouse (120,000 yen), for dependents (for each 13 years old or over 50,000 yen, for each under 13 years 50,000 yen) are allowed. Any casualty loss, medical expenses, social, life or casualty insurance premiums incurred or payable by a taxpayer are deductible subject to certain limitation for the income tax purpose. Income tax revenue in 1965 budget totaled 989 billion yen, or about 28.2% of national tax revenue.

(2) *Corporation Tax (Corporate Income Tax)*

Japanese corporation tax is levied under the Corporation Tax Law as distinct from the Income Tax law. Ordinary corporations such as joint stock companies, limited companies, partnerships, cooperative associations, foundations and non-juridical organization carrying on continuous profit making activities, are liable for corporation tax.

In computing the corporation tax, income is divided into income "earmarked for dividend" and "other income". Each of the two classes of income is divided into income of not more than 3,000,000 yen and income over 3,000,000 yen per year. The two brackets of income "earmarked for dividends" are taxed at the rates of 22% and 26%, and the two brackets of "other income" are taxed at the rates of 31% and 37%, respectively.

Corporation tax revenue in 1965 budget reached 1,036 billion yen, or about 29.5% of national tax revenue.

(3) *Inheritance & gift taxes*

Inheritance tax is levied at progressive rates on the total value of the estate less liabilities of all properties acquired through inheritance or bequest. Excluded from the tax base are properties acquired by charitable and public welfare organizations, life insurance proceeds to an heir up to 1,000,000 yen, and retirement allowances up to 500,000 yen for each statutory heir. Taxes are not imposed on estates the value of which does not exceed 2,500,000 yen plus 500,000 yen for each statutory heir, or on estates the taxable value of which does not exceed 700,000 yen for each statutory heir or 400,000 yen for each legatee.

Gift tax is levied at progressive rates after a basic exemption of 400,000 yen on properties acquired by gift during the period of a year.

(4) *Excise Taxes*

(i) *Liquor tax* is levied as a specific duty on the quantity of liquors shipped or delivered from the manufacturing or bonded area. For certain classes of expensive liquors, an ad valorem duty system was adopted in 1962 under which the tax base is manufacturer's selling price or the price as received from a bonded area.

(ii) *Commodity tax* is levied on manufacturers, recipients of goods from bonded areas, or retailers of 60 commodities classified as follows:

Class 1. Taxes are levied on the basis of the retailer's sale price at flat rates of 20 percent on jewelry and furs, and 10 percent on articles for household decoration and similar valuable goods.

Class 2. Taxes are levied on the manufacturer's sales price or the price at receipt from bonded area, at flat rates of 40 percent on large size passenger cars, yachts, golfing goods, higher priced clocks and watches, etc., at 30 percent on ordinary passenger cars, air conditioners, television sets, etc., and at 20 percent on cameras, playing-records and furnitures, 10 percent, and 5 percent on certain durable goods, cosmetics, etc.

Class 3. Taxes are levied as specific duties on matches and soft drinks.

(iii) *Sugar excise tax* is levied as a specific duty per kilogram of sugar and various sugar products shipped or delivered from the manufacturing or bonded areas.

(iv) *Gasoline tax* and *Local road tax* are specific duties per kilolitre of gasoline shipped from refineries or delivered from bonded areas. The two taxes are collected together at the same stage, and the yields of local road tax are distributed to local governments on a statutory basis. The rates are 24.300 yen per kilolitre for gasoline tax and 4.400 yen per kilolitre for local road tax.

(5) *Transaction Taxes*

(i) *Registration tax* is levied by various rates at registration of real property, ships, and industrial ownership of incorporation or increases in capital of commercial companies, of patent rights, trade marks, etc., and registration by lawyers, doctors, accountants, etc.

(ii) *Stamp duties* are imposed on persons who prepare deeds, bills of exchange, stock subscription certificates, etc. Except for a few minor items, taxes are levied at progressive rates according to the value stated in the deed.

(iii) *Securities transactions tax* is levied at flat rates on the transfer price of stocks, shares, bonds and debentures.

LOCAL TAX

(1) *Prefectural Taxes*

(i) *Prefectural inhabitants tax*

In the case of individuals, this tax consists of an annual per capita tax of 100 yen and a progressive income tax of 2 percent on incomes not more than 1,500,000 yen and 4 percent on incomes over 1,500,000 yen. In the case of corporations, it consists of an annual per capita tax of 600 yen and standard rate of 5.5 percent on the amount of corporation tax.

(ii) *Enterprise tax*

In the case of individuals, this tax is levied at the rates of 3, 4 and 5 percent on income according to the kinds of business. In the case of corporations, it is levied on corporation profits at progressive rates of 6, 9, and 12 percent on income brackets under 1,500,000 yen, between 1,500,000-3,000,000 yen, and over 3,000,000 yen, respectively. A flat rate of 1.5 percent is applied to insurance company premium income determined by deducting from premium received the amount of reinsurance premiums paid and an estimated amount for insurance benefits.

(iii) *Motor vehicle tax* is levied annually in the form of a specific tax according to size and use of motor vehicle.

(iv) *Real property acquisition tax* is levied on persons purchasing land or a house at a flat rate of 3 percent of appraised value. Deductions from appraised value are allowed if property is acquired for residential purposes.

(v) *Light oil delivery tax* is levied on light oil received from a retailer at the rate of 15,000 yen per kilolitre.

(2) *Municipal Taxes*

(i) *Municipal inhabitant tax*

This tax is levied at the city, town, or village level at progressive rates ranging 2 to 14 percent on the income of individuals with a per capita tax of 200 to 600 yen; it is also levied on corporations by a standard rate of 8.4 percent on the amount of corporation tax together with a per capita tax of 1,200 to 2,400 yen.

(ii) *Property tax* is levied at a standard rate of 1.4 percent on lands, houses, as well as tangible business assets depreciable for income or corporation tax purposes.

TAX HARMONISATION IN A FEDERATION
THE 1965 BUDGET IN MALAYSIA

by

H.W.T. PEPPER

1. There have been refreshing signs of a tendency to federation among developing countries in recent years. An outstanding example was that of Malaysia, the federation of Malayan States to which Singapore, Sabah and Sarawak were added in September 1963 and this was followed by Tanzania, the union of Tanganyika and Zanzibar, in 1964.

2. Such movements have almost everything to be said in their favour. Few developing countries are large enough to be able to bear the full cost of defence if seriously threatened by an agressor. Some smaller countries find the cost of diplomatic representation in other countries and of representation at the United Nations a material drain on resources. These and other expenses are among those which will be spread more widely and therefore be less burdensome under a federation.

3. The economic advantages of federation include the removal of inter-state trade barriers and the enlargement of the market for local manufactures. The size of the market is a factor in the attraction of foreign capital to set up new industries and the modern tendency for the formation of a common market between countries which are not linked politically is clearly even more likely to flourish when there is political federation.

4. One problem in a newly-formed federation is the necessity for harmonising differing direct and indirect tax structures in the units of the federation. There are bound to be differences in the impact of taxes in what were previously separate countries.

5. The following notes relate to the position in Malaysia where the process of harmonising disparate tax systems has begun.

6. The 14 States which comprise Malaysia include 3 free trade areas (the islands of Singapore, Penang, and Labuan) where, broadly speaking, duties are limited to tobacco, alcohol, and petroleum. Apart from problems of smuggling the situation therefore exists that part of the population of Malaysia is largely free of import duties. Export duties on exports of tropical produce (especially rubber) and minerals form an important part of the Federal revenue and these duties vary in the different States.

7. Direct taxes, especially income tax on individuals, also varied considerably before the 1965 Budget, the top effective personal income tax rate being 55% in Singapore, 45% in the States of Malaya, 40% in Sabah and 10% in Sarawak. The corporation income tax rate was 40% in each State with a credit being given to the shareholder in Malaya, Singapore and Sabah for the tax paid on the income out of which his dividend was derived. Sabah, however, granted a "deferment" of 20%, in respect of profits not distributed by taxing corporate incomes at 20%, a further 20% being charged on subsequent distributions from such income. Effectively therefore, profits "permanently" ploughed back would never be taxed at more than 20%.

8. Another substantial difference in the impact of income tax arose because Sarawak, apart from its low top personal rate, had a schedular system where different types of income were taxed differently and there was not full aggregation of the income of individuals.

9. In Sabah, although the top personal income tax rate of 40% was reasonably "in line", a feature of the rate structure was that large slabs or bands of taxable income were chargeable at $3\frac{1}{2}$% and 5% respectively. Accordingly the income tax burden on the middle class was a very light one.

10. The effect of the "deferment" in respect of companies in Sabah was to encourage the corporate form of enterprise. In Sarawak by contrast there was a strong discouragement in that corporations were taxable at 40% and individuals at a flat rate of 10% on their profits.

11. The effect was that in Sarawak large enterprises avoided corporate status while in Sabah even comparatively small businesses tended to incorporate.

12. It is generally accepted that a tax system should be as even as possible in its impact within a federation so that economic development is influenced only by economic considerations and not distorted by differences in the tax burden other than specific incentive legislation.

13. Political considerations are however involved whenever the integration of tax systems increases the tax burden of a particular region or community. It is clear that increases must be involved because if all levelling were done by decreasing the taxes in the higher taxes regions it is unlikely that the Budget would balance.

14. Provisions for consultation with the State Governments in Singapore, Sarawak, and Sabah concerning certain aspects of tax changes were therefore written into the agreements connected with their joining Malaysia. Moreover Sabah and Sarawak were given a guarantee that tax adjustments would be made in graduated stages. In Singapore's case the most important tax changes on which there was to be consultation would clearly be those connected with the application of tariffs—the ultimate object is that a common market should replace the mixed structure of State tariffs and free trading areas.

15. In the context of the background, sketched in above the 1965 Budget of the Federal Finance Minister, Mr. Tan Siew Sin, is worth study as an exercise in harmonisation requiring both fiscal soundness and political courage.

16. The nettle of income tax inequalities has been firmly grasped by converting the Sarawak system from a schedular to a unitary system and establishing throughout Malaysia a uniform scale of tax rates and personal reliefs. This incidentally has been of considerable benefit in Sarawak to small businessmen with dependants, and small partnerships. These persons who previously paid tax at 10%, after a basic abatement, now receive substantial personal reliefs and lower starting rates of tax as well as a 40% rebate (see paragraph 18) and accordingly achieve material decreases in their income tax liabilities. In contrast the top rate of personal tax for wealthier taxpayers has been increased from 10% to 50% subject to the rebate referred to below.

17. In the case of both the lower income-taxed regions, Sabah and Sarawak, the personal

reliefs for an individual and his wife have been left on a higher plane than the reliefs in Malaya and Singapore but on the other hand the limited earned income relief allowable in Malaya and Singapore has not yet been extended to Sabah and Sarawak.

18. In addition the new Malaysian scale of income tax rates has been abated in Sabah and Sarawak by a 40% discount from tax on the first $50,000 of taxable income. The top personal income tax rate which varied regionally from 10% to 55% before the Budget has been standardised at 50% throughout Malaysia.

19. The result of these changes is the achievement of complete harmonisation in personal income tax between Malaya and Singapore, and, at the lower level referred to above, between Sabah and Sarawak.

20. The 20% tax deferment on corporate income in Sabah has been repealed so that corporations are now taxed at the same rate throughout Malaysia.

21. The total effect of the changes has been to establish a reasonably level platform from which future changes can be made evenly throughout Malaysia.

22. Although the income tax changes will produce some $15 million extra revenue there is clearly a limit to what increases in rates alone will achieve. The Minister of Finance has announced his determination to see that tax evasion is firmly tackled and a good deal has been done, including the employment of expatriate experts to train local staff, to cope with this universal problem.

The buoyance of income tax revenue moreover is traditionally based on a healthy developing economy producing increasing profits and hence a natural increase in income tax yield. Diversification into new crops and into manufactures is being promoted in Malaysia, the latter partly by the provision of pioneer tax exemptions. As new crops come to maturity, and exemptions gradually run out the companies concerned will become new contributors to tax revenues.

23. A Bill introduced in March 1965 has effected a large measure of standardisation of the tax holiday provisions for pioneer industries, the maximum period of exemption is now 5 years and qualifying limits for expenditure on factories and machinery have been standardised for the purpose of extending the basic exemption (of 2 years) to 3, 4, or 5 years. The amended provisions apply to Malaya, Singapore, and Sabah and are to be extended to Sarawak shortly. In addition it is planned to provide additional, alternative relief in the form of enhanced capital allowances later in the year. The consent of the Federal Government is necessary to the issue of pioneer certificates by the State authorities.

24. Estate Duty, previously levied (under different laws in the various regions) at rates ranging at the maximum from 40% to 60% is now being imposed on the estates of persons dying on or after 1st January, 1965, on a common scale of rates rising to a maximum of 50%. The exemption limit has also been harmonised at the substantially increased figure of $25,000.

25. A start has been made with the harmonisation of indirect taxes—increases have been made in some duties in other parts of Malaysia which were appreciably lower than in Malaya, and a Tariff Advisory Board has been set up to consider an initial list of goods for common market treatment.

26. An effective tax system normally relies on a fairly wise spread of taxes so that no single tax is too severe and none becomes subject to diminishing returns. This principle has been fully recognised in the 1965 Malaysian Budget*. Several new taxes have thus been introduced and will be the first fully "Malaysian" taxes applied under Federal laws from the outset and will supplement the revenue from existing taxes which, as mentioned, are not being subjected to heavy increases.

27. Since there is a limit to income taxation the alternative is to tax transactions. This could be done by taxing particular items of consumption at appropriate rates dependent, for example, on the degree of luxury, or by levying a general sales tax at a low rate. The former course would in the context of a newly formed Federation require a lengthy operation to fix suitable rates of tax compatible with the existing commodity tax structures of the member States.

28. Most luxuries are imported and are subject to customs duties which vary from State to State and in any event such goods are not objects of mass consumption likely to generate material revenue.

29. The course was therefore chosen of applying a turnover tax at ½% on the turnover of business generally with exemption, inter alia, for exports.

30. For the purpose of administrative economy it was decided to use the income tax machinery to collect the tax which is to be computed along with the income tax liability partly on the basis of information provided by the accounts rendered for income tax purposes. Turnover tax is deductible in computing profits for income taxation.

31. The tax is incidentally expected to provide useful sidelights on income tax compliance. Traders will be asked to analyse their turnover between exports and local sales and the latter between sales to wholesalers, retailers and consumers. These analyses will provide data for checking the rate of profit declared for income tax purposes and at the same time furnish relevant information for future development of the tax.

32. In announcing the turnover tax the Minister of Finance mentioned that he realised the tax might involve anomalies, as did most taxes, but that a flexible approach would be maintained in order to correct these as far as possible and that future development might be either on the multi-stage basis or as a single stage tax. Traders who found difficulty in paying the tax due in one sum would be given time to pay.

33. Another new Malaysian tax is a 2% tax on payroll applicable to all businesses and professions where the payroll exceeds $6,000 per year. To facilitate administration the tax is being collected by the national provident funds which already collect provident contributions monthly from employers in respect of their employees.

34. In acknowledgment of the graduation principle in regard to the taxation of Sabah and Sarawak the Payroll tax will not be extended to those States until 1st January 1966, one year after the application to the States of Malaya and Singapore.

35. The payroll tax is intended to provide a contribution to general Federal revenue, in

*) This principle of fiscal policy was recently endorsed by Pakistan's Finance Minister who in the course of an interview, reported in the Economist of 6th March 1965, said, "Our taxation policy aims at widening the net rather than increasing the incidence. High rates do not necessarily produce high yields. We are careful in this country not to push taxation to the limit of decreasing returns."

token of the Federal Government's everincreasing expenditure on such social welfare items as education and health, and is deductible in computing profits for income tax.

36. A measure is to be introduced to equalise the taxation of film rentals in Malaysia—at present a rental tax applies in Singapore and a footage tax in the States of Malaya. The new tax which will be based on rentals is intended to harmonise rather than raise material extra revenue although a moderate increase is expected.

37. Capital Gains taxation is to be introduced throughout Malaysia later in 1965. It has been announced that the tax will apply, at a maximum rate of 20%, to gains from assets acquired and disposed of after Budget Day, but will apply also to assets acquired within the 10 years before Budget Day if disposed of after Budget Day and within 10 years of acquisition. The tax rate applicable to pre-Budget acquisitions will be scaled down successively from 20% to 5% according to the length of time the asset is held. Where a taxpayer's income tax rate is lower than 20% he may opt to have his income tax rate applied.

38. Government has been virtually compelled to introduce some form of capital gains tax because of the public spectacle of untaxed capital gains, especially those arising from real estate, being made in urban areas as a result of an increase in values, caused largely by the development expenditure of the Government, over a period when the cost of living has been remarkably stable.

39. Apart from the effective exemption of disposals of pre-Budget assets where held for more than 10 years, an annual exemption of the first $5,000 of gains is to be granted so as to encourage equity investment by the small man and the growth of a share-owning democracy. Moreover no capital gains tax will apply on the disposal by a taxpayer of his residence. This latter exemption is in line with the Malaysian Government's policy of encouraging house ownership which has also been marked by a measure of income tax exemption and by the raising of the exemption limit for estate duty.

40. Malaysia's 1965 Budget is a token of the country's firm intention to pay for its economic development by spreading the tax load without burdening any sector too heavily and without diminishing the various incentives to industrialisation.

THE TAX CONVENTION BETWEEN SWEDEN AND ISRAEL IN RESPECT OF DEATH DUTIES

by
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and
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1. INTRODUCTION

In order to arrange the avoidance or relief of double taxation of income and capital arising out of the steadily increasing economic and commercial relations between Sweden and Israel, an agreement was signed between the two countries on December 22, 1959, for the avoidance of double taxation with respect to taxes on income and capital. This agreement entered into force on June 3, 1960, and has been commented on in Publication No. 16 of the International Bureau of Fiscal Documentation.

A similar arrangement has now been made in the field of death duties by the conclusion of an *agreement between Sweden and Israel for the avoidance of double taxation with respect to death duties*, signed on May 15, 1962, and entered into force on February 7, 1963.

It shall be effective in the respect of the estates of persons dying on or after the 1st of July 1961.

The purpose of this agreement is to state the principles for a solution of the double taxation arising when the estates of a person, resident at the time of his death in Sweden or in Israel, are subject to both the Swedish succession duty and the Israeli estate duty. In such a case a conflict arises, due to the collision of the different types of rules of the national systems of taxation.

The above mentioned two duties are *the present subject of this agreement*, which is also applicable to any other taxes of a substantially similar character, imposed in Sweden or Israel subsequent to the date of signature of this agreement. *The object of this agreement* is limited to the estates of those persons, who at the time of their death were residents of Sweden or Israel.

A short survey of the nature of the two duties subject to this agreement might give the reader a valuable background to the double taxation which might arise by the levying of the said duties on the same estate.

2. THE SWEDISH SUCCESSION DUTY

(*KF om arvsskatt och gåvoskatt, 6 juni* 1941 (*SFS* 1941/416) cited here below as AGF). This duty is the only death duty at present in force in Sweden. It is a legacy tax levied at progressive rates on the amount received by each beneficiary without regard to the value of the whole estate; its amount varies both with the value of the property received and with the degree of the legatee's relationship to the decedent.

Disputes in matters relative to the imposing of this duty are brought before the local court which has jurisdiction over the estate. Appeal from a decision of this court must

be made to the intermediate court of appeal *(hovrätten)* within three years from the time the lower court determines the amount of the duty. Final appeal goes to the Supreme Court *(högsta domstolen)* and must be made within four weeks (AGF §60).

The succession duty is payable on the receipt of property, whether located in Sweden or abroad, left by a person who at this death was either a citizen of Sweden (whether or not a resident) or a resident of Sweden (whether or not a citizen). A resident according to Swedish law is in this case one who at the time of his death had his real dwelling and home in Sweden. In addition anyone who, regardless of residence, was making a permanent sojourn in Sweden at the time of his death will be treated as though he has been a resident (AGF §4(2)). In the case of *property left by a nonresident foreigner*, the benificiary is taxed only on certain property located in Sweden on the decedent's death. Property which is deemed to have its situs in Sweden is:

1. Real property in Sweden or the right to receive rent or other benefits from such property;
2. Movable property not included in item 1., which is part of the capital or assets of a business activity carried on in Sweden by the decedent, such as machinery and equipment, raw materials, inventories and similar assets, mining rights, patents and copyrights, and capital in the form of cash, bonds, bank deposits, loans, shares in corporations, and interests in economic associations and partnerships;
3. The right to use or enjoy any property listed in item 2., including any right to a royalty or other periodic receipt from such property;
4. Shares in Swedish corporations, or interests in Swedish economic associations or partnerships even if they are not comprehended in item 2.; that is even if they are not assets of business being carried on in Sweden by the decedent. Shares in a Swedish corporation, owned by a nonresident alien merely as an investment and not as part of a business he is carrying on in Sweden, are thus subject to the succession duty on his death even if bequeathed to a nonresident alien.

The succession duty is levied against the person or institution receiving the property (AGF §2), whether or not that person is a resident or citizen of Sweden. He is taxed on the value of his share of the estate (AGF §10). Only the national government (but not the King or members of the royal family or local governments) and certain Swedish patriotic and charitable institutions are exempt from the tax (AGF §3). The Swedish organizations in question are those set up to strengthen the defence of the country, to further scientific education or research or to further the care and education of youth or the care of needy, aged, sick or disabled persons. In the latter case the exemption will be denied if the purpose of the organization is to benefit members of certain family or families or foreigners residing abroad. In no case can a foreign organization qualify for exemption, nor can any organization whose purpose is to benefit the economic interests of its members.

Foreign diplomatic and consular personnel in Sweden and their wives, children under eighteen years, and personal servants, who are not Swedish citizens, are not regarded as residents (AGF §4(3)).

The succession duty is levied separately on each beneficiary's share in the estate (AGF

§10). Beneficiaries are divided into four classes with a special rate applicable to each class. Within each table the rates are progressive (AGF §28).
Treaties for the elimination or mitigation of double taxation in connection with succession duties are expressly authorized (AGF §71(1)).

3. THE ISRAELI ESTATE DUTY

The estate duty law (Amendment no. 3.), published in Books of Laws on August 7, 1964, although called an amendment, practically replaces the previous law of 1949 with the two Amendments of 1956 and 1957. While the Israeli income tax law still adheres to the principle of the geographical source of income the estate tax follows the system of residence, implying that the world wide estate of a permanent resident of Israel is liable to Israeli estate duty while the estate of a nonresident is liable only in case it is situated within Israel. Every heir is liable to tax on his share in the estate and the administrator of the estate is liable for the tax of the whole estate. The same principle applies to persons having possession of the whole estate or any part thereof without being heirs. The object of taxation is the net residue of the estate; that is the estate after deduction of the general and personal allowances.

The general allowances are to be subdivided as follows:

a) *General exemptions.*

These are goods or property which were dedicated by the deceased to the State of Israel, a local authority such as a municipality or a village or a district council, the Jewish National Fund (Keren Kayemet Le'Israel, Keren Heyssod, the Joint Appeal for Israel, an institution of higher education confirmed under the Law of the Council for Higher Education, 1958, or to an institution for the purposes of religion, culture, education, science, health, public welfare or sport which has been confirmed for such exemption by Minister of Finance with the consent of the Finance Committee of the legislative body (Knesset); *furthermore* property which was dedicated by the deceased to a public institution privileged under the Income Tax Law, viz. a national fund or public institution such as a benevolent fund approved by the Income Tax Commissioner, provided, however, that the property so dedicated to the funds and institutions privileged under the Income Tax Law should not exceed 50% of the whole value of the estate;

there are *furthermore* generally exempt the furniture and household utensils which were transferred by the deceased to his spouse or his children before his death or which were conveyed to them on the death of the deceased;

furthermore religious utensils, manuscripts, books, scientific collections, pictures and works of art which the deceased did not keep for the purposes of sale or lease and which were donated by the deceased or his heirs without consideration to a public institution privileged under the Income Tax Law. It those last-mentioned utensils and literary, scientific and artistic pieces of property had been left in the possession of the heirs and not been sold within five years from the day of the deceased's death and, as far as pictures and works of art are concerned, their value does not exceed IL 15,000.-.

b) *Expenses.*
The next item of general allowances are four categories of expenses, viz. those for the funeral and the tombstone and the performance of prayer and other religious ceremonies, the debts of the deceased which were not cancelled by his death and which include the marriage obligation under the Jewish law, but with the exclusion of the sometimes considerable duty to pay maintenance to the widow and small children, out of the estate. This is of practical importance because by the exclusion of the maintenance obligations, the value of the estate is artificially enhanced for estate tax purposes.

c) *Fees.*
The next item in the deductible expenses are the transfer and registration fees for immovable property which were paid for the transfer of gifts allowed under the Estate Tax Law.

d) *Administration.*
The next and final item are the expenses for the administration of the estate inasmuch as they are confirmed by the Court.

With regard to the exclusion of debts of the deceased, there is one qualification relating to a non-resident deceased whose creditor was also a non-resident. Those debts cannot be deducted from the estate assets unless the deceased had mortgaged specific property in favour of the non-resident creditor; only if that non-resident creditor could prove to the Director of Estate Tax that the assets of the non-resident deceased outside Israel are insufficient in order to cover his debt, then deduction of such part of the debt from the estate situated in Israel would be allowed, as would be necessary in order to cover the remaining debt. On the other hand, if estate property situated outside Israel (and this would apply to the estate of a non-resident of Israel) cannot be transferred or taken out of the place where they are or there are restrictions in that respect, then those assets will not be taken into account for the valuation of the estate until the prohibition or restriction relating to them will have been removed.

If the estate belonged to a person who had made in Israel an approved investment in foreign currency, irrespective of whether the deceased at the time of his death had been a resident or a non-resident of Israel, the value of his estate should not include any property which was owned by him at the time of his death. The same applies to foreign currency which the deceased had legally transferred to Israel, while he was a non-resident or after he became a resident, if that transfer was made within seven years from the day on which he became a resident. The same applies to property acquired by the deceased with legally disposable foreign currency and also to property of a person who became a resident after the establishment of the State of Israel (May 15, 1948) and which was outside Israel at the time of his death, if that property had been owned by him immediately before he became a resident or, if acquired thereafter, was acquired in exchange for property previously owned by him or with the profits of such property. There is the further possibility of exemption from estate duty for property acquired with foreign

currency, that is if the Board of the Investment Authority had granted an exemption.

The property exemptions are supplemented by the amount of IL 10,000.– as such and, in the case of a deceased who died as a result of enemy action, by an additional amount of IL 15,000.–.

The personal allowances consist of three categories:

The first are IL 25,000.– for the surviving spouse, even if a divorce had taken place before the death of the deceased. As such spouse is also considered a person who, without being legally married to the deceased, was known as having lived with the deceased at the time of his death under marriage-like conditions and had not been legally married to another person.

The second category are children of the deceased, and their allowance is IL 15,000.–, if the child had not completed his 22nd year, and thereafter IL 10,000.–. If the child is unable to support himself, the amount of his allowance is IL 32,500.–.

The third category are the parents of the deceased whose allowance is IL 5,000.– for each of them, if the deceased had been entitled to a maintenance relief under the Income Tax Law which means that he had supported and maintained them.

On the other hand, the estate property has under the new law been either extended or at least so determined as to exclude, as far as possible, attempts to evade the full tax rate by contrivances. For that purpose, the estate property will include such items which are in joint ownership by the deceased and another person, who is not his spouse, if it was agreed that at the time of the death, that property should fully belong without consideration to that other person. Joint ownership exists if there is a possibility that each of the participants could dispose of that property as if he were the only owner thereof. Also assets which were transferred by the deceased without consideration to another person so that the ownership should be bestowed on that other person at the death of the deceased or at any date connected with that death which was determined by the deceased. Also included in the estate are assets which were transferred by the deceased without consideration to another person within five years of his death, and the property had been conveyed to that person immediately. Exceptions to the above rule are marriage gifts (not to an exorbitant degree) to the children of the deceased, as well as other gifts which are not exaggerated under the economic conditions of the deceased; and gifts made by the deceased to a public institution recognised under the Income Tax law.

Very important is the inclusion in the estate property of amounts paid under an insurance policy or labour agreement or by a pension fund or a benevolent fund, or premiums or other amounts paid from the assets of the deceased. The re-exemption to that are payments made to the spouse, the children and their descendants, the parents and a person maintained by the deceased, if it can be proved that the premiums or other payments made for that purpose by the deceased did not exceed a reasonable amount under the economic conditions in which the deceased lived.

Also included in the estate are such assets as actually were out of reach of the deceased because they were under the disposition of the Public Administrator under the Tranding with Enemy Ordinance, 1939, the Law of Absentee Persons of 1950, the Law of German

Property 1950, and the Public Administrator delivered them to the heirs of the deceased.

If some property had at the time of the death of the deceased, belonged to the deceased and his spouse in undivided parts, then the surviving spouse is considered to be the owner of half of that property.

The rates of estate tax are as follows:

On any part of the first IL 35,000.– of the net residue value of the estate	5%
On the next IL 35,000.–	10%
On the next IL 40,000.–	15%
On the next IL 45,000.–	20%
On the next IL 45,000.–	25%
On the next IL 50,000.–	30%
On the next IL 50,000.–	35%
On the next IL 100,000.–	40%
On the next IL 100,000.–	45%
On the next IL 250,000.–	50%
On the next IL 250,000.–	55%
On any subsequent amount	60%

Double taxation relief is being granted by giving a tax credit for estate tax payed on estate property which the deceased himself had inherited during the last seven years before his death and on which estate tax had been paid, and if the deceased died after the seven years, 1/5 of the previously paid estate tax is being given to him as a credit for every year preceding the seventh year, in which he himself had inherited estate property on which estate tax had been paid.

An extensive system of obligations to submit returns and information to the Director of Estate Duty, as well as prohibitions to dispose of estate property before payment of estate tax, including the prohibition to open "safes" in banks, as well as detailed provisions for penalties are intended to secure the observance of the provisions of the new law.

4. THE SWEDISH-ISRAELI DOUBLE TAXATION AGREEMENT

The allotment of the right of taxation between Sweden and Israel in order to avoid double taxation with respect to the above related death duties, is in the agreement based on the same principles in force in those agreements which Sweden has already concluded in this field with several European countries.

Thus the right to tax *immovable property* of an estate shall be assigned to the State where the property is situated. The same will apply to accessories thereto as well as usufructs over and other like interests therein, inclusive of rights to royalties for the use of immovable property. (Art. IV (1), (2), (3)).

If *assets employed in a business or liberal profession or in any agricultural or foresty enterprise* are attributable to a permanent establishment, i.e. an office, a branch, a factory, a work-

shop, a farm or a forest, situated in Sweden, they shall be taxed only in Sweden to the Swedish succession duty. (Art. V).

Shares in a joint stock ompany, incorporated under the laws of one of the territories, i.e. Sweden or Israel, making part of the estate of the decedent, shall be subject to duty only in that territory in which the company is incorporated. (Art. VI).

Assets not dealt with in Articles IV, V, and VI shall be subject to duty only in the territory in which the deceased person was resident at the time of his death. (Art. VI (1)). If any doubt arises as to the territory in which a deceased person shall be deemed to be resident, or if such person is deemed to have been resident in both territories, the question of residence shall be settled by arrangement between the competent authorities i.e. the Minister of Finance, or his authorized representative, in Sweden or Israel respectively. If so, the authorities shall take into consideration in which territory the deceased's personal and economic interests may be considered to have been centred, or, if this cannot be decided, his nationality. (Art. VII (2)).

Institutions and organizations established in one of the territories mainly for religious, educational, cultural, charitable, social welfare or other like purposes for public benefit shall not in the other territory be subject to other or more burdensome duties than institutions and organizations established in that other territory for the same or similar purposes. (Art. IX). This provision of the agreement applies, as far as Sweden is concerned, directly to the Swedish rules (AGF §71), which provides for exemption of the Swedish succession duty or an imposition of that duty at a lower rate for foreign institutions or organization in certain cases (*KK. March 1st 1963 about the application of an agreement concluded on May 15, 1962, between Sweden and Israel for the avoidance of double taxation with respect to death duties.*).

This Royal Decree (SFS 1963/34) fixes the procedure in all cases where exemption from the Swedish succession duty is to be obtained owing to the provisions of the double taxation agreement. (Art. XV).

An individual protection is provided for in the agreement (Art. XIII (1)), implying that, if it can be shown that action taken by the revenue authorities of the two territories results in taxation contrary to the principles of the agreement, any person aggrieved by such taxation shall be entitled to lodge a claim with the competent authority of the territory in which the deceased person is deemed under the agreement to have been resident at the time of his death. If the claim is upheld, the competent authority of the last-mentioned territory shall take the necessary action to eliminate the taxation in question.

An exchange of information between the Minister of Finance, or his authorized representative, in Sweden or Israel respectively, shall upon request be made, when necessary for carrying out the provisions of this agreement or for the administration of statutory provisions in relation to the duties which are the subject of the agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including courts) concerned with the determination and collection of the Swedish succession duty or the Israeli estate duty. No information shall be exchanged which would disclose any trade secret or trade process. (Art. XIV).

The double taxation agreement has come into force on February 7, 1963, at which

date the exchange of instruments of ratification has taken place in Stockholm. The agreement shall be effective in respect of the estates of persons dying on or after the 1st of July 1961.

Written notice of termination of the agreement may be given by either of the Contracting Governments before the thirtieth day of June in any year. If due notice is thus given, the agreement shall cease to be effective at the end of the calendar year in which the notice is given but shall continue to apply in respect of the estate of any person dying before the end of that year.

The agreement can, however, not cease to be effective before the end of 1966, after duly given notice by either party before June 30, 1966.

COMMON MARKET

DOCUMENTS

PROPOSITION D'UNE DIRECTIVE DU CONSEIL

concernant

LES IMPOTS INDIRECTS FRAPPANT LES RASSEMBLEMENTS DE CAPITAUX

(Présentée par la Commission au Conseil)

– document IV/Com (64) 526 final, 14 décembre 1964 –

Le Conseil de la Communauté Economique Européenne

Vu les dispositions du Traité instituant la Communauté Economique Européenne, et notamment les articles 99 et 100,

Vu la proposition de la Commission,

Vu l'avis du Comité Economique et Social,

Vu l'avis du Parlement Européen,

Considérant que l'objectif du Traité est de créer une union économique ayant des caractéristiques analogues à celles d'un marché intérieur et qu'une des conditions essentielles pour y accéder est de réaliser la libre circulation des capitaux,

Considérant que les impôts indirects qui frappent les rassemblements de capitaux, actuellement en vigueur dans les Etats membres, à savoir le droit d'apport frappant les apports en société et le droit de timbre sur les titres, donnent naissance à des discriminations, des doubles impositions et des disparités qui entravent la libre circulation des capitaux et qui doivent, par conséquent, être éliminées par voie d'harmonisation,

Considérant que l'harmonisation de ces impôts frappant les rassemblements de capitaux doit être conçue de sorte que les répercussions budgétaires pour les Etats membres soient limitées au minimum,

Considérant que la perception d'un droit de timbre par un Etat membre sur les tires des autres Etats membres introduits ou émis sur son territoire est contraire à la conception d'un marché commun ayant les caractéristiques d'un marché intérieur; qu'il est apparu, en outre, que le maintien du droit de timbre sur l'émission des titres nationaux d'emprunt, de même que sur l'introduction ou l'émission sur le marché national d'un Etat membre de titres étrangers n'est pas souhaitable du point de vue économique et s'éloigne, par ailleurs, de l'orientation suivie par le droit fiscal des Etats membres dans ce domaine,

Considérant que dans ces conditions il convient de supprimer le droit de timbre sur les titres, que les titres soient représentatifs tant de capitaux propres de sociétés que de capitaux d'emprunt et quelle que soit leur provenance,

Considérant que la conception d'un Marché commun ayant les caractéristiques d'un marché intérieur suppose que la soumission des capitaux propres rassemblés dans le cadre d'une société au droit sur le rassemblement des capitaux ne puisse intervenir qu'une seule fois au sein du Marché commun et que cette taxation, afin de ne pas perturber la circulation des capitaux, doit être d'un niveau égal dans les Etats membres,

Considérant, dès lors, qu'il convient de procéder à une harmonisation de ce droit tant en ce qui concerne sa structure que ses taux,

Considérant que le maintien d'autres impôts indirects présentant les mêmes caractéristiques que le droit d'apport ou le droit de timbre sur les titres risque de remettre en cause les buts poursuivis par les mesures proposées ci-avant et que, dès lors, leur suppression s'impose,

A arreté la présente directive:

ARTICLE 1

Les Etats membres perçoivent un droit sur les apports à des sociétés de capitaux, harmonisé conformément aux dispositions des articles 2 à 9 inclus de la présente directive et dénommé ci-après droit d'apport.

ARTICLE 2

1 Les operations soumises au droit d'apport sont uniquement taxables dans l'Etat membre sur le territoire duquel se trouve le siège de direction effective de la société de capitaux au moment où se produisent ces opérations.

2 Lorsque le siège de direction effective d'une société de capitaux se trouve en pays tiers et son siège statutaire dans un Etat membre, les opérations soumises au droit d'apport sont taxables dans l'Etat membre où se trouve le siège statutaire.

ARTICLE 3

1 Par société de capitaux au sens de cette directive, il faut entendre:

a les sociétés de droit belge, allemand, français, italien, luxembourgeois et néerlandais, dénommées respectivement:
– société anonyme, Aktiengesellschaft, société anonyme, società per azioni, société anonyme, naamloze vennootschap;
– société en commandite par actions, Kommanditgesellschaft auf Aktien, société en commandite par actions, società in acomandita per azioni, société en commandite par actions, commanditaire vennootschap op aandelen;
– société de personnes à responsabilité limitée, Gesellschaft mit beschränkter Haftung, société à responsabilité limitée, società à responsabilità limitata, société à responsabilité limitée;

b toute société, association ou personne morale dont les parts sociales représentatives du capital ou de l'avoir social sont susceptibles d'être negociées en bourse;

c toute société, association ou personne morale poursuivant des buts lucratifs dont les membres ont le droit de céder sans autorisation préalable leurs parts sociales à des tiers et ne sont responsables des dettes de la société, association ou personne morale qu'à concurrence de leur participation.

2 Il faut également entendre par société de capitaux toute autre société, association ou personne morale poursuivant des buts lucratifs. Toutefois, un Etat membre peut ne pas les considérer comme telle pour la perception du droit d'apport.

ARTICLE 4

1 Sont soumises au droit d'apport les opérations suivantes:

a la constitution d'une société de capitaux;

b la transformation d'une société, association ou personne morale qui n'est pas une société de capitaux en une société de capitaux;

c l'augmentation du capital social d'une société de capitaux au moyen de l'apport de biens de toute nature;

d l'augmentation de l'avoir social d'une société de capitaux au moyen d'apport de biens de toute nature rémunéré non par des parts représentatives du capital ou de l'avoir social, mais par des droits de même nature que ceux d'associés, tels que droit de vote, participation aux bénéfices ou au boni de liquidation;

e le transfert d'un pays tiers dans un Etat membre du siège de direction effective d'une société, association ou personne morale dont le siège statutaire se trouve en pays tiers et qui est considérée, pour la perception du droit d'apport, comme société de capitaux dans cet état membre;

f le transfert d'un Etat membre dans un autre Etat membre du siège de direction effective d'une société, association ou personne morale qui est considérée, pour la perception du droit d'apport, comme société de capitaux dans ce dernier Etat membre, alors qu'elle ne l'est pas dans l'autre Etat membre;

2 Peuvent être soumises au droit d'apport les opérations suivantes:

a l'augmentation du capital social d'une société de capitaux par incorporation de bénéfices, reserves ou provisions;

b l'augmentation de l'avoir social d'une société de capitaux au moyen de prestations effectuées par un associé qui n'entraînent pas une augmentation du capital social, mais qui trouvent leur contrepartie dans une modification des droits sociaux ou bien qui sont susceptibles d'augmenter la valeur des parts sociales;

c l'emprunt que contracte une société de capitaux, si le créancier a droit à une quote-part des bénéfices de la société;

d l'emprunt que contracte une société de capitaux auprès d'un associé, du conjoint ou d'un enfant d'un associé, ainsi que celui contracté auprès d'un tiers lorsqu'il est garanti par un associé, à la condition que ces emprunts aient la même fonction qu'une augmentation du capital social.

3 N'est pas une constitution au sens du paragraphe 1, a), une quelconque modification du pacte social ou des statuts d'une société de capitaux et notamment:

a la transformation d'une société de capitaux en une autre société de capitaux d'un type différent;

b le transfert d'un Etat membre dans un autre Etat membre du siège de direction effective ou du siège statutaire d'une société, association ou personne morale qui

est considérée, pour la perception du droit d'apport, comme société de capitaux dans chacun de ces Etats membres;

c le changement de l'objet social d'une société de capitaux;

d la prorogation d'une société de capitaux, pour autant qu'elle intervienne avant l'échéance du terme de cette société.

ARTICLE 5

1 Le droit est liquidé:

a dans le cas de la constitution d'une société de capitaux, de l'augmentation de son capital social et de l'augmentation de son avoir social, visées à l'art. 4, paragraphe 1, a), c) et d): sur la valeur réelle des biens de toute nature apportés ou à apporter par les associés après déduction des obligations et charges supportées par la société du fait de chaque apport;

b dans le cas de la transformation en société de capitaux et du transfert du siège de direction effective, visés à l'article 4, paragraphe 1, b), e) et f): sur la valeur réelle des biens de toute nature appartenant à la société au moment de la transformation ou du transfert, après déduction des obligations et charges qui pèsent sur elle à ce moment;

c dans le cas de l'augmentation du capital social par incorporation de bénéfices, de réserves ou de provisions, visée à l'article 4, paragraphe 2, a): sur le montant nominal de cette augmentation;

d dans le cas de l'augmentation de l'avoir social visée à l'article 4, paragraphe 2, b): sur la valeur réelle des prestations effectuées après déduction des obligations et charges supportées par la société du fait de ces prestations;

e dans le cas d'un des emprunts visés à l'article 4, paragraphe 2, c) et d): sur le montant nominal de l'emprunt contracté.

2 Dans les cas visés au paragraphe 1, a), b) et c), le montant sur lequel le droit est liquidé ne peut cependant être inférieur à la valeur réelle des parts sociales attribuées ou appartenant à chaque associé, ou bien au montant nominal de ces parts sociales, si ce montant est supérieur à leur valeur réelle.

3 Le montant sur lequel le droit est liquidé en cas d'augmentation du capital social ne comprend pas:

- le montant des avoirs propres de la société de capitaux qui sont affectés à l'augmentation du capital social et qui ont déjà été soumis au droit d'apport;
- le montant des prêts contractés par la société de capitaux qui sont convertis en parts de capital social et qui ont déjà été soumis au droit d'apport.

ARTICLE 6

1 Chaque Etat membre peut exclure de la base imposable déterminée conformément à l'article 5, le montant de l'apport qu'effectue un associé indéfiniment responsable des obligations d'une société de capitaux, ainsi que la quote-part d'un tel associé dans l'avoir social en cas de transformation ou de transfert du siège de direction effective d'une société de capitaux.

2 Si un Etat membre fait application de la règle prévue car le paragraphe précédent, sont ultérieurement soumis au droit d'apport :

- le transfert du siège de direction effective de la société de capitaux bénéficiaire dans un autre Etat membre qui n'applique pas cette règle;
- toute opération par laquelle la responsabilité d'un associé est limitée à sa participation dans le capital social, notamment lorsque la limitation de la responsabilité résulte d'une transformation de la société de capitaux bénéficiaire en société de capitaux d'un type différent.

Le droit d'apport est liquidé dans ces cas sur la valeur de la quote-part qui, dans l'avoir social, appartient aux associés indéfiniment responsables des obligations de la société de capitaux.

ARTICLE 7

1 Le taux du droit d'apport est de 1%.

2 Ce taux est réduit à 0,5% en cas de constitution ou d'augmentation du capital social sous forme de fusion ou scission, pour les apports faits par la ou les sociétés de capitaux fusionnées, absorbées ou scindées ayant leur siège de direction effective ou leur siège statutaire sur le territoire d'un Etat membre au moment de la fusion ou de la scission.

3 Sont également soumises au droit de 0,5% :

- l'augmentation du capital social d'une société de capitaux qui est liée à une réduction correspondante du capital social d'une ou plusieurs autres sociétés de capitaux appartenant au même groupe;
- l'augmentation du capital social d'une société de capitaux qui est souscrite par une autre société de capitaux appartenant au même groupe, si en vue de cette souscription celle-ci a préalablement augmenté son capital social d'un montant au moins équivalent et acquitté de ce fait le droit d'apport au taux plein.

Deux ou plusieurs sociétés de capitaux appartiennent à un même groupe, lorsque l'une d'elles possède directement ou indirectement la totalité ou la quasi-totalité des parts sociales des autres.

4 Le taux peut être réduit en cas d'augmentation du capital social visée à l'article 4, paragraphe 1, c), faisant suite à une réduction de capital social effectuée en raison des pertes subies.

5 Lorsqu'un Etat membre fait usage de la faculté visée à l'article 4, paragraphe 2, le droit d'apport peut être perçu à un taux réduit.

ARTICLE 8

Un Etat membre peut exonérer totalement ou partiellement du droit d'apport les opérations visées à l'article 4, paragraphes 1 et 2, concernant:

- les sociétés de capitaux qui fournissent des services d'utilité publique, telles que entreprises de transport public, de fournitures d'eau, de gaz ou d'électricité et dont l'Etat ou d'autres collectivités territoriales possèdent au moins la moitié du capital social;

– les sociétés de capitaux qui, conformément à leurs statuts et à leur gestion réelle, poursuivent uniquement et directement des objectifs culturels, de bienfaisance, d'assistance ou d'éducation.

ARTICLE 9

Certaines catégories d'opérations ou de sociétés de capitaux peuvent faire l'objet d'exonérations, de réductions ou de majorations de taux pour des motifs d'équité fiscale, d'ordre social ou pour mettre un Etat membre en mesue de faire face à des situations particulières. La Commission autorise ces mesures par voie de directive, sur demande d'un ou plusieurs Etats membres et après consultation des autres Etats membres. Elle veille à sauvegarder le bon fonctionnement du marché de capitaux.

ARTICLE 10

Sous réserve de la perception du droit d'apport, les Etats membres ne perçoivent en ce qui concerne les sociétés, associations et personnes morales poursuivant des buts lucratifs, aucune imposition, sous quelque forme que ce soit:

a pour les opérations visées à l'article 4;

b pour les apports, prêts ou prestations, effectués dans le cadre des opérations visées à l'article 4;

c pour l'immatriculation ou pour toute autre formalité préalable à l'exercice d'une activité, à laquelle une société, association ou personne morale poursuivant des buts lucratifs peut être soumise en raison de sa forme juridique.

ARTICLE 11

Les Etats membres ne perçoivent aucune imposition sous quelque forme que ce soit:

a pour la création, l'émission, l'admission en bourse, la mise en circulation ou la négociation d'actions, de parts ou autres titres de même nature, ainsi que de certificats de ces titres, quel qu'en soit l'émetteur;

b pour les emprunts, y compris les rentes, contractés sous forme d'émission d'obligations ou autres titres négociables, quel qu'en soit l'émetteur, pour toutes les formalités y afférentes, pour la création, l'émission, l'admission en bourse, la mise en circulation ou la négociation de ces obligations ou autres titres négociables.

ARTICLE 12

1 Par dérogation aux articles 10 et 11, les Etats membres peuvent percevoir:

a des taxes sur les mutations des valeurs mobilières, perçues forfaitairement ou non, y compris les taxes pour l'inscription en bourse:

b des droits de mutation, y compris les taxes de publicité foncière, sur l'apport à une société, association ou personne morale poursuivant des buts lucratifs, de biens immeubles situés sur leur territoire;

c des droits de mutation sur les biens de toute nature qui font l'objet d'un apport à une société, association ou personne morale poursuivant des buts lucratifs, dans la

mesure où le transfert de ces biens est rémunéré autrement que par des parts sociales;

d des droits frappant la constitution, l'inscription ou la mainlevée de privilèges et hypothèques;

e des droits fixes à caractère rémunératoire;

2 Les droits et taxes visés au paragraphe 1 sont les mêmes, que le siège de direction effective de la société, association ou personne morale poursuivant des buts lucratifs, se trouve ou non sur le territoire de l'Etat membre de perception. Ces droits et taxes ne peuvent non plus être supérieurs à ceux qui sont applicables dans l'Etat membre de perception aux autres opérations similaires.

ARTICLE 13

Après consultation des Etats membres, la Commission peut arrêter par voie de directive des dispositions concernant les modalités d'application des articles précédents.

ARTICLE 14

Les Etats membres mettent en vigueur les dispositions législatives, réglementaires et administratives nécessaires pour se conformer aux dispositions de la présente directive dans un délai de 12 mois suivant la notification et en informent immédiatement la Commission.

ARTICLE 15

Les Etats membres informent la Commission, en temps utile, pour présenter ses observations, de tout projet ultérieur de dispositions législatives, réglementaires ou administratives qu'ils envisagent d'adopter dans les matières régies par la présente directive.

ARTICLE 16

Les Etats membres sont destinataires de la présente directive.

EXPOSE DES MOTIFS

1 *Exposé général*

Une des conditions essentielles pour accéder à l'union économique prévue par le Traité de Rome est la réalisation d'une libre circulation des capitaux. En vue d'atteindre ce but et, notamment, pour arriver à l ouverture des marchés financiers des Etats membres et favoriser leur interpénétration, plusieurs mesures d'ordre financier ont déjà été prises ou sont en cours d'élaboration. Sur le plan fiscal, il convient de réaliser également les conditions utiles à cette libération des mouvements de capitaux, car on ne saurait nier que la fiscalité revêt une importance essentielle à cet égard. Les impôts directs sur le capital (impôts sur la fortune) et sur les revenus (impôts sur les revenue et impôts sur les sociétés) et, dans une moindre mesure étant donné leur incidence plus faible, les impôts indirects frappant les mouvements de capitaux (droits d'apport, droits de timbre sur les

titres, droits sur les opérations de bourse, et taxes analogues), influencent, en effet, sans aucun doute la mobilité des capitaux, leur utilisation et la rentabilité des investissements.

Dans le cadre de la libération des mouvements de capitaux, il paraît donc souhaitable d'entreprendre une action, tant dans le domaine des impôts directs que dans le domaine des impôts indirects, en vue de supprimer des législations fiscales les éléments susceptibles d'entraver la libre circulation des capitaux.

Il est cependant clair que l'examen des impôts directs sous l'angle de la libre circulation des capitaux ne peut être détaché de l'examen de l'ensemble des problèmes soulevés par la fiscalité directe. Cette dernière étude, effectuée par les services de la Commission en collaboration étroite avec les experts des Gouvernements des Etats membres, est actuellement en cours. Si, sur base des conclusions de cette étude il apparaît possible et souhaitable d'envisager des aménagements particuliers de ces impôts en vue d'éliminer certaines entraves à la circulation des capitaux, la Commission ne manquera pas de faire les propositions nécessaires. Dans ce cadre, le problème de la taxation à la source des revenus provenant de capitaux fait l'objet notamment d'un examen particulièrement attentif de la part des services de la Commission.

Sans attendre cependant les résultats des travaux dans le domaine des impôts directs, la Commission a cru utile de poursuivre ses travaux relatifs aux impôts indirects frappant les mouvements de capitaux.

Parmi ces impôts, l'on peut distinguer, d'une part, ceux qui frappent les rassemblements de capitaux et, d'autre part, ceux qui frappent les transactions sur titres. Le présent projet de directive porte sur les impôts indirects frappant les rassemblements des capitaux, cette catégorie d'impôts comprenant le droit d'apport sur les capitaux propres des sociétés, le droit de timbre sur les titres nationaux, le droit de timbre perçu à l'occasion de l'introduction ou de l'émission sur le marché national des titres d'origine étrangère, ainsi que d'autres impositions indirectes qui ont les mêmes caractéristiques. Quant aux impôts indirects frappant les transactions sur titres, tels que les taxes sur les opérations de bourse, ils feront ultérieurement l'objet d'un autre projet de directive. La présente proposition est donc sans incidence à leur égard.

La priorité réservée parmi l'ensemble des impôts indirects frappant les mouvements de capitaux aux impôts frappant les rassemblements de capitaux s'explique par le fait qu'ils exercent les effets les plus sensibles à l'encontre de la libre circulation des capitaux. En effet, le droit de timbre perçu par certains Etats membres à l'occasion de l'émission ou de la mise en circulation de titres étrangers sur leur propre marché a, sur le plan financier, les mêmes effets que les droits compensatoires existant dans le domaine des taxes sur le chiffre d'affaires. Or, il va sans dire que le maintien de ces droits compensatoires entre les Etats membres est incompatible avec l'idée d'un marché libre des capitaux. Etant donné que le droit d'apport et le droit de timbre supportés par les titres ne sont pas remboursés à l'exportation, le droit de timbre perçu sur les mêmes titres dans le pays d'importation constitue, par ailleurs, une double imposition. Il y a lieu de constater, en outre, dans le domaine du droit d'apport, la possibilité de doubles impositions, du fait que les règles qui en déterminent le champ d'application varient d'un pays à l'autre, si bien qu'une même opération peut être soumise à imposition par plusieurs Etats membres. Il faut signaler enfin, tant dans le domaine du droit d'apport que du droit de timbre,

l'existence de situations discriminatoires du fait de l'existence de bases imposables, de taux ou de régimes spéciaux, différenciés selon la nationalité de la société ou du titre.

Il s'est cependant avéré que la simple suppression du droit de timbre sur les titres émanant des résidents des Etats membres n'était pas à même d'apporter une solution satisfaisante dans la perspective d'une libération des mouvements de capitaux. En effet, une telle adaptation limitée laisserait subsister, en matière de droit d'apport et de droit de timbre, les différences fondamentales existant entre les divers systèmes nationaux, ce qui risquerait de maintenir certains phénomènes distorsifs dans les mouvements de capitaux ou même d'en provoquer de nouveaux.

Au cours des travaux effectués par les services de la Commission, il est apparu que trois solutions permettraient de créer, sur le plan des impôts frappant le rassemblement des capitaux, les conditions nécessaires pour une libre circulation des capitaux:

a Dans la première solution, le droit d'apport, le droit de timbre sur les titres, ainsi que les autres impôts indirects y assimilés frappant les rassemblements de capitaux seraient supprimés.

b Dans la deuxième solution, les titres représentatifs des capitaux d'emprunt (obligations, titres de rente, etc.), ainsi que les titres provenant des pays tiers (obligations et actions) seraient exonérés de tout droit de timbre; d'autre part, un droit d'apport harmonisé dans son taux et dans sa structure ne frapperait qu'une seule fois, au sein du Marché commun, le rassemblement des capitaux propres des sociétés, les titres représentatifs de ces capitaux n'étant, par ailleurs, plus soumis à un droit de timbre, ni lors de l'émission, ni à l'occasion de l'introduction sur le marché d'un autre Etat membre.

c La troisième solution repose sur l'hypothèse que tous les rassemblements de capitaux devraient faire l'objet d'une imposition. En plus du droit d'apport harmonisé pour les titres représentatifs de capitaux propres des sociétés (voir sub b), on créerait donc un droit de timbre harmonisé dans son taux et dans sa structure pour les titres représentatifs de capitaux d'emprunt. Ce droit de timbre serait conçu de façon à ce qu'il ne frappe qu'une seule fois ces capitaux d'emprunt. La perception de ce droit qui excluerait celle du droit d'apport pourrait aussi être étendue à l'émission et à la mise en circulation dans le Marché commun de titres émanant de résidents des pays tiers, s'il apparaissait que l'absence d'une telle imposition pourrait causer des distorsions dans les courants de capitaux.

Pour apprécier ces solutions, la Commission a tenu compte des considérations suivantes:

L'existence tant du droit d'apport sur les capitaux propres des sociétés que du droit de timbre sur les capitaux d'emprunt et sur les titres provenant des pays tiers peut entraver le bon développement et le bon fonctionnement d'un marché de capitaux communautaire. La charge fiscale résultant de la perception de ces impôts lors du rassemblement des capitaux propres et d'emprunt est, en effet, peu souhaitable du point de vue économique, car elle freine de tels rassemblements de capitaux, alors que la possibilité de procéder à ces rassemblements est de la plus grande importance pour les entreprises dans les économies très industrialisées des Etats membres.

En outre, le droit d'apport et le droit de timbre sur les titres est susceptible d'inciter les entreprises ayant la possibilité de procéder à des émissions publiques, à avoir recours à des formes de financement qui n'entraînent pas l'exigibilité de ces impôts et à n'émettre

des actions et obligations qu'au moment où les autres possibilités de financement ont été épuisées.

Ensuite, l'existence de ces impôts peut avoir pour effet d'encourager les entreprises à financer leurs investissements dans une mesure excessive par voie de l'autofinancement – méthode qui ne permet pas toujours aux capitaux de s'orienter vers les secteurs où ils auraient, du point de vue économique, leur meilleure utilisation.

Enfin, la Commission est d'avis, comme d'ailleurs le Comité Fiscal et Financier, que les impôts indirects frappent les rassemblements de capitaux ne trouvent plus leur place dans un système fiscal rationnel. Du point de vue économique, il ne semble pas justifiable d'imposer les regroupements et les rassemblements de capitaux que l'instauration du Marché commun rend nécessaires et que le Traité cherche à faciliter, avant même qu'ils aient pu produire au moins le montant de ces impôts. Une telle taxation s'expliquait à une époque où l'impôt sur le revenu n'en était qu'à son premier stade de développement; actuellement, les administrations fiscales disposent de moyens beaucoup plus adéquats pour taxer les revenus.

D'autre part, il ne faut pas perdre de vue que le droit de timbre ne frappe dans la plupart des pays où il est perçu que les emprunts contractés sous forme d'émission d'obligations ou d'autres titres négociables et que la taxation des titres représentatifs de ces emprunts appelle, en outre, inévitablement des exonérations importantes. Or, pareille taxation partielle est de nature à provoquer un déséquilibre entre les différentes formes de rassemblement de capitaux d'emprunt. Les faits semblent démontrer, d'ailleurs, que le marché des capitaux dans certains Etats membres est perturbé par les dispositions qui régissent actuellement la perception du droit de timbre.

Par ailleurs, le droit de timbre perçu par un Etat membre sur les titres des autres Pays membres, comme cela a déjà été souligné, doit être considéré comme un obstacle sérieux à la libre circulation des capitaux, du fait de son caractère de taxe compensatoire; il constitue notamment pour les entreprises une entrave considérable à l'introduction de leurs titres aux autres bourses de la communauté. Une telle situation n'entraîne pas seulement un retard dans l'intégration des marchés de capitaux nationaux, mais limite également le choix des épargnants des différents Etats membres quant aux valeurs qu'ils peuvent acquérir aux bourses de leur pays de résidence. Ces dernières considérations militent également en faveur de la non-taxation des titres provenant des pays tiers, outre les raisons d'opportunité qui peuvent être invoquées en faveur d'un traitement égal entre les titres des pays membres et les titres des pays tiers. Il faut ajouter encore qu'une telle taxation des titres étrangers inciterait ceux qui désirent acheter de tels titres à se les procurer et à les garder à l'étranger, dans un but d'évasion fiscale.

Ces différentes considérations ont amené la Commission à la conclusion que la solution qui consisterait à supprimer totalement le droit d'apport et le droit de timbre devrait être considérée comme la solution la plus souhaitable du point de vue de l'instauration d'un marché libre des capitaux.

Il s'est avéré cependant que cette solution ne pourrait vraisemblablement pas recevoir l'agrément des Etats membres, étant donné qu'ils ne paraissent pas prêts à renoncer entièrement aux recettes budgétaires que ces taxes et notamment le droit d'apport leur procurent.

C'est pourquoi, la Commission croit plus utile de proposer, d'une part, la suppression intégrale du droit de timbre sur les titres, qu'ils soient représentatifs de capitaux propres ou d'emprunt et quelle que soit la résidence des personnes émettrices et, d'autre part, le maintien d'un droit d'apport harmonisé, droit qu'elle propose de fixer, pour les raisons évoquées ci-avant, à un niveau aussi bas que possible.

Cette proposition tient compte également des tendances qui se manifestent actuellement dans le droit fiscal des Etats membres dans la matière considérée. En effet, la France et le Luxembourg n'appliquent plus, depuis longtemps, de droit de timbre, ni sur les titres nationaux représentatifs de capitaux d'emprunt, ni sur les titres en provenance de l'étranger; dans la République fédérale d'Allemagne, ce droit est en voie de suppression, alors que la Belgique et l'Italie semblent prêtes d'y renoncer également.

II *Principes de base du projet de directive*

Il semble utile de résumer ci-après les principes qui sont à la base des dispositions du présent projet de directive et, notamment, de celles qui concernent l'harmonisation du droit d'apport.

Si l'on veut que les actions et titres similaires émanant de résidents des Etats membres circulent à l'intérieur du Marché commun, sans que cette circulation entraîne la perception de droits compensatoires lors du franchissement des frontières entre Etats membres, il faut veiller à ce que ces titres supportent la même charge fiscale, quelle que soit leur origine. Il faut éviter, en effet, que les demandeurs de capitaux d'un Etat membre ne soient, même sur leur propre marché, désavantagés par rapport aux demandeurs d'autres Etats membres qui supporteraient dans leur pays une charge fiscale moins élevée.

En vue de réaliser cet objectif, le présent project de directive prévoit la suppression du droit de timbre sur ces titres et une harmonisation concomitante du droit d'apport frappant les capitaux propre des sociétés et indirectement de ce fait, les titres qui en sont représentatifs, cette harmonisation étant conçue, par ailleurs, de telle sorte que l'incidence du droit d'apport soit pratiquement la même dans tous les Etats membres.

Le réalisation de ce dernier principe postule une harmonisation du droit d'apport dans tous les éléments qui servent à en fixer la charge à savoir les faits générateurs, la base imposable, les taux et les exonérations. Pour certains de ces éléments cependant, une certaine liberté a pu être laissée aux Etats membres (notamment, en matière de faits générateurs et d'exonérations). Ainsi, ils ont la faculté de taxer ou de ne pas taxer l'augmentation du capital social d'une société par l'incorporation des bénéfices, réserves ou provisions. Bien qu'une taxation obligatoire de ces capitalisations eut été souhaitable au regard du but poursuivi, il a paru préférable, dans un premier temps, de laisser aux Etats membres la faculté de ne pas les taxer afin de tenir compte du fait que le traitement applicable à ces capitalisations diffère d'un Etat membre à l'autre dans d'autres domaines de la fiscalité également. Une unification sur ce point dans le seul domaine du droit d'apport risquerait, en effet, de rompre la cohérence existant, au sein de chaque Etat membre, dans le traitement de ces capitalisations au regard du droit d'apport et des impôts directs. Si une convergence dans la fiscalité directe se dessinait sur ce point, le maintien de cette taxation facultative devrait faire l'objet d'un nouvel examen.

Afin que les titres supportent une charge fiscale d'une même incidence, il s'est avéré,

en outre, indispensable de veiller à ce que chaque opération taxable ne soit soumise qu'au droit d'apport et dans un seul Etat membre. A cet effet, le présent projet de directive prévoit la suppression de tous les impôts indirects frappant le rassemblement des capitaux autres que le droit d'apport et prescrit que le pouvoir de taxation, en matière de droit d'apport, n'appartiendra qu'au pays où se trouve le siège de direction effective de la société. Il semble logique, en effet, de réserver le droit de taxation au pays sur le territoire duquel se trouve le siège de direction effective de la société au profit de laquelle s'effectuent les opérations économiques soumises au droit d'apport.

Dans le même but, il est apparu enfin nécessaire de construire le droit d'apport sur une conception économique, plutôt que juridique, étant donné qu'une harmonisation sur base de conceptions juridiques, par suite de l'absence d'uniformité dans ce domaine entre les Etats membres, ne pouvait conduire qu'à des incidences fiscales différentes. Pour ces raisons, il s'est avéré indispensable de concevoir le droit d'apport harmonisé comme un droit qui frappe les opérations qui sont l'expression juridique d'un rassemblement de capitaux et cela pour autant que ces opérations de rassemblement contribuent au renforcement du potentiel économique de la société.

Il est à remarquer, enfin, que le présent projet de directive lie tout Etat membre quant au résultat à atteindre, mais laisse aux instances nationales la compétence quant à la forme et aux moyens pour atteindre ce résultat. Ainsi chaque Etat membre restera libre de maintenir son propre système de perception du droit d'apport, dans la mesure où celui-ci est conforme aux impératifs de la présente directive.

AN ENGLISH TRANSLATION OF THE DIRECTIVE HAS BEEN PUBLISHED IN THE MAY, 1965, ISSUE OF SUPPLEMENTARY SERVICE TO EUROPEAN TAXATION, PUBLICATION OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION.

GERMANY

DOCUMENTS

OFFICIAL EXPLANATION – BEGRÜNDUNG –

INTRODUCTION INTEREST WITHHOLDING TAX – KAPITALERTRAGSTEUER FÜR ZINSEN – AND ABOLISHMENT SECURITY TAX – WERTPAPIERSTEUER*)

Allgemeines

I. ZIELSETZUNG DES GESETZENTWURFS

1. Die Bundesrepublik Deutschland hat seit Monaten einen anhaltenden Zustrom von Auslandskapital zu verzeichnen. Die hohen Kapitalimporte führen neben den Überschüssen in der laufenden Rechnung der Zahlungsbilanz (Waren- und Dienstleistungsverkehr sowie unentgeltliche Leistungen) zu einer Ausweitung der Liquidität und zu unerwünschten Rückwirkungen auf die innere Preisstabilität.

*) The Act was published in Bundesgesetzblatt I of March, 27, 1965.

Vom Kapitalimport entfällt der größte Teil auf den Erwerb inländischer Anleihen durch Ausländer. Die Nettoanlagen in der Bundesrepublik, d. h. die Käufe deutscher Anleihen, vermindert um die Verkäufe, sind von 170 Millionen DM im Jahre 1961 über 751 Millionen DM im Jahre 1962 sprunghaft auf 2 062 Millionen DM im Jahre 1963 gestiegen.

2. Die Einführung einer Kapitalertragsteuer für Zinsen aus festverzinslichen Wertpapieren, die im Besitz von Personen sind, die im Inland weder einen Wohnsitz noch ihren gewöhnlichen Aufenthalt haben, ist eine der Maßnahmen, durch die in der gegenwärtigen wirtschaftlichen Situation einem unerwünschten Kapitalzufluß entgegenwirkt werden soll.

Das hohe deutsche Zinsniveau verbunden mit dem Umstand, daß der Zinsertrag von Wertpapieren keiner Kapitalertragsteuer unterworfen worden ist, hat zu den außerordentlich umfangreichen Käufen deutscher Anleihen beigetragen. Dabei ist zu berücksichtigen, daß die einem ausländischen Anleger verbleibende Nettorendite um so höher ist, je geringer die Besteuerung in seinem Heimatstaat ist. Besonders wurden daher jene Anleger veranlaßt, auf dem deutschen Kapitalmarkt zu investieren, deren Heimatstaat die Zinsen aus ausländischen Quellen nicht oder nur sehr gering besteuert. Dazu kommt die nicht kleine Zahl von ausländischen Anlegern, die in ihrem Heimatstaat die Zinsen aus deutschen Wertpapieren entgegen den gesetzlichen Vorschriften dieses Staates nicht versteuern (Steuerfluchtkapital).

Durch den beabsichtigten Steuerabzug wird die Nettorendite im allgemeinen um 25 v. H. gesenkt. Diese Verminderung der Rendite ist endgültig bei ausländischen Anlegern, die die Zinsen in ihrem Heimatstaat nicht versteuern, was besonders für das Fluchtkapital zutrifft. Soweit die Anleger in einem Staat ansässig sind, mit dem die Bundesrepublik ein Doppelbesteuerungsabkommen abgeschlossen hat, ist die Kapitalertragsteuer in der Regel allerdings wiederzuerstatten, so daß für diese Kapitalanleger nur durch das Verfahren der Erstattung eine gewisse Erschwernis entsteht. Der Anleger muß allerdings bei dem Erstattungsverfahren durch eine Bescheinigung seines heimischen Finanzamts nachweisen, daß er in dem Staat ansässig ist, mit dem ein Doppelbesteuerungsabkommen besteht.

3 Die Bundesregierung ist der Auffassung, daß die Verminderung der Rendite der deutschen Papiere den Kapitalimport, besonders von ausländischem Fluchtkapital, dämpfen wird. Die Ausdehnung der Kapitalertragsteuer auf ausländische Gläubiger schließt im übrigen eine Lücke im System der für diese Personen maßgebenden beschränkten Steuerpflicht. Ein internationaler Vergleich zeigt, daß es nicht selbstverständlich ist, daß der Quellenstaat auf eine Besteuerung der Zinsen, die aus seinem Gebiet ausländischen Gläubigern zufließen, verzichtet, wie dies bisher bei der Bundesrepublik der Fall ist. So werden z. B. die Ausländern zufließenden Zinsen aus festverzinslichen Wertpapieren einer Abzugsteuer unterworfen in Belgien, Frankreich, Griechenland, Großbritannien, Irland, Italien, Kanada, Luxemburg, der Schweiz und den USA. Die für die jeweilige Quellensteuer maßgebenden Bedingungen sind allerdings in den einzelnen Staaten unterschiedlich.

4. Die Einführung einer Kapitalertragsteuer erscheint auch zweckmäßig, um dem Umstand Rechnung zu tragen, daß mit zunehmender Tendenz in die ausländischen

Staaten mit besonders niedrigem Steuerniveau oder besonderen steuerlichen Vergünstigungen (sogenannte Steueroasenstaaten) Kapital verlagert wird, das nach einer möglichst ertragreichen Anlage sucht. Gerade gegenüber diesen Staaten und gegenüber diesem Kapital besteht kein Anlass zu einem Steuerverzicht.

In diesem Zusammenhang sei darauf hingewiesen, daß bereits nach dem Kapitalertragsteuergesetz vom 29. März 1920 (RGBl I S. 345) und dem Einkommensteuergesetz vom 10. August 1925 (RGBl I S. 189) von Zinsen aus festverzinslichen Wertpapieren eine Kapitalertragsteuer erhoben wurde, die sich aber nicht auf die Ausländer beschränkte. Diese Kapitalertragsteuer ist durch die Verordnung über die Aufhebung des Steuerabzugs vom Kapitalertrag und der beschränkten Steuerpflicht bei festverzinslichen Wertpapieren vom 16. Oktober 1930 (RGBl I S. 464) aufgehoben worden. Durch diese Maßnahme sollte in der damaligen Wirtschaftskrise der Kapitalexport gehemmt und der Kapitalimport gefördert werden. Da im Gegensatz zur wirtschaftlichen Situation des Jahres 1930 ein Anlaß zur Förderung des Kapitalimportes nicht mehr besteht, rechtfertigt sich die Wiedereinführung der Abzugsteuer. Der Zweck der Steuer, auf den Kapitalimport dämpfend zu wirken, läßt es angezeigt erscheinen, die Kapitalertragsteuer auf Ausländer zu beschränken.

II. GRUNDZÜGE DER KAPITALERTRAGSTEUER FÜR FESTVERZINSLICHE WERTPAPIERE

1. Der Gesetzentwurf unterscheidet nicht zwischen Anleihen, die vor dem Inkrafttreten des Gesetzes ausgegeben worden sind, und Anleihen, die nach dem Inkrafttreten des Gesetzes ausgegeben werden. Das Ziel des Gesetzes, dem Kapitalimport entgegenzuwirken, kann wirksam nur erreicht werden, wenn auch die bereits ausgegebenen Anleihen in die Kapitalertragsteuerpflicht einbezogen werden. Anderenfalls wäre mit Sicherheit zu erwarten, daß die alten Anleihen, deren Zinsen nicht mit Kapitalertragsteuer belastet werden, bevorzugt von beschränkt Steuerpflichtigen gekauft würden. Eine Unterscheidung zwischen alten und neuen Anleihen würde außerdem auch auf eine Spaltung des Anleihezinses hinauslaufen. Neue Anleihen könnten dann vermutlich nur mit einem noch höheren Zins als bisher untergebracht werden. Eine Privilegierung der alten Anleihen erscheint nicht vertretbar.

2. Besondere Probleme werfen diejenigen Anleihen auf, die von inländischen Emittenten im Ausland (vor allem in der Schweiz) in ausländischer Währung ausgegeben worden sind. Diese Anleihen haben grundsätzlich einen niedrigeren Zinssatz (in der Regel 4,5 v. H. und niedriger) als die auf Deutsche Mark lautenden Anleihen. Die Anleihebedingungen enthalten hier regelmäßig eine Klausel, nach der im Falle der Einführung einer deutschen Kapitalertragsteuer entsprechend der Anleihezins zu erhöhen ist. Eine Einbeziehung dieser Anleihen würde also voll zu Lasten der deutschen Emittenten gehen. Dem würde jedoch in solchen Fällen, in denen die Kapitalertragsteuer auf Grund eines Doppelbesteuerungsabkommens zu erstatten ist, eine sinnvolle Auswirkung auf die Anleihe-Gläubiger nicht gegenüberstehen. Die Auswirkung für diese Anleihegläubiger, zu denen insbesondere auch Anleihebesitzer in der Schweiz gehören, würde, wenn sie die Einkünfte im Heimatstaat versteuern und sich die Kapitalertragsteuer auf

Grund des Doppelbesteuerungsabkommens erstatten lassen, in einer Erhöhung der Nettorendite bestehen. Versteuern sie die Zinsen im Heimatstaat nicht, so bliebe ihnen immer die bisherige Nettorendite erhalten. Die Einführung einer Kapitalertragsteuer für diese Anleihen hätte somit keinerlei dämpfende Wirkung auf dem Kapitalimport und würde nur die Belastung des deutschen Schuldners erhöhen.

Aus den dargelegten Gründen sieht der Gesetzentwurf vor, daß bei Auslandsanleihen, die vor dem Inkrafttreten des Gesetzes ausgegeben worden sind, von der Erhebung der Kapitalertragsteuer abgesehen wird.

3. Mit Rücksicht auf den Zweck des vorliegenden Gesetzentwurfs, unerwünschten Kapitalzuflüssen aus dem Ausland entgegenzuwirken, erschien es nicht vertretbar, über die in der Ziffer 2 behandelten Fälle hinaus Ausnahmen für bestimmte Gruppen von Wertpapieren vorzusehen. Derartige Ausnahmen würden zudem die Ausführung des Gesetzes in unvertretbarer Weise erschweren. Es erschien deshalb auch nicht möglich, bestimmte Personengruppen von der Steuerpflicht auszunehmen.

III. VERFAHRENSFRAGEN BEI DER KAPITALERTRAGSTEUER

1. Der Gesetzentwurf sieht vor, daß die Kapitalertragsteuer grundsätzlich von der Stelle einzubehalten ist, die die Zinsen auszahlt. Das sind in erster Linie die Kreditinstitute. Die Regelung weicht damit ab von dem bisher bei der Kapitalertragsteuer üblichen Verfahren, nach dem der Schuldner der Kapitalerträge den Abzug vorzunehmen hat. Die Einschaltung der Kreditinstitute ist erforderlich, weil bei den festverzinslichen Wertpapieren, mit denen dieses Gesetz sich befaßt, der Schuldner der Anleihe oder Forderung nicht in der Lage wäre, zwischen Anleiheinhabern, die ihren Wohnsitz oder gewöhnlichen Aufenthalt im Inland haben und solchen Anleiheinhabern, die im Ausland wohnen, zu unterscheiden. Demgegenüber sind die Kreditinstitute, die in vielen Fällen die Wertpapiere in Depotverwahrung haben, oft schon auf Grund der in ihrem Bereich befindlichen Unterlagen in der Lage, diese Unterscheidung zu treffen. Es erschien jedoch geboten, bei der Gestaltung der Anforderungen an die den Kreditinstituten obliegende Nachprüfungspflicht auf deren Möglichkeiten Rücksicht zu nehmen (vgl. hierzu nachstehende Nummer 3), zumal mit der Verpflichtung zur Einbehaltung der Kapitalertragsteuer die Haftung für die zutreffende Einbehaltung und Abführung der Steuer — wie bei allen anderen Abzugsteuern — verbunden ist.

2. Die Einschaltung der Kreditinstitute erfordert ein möglichst einfaches Verfahren. Wenn die Maßnahmen aber die gewünschte Wirkung haben sollen, müssen die Regelungen insgesamt so gestaltet werden, daß Umgehungen der Steuerpflicht im Rahmen des Möglichen begegnet wird. Es ist deshalb ohne eine Anzahl von Sonderregelungen nicht auszukommen.

3. Befindet sich ein Wertpapier im Depot eines Kreditinstituts, so kann dieses anhand der Depotvermerke in der Regel ohne besondere Schwierigkeiten feststellen, ob der Inhaber des Depots seinen Wohnsitz oder seinen gewöhnlichen Aufenthalt im Inland oder im Ausland hat. Besondere Regelungen erschienen hier nur erforderlich, wenn das Depot für eine Handelsgesellschaft oder eine andere Gesellschaft oder sonstige Personenvereinigungen geführt wird.

4. Schwieriger liegen die Dinge, wenn das Wertpapier sich nicht in Depotverwahrung befindet.

Wenn ein Zinskupon bei einem Kreditinstitut zur Einlösung vorgelegt wird, sind zwei Fälle zu unterscheiden. Ist der Gläubiger des Zinsanspruchs zugleich der Inhaber des Wertpapiers, so kann der Steuerabzug unterbleiben, wenn der Zinsgläubiger dem Kreditinstitut nachweist, daß er Inhaber des Wertpapiers ist und seinen Wohnsitz oder gewöhnlichen Aufenthalt im Inland hat. Der Nachweis kann z. B. durch Vorlage des Personalausweises und schriftlicher Erklärung über die Inhaberschaft geführt werden. Ist der Zinsgläubiger dagegen nicht auch der Inhaber des Papiers, so kann die Feststellung, wer im Zeitpunkt der Kuponeinlösung der Inhaber ist, praktisch kaum getroffen werden. Es war daher erforderlich, für solche Fälle allgemein die Einbehaltung von Kapitalertragsteuer vorzusehen. Eine Sonderregelung war ferner bei Vergütung von sog. Stückzinsen erforderlich. Stückzinsen werden bei der Veräußerung von Wertpapieren vergütet, wenn die Veräußerung während des laufenden Zinszahlungszeitraums erfolgt. Es muß insbesondere verhindert werden, daß Papiere kurz vor dem Zinszahlungstermin an Personen mit Wohnsitz oder gewöhnlichem Aufenthalt im Inland veräußert und nach dem Zinszahlungstermin sogleich wieder rückveräußert werden. Es erschien daher angebracht, den Abzug von Kapitalertragsteuer auch bei der Vergütung von Stückzinsen vorzuschreiben.

Schließlich war noch zu berücksichtigen, daß Wertpapiere sich auch in Depots ausländischer Kreditinstitute befinden können oder daß Kupons zur Einlösung von ausländischen Kreditinstituten vorgelegt werden. Für diese Fälle mußte zur Verhinderung von Umgehungen allgemein die Vornahme des Kapitalertragsteuerabzugs bei Zinszahlungen in das Ausland vorgesehen werden, es sei denn, daß im einzelnen der Nachweis erbracht wird, daß der Inhaber des Wertpapiers seinen Wohnsitz oder gewöhnlichen Aufenthalt im Inland hat.

IV. AUFHEBUNG DER WERTPAPIERSTEUER

Durch dieses Gesetz sollen ferner die Bestimmungen des Kapitalverkehrsteuergesetzes über die Wertpapiersteuer aufgehoben werden.

Die wertpapiersteuerliche Belastung ausländischer Schuldverschreibungen und Aktien erscheint aus währungs- und kapitalmarktpolitischen Gründen nicht mehr gerechtfertigt, da sie die gebotene Verstärkung des deutschen Kapitalexports hemmt. Hinsichtlich der ausländischen Aktien, bei denen die Wertpapiersteuer an die Stelle der die inländischen Aktien belastenden Gesellschaftsteuer tritt, ist überdies zu bedenken, daß diese Aktien in der Regel schon in dem Staat, in dem die emittierende Kapitalgesellschaft ihren Sitz hat, einer steuerlichen Belastung unterlegen haben, so daß der Verzicht auf die Wertpapiersteuer sich zugleich als Maßnahme zur Beseitigung der nach heutiger Auffassung unerwünschten Doppelbesteuerung auswirkt.

Bei inländischen Schuldverschreibungen belastet die Wertpapiersteuer infolge der zahlreichen Befreiungsvorschriften praktisch nur die Anleihen der Industrieunternehmen. Diese einseitige Belastung hat dazu beigetragen, daß die Industrie mehr und mehr dazu übergegangen ist, ihren Bedarf an Fremdkapital nicht auf dem Anleihemarkt zu

decken, sondern zur Vermeidung der Besteuerung andere Finanzierungsquellen in Anspruch zu nehmen. Die infolge dieser Entwicklung eingetretene Verödung des Marktes für Industrieobligationen läßt es geboten erscheinen, auch auf die Besteuerung der inländischen Industrieanleihen künftig zu verzichten.

V. HAUSHALTSMASSIGE AUSWIRKUNGEN

Die Steuermehreinnahmen durch Ausdehnung der Kapitalertragsteuer auf festverzinsliche Wertpapiere werden sich auf etwa 50 Millionen DM im Kalenderjahr belaufen. Dabei sind die zu erwartenden Erstattungen auf Grund von Doppelbesteuerungsabkommen gegengerechnet. Die Mehreinnahmen fließen nach dem für die Einkommensteuer maßgebenden Verteilungsschlüssel dem Bund und den Ländern zu. Die Bedeutung dieser gesetzlichen Regelung darf nicht an den verhältnismäßig bescheidenen haushaltsmäßigen Auswirkungen gemessen werden. Wie bereits angeführt wurde, steht nicht die fiskalische Bedeutung, sondern der allgemeinwirtschaftliche Zweck im Vordergrund.

Die Steuerausfälle auf Grund der Aufhebung der Wertpapiersteuer werden sind auf etwa 20 Millionen DM im Kalenderjahr belaufen. Die Steuerausfälle sind allein von den Ländern zu tragen.

GHANA

TAX NEWS

SUMMARY OF GHANA TAXATION

The following taxes on income and property are levied in Ghana.

Income Tax
Excess Profits Tax
Property Tax
Capital gains tax

Other taxes levied, exclusive of Import, Export, Minerals and Excise Duties are as follows:

Sales Tax: 10% on all sales.
Airport Tax:
Hotel Customers Tax: 10% on all hotel charges.
Purchase Tax. At various rates on C.I.F. value.
Foreign Travel Tax: 10% on cost of all air tickets.
Betting Tax: 10% on all stake money or 15% on sweepstake receipts.
Estate Duty: Various rates on the value of the Estate of deceased persons.

The Fiscal Year is from 1st July to 30th June.

Income Tax: Personal.

Tax is charged on the actual income of the fiscal year and in the case of employees is deducted monthly from salaries and wages. Tax is also charged on benefits either on the actual value thereof or on a fixed value in the following cases:

Use of Company Car	£G.180 p.a.
Use of Company Car plus free petrol or use of Driver	£G.300 p.a.

Rent free accommodation – fully furnished: 15% of actual cash emoluments.

Rent free accommodation – part furnished or unfurnished: 10% of actual cash emoluments.

There are no personal allowances of any kind.

Personal Tax Rates		Resident in Ghana
For every £1 of the first	£G 120	NIL
" " " " " next	120	1. od
" " " " " "	240	1. 6d
" " " " " "	240	2. od
" " " " " "	480	2. 6d
" " " " " "	480	3. od
" " " " " "	720	4. od
" " " " " "	720	5. od
" " " " " "	720	6. od
" " " " " "	720	7. od
" " " " " "	720	8. od
" " " " " "	720	10. od
" " " " " "	1200	12. od
" " " exceeding	7200	14. od
		Non Resident
For every £1 of the first	4560	7. od
" " " " " next	720	8. od
" " " " " "	720	10. od
" " " " " "	1200	12. od
" " " exceeding	7200	14. od

The partners of a firm or the proprietor of a non corporate business are assessed individually at personal tax rates, but the basis of assessment is the profit of the trading year ended within the preceding fiscal year. For fuller details of this basis see below.

Company Taxation.

For tax purposes there is no distinction between companies incorporated in Ghana, and companies incorporated elsewhere in the world.

The normal basis of assessment is the adjusted profit for the trading year ended within the preceding fiscal year. Special rules for commencement and cessation are as follows:

Commencement:

1st year of assessment.

Profits from commencement to following 30th June.

2nd year of assessment.

Profits of first twelve months trading

3rd year of assessment

Profits of trading period ended within the preceding fiscal year.

A company may request to be assessed on the actual profits of the first three fiscal years.

CESSATION:

Final Assessment

Profits from preceding 1st July to date of cessation.

Penultimate assessment

Either the profits of the trading period ended within the preceding fiscal year or the profits of the actual fiscal year whichever is the greater.

Note: When the profits of trading period require to be split to ascertain the assessabel income in accordance with the above rules the apportionment is made on a time basis.

Losses: Losses as such are not recognised and can not be carried forward to be set off against future profits.

Minimum Assessment: It is provided that the minimum chargeable profit shall be 2½% of the gross turnover of the Company. This does not apply for the first five years of assessment of a new business.

Group Profits: An additional basis of assessment may be applied in the case of the Ghana Branch Profits of an external company. If the percentage of Gross

Profit on sales of the Ghana branch is less than the Gross Profit percentage of the whole company the Commissioner of Income Tax may direct that the percentage of the whole company be applied to the Ghana branch to arrive at the trading profit. A Company may resist this requirement by bringing evidence to show that it was not possible to earn the normal rate of profit in Ghana.

Capital Allowances: These are granted on certain investments in fixed assets and are deducted from the adjusted trading profit to arrive at chargeable income. They are as follows:

Initial Allowance –

At rates from 5% to 20% on the first cost of the asset.

Annual Allowance –

At various rates from 7½% to 20% on the written down tax value of the asset.

Balancing Allowance –

The excess of the written down tax value of an asset over the proceeds of sale on disposal of the asset.

A Balancing Charge is raised on the excess of the proceeds of sale over the written down tax value of assets disposed of.

Allowances are not granted on buildings used for residential purposes.

Rates of Tax:

The standard rates of tax are

On chargeable income	9/– for every £1
On such part of the chargeable income as is not retained in Ghana	13/– for every £1

The amount of profits not retained in Ghana is deemed to be the actual sum remitted grossed up at 13/– in the £ e.g. if profit remitted is £35,000 tax at 13/– is payable on the grossed up value i.e. £100,000. When the grossed up value of the remittance exceeds the chargeable income of the year additional assessments will be raised on the profits of earlier years. The additional assessment on remittances is deemed to arise for the fiscal year in which remittance is effected regardless of the year of assessment attributable to the profits remitted.

The present legislation has been established by a number of amendments to the original ordinance, and is ambiguous in some respects. Where a company has both resident and non-resident shareholders two different tax rates will be applied. The ordinance merely states that the Company shall deduct tax from dividends at the rate payable by the Company on the assessed income of the year of assessment within which the dividend is declared. Since the Company cannot know when it will be permitted to remit dividends to non-resident shareholders it cannot know what rate of tax it should deduct from dividends. The position is further complicated if a non-resident shareholder elects to have his dividend paid to him in Ghana. This is because it is mandatory for the Company to deduct and account for tax at the rate of 13/– on any dividend due to a non-resident even though there is no remittance and the company itself pays only 9/– on its chargeable income. This last provision as to deduction of tax at 13/– does not apply if the recipient is resident in a country having a Double Taxation Agreement with Ghana.

Double Taxation Agreements:

There are agreements with the following countries:

United Kingdom
Sierra Leone
Nigeria

New Zeland
Canada
Sweden
Gambia

Excess Profits Tax:

The rate of tax is 1/– in the £G, and the tax is levied on the excess of the chargeable income of any year over the Standard Deduction. The Standard Deduction is the greater of either:–

Ten per cent of the Company's paid up capital on the first day of the accounting period which forms the basis of assessment

or

The average of the chargeable incomes of the Company for the preceding three years of assessment.

In the case of a new company the Standard for the first three years of assessment is ten percent of the Capital as above or £G5,000 whichever is the greater. For a Partnership the Standard for the first three years is ten per cent of the capital or £7,500 whichever is the greater.

No Excess Profits Tax is payable for any year where the chargeable income does not exceed £5,000 (Partnership £7,500).

Property Tax:

This tax is assessed on the rateable value of any building owned by a Company or person at the following rates:

1) Where the rateable value of the property does not exceed £1,000 NIL
2) Where the rateable value of the property exceeds £1,000 –
   (*a*) and does not exceed £5,000: on every pound 1d
   (*b*) exceeds £5000 but does not exceed £8,000 on every pound of such excess 2d
   (*c*) exceeds £8,000 is respect of property used for dwelling purposes, on every pound of such excess 3d
   and
   (*d*) exceeds £8,000 in respect of property other than property used for dwelling purposes, on every pound of such excess 2d

In general, rateable values have rarely been established for this purpose and the assessment is normally based on the cost of the building to the owner.

Capital Investments Act 1963.

Under the provision of this act an approved new company may be exempted from taxation in the early years of operation.

Capital Gains Tax

The tax, effective from February, 1, 1965*), is imposed on capital gains of a company or individual derived from the realisation of a chargeable asset. The following are specified as chargeable assets, but the Minister of Finance may at any time declare any other type of asset to be chargeable.

(*a*) Buildings of a permanent or temporary nature.
(*b*) Land, other than agricultural land, which has been used or is intended to be used for commercial purposes.
(*c*) Any business.
(*d*) Any business asset including goodwill.
(*e*) Any right or interest over any of the above assets, other than a mortgage.

*) Capital gains tax act, 1965, date of assent: 29th April 1965.

The tax is charged on the excess of the sale price of the asset over the cost of acquisition to the owner. The cost of acquisition may include the cost of approved alterations and improvements incurred subsequent to original purchase of the asset.

Where an asset has been acquired by way of gift or inheritance and the cost cannot be ascertained it shall be deemed to be 75% of the sale price.

It is provided that there is only a capital gain when the gain is not subject to tax under Income Tax law.

The rates of tax are as under:–

Where the sale of the asset occurred	%
(*a*) not more than one year from acquisition	75
(*b*) more than one year but less than seven years from acquisition	50
(*c*) more than seven years but less than eight	47
(*d*) more than eight years but less than nine	45
(*e*) more than nine years but less than ten	42
(*f*) more than ten years but less than eleven	40
(*g*) more than eleven years but less than twelve	37
(*h*) more than twelve years but less than thirteen	35
(*i*) more than thirteen but less than fourteen	32
(*j*) more than fourteen but less than fifteen	30
(*k*) more than fifteen but less than sixteen	27
(*l*) more than sixteen but less than seventeen	25
(*m*) more than seventeen but less than eighteen	22
(*n*) more than eighteen but less than nineteen	20
(*o*) more than nineteen but less than twenty	17
(*p*) more than twenty but less than twenty one	15
(*q*) more than twenty one years	10

reported by: D.W. Simmonds

IV

BIBLIOGRAPHY

1. BOOKS

AUSTRIA

ÖSTERREICH, INTERNATIONALE STEUERN, Heft 19, by *Kryer, A.*, Mondorf/Rhein, Titz Verlag GmbH, 1964, 92 pp.

This brochure summarizes the important points of commercial law and follows with a survey of existing Austrian taxes. The nature, rates and main features of the relevant acts are discussed for the individual income tax, corporate income tax, net worth tax, business tax, land tax, turnover tax and some minor taxes. The text of the German-Austrian tax treaty is included.

LEASING MIETEN STATT KAUFEN; EINE NEUE FINANZIERUNGSMETHODE, Schriftenreihe der Österreichischen Steuer- und Wirtschaftskartei, Heft 18, by *Abel, A.*, Wien, Industrieverlag Peter Linde, 1965, 48 pp., ÖS 33.

Analysis of important aspects of leasing.

STEUER-INDEX ÜBER RECHTSMITTEL-ENTSCHEIDUNGEN, ERLÄSSE UND SCHRIFTTUM DES JAHRES 1963, by *Neuner, K., O. Zechmeister*, Wien, Wirtschaftsverlag Dr. Anton Orac, 1964, 264 pp.

STEUER-INDEX ÜBER RECHTSMITTEL-ENTSCHEIDUNGEN, ERLÄSSE UND SCHRIFTTUM DES JAHRES 1964, by *Neuner, K., O. Zechmeister*, Wien, Wirtschaftsverlag Dr. Anton Orac, 1965, 253 pp.

Guides to the Austrian Supreme Tax Court decisions, administrative decrees and articles published in Austrian periodicals during 1963 and 1964, in the form of short abstracts. An alphabetical index to key words is included.

DIE EINKOMMENSTEUERNOVELLE 1964, *„Schriftenreihe der Österreichischen Steuer- und Wirtschaftskartei"*, Band 17, Weiler, F., Wien, Industrieverlag Peter Linde, 1965, 48 pp., ÖS 28.50.

This brochure contains an explanation to the Income Tax Amendment Act 1964.

COMMON MARKET
EUROPEAN FREE TRADE ASSOCIATION
USA

DIE STEUERSYSTEME IN DEN SECHS MITGLIEDSTAATEN DER EUROPÄISCHEN WIRTSCHAFTSGEMEINSCHAFT, IN SECHS MITGLIEDSTAATEN DER EUROPAISCHEN FREIHANDELSZONE UND IN DEN VEREINIGTEN STAATEN VON AMERIKA, by *Mennel, A.*, Herne/Berlin, Verlag Neue Wirtschafts-Briefe, 1965, 112 pp.

Survey and synopsis of the nature, features, rates, computations of taxable base, deductions, etc., of most taxes levied in the U.S.A. and the member countries of the European Economic Community and the European Free Trade Association.

GERMANY

AUSLANDSBEZIEHUNGEN UND STEUER-OASEN ZUGLEICH EIN KRITISCHER BEITRAG ZUM STEUEROASENBERICHT DER BUNDESREGIERUNG, *Fachschriften der Handelskammer Deutschland-Schweiz, Holiatz, G.*, Hamburg, Verlag „Die Aktiengesellschaft". Trede und Co., 1965, 82 pp.

Critical approach to the Report of June 23, 1964, by the federal German Government to the federal German Parliament (reproduced in Supplementary Service to European Taxation, Section D) on distortions of competition resulting from changes of domicile to foreign countries and from the international tax differential. The analysis covers tax evasion, its economic reasons, its tax motives, the influence of taxation on competition, international base companies and measures to counteract tax evasion.

DIE BESTEUERUNG DER LIZENS- UND KNOW-HOW-VERTRÄGE, by *Knoppe, H.*, Verlag Dr. Otto Schmidt KG, 1964, 222 pp.

The author discusses the nature of agreements by which patent and know-how royalties are due, both from an economic point of view and from

the standpoint of civil law. Emphasis, however, is given to tax questions, including tax law and court decisions for all important German taxes. The author states that the underlying agreement is not identical to a lease, but is to be regarded sui generis. After the publication of this book, the German Supreme Tax Court modified its case law to conform to this reasoning.

DER FISKUS ALS SOZIALPOLITIKER, *Institut „Finanzen und Steuern"*, Heft 77, Bonn am Rhein, Institut „Finanzen und Steuern", 1965, 296 pp.

The book outlines the historical development of social welfare thinking in the concept of public finance and discusses which public levies may serve welfare aims and related political measures. Consideration is given in this respect to individual income tax, turnover tax, corporate and business tax; tax incentives for certain branches; and levies intended to serve a special and well-known purpose. The relationship between welfare politics and tax policy and its effect on business cycles are also discussed. This comprehensive study is a guide to current thinking on taxation and government spending.

DER EINFLUSS DER STEUERN AUF DIE UNTERNEHMERISCHEN INVESTITIONSENTSCHEIDUNGEN, by *Schneider, H.*, Tübingen, J. C. B. Mohr (Paul Siebeck), 1964, 240 pp., DM 40.

An analysis of the effect of taxation on investment, using the econometric method. Discussed first is the investment decision if the relevant facts (including expectations) are well known and certain and the effect of direct and indirect taxes on it. Second, the investment decision if the relevant factors (including expectations) are not known and the effect of direct and indirect taxes on it. Third, the financing of the investment and the effect of taxation on it when expectations are certain and when they are unknown.

DIE BESTEUERUNG VON RENTEN, Der Rechts- und Steuerdienst, Heft 46, by *Kapp, R., G. Grune,* Köln-Marienburg, Verlag Dr. Otto Schmidt KG, 1965, 96 pp.

This book is a thorough discussion of the income tax, net wealth tax, business tax, estate duty, tax on the transfer of real estate and turnover tax, in relation to the taxation of all kinds of pensions, life annuities and similar payments.

MEHRWERTSTEUERGESETZ; REGIERUNGSENTWURF UND ERLÄUTERUNGEN; SYNOPTISCHE AUSGABE, by *Eckhardt, W., L. Meyer-Arndt,* Berlin und Frankfurt a.M., Verlag Franz Vahlen G.m.b.H., 1964, 138 pp. DM 25.50.

In Germany a bill to replace the existing system of turnover tax by a turnover tax on value added is under discussion. This brochure provides an introduction to some of the problems connected with the taxation of turnover and includes the text of the bill as proposed by the German Government. It gives a fair explanation to the several provisions of the bill and related problems.

GRENZEN ZWISCHEN BILANZÄNDERUNG UND BILANZBERICHTIGUNG, by *Pochmann, H. G.,* Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1964, 77 pp.,

The author discusses the possibility of later correcting the computation of taxable profits as filed on a return.

STEUERLICHE EINFLÜSSE AUF DIE BEWIRTSCHAFTUNG DES PRIVATWALDES, by *Haegert, L.,* Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1965, 102 pp.

The effect of taxation of agricultural and forestry enterprises.

STEUERBERATER-JAHRBUCH 1964/65, Köln, Verlag Dr. Otto Schmidt KG, 1965, 512 pp.

The report of the annual meeting of tax advisors in Germany, held in October 1964, including discussions on various topics: G. Thomas on some questions affecting the General Tax Law; W. Grund on new, pending and proposed legislation in the field of tax law (e.g., the Income Tax Amendment Act 1964 and 1965, the Interest Withholding Tax Act, the bill for a turnover tax based on added value); W. Flume on the effect of court decisions on tax law: C. Böttscher on the taxation of family enterprises and some economic implements; H. von Wallis on major problems in the field of corporate taxation (e.g., secret reserves, hidden distributions, the relation between parent corporation and subsidiary); H. Vogel on current problems in income tax law; H. Debatin on international tax law (e.g., the taxation of base companies and the position of tax-haven countries).

2. LOOSE-LEAF SERVICES

Releases received between April 15th 1965 and May 15th 1965.

AUSTRIA
Oesterreichische Steuer- und Wirtschaftskartei;
releases nos 7-9: Linde-Wien.

BELGIUM
Documentatie Vandewinckele – De Nieuwe Inkomstenbelasting;
releases nos 252-253: Vandewinckele – Brugge.
Handleiding der Inkomstenbelastingen;
release no 8: Excelsior – Bruxelles.

CANADA
Canada Tax Service;
release no 172: De Boo – Toronto.
Canada Tax Service Letter;
release no 90: De Boo – Toronto.
McDonald-Current Taxation;
releases nos 14-18: Butterworth.
Provincial Taxation Service;
release no 190: De Boo – Toronto.

FRANCE
Dictionnaire Fiscal Permanent;
releases nos 9-11: Ed. Législatives et Administratives – Paris.
Documentation Pratique de Securité Sociale et de Législation du Travail;
release no 5: Lefebvre.
Juris Classeur Fiscal – Chiffre d'Affaires;
release no 6058: Ed. Techniques – Paris.
Problèmes d'Outre Mer;
releases April-May 1965: Centre d'étude des problémes d'outre mer – Paris.

GERMANY
Handbuch der Einfuhr Nebenabgaben;
release no 3: V.d. Linnepe-Hagen (Westfalen).
Kommentar zur Einkommensteuer – Einschl. Lohnsteuer und Körperschaftsteuer;
release no 63: Otto Schmidt – Köln.
Steuererlasse in Karteiform;
release no 44: Otto Schmidt – Köln.
Steuergesetze;
release April 1965: Beck – München.

NETHERLANDS
Beknopte Belastinggids – Smeets en Meihuizen;
releases nos 28-92: L.J. Veen – Amsterdam.
FED's Losbladig Fiscaal Weekblad;
releases nos 988-992: FED – Amsterdam.
FED's Fiscaal Register;
releases nos 10-11: FED – Amsterdam.
FED's Fiscaal Repertorium;
release no 12: FED – Amsterdam.
De Gemeentelijke Belastingen;
releases nos 60-61: Vuga Boekerij – Arnhem.
Handboek voor de Europese Gemeenschappen – Tariefljsten voor de E.E.G.;
releases nos 35-36: Kluwer – Deventer.
Handboek voor in- en uitvoer – Tarief van invoerrechten
Part B2 release no 37: Kluwer – Deventer.
Kluwer's Fiscaal Zakboek;
relases nos 2-3: Kluwer – Deventer.
Kluwer's Tarievenboek;
releases nos 42-43: Kluwer - Deventer.
De Groot Nederlandse Belastingwetten;
releases nos 6-7: Samsom – Alphen a/d Rijn.
Omzetbelasting – Fiscale Handleiding voor de Praktijk;
releases nos 85-89: Vuga Boekerij – Arnhem.
Regelingen Euromarkt;
release no 59: Vermande – IJmuiden.
Vademecum voor in- en uitvoer;
release no 310: Kluwer/Samsom – Deventer Alphen a/d Rijn.
De Vakstudie – Fiscale Encyclopedie;
Vennootschapsbelasting;
releases nos 48-49: Kluwer – Deventer.
Loonbelasting;
release no 66: Kluwer – Deventer.
ABC – Wijn, Bier, Gedistilleerd;
release no 1: Kluwer – Deventer.

SOUTH AFRICA (Republic of)
Legislation Service of the Rhodesian Income Tax Service;
release no 11: Juta – Cape Town.

SPAIN
Circulares – Boletines de Informacion;
release no 73: Gabinete de Estudios-Madrid.

TURKEY
Türk Argüs Ajansi;
releases nos 3349-3371: Bankasi Hani Galata-Istanbul.

UNITED STATES OF AMERICA
Federal Tax Guide Reports;
releases nos 25-31: Commerce Clearing House – New York.
Federal Taxes Report Bulletin;
releases 12-17: Prentice Hall – Englewood Cliffs.
Federal Taxes Report Bulletin Tax Treaties;
release no 4: Prentice Hall – Englewood Cliffs.
State Tax Guide C.C.H.;
releases nos 322-323; Commerce Clearing House – New York.

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September 1964

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II

WORLD TAX REVIEW

ALGERIA

Reported by: M.H. Brochier, Algiers, 24 Boulevard Camille Saint Saens

Avant Propos

Il y a lieu de noter que les Codes Fiscaux Français, (Enregistrement, Valeurs Mobilières, Impôts Directes, Taxes sur le Chiffre d'Affaires, et annexes), forment toujours la base de la documentation fiscale dans ce pays.

De même la loi du sept mars 1925 fixant le statut des SARL, et la loi du 24 juillet 1867 fixant celui des Sociétés par actions, sont toujours applicables en Algérie. De ce qui précède, on peut aisément déduire qu'il n'y a pas encore en Algérie une jurisprudence en matière fiscale, et à notre connaissance aucun ouvrage d'importance traitant de ces questions d'actualité, n'y paru à ce jour.

Les circulaires de l'Administration fiscale algérienne sont celles qui étaient en vigueur du temps de la présence française.

Mesures fiscales

1 *Décret sur les transactions*

Le Décret du 22 janvier 1964 fixe le régime des Transactions. Il stipule que toute opération entre vis à vis ayant pour objet la création, l'extension ou le transfert des droits réels immobiliers (propriété, servitude, cession de part, hypothèque, antichrèse, emphytéose) ainsi que les baux d'une durée supérieure à neuf ans et les cessions, apports de location, gérance de fonds de commerce, sont libres, sous réserve des dispositions suivantes:

Les opérations énumérées ci-dessus sont soumises à l'autorisation administrative lorsqu'elles portent sur un bien d'une valeur supérieure:

- 100.000 NF s'il s'agit d'un immeuble;
- 200.000 NF s'il s'agait d'un fonds de commerce.

Sont dispensés d'autorisation:

- les transferts pour cause de mort et les opérations successorales qui en découlent (partages, retraits, rapports);
- les opérations auxquelles sont parties l'Etat, une Collectivité locale ou une personne morale de droit public.

Par ailleurs, nul ne peut, s'il n'y a été dûment autorisé, effectuer plus de deux opérations, même si les opérations suivantes portent sur des biens d'une valeur inférieure aux sommes prévues ci-dessus.

2 *Droits d'Enregistrement*

Le Décret du trente janvier 1964 fixe les droits d'enregistrement en matière de ventes de fonds de commerce et de ventes d'immeubles.

Dans tous les cas, l'acquéreur paie un droit de 10 pour cent.
Quant au vendeur, les droits sont fixés comme suit:

jusqu'à	20.000 NF	10 pour cent
de	20.001 à 50.000 NF	12 pour cent
de	50.001 à 100.000 NF	15 pour cent
au delà de	100.000 NF	20 pour cent

Etant ici précisé qu'en Algérie les «nouveaux francs» ont toujours cours.

3 *Taxe sur l'activité industrielle et commerciale*

En ce qui concerne les établissements publics, les entreprises de bâtiment et de travaux publics, les banques et les établissements financiers, assimilés et les entreprises de transport, la taxe est dans tous les cas, établie au lieu du principal établissement pour l'ensemble de leurs entreprises exploitées en Algérie.

Le taux appliqué aux recettes provenant des activités sus indiquées, égal au taux moyen global de la taxe constaté pour l'Algérie l'année précédente, est fixé chaque année par arrêté.

Pour l'application de cette disposition, un arrêté du 10 octobre 1963 a fixé à 2,0486 pour cent le taux 1962. Ce taux est donc appliqué aux entreprises visées pour leur imposition 1963. Ce taux est majoré de la taxe additionnelle prévue pour les bourses et chambres de commerce, et éventuellement de la majoration de 0.03 point prévue pour les communes de plus de 100.000 habitants.

Tel est le régime particulier prévu par l'Article 246/2 du Code Algérien des Impôts Directs.

4 *Nouveau Tarif Douanier*

Le nouveau tarif douanier est institué par l'Ordonnance du 28 octobre 1963. Ce texte fixe ce qui suit: Il est institué un nouveau tarif douanier.

Le tarif douanier indique les taux des droits de douane applicables à l'importation des marchandises suivant leur origine.

Les droits figurant dans le colonne du tarif dite «De Droit Commun» sont applicables aux marchandises originaires de pays qui accordent à l'Algérie le traitement de la nation la plus favorisée.

Les marchandises originaires du territoire douanier français sont passibles des droits figurant dans la colonne «France».

En attendant la définition des relations tarifaires entre l'Agérie et la Communauté Economique Européenne, les marchandises qui sont originaires de cette dernière, à l'exception de la France, sont passibles des droits de la colonne «C.E.E.» si les conditions, pour être admises à ce tarif, sont remplies.

Les marchandises originaires des pays autres que ceux visés ci-dessus sont passibles des droits du tarif général. Les droits du tarif général sont fixés au triple de ceux du tarif du droit commun.

Des décrets rendus sur le rapport du Ministre de l'Economie Nationale, pourront suspendre, réduire ou relever les droits de douane dans les circonstances exceptionnelles, si la situation économique du pays le justifie.

Sont abrogées toutes dispositions contraires à la présente ordonnance, y compris l'arrêté du 10 février 1963 instituant une surtax spéciale temporaire à l'occasion de l'importation de certains matériels.

Ces dispositions sont entrées en application le 1 novembre 1963.

5 *Controle des changes*

Le Décret du 19 octobre 1963 a étendu provisoirement aux pays de la zone franc, les obligations et interdictions prévues par le Décret du 15 juillet 1947, et les avis de change de caractère général pris pour son application.

Ce dernier décret est celui qui a codifié les obligations et prohibitions édictées par la réglementation des changes. Le nouveau décret du 19 octobre 1963 est entré en vigueur le 21 octobre 1963. Il précise que les modalités d'application, qui comporteront un régime préférentiel pour les pays de la zone franc, feront l'objet d'avis du Ministre de l'Economie Nationale.

Les dispositions de l'article 57 de la loi du 13 décembre 1962 portant création et fixant les statuts de la Banque Centrale d'Algérie, sont rendues applicables aux opérations avec la zone franc.

C'est ainsi qu'il est stipulé ce qui suit:

La Banque Centrale participe à l'élaboration de la législation et de la réglementation des changes; elle est chargée de leur application.

A cet effet, la Banque Centrale vise pour accord les licences d'importation et d'exportation et délivre toutes autres autorisations particulières prévues par le réglementation des changes.

En vue d'assurer l'application de la réglementation des changes, la Banque Centrale peut donner toutes instructions aux banques et autres intermédiaires agrées et leur demander tous renseignements et documents statistiques.

Elle peut également réclamer à toutes personnes et administrations, les renseignements et documents nécessaires à l'établissement de la balance des paiements de l'Algérie.

6 *Taxe à la production – Taux majoré*

Les quatre arrêtés du 25 octobre 1963, relatifs à la Taxe Unique globale à la production, ont en réalité un champ d'application nettement délimité.

Toute sorte de produits figurent sur la liste des produits soumis à l'application de la taxe au taux majoré (actuellement 25 pour cent).

Ces mesures sont rentrées en application le 10 novembre 1963.

7 *Taxe sur les transactions*

Le Ministre de l'Economie Nationale, par deux avis du septembre et octobre 1963 nos. 884 et 885, vient d'apporter dans ce domaine les précisions ci-après:

– En raison de son double caractère de taxe sur la consommation locale et de taxe de remplacement, à la taxe à la production, la taxe sur les transactions est normalement acquittée sur toutes les ventes, tant en gros qu'au détail, effectuées par des commerçants non assujettis à la taxe à la production et ceux qui sont redevables de cette taxe mais qui vendent directement au consommateur. Il parait utile de préciser que par livraison à la

consommation, il faut entendre la dernière livraison d'un produit imposable qui n'est pas destiné à la revente.

Le taux de la taxe étant de 1 pour cent, la base imposable est constituée par le montant total des paiements. Il y a donc lieu d'appliquer simplement 1 pour cent sur le montant total des ventes.

La taxe sur les transactions est dûe par les seules personnes effectuant des opérations imposables et dont le chiffre d'affaires global annuel est égal ou supérieur à 180.000 NF.

Par chiffre d'affaires annuel il faut entendre le montant global des affaires réalisées par le redevable pour l'ensemble des activités qu'il exerce en Algérie.

8 *Transferts de fonds vers l'étranger*

Depuis le 18 novembre 1963, l'envoi de tous objets avec valeur déclarée à destination de l'étranger est provisoirement suspendu.

L'insertion des billets de banque algériens ou étrangers dans les lettres recommandées est interdite jusqu'à nouvel ordre.

9 *Mise sous protection de l'état de biens mobiliers et immobiliers.*

Le décret du 9 mai 1963 fixe que les biens immobiliers, les fonds de commerce, les entreprises, établissements et exploitations de caractère industriel, commercial, artisanal, financier, minier, agricole, peuvent être placés, après enquête et par arrêté du préfet du département sur lequel ces biens se trouvent situées, sous protection de l'Etat.

Cette mesure peut être décidée soit en raison de l'irrégularité de la transaction dont ils ont fait l'objet, soit en raison de troubles à l'ordre public ou de l'atteinte à la paix sociale portés ou susceptibles d'être portés par leur mode de gestion, d'exploitation ou d'utilisation.

10 *Réimmatriculation au régistre de commerce des sociétés*

Le délai obligatoire de réimmatriculation au Registre de Commerce d'Alger, Oran, Constantine, des Sociétés, a été reporté au 31 octobre 1964.

L'inobservation des formalités de réimmatriculation obligatoire des Sociétés, dans les délais impartis, entraîne la nullité de la Société. Toutefois, les actionnaires d'une Société anonyme ne pourront se prévaloir vis à vis des tiers, de cette cause de nullité.

11 *Transfert de siège social hors d'Algérie*

Le Décret du 23 décembre 1963 stipule que le transfert hors d'Algérie du siège social de personnes morales établies en Algérie est soumis à l'autorisation préalable du ministre de l'Economie Nationale.

Reported by:
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AUSTRIA

BIBLIOGRAPHY

Das Recht der Doppelbesteuerung in Oesterreich, LAGER A., Wien, Wirtschaftsverlag Dr. Anton Orac, 1964, loose-leaf publication.

The first section of this treatise on foreign taxation explains in short the principles of double taxation treaties upon direct taxes. The second section (approximately 340 pages) contains the text of the tax treaties concluded by Austria, with their corresponding regulations etc, covering income taxes, net worth taxes, estate duties, gift taxes, motor-vehicle taxes and conventions for reciprocal assistance in juridical tax-matters. The tax treatment of members of supranational and international organizations is also included. Except for the first short explanatory section, the book reproduces texts and documents but offers up to now no critical commentary.

Internationales Steuerrecht, Manz'sche Grosze Gesetzausgabe Nr. 15, WATZKE O, R. POLLAK und A. PHILIPP, Wien, Manz'sche Verlags- und Universitätsbuchhandlung, 1964, pp. 788.

This handbook concerns itself with the tax treaties concluded by Austria and provisions of Austrian law pertinent to residents and non-residents receiving foreign income. Aside from income taxes, the book discusses net worth taxes, death duties and motor-vehicle taxes. Also contained in this book is the tax treatment of individual employees of supranational or international organizations. The first part of the book explains the general principles and problems of international tax relations, followed by the text of the tax conventions concluded with relevant provisions. The second part speaks to the reciprocal tax administration assistance between Austria and other countries. The third part extracts articles from multilateral conventions or conventions not limited to taxation, which are important for the Austrian or international taxation. The fourth part pertains to tax exemptions as they relate to extraterritorial individuals and international entities.

BRAZIL

TAX NEWS

For many years, Brazil has been plagued by inflation. Its latest attempt to remedy the situation is via taxation through law 3.898 and 4.194. These laws introduce a system, for the avoidance of inflationary effects, which does not require frequent changes in the rate structure. The following rates of complementary tax are now applicable:

Up to	24	times	the	minimum	taxable	salary	.	.	.	.	.	.	.	.	.	.	.	exempt	
between	24	times	the	minimum	salary	and	30	.	.	.	.	.	.	.	.	.	.	3	per	cent
,,	30	,,	,,	,,	,,	,,	45	.	.	.	.	.	.	.	.	.	.	5	,,	,,
,,	45	,,	,,	,,	,,	,,	60	.	.	.	.	.	.	.	.	.	.	8	,,	,,
,,	60	,,	,,	,,	,,	,,	75	.	.	.	.	.	.	.	.	.	.	12	,,	,,
,,	75	,,	,,	,,	,,	,,	90	.	.	.	.	.	.	.	.	.	.	16	,,	,,

between	90	times	the	minimum	salary	and	120	. . . . .	20	per	cent
„	120	„	„	„	„	„	150	. . . . .	25	„	„
„	150	„	„	„	„	„	180	. . . . .	25	„	„
„	180	„	„	„	„	„	250	. . . . .	35	„	„
„	250	„	„	„	„	„	350	. . . . .	40	„	„
„	350	„	„	„	„	„	450	. . . . .	45	„	„
„	450	„	„	„	„	„	600	. . . . .	51	„	„
„	600	„	„	„	„	„	800	. . . . .	57	„	„
over	800	. . . . .	65	„	„

To illustrate the way within the tax operates, the stages of income to which the various tax rates were applied in 1963 and 1964 (yearly income from 1962 and 1963) are set forth as follows:

1963					*1964*				
	up to	336.000	exempt			up to	504.000	exempt	
between	336.001	and 420.000	3	per cent	between	504.001	and 630.000	3	per cent
„	420.001	„ 630.000	5	„ „	„	630.000	„ 945.000	5	„ „
„	630.001	„ 840.000	8	„ „	„	945.001	„ 1.260.000	8	„ „
„	840.001	„ 1.050.000	12	„ „	„	1.260.001	„ 1.575.000	12	„ „
„	1.050.001	„ 1.260.000	16	„ „	„	1.575.001	„ 1.890.000	16	„ „
„	1.260.001	„ 1.680.000	20	„ „	„	1.890.001	„ 2.520.000	20	„ „
„	1.680.001	„ 2.100.000	25	„ „	„	2.520.001	„ 3.150.000	25	„ „
„	2.100.001	„ 2.520.000	30	„ „	„	3.150.001	„ 3.780.000	30	„ „
„	2.520.001	„ 3.500.000	35	„ „	„	3.780.001	„ 5.250.000	35	„ „
„	3.500.001	„ 4.900.000	40	„ „	„	5.250.001	„ 7.350.000	40	„ „
„	4.900.001	„ 6.300.000	45	„ „	„	7.350.001	„ 9.450.000	45	„ „
„	6.300.001	„ 8.400.000	51	„ „	„	9.450.001	„ 12.600.000	51	„ „
„	8.400.001	„ 11.200.000	57	„ „	„	12.000.001	„ 16.800.000	57	„ „
		11.200.001	65	„ „			16.800.001	65	„ „

The minimum taxable salary is the maximum labour salary for the year in which the income is accrued. The labour salary is fixed by the government and generally changes in accordance with changes in the price level. Thus, tax rates need not change to satisfy the State's revenue needs. Perhaps a curious anomaly exists with regard to this tax: most Brazilians know how much the maximum labour salary is but few know how high the minimum taxable salary is.

TAX CASES

A Brazilian corporation contracted outside of Brazil with a non-Brazilian corporation (known hereinafter as the foreign corporation) for construction that was to be done in Brazil. Not only was the contract entered into outside of Brazil, but it was stipulated that the payments to the foreign corporation would also be made outside of Brazil. The main office of the foreign corporation performed various functions outside

of Brazil, viz., recruitment of technical personnel, purchase of heavy machinery, preparation of various contracts, preparation of the budget, etc. The Brazilian branch of this company performed various functions in Brazil, to wit, furnishing the materials for construction, arranging for hiring labourers, accounting for receipts and expenses, administering and guiding the performance of the contract, etc.

The payments, outside of Brazil, were directed to the main office, and years later a portion of the income (40%) was distributed to the Brazilian branch by its home office. Only then did the books of the branch office reflect any income from the performance of the contract. The tax authorities subjected the entire payments to tax, and fined the Brazilian branch of the foreign corporation because it had not included in its accounts the total Brazilian payments.

The foreign corporation appealed the decision of the tax authorities, arguing that it was unimportant that the contract was to be performed in Brazil; what was important was the proper allocation of the income for service rendered, and a view must be taken to the services performed by the main office. The appellant argued that any other solution would be contrary to reality since the main office would be uncompensated for the services which it performed. Also, unless this allocation was made, the remuneration would far exceed the actual work done in Brazil.

The "Conselho de Contribuientes" rejected these arguments and held that although art. 35 of the Income Tax Law, in some cases, permits the attribution of income to sources within and without Brazil, in the case at hand the activity was not within the ambit of art. 35; therefore, all receipts from the work must be included in the statement by the foreign branch. The "Counsel of Taxpayers" further stated that the income should have been included in the year of receipt. Since the branch did not include the income, the fine must be levied.

This judgement is important because it contributes to the doctrine stated in other judgements, namely, that income from Brazilian sources, not income from activities performed in Brazil, are taxable in Brazil—See Revista Fiscal e de Legislaçao de Fazenda, 397/61, 24/62 and 431/61.

(Research-editor's commentaries on the judgement pubished in the Revista Fiscal e de Legislaçao de Fazenda 777/63).

GERMANY

BIBLIOGRAPHY

Bewertungsgesetz, Vermögensteuergesetz, Kommentar von GÜRSCHING L., A. STENGER und H. DIEDENHOFEN, Köln, Verlag Dr. Otto Schmidt KG, loose-leaf publication in 2 volumes, DM 78.— for both volumes plus DM 4.— for each binder.

We regularly receive the supplements to this publication. The 16th supplement to the basic volume which is a guide to a most difficult subject, i.e. valuation and net worth taxation, appeared in March 1964.

Der Bundeshaushalt, Schriftenreihe des Instituts "Finanzen und Steuern", Heft 15, Band 13, Bonn, Institut "Finanzen und Steuern", 1964, pp. 195, DM 15.—.

Since 1952 each year one volume (no. 15) of this series is devoted to a survey of the public finance situation of the Federal Republic. The Budget is analyzed and data and commentaries are given on the receipts and expenditures of the Government. Emphasis is put on the development of public finance between 1961 and 1964.

Bundesverfassungsgericht und Rückwirkung von Gesetzen, Schriftenreihe des Instituts "Finanzen und Steuern", Heft 72, KLEIN F. und G. BARBEY, Bonn, Institut "Finanzen und Steuern", 1964, pp. 138, DM 10.50.

This book contains a discussion of the problem whether or not it is permitted to enact laws retroactively effective from a date prior to that of its enactment. Discussion is held within the scope of critizing decisions of the German High Tax Court since 1951 related to this matter. After that a theoretical survey on the meaning of retroactiveness of law is given. The conclusion is that in a few cases it must be permitted, but that generally retroactive laws are not in accordance with legal security and therefore should not be permitted.

Die Erteilung von Rechtsauskünften durch die Finanzämter, Spezialfragen im Steuerrecht, KAMPMANN M., Stuttgart, Fachverlag für Wirtschafts- und Steuerrecht Schaffer & Co GmbH, 1963, pp. 120, DM 9.80.

In many transactions, concerning import duties, income tax, etc. rulings are asked from the tax authorities. A question arises whether or not the tax authorities are obliged to render rulings; once rulings are rendered the second problem is effected, namely, whether or not the tax authorities are bound, in the case at hand, to their rulings. The above and other related problems are discussed in this book, along with the applicable legal and administrative provisions.

Grundriss des Steuerrechts, Schriftenreihe der Berliner Verwaltungsschule, Heft 7, FECHNER R., Berlin, Verlag Franz Vahlen GmbH, 1960, 3rd edition, pp. 174, DM 10.—.

This educative booklet gives a clear survey of the total German tax law. It is mainly written for students and other persons who have no experience with German tax law but who are interested in it or who wish to have a quick glance at it. The booklet covers tax history, tax legislation, organization of tax administration, tax procedure, valuation and the separate taxes i.e. federal taxes, state taxes, municipal taxes and additional levies such as the "church tax". The special tax treatment of Berlin is dealt with in the appendix.

Kommentar zum Umsatzsteuergesetz, HÜBSCHMANN W., R. GRABOWER, E. BECK, H. VON WALLIS und O. SCHWARZ, Köln, Verlag Dr. Otto Schmidt KG, March 1964, looseleaf publication of 3 volumes, DM 137,— plus DM 4.— for each binder.

Supplement 27 contains commentary on: who pays the tax, how is it computed and how is it paid or refunded.

Kommentar zur Einkommensteuer und Körperschaftsteuer, HERRMANN C., G. HEUER, A. HEINING und O. VON SCHILLING, Köln, Verlag Dr. Otto Schmidt KG, May 1964, loose-leaf publication of 6 volumes, DM 174.— for all volumes plus DM 4.— for each binder.

Supplement 59 contains commentary *inter alia* about incidental and foreign income, incentives for investment in development countries and assessment of tax-payers who received income subject to withholding. In addition it contains an index of decisions and an index of "catch words".

Oeffentliche Finanzhilfen an Entwicklungsländer, Finanzwissenschaftliche Forschungsarbeiten, Neue Folge Heft 29, herausgegeben von Prof. Dr. G. Schmölders, Universität zu Köln, ZIMMERMANN H., Berlin, Duncker & Humbult, 1963, pp. 168, DM 19.80.

This book covers the field of financial aid to development countries. The author states that private investments since 1948 have decreased and that public investments have increased. Conditions, however, often remained as in a private contract. Many development countries therefore suffer under a high burden of financial debts to foreign nations. The World Bank has this as one problem under discussion. The book starts with a short historical survey, *inter alia* the discussions in the U.N. of 1949 and 1952. The subsequent part is devoted to the theory of possible forms of financial aid both from an economic point of view and from a political point of view. The third part is directed to the new criteria of theoretical thought on practical aid given by several capital exporting countries and financial organizations.

Schnellkartei des deutschen Rechts bzw. des Steuerrechts, Köln, Verlag Dr. Otto Schmidt KG, April 1964, loose-leaf publication of 4 volumes pertaining to taxes, DM 48.— for 4 volumes.

Supplement 124 contains the directives to the income tax of 1963 and regulations to the depreciation of buildings.

Steuererlasse in Karteiform, FELIX G. und D. CARLE, Köln, Verlag Dr. Otto Schmidt KG, March 1964, loose-leaf publication of 7 volumes, DM 73.— for all volumes.

Supplement 31 contains rulings and disposals pertaining *inter alia* to the computation of profits and net worth, depreciation on buildings, alienation of a business, business tax, wage tax, exemptions and rates for turnover tax.

Steuerrechtsprechung in Karteiform, HÜBSCHMANN W. und P. KAATZ, Köln, Verlag Dr. Otto Schmidt KG, April 1964, loose-leaf publication in 19 volumes, DM 164.— for all volumes plus DM 3.50 for each binder.

Supplement 148 contains decisions *inter alia* about notices of assessemt to tax; waiver of tax; accounting; returns; appeals; equity in tax treatment of spouses; abuse of commercial law provisions to avoid taxes; domicile and residence; computation of profits income from employment and wage tax.

INDIA

TAX NEWS

Reported by: K. C. Khanna, 16 Strandroad, Calcutta

Finance Act, 1964

The Finance Act, 1964 received the assent of the President on 28th April, 1964 and has been passed as Act No. 5 of 1964. No material changes have been made in the original proposals but the following amendments are worthy of note:

Personal Taxation

(i) The exemption limit in respect of individuals has been revised and the current limits of annual income exempt from tax in their cases are as follows:
   (a) Unmarried individuals — Rs. 1,000—
   (b) Married individual with no child — Rs. 3,200.—
   (c) Married individual with one child — Rs. 3,600.—
   (d) Married individual with more than one child — Rs. 4,000.—

(ii) Stipends or remunerations received by foreign students and professors from Foreign Governments or Institutes for carrying on research work in India under an approved programme will be exempt from taxation for a period of 2 years for each such individual.

Corporate Taxation

(i) Some relief in the form of reduced rate of tax on profits has been given to small companies in which the public is not substantially interested. Details are given in the Tables below.

(ii) Manufacturing companies and companies the book value of whose plant and machinery is Rs. 5,000,000 or more will be exempt from compulsory distribution of profits.

(iii) The development rebate (investment allowance) at 20% of cost will be allowed in respect of second-hand plant and machinery imported from abroad.

(iv) Additional depreciation at 50% of the normal rate of depreciation will be allowed for a third shift working of the plant and machinery.

(v) The list of basic industries entitled to a tax rebate of 10% (20% in case of surtax) has been amended to include electronic equipment, petrochemicals, manganese ore, dolomite and mineral oils; coffee and rubber have been deleted from the list.

Table A.

A. Indian Companies in which the public is substantially interested.

	rate of tax
(a) With income not exceeding Rs. 25.000 on total income	42.5%
(b) With income exceeding Rs. 25,000	
(i) on income attributable to specified "priority" industries	45 %
(ii) on other income	50 %

B. Indian Companies in which the public is not substantially interested.

(a) With income not exeeding Rs. 5 lakhs	
(i) on the first Rs. 2 lakhs of total income attributable to specified "priority" industries	45 %

(ii) on the balance of such income 54 %
(iii) on the first Rs. 2 lakhs of total income attributable to manufacturing or processing of goods other than in specified "priority" industries 50 %
(iv) on the balance of such income 60 %

(b) With income exceeding Rs. 5 lakhs
(i) on income attributable to specified "priority" industries 54 %
(ii) on other income 60 %

c. Foreign Companies operating in India through a Branch.
On all income 65 %

NOTE: The table is confined to income tax and super tax and does not take into account additional levies in the form of dividend tax, bonus tax and surtax on company profits which further enhance the effective rate of corporate taxation.

Table B.
Rates of tax payable by companies on income from dividends, royalties and technical service fees.

	Rate of Tax
1. Indian Company	
(a) income from dividends	25%
(b) other income	As per Table A
2. Foreign Company	
(a) dividends from a closely-held Indian company ("controlled corporation") engaged in a "basic" industry	15%
(b) dividends from any other Indian company	25%
(c) royalties from an Indian concern in pursuance of an agreement made on or after 1.4.61 and approved by the Government	50%
(d) fees for technical services received from an Indian concern in pursuance of an agreement made after 29.2.64 and approved by the Government	50%

"Basic" or "Priority" industry includes iron and steel, aluminium, coal, boilers and steam generating plants, equipment for the generation and transmission of electricity, machine tools, tractors, cement, fertilizers, paper, tea, electronic equipment, petrochemicals etc.

ITALY

BIBLIOGRAPHY

Finanza Publica. Tome Secondo – Parti Speciali, Trattato Italiano di Economia, Volume XIV, CELESTINO ARENA, Torino, Unione Tipografico – Editrice Torinese (UTET), 1963, pp. 725, 7500 Lire.

This second Volume on the study of public finance in Italy is devoted to specific subjects. It contains not only a general theoretical discussion of the principles of public finance, but it also contains a survey of the present system of taxation in Italy.
The publication has six sections:
– Section 1 : a general discussion of the technique of taxation

- Section II : assessment and collection of taxes
- Section III: the Italian tax system
- Section IV : local public finance; the relation between the state and local entities
- Section V : problems of public finance in case of economic depression or war
- Section VI : international public finance; international financial bodies, tax problems with respect to the EEG and tax problems caused by international cooperation.

(For a discussion of Tome I, see Bulletin Vol. XVII, nr. 6, p. 368).

Il fondamento teorico dell'imposta di registro – Applicazione pratica e problemi relativi, Dott. WALTHER ALVISI, Milano, 1963, pp. 95.

This publication contains a critical discussion of the theoretical principles underlying the Italian Registration duties, and a survey of the practical application of these duties. This survey is amplified by many examples based on case law.

JAPAN

BIBLIOGRAPHY

Proceedings of the Special Meeting of the Japan Tax Association on Tax System and Administration in Asian Countries, April 8th to 16th, 1963, edited by HIDEYASU IWASAKI – Japan Tax Association, 2,1-chome, Marunouchi, Chiyoda-ku, Tokyo, 282 pages, 1964.

Price $5.60 (Airmail $9.20)

The Japan Tax Association deserves to be better known outside of Japan than it actually is. According to its by-laws, "the particular objects ... shall be to promote theoretical and practical studies on the subject of taxation, and to help to diffuse the knowledge or experiences attained therefrom."

The Association has done much to disseminate information about the Japanese tax system. Its officers and members have made successful efforts to acquire knowledge about tax systems in other countries, especially those of the West.

Commendation must be directed to the Association for the important and interesting initiative which it had undertaken in the spring of 1963. Leading tax officials from a large number of Asian countries, many of which are known as developing countries, were brought together. Delegations came from Cambodia, China, India, Indonesia, Korea, Laos, Malaya, Philippines, Singapore, Thailand and Viet-Nam. The Organisation for Economic Cooperation and Development was represented by the chairman of its Fiscal Committee, Prof. A.J. van den Tempel, and in attendance for the United States Internal Revenue Service was Mr. Robert L. Chandler, representative in Manila.

The agenda included five subjects for discussion, viz.

- Tax policy and tax system
- Taxation of foreign corporations and aliens
- Special measures for industrial development

- Tax Administration
- Various problems with respect to conventions for the avoidance of double taxation.

Two days of intensive discussions were followed by visits to various Japanese business firms throughout the country. Thus, theory and practice were combined and this should contribute to a more profound knowledge of the problems faced by corporate taxpayers.

The first day was devoted to introductory remarks by the heads of the delegations directed to the above subjects as they pertain to their respective countries. These talks, comprising 75 pages, were preceded by a welcome address from the President of the Japan Tax Association, the Minister of Foreign Affairs and the Minister of Finance of Japan, as well as a talk by Prof. van den Tempel on tax developments in the European Common Market.

The next 30 pages of the book are devoted to discussions of the second day, during which questions were directed from the floor to a panel of delegates. The questions pertain mainly to the taxation of Japanese business firms operating in the delegate represented countries. The attitude of the tax authorities vis-à-vis foreign business were set forth clearly.

The third section of this book (160 pages) contains detailed answers to questionnaires submitted by the Japan Tax Association to the Governments represented. This is of utmost importance as it sets forth information which is otherwise difficult to obtain.

The preparatory work done by the members of the Japan Tax Association must have been enormous. Tax experts throughout the world benefit from the Association's initiative because of the fruitful exchange of ideas and experiences. This meeting and book may be qualified as a landmark work which must be consulted by anyone having concern with taxation in the represented countries; countries which will only be able to solve their economic problems through a well administered tax system.

A direct result of the meeting in Tokyo was that the Philippine representatives compared analytically the income tax structures of the represented countries. For a brief review, see below.

Comparative Study on the Individual Income Tax Structures of Selected Asian Countries, ANGEL Q. YOINGCO and F. RUBEN TRINIDAD, Japan Tax Association, April 1964. 40 pages.

The meeting of eleven Asian countries in Tokyo in April 1963 (see the preceding review), resulted in the two Philippine representatives having analytically compared the tax burdens in the countries concerned. The drawback with this publication was that the authors had insufficient data on the distribution of income among the various groups of taxpayers. Therefore assumptions were made in the analysis. The comparisons "reflect the features of the individual income tax system, such as the level of exemptions, progressivity, flexibility and the level of personal income taxation in general".

After stating that a comparison of tax burdens on the basis of foreign exchange rates would be erroneous because they do not take into account such factors as standard of living, cost of production, taxable capacity, and the stage of economic development, the authors proceed to a comparison of all types of ratios.

First, a comparison is made of *income subject to the minimum tax rate*. The basis of comparison is the income of a family of five, which was assumed to be the per capita income multiplied by 5.

The amount of personal exemptions is assumed to be that which conforms to a certain standard of living. On the basis of these assumptions, the result is that in a number of countries the average five-member family income is lower than the income subject to the minimum tax rate.

Another comparison concerns the flexibility of the tax burden on changing incomes. This is arrived at by computing ratios between (a) a change in tax liability, i.e. tax rate, and (b) a change in gross income. Since statistical data on income tax returns were not available, the authors have "measured this flexibility by the degree in which income is taxed at various rates as it moves from one bracket to another", starting from the tax tables in each of the countries concerned.

A third comparison is made on the effective tax rates. The basis started from is for each country, what the authors –erreoneously– refer to as "maximum taxable income", i.e. the amount of gross income above which a flat rate is applied. The assumptions here are twofold. First, that "taxpayers who are in the highest taxable income bracket are in the same level of satisfaction". This means that it is assumed that a taxpayer in the Philippines, where the highest bracket is 500,000 Pesos, can compare with a taxpayer in Japan (highest bracket 60,000,000 Yen) or Malaya (55,000 Malayan $), etc. whatever the foreign exchange rate is.

The second assumption is that taxpayers in different countries earning the same percentage of the "maximum taxable income" in their respective countries are on equal levels of satisfaction. Thus, the taxpayers in the three above-mentioned countries, whose incomes amount to respectively 25,000 Pesos, 3,000,000 Yen and 2,750 Malayan $, which in the three cases is 5 per cent of the "maximum taxable income", are considered as comparable as far as the burden of income tax is concerned. By applying the tax tables to these incomes, the respective percentages are 19.92, 28.26 and 6.18. A table gives the effective income tax rates, computed in the way described, for nine countries and for twenty percentages of "maximum taxable income".

In the discussions about the tax aspect of the problems relating to developing countries, this form of analysis deserves more attention and it would be useful if further similar studies would be undertaken.

MEXICO

Reported by: Roberto Casas, Abogado, Avenue Hidalgo 5, Mexico D.F.

Survey of The Mexican General Income Tax

The Mexican General Income Tax is regulated by the Federal Law of December 30, 1953, issued by the Congress of the Union and published in the Federation Courant of December 31, 1953.

This law, effected as of January 10, 1954, had had various modifications added thereto; the last modification occurring on January 10, 1964. This law contains the rules which

govern the payment of the general income tax by all individual and juridical entities, be they national or foreign.

The structure for the tax is schedular, subjecting to the tax the income from different categories. Each category has its own provision for deductions in reaching taxable income.

Schedule I: This schedule subjects to tax the commercial activities of individual and juridical persons, nationals or foreign. The progressive tax ranges from 5% to 39% of the taxable income (gross income less the allowed deductions).

Rate Schedule on Annual Taxable Income		fixed amount	% applicable
lower limit	upper limit	of tax	on the excess of lower limit
between 0.01	and 2,000.00	exempted	
2,000.01	3,500.00		5%
3,500.01	5,000.00	75.00	6%
5,000.01	8,000.00	165.00	7%
8,000.01	11,000.00	375.00	8%
11,000.01	14,000.00	615.00	9%
14,000.01	20,000.00	885.00	10%
20,000.01	26,000.00	1,485.00	11%
26,000.01	32,000.00	2,145.00	12%
32,000.01	38,000.00	2,865.00	13%
38,000.01	50,000.00	3,645.00	14%
50,000.01	62,000.00	5,325.00	15.1%
62,000.01	74,000.00	7,137.00	16.2%
74,000.01	86,000.00	9,081.00	17.3%
86,000.01	100,000.00	11,157.00	18.4%
100,000.01	125,000.00	13,733.00	19,5%
125,000.01	150,000.00	18,608.00	20.6%
150,000.01	175,000.00	23,758.00	21.7%
175,000.01	200,000.00	29,183.00	22.9%
200,000.01	250,000.00	34,908.00	24.1%
250,000.01	300,000.00	46,958.00	25.3%
300,000.01	350,000.00	59,608.00	26.5%
350,000.01	400,000.00	72,000.00	27.8%
400,000.01	500,000.00	86,758.00	29.1%
500,000.01	750,000.00	115,858.00	30.4%
750.000.01	1,000,000.00	191,858.00	31.7%
1,000,000.01	1,250,000.00	271,108.00	33.1%
1,250,000.01	1,500,000.00	353,858.00	34.5%
1,500,000.01	1,750,000.00	440,108.00	36%
1,750,000.01	2,000,000.00	530,103.00	37.5%
2,000,000.01 and higher		623,858.00	39%

The tax must be prepaid in the fifth, ninth and twelfth month of corresponding fiscal year, and three months following the filling of the income tax return which is filed at the end of the fiscal year.

Schedule II: This schedule subjects to tax the income from industrial activities of individual and juridical persons, national or foreign. The tax is the same as hereinbefore mentioned in Schedule I.

Schedule III: This schedule subjects to tax the income from agriculture, ranching and fishing. The progressive tax, ranging from 3.2% to 25%, is applicable on annual taxable income (gross income less allowed deductions) and it is set forth as follows:

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and	exempted	
2,000,01	3,500.00		3.2%
3,500.01	5,000.00	48.00	3.6%
5,000.01	8,000.00	102.00	4 %
8,000.01	11,000.00	222.00	4.6%
11,000.01	14,000.00	360.00	5.2%
14,000.01	20,000.00	516.00	5.8%
20,000.01	26,000.00	864.00	6.5%
26,000.01	32,000.00	1,254.00	7.2%
32,000.01	38,000.00	1,686.00	7.9%
38,000.01	50,000.00	2,160.00	8.6%
50,000.01	62,000.00	3,192.00	9.4%
62,000.01	74,000.00	4,320.00	10.2%
74,000.01	86,000.00	5,544.00	11 %
86,000.01	100,000.00	6,864.00	11.8%
100,000.01	125,000.00	8,516.00	12.6%
125,000.01	150,000.00	11,666.00	13.5%
150,000.01	175,000.00	15,041.00	14.4%
175,000.01	200,000.00	18,641.00	15.3%
200,000.01	250,000.00	22,466.00	16.2%
250,000.01	300.000.00	30,566.00	17.1%
300,000.01	350,000.00	39,116.00	18 %
350,000.01	400,000.00	48,116.00	19 %
400,000.01	500,000.00	57,616.00	20 %
500,000.01	750,000.00	77,616.00	21 %
750,000.01	1,000,000.00	130,116.00	22 %
1,000,000.01	1,250,000.00	185,116.00	23 %
1,250,000.01	1,500,000.00	242,616.00	24 %
1,500,000.01 and higher		302,616.00	25 %

The prepayment of the tax, upon cattle ranching enterprises, is based upon a stamp tax of 1% of sales which must be included as part of the invoice.

It is important to note that according to a convention between the National Cattle Confederation ("Confederación Nacional Ganadera") and the Secretary of the Treasury held on June 5, 1963, a set amount of tax is paid on each head of cattle sold and when this is paid, this income will not be subject to any other schedular tax.

Schedule IV: This schedule subjects to the tax income earned under the dependence and direction of one or more employers. This tax is paid on gross income without deductions.

The tax is withheld by the employer and delivered monthly to the Tax Collection Office. At the end of the year the employee must file a return to account for all income subject to this schedule, whereupon the progressive rate is imposed. When the tax is computed at the end of the year the withholdings by the employer are deducted.

The tax is as follows:

Annual taxable income			
lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and	exempted	
0.01	6,000.00	0.00	
6,000.01	7,200.00	54.00	2.10%
7,200.01	8,400.00	79.20	2.15%
8,400.01	9,600.00	105.00	2.21%
9,600.01	10,800.00	131.52	2.27%
10,800.01	12,000.00	158.76	2.57%
12,000.01	18,000.00	189.60	3.54%
18,000.01	24,000.00	402.00	4.50%
24,000.01	30,000.00	672.00	5.45%
30,000.01	36,000.00	999.00	6.55%
36,000.01	48,000.00	1,392.00	8,30%
48.000.01	60,000.00	2,388.00	9.85%
60,000.01	72,000.00	3,570.00	11.20%
72,000.01	84,000.00	4,914.00	12.40%
84,000.01	96,000.00	6,402.00	13.50%
96,000.01	108,000.00	8,022.00	14.60%
108,000.01	120,000.00	9,774.00	15.65%
120,000.01	144,000,00	11,652.00	17.75%
144,000.01	168,000.00	15,912.00	19.75%
168,000.01	216,000.00	20,652.00	23.07%
216,000.01	264,000.00	31,725.60	26.41%
264,000.01	336,000.00	44,402.40	30.65%
336,000.01	408,000.00	66,470.40	34.12%

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
408,000.01	480,000.00	91,036.80	40.10%
480,000.01	840,000.00	119,908.80	48.03%
840,000.01 and higher		292,816.80	50.00%

Schedule V: This is applicable only to national or foreign individuals, but associations of professionals, e.g. firms of lawyers, engineers, accountants, etc. are included within this schedule.

The progressive tax is applied to the annual taxable income and is as follows:

Annual taxable income

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		3 %
2,000.01	3,500.00	60.00	3.4%
3,500.01	5,000.00	111.00	4 %
5,000.01	8,000.00	171.00	4.6%
8,000.01	11,000.00	309.00	5.4%
11,000.01	14,000.00	471.00	6.2%
14,000.01	20,000.00	657.00	7 %
20,000.01	26,000.00	1,077.00	8 %
26,000.01	32,000.00	1,557.00	9 %
32,000.01	38,000.00	2,097.00	10 %
38,000.01	50,000.00	2,697.00	11 %
50,000.01	62,000.00	4,017.00	12.2%
62,000.01	74,000.00	5,481.00	13.4%
74,000.01	86,000.00	7,089.00	14.6%
86,000.01	100,000.00	8,841.00	15.8%
100,000.01	125,000.00	11,053.00	17 %
125,000.01	150,000.00	15,303.00	18.3%
150,000.01	175,000.00	19,878.00	19.6%
175,000.01	200,000.00	24,778.00	20.9%
200,000.01	250,000.00	30,003.00	22.2%
250,000.01	300,000.00	41,103.00	23.6%
300,000.01	350,000.00	52,903.00	25 %
350,000.01	400,000.00	65,403.00	26.5%
400,000.01	500,000.00	78,653.00	28 %
500,000.01	750,000.00	106,653.00	29.5%
750,000.01	1,000,000.00	180,403.00	31 %
1,000,000.01 and higher		257,903.00	33 %

The income from professional entertainers, sportsmen, etc. who do not continuously perform their activities within the country, are taxed under a special tax applicable upon each individual receipt.

Up to		500.00	8%
between $	500.01 and	1,000.00	10%
	1,000.01	1,500.00	12%
	1,500.01	2,000.00	15%
	2,000.01	3,000.00	20%
	3,000.01	4,000.00	25%
	4,000.01 and higher		30%

The taxpayer within this schedule must submit invoices wherein a stamp for the tax due must be affixed. The prepayment will be deducted from the entire tax due which is based upon the taxpayer's total taxable income for the calendar year.

Schedule VI: This schedule subjects the individual or juridical person (national or foreign) to tax on the income derived from the transfer of urban real property or securities by individuals or civil companies or associations.

The rules for taxing interest varies according to the transaction within which it is derived. In some cases the tax of 10% is withheld by the payor; in other cases the schedular tax is applied. In still other cases a special tax is imposed, namely, when the interest on a single transaction is greater than 15% the tax is 50% of the interest collected; if the interest is 18% or more, the excess from 18% is taxed at 90% of the interest collected.

Generally the tax is levied on the gross income without deductions, and it is as follows:

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		10.0%
2,000.01	5,000.00	200.00	11.3%
5,000.01	8,000.00	539.00	12.6%
8,000.01	14,000.00	917.00	13.9%
14,000.01	20,000.00	1,751.00	15.2%
20,000.01	26,000.00	2,663.00	16.5%
26,000.01	38,000.00	3,653.00	17.9%
38,000.01	50,000.00	5,801.00	19.3%
50,000.01	62,000.00	8,117.00	20.7%
62,000.01	75,000.00	10,601.00	22.1%
75,000.01	100,000.00	13,474.00	23.5%
100,000.01	125,000.00	19,349.00	24.9%
125,000.01	150,000.00	25,574.00	26.4%
150,000.01	200,000.00	32,174.00	27.9%

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
200,000.01	250,000.00	46,124.00	29.4%
250,000.01	350,000.00	60,824.00	30.9%
350,000.01	408,000.00	91,724.00	32.4%
408,000.01	480,000.00	110,516.00	36.0%
480,000.01	720,000.00	136,436.00	40.0%
720.000.01	840,000.00	232,436.00	45.0%
840,000.01 and higher		286,436.00	50.0%

The gain from the sale of urban real estate and securities by individuals, civil companies and civil associations, are taxed as follows:

taxable income time elapsed between acquisition date and sale	up to $ 100,000	from $ 100,001 to $ 200,000	from $ 200,001 to $ 300,000	from $ 300,001 to $ 400,000	more than $ 400,000
up to 1 year	12%	14%	16%	18%	20%
more than 1 year up to 3 years	10%	12%	14%	16%	18%
more than 2 years up to 3 years	8%	10%	12%	14%	16%
more than 3 years up to 4 years	6%	8%	10%	12%	14%
more than 4 years	5%	6%	8%	10%	12%

Schedule VII: This schedule subjects to tax the profits distributed or which must be distributed by all Mexican or foreign enterprises doing business in Mexico.

The tax rate of 15% is levied on distributable profits and must be withheld and paid to the tax authorities by the corporation. Where bearer shares of a corporation are not deposited with a financial institution an additional 5% of the gross distributable profits per bearer shares will be levied. The distributable profits upon which the tax is calculated is not the distributable dividends but rather the accounting profits adjusted to satisfy legal requirements.

In case a general meeting of shareholders decides to reinvest 100% of the profits and the company has not received any authorization from the Minister of Finance, the company must withhold the tax thereon. Exempt from this tax are dividends distributed by investment companies, or which come from securities exempted in Schedule VI, or when a tax imposed by Schedules VI or VII has been withheld and paid.

Also exempted from this tax are the profits distributed by companies composed of professionals.

Schedule VIII: This schedule subjects to tax the income from the following: leasing and subleasing real estate; businesses of a commercial, industrial, agricultural, cattle-raising

or fishing nature; premiums and royalties and remunerations of any kind brought about by the exploitation of patents, trademarks, trade names, or copyrights where the income is derived by someone other than the owner; also included is income from film distributions, jukeboxes, weighing machines and vending machines.

Case law permits different deductions in the above categories but the tax is uniformly as follows:

annual taxable income

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		10.0%
2,000.01	5,000.00	200.00	11.3%
5,000.01	8,000.00	539.00	12.6%
8,000.01	14,000.00	917.00	13.9%
14,000.01	20,000.00	1,751.00	15.2%
20,000.01	26,000.00	2,663.00	16.5%
26,000.01	38,000.00	3,653.00	17.9%
38,000.01	50,000.00	5,801.00	19.3%
50,000.01	62,000.00	8,117.00	20.7%
62,000.01	75,000.00	10,601.00	22.1%
75,000.01	100,000.00	13,474.00	23.5%
100,000.01	125,000.00	19,349.00	24.9%
125,000.01	150,000.00	25,574.00	26.4%
150,000.01	200,000.00	32,174.00	27.9%
200,000.01	250,000.00	46,124.00	29.4%
250,000.01	350,000.00	60,824.00	30.9%
350,000.01	408,000.00	91,724.00	32.4%
408,000.01	480,000.00	110,516.00	36.0%
480,000.01	720,000.00	136,436.00	40.0%
720,000.01	840,000.00	232,436.00	45.0%
840,000.01 and higher		286,436.00	50.0%

The income from leasing and subleasing real estate is subject to the preceding tax, but it is possible to reduce the taxable income by 30% for the following tax as established by Presidential Decree of September 24, 1942:

in case of controlled rents	0.14%
rents from m$n 1 to m$n 1.000	0.75%
over 1.000	5.00%

The tax is paid by stamps which must be affixed to the vouchers which corrobarate the payment.

Schedule IX: This schedule subjects to tax the income or consideration received in any manner from the sale or exchange of a contract, license, concession or authorization by the Federation, Municipality or Province. Where the Federation, Municipality or Province issued any concession, license, authorization or right for the exploitation of mineral rights, the sale (total or partial) or exchange of any of the above rights is subject to the tax under this schedule, as follows:

annual taxable income			
lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		20.0%
2,000.01	5,000.00	400.00	21.3%
5,000.01	8,000.00	1,039.00	22.6%
8,000.01	14,000.00	1,717.00	23.9%
14,000.01	20,000.00	3,151.00	25.2%
20,000.01	26,000.00	4,663.00	26.5%
26,000.01	38,000.00	6,253.00	27.9%
38,000.01	50,000.00	9,601.00	29.3%
50,000.01	62,000.00	13,117.00	30.7%
62,000.01	75,000.00	16,801.00	32.1%
75,000.01	100,000.00	20,974.00	33.5%
100,000.01	125,000.00	29,349.00	34.9%
125,000.01	150,000.00	38,074.00	36.4%
150,000.01	200,000.00	47,174.00	37.9%
200,000.01	250,000.00	66,124.00	39.4%
250,000.01	350,000.00	85,824.00	40.9%
350,000.01	500,000.00	126,724.00	42.4%
500,000.01	750,000.00	190,324.00	44.0%
750,000.01	1,000,000.00	300,324.00	45.6%
1.000,000.01	1,250.000.00	414,324.00	47.2%
1,250,000.01	1,500,000.00	532,324.00	49.1%
1,500,000.01	1,750,000.00	655,074.00	51.0%
1,750,000.01	2,000,000.00	782,574.00	53.0%
2,000,000.01 and higher		915,074.00	55.0%

Tax on Excess Profits:
This subjects to tax individuals or juridical persons (national or foreign) whose annual income, as assessed under schedule I, II, III, is higher than 300.000 and whose yearly taxable income is higher than 15% of the working capital. The applicable tax on the above annual taxable income is as follows:

Taxable income up to 15% of the working capital	Exempt
between 15% and 20% of the working capital	5%
between 20% and 30% of the working capital	10%
between 30% and 40% of the working capital	15%
between 40% and 50% of the working capital	20%
over 50%	25%

This tax may not exceed 10% of the taxable income under schedules I, II, or III.

Tax on accumulated income:
This subjects to tax the individuals (national or foreign) who have a yearly income greater than 180,000 and who must pay tax under two or more schedules.

The taxable income is the sum of all taxable income under the various schedules. The tax is levied as follows:

Up to 275,000.000				3%
from	275,000.01	to	300,000.00	3.25%
	300,000.01		325,000.00	3.50%
	325.000.01		350,000.00	3.75%
	350,000.01		375,000.00	4.00%
	375,000.01		400,000.00	4.25%
	400,000.01		425,000.00	4.50%
	425,000.01		450,000.00	4.75%
	450,000.01		475,000.00	5,00%
	475,000.01		500,000.00	5.25%
	500,000.01		525,000.00	5.50%
	525,000.01		550,000.00	5.75%
	550,000.01		575,000.00	6.00%
	575,000.01		600,000.00	6.25%
	600,000.01		625,000.00	6.50%
	625,000.01		650,000.00	6.75%
	650,000.01		675,000.00	7.00%
	675,000.01		700,000.00	7.25%
	700,000.01		725,000.00	7.50%
	725,000.01		750,000.00	7.75%
	750,000.01		775,000.00	8.00%
	775,000.01		800,000.00	8.25%
	800,000.01		825,000.00	8.50%
	825,000.01		850,000.00	8.75%
	850,000.01		875,000.00	9.00%
	875,000.01		900,000.00	9.25%
	900,000.01		925,000.00	9.50%
	925,000.01		950,000.00	9.75%
	950.000.01		975,000.00	10.00%

from	975,000.01	to	1,000,000.00	10.25%
	1,000,000.01		1,025,000.00	10.50%
	1,025,000.01		1,050,000.00	10.75%
	1,050,000.01		1,075,000.00	11.00%
	1,075,000.01		1,100,000.00	11.25%
	1,100,000.01		1,125,000.00	11.50%
	1,125,000.01		1,150,00.00	11.75%
	1,150,000.01		1,175.000.00	12.00%
	1,175,000.01		1,200,000.00	12.25%
	1,200,000.01		1,225,000.00	12.50%
	1,225,000.01		1,250,000.00	12.75%
	1,250,000.01		1,275,000.00	13.00%
	1,275,000.01		1,300,000.00	13.25%
	1,300,000.01		1,325,000.00	13.50%
	1,325.000.01		1,350,000.00	13.75%
	1,350,000.01		1,375,000.00	14.00%
	1,375,000.01		1,400,000.00	14.25%
	1,400,000.01		1,425,000.00	14.50%
	1,425,000.01		1,450,000.00	14.75%
	1,450,000.01 and higher			15.00%

Additional Tax on the Renumeration for Personal Service. This tax is levied at 1% of the gross income, only when the income is subject to tax under Schedules IV or V.

Reported by: Roberto Casas, Abogado, Avenue Hidalgo 5, Mexico - D.F.

BIBLIOGRAPHY

Revista Fiscal y Financiera, December 1963, contains an article by H. Briseno Sierra about:

La participación de utilidades y el Impuesto sobre la renta.

This is a study of the income tax consequences for employees participating in company profits.

Derecho Procesal Fiscal, Humberto Briseno Sierra, México, Antigua Libreria Robredo, 1964, 701 pp.

This is a study of the tax procedures utilized when tax claims are submitted to the courts. References are made to the theory and jurisprudence concerning such procedures; also included are historical precedents and administrative procedures.

Conozca sus Obligaciones Fiscales, release March 1964, Daniel Albareda.

Survey of recent minor reforms in the Mexican individual income tax. As in previous releases, examples are used to explain each of the topics.

Jurisprudencia de la Suprema Corte de la Nacion y del Tribunal Fiscal de la Federacion en materia de la Ley del Impuesto sobre la Renta.

México, Secretaria de Hacienda y Crédito Publico.

Income tax matters on case law decided by the High Court and the Federal Tax Tribunal of Mexico.

Codificacion de la Legislacion de las Resoluciones Jurisdiccionales en materia del Impuesto Federal sobre Ingresos Mercantiles.

México, Secretaria de Hacienda y Crédito Publico, 1959, 578 pp.

Legislation and case law on the Federal receipts tax (type of turnover tax).

NEW ZEALAND

TAX NEWS

Brief summary of the main provisions of the Land and income Tax Amendment Act (No. 2), 1963.

1. An investment allowance of 10% in addition to existing ordinary and special depreciation for plant and machinery for manufacturing or farming purposes.
2. A special tax allowance of 50% for increased use of fertilizer over and above a preceding period and full deduction for several types of expenditure on farm improvement which normally are considered capital expenditure.
3. A tax allowance for increased exports of manufactured goods by exempting from income tax that portion of the income of an exporter which bears the same proportion to his total income as his increase in export turnover over three preceding base years bears to his total turnover.

   The definition of manufacture excludes animal products and bi-products, forest products, newsprint and minerals.
4. The existing additional allowable deduction for export marketing development expenditure has been extended to research expenditure and to expenditure for tourist promotion.

According to an announcement made by the Minister of Finance in November, 1963, to be entitled to special depreciation on plant and machinery a company is not required to actually write down in its accounts the amount of depreciation claimed. This has the advantage from a dividend policy point of view that companies with heavy new capital investment do not have to show substantially reduced profits owing to special depreciation.

Reported by: Dr. G.A. Lau, Wellington, 117, Customhouse Quay.

PERU

Research Editor's Survey

Major summaries of taxation of companies in Peru

DOMESTIC COMPANIES

1. *Business license fee*

According to the business capital and varies with the location of the business.

2. *Business income tax*

taxable base: net income from activities carried on in Peru

Tax rates: progressive from	5-35%
Surtax: unemployment tax:	2%

FOREIGN COMPANIES

1. *Business license fee:* the same as for national companies
2. *Business income tax:* the same as for national companies
3. *Income tax on non-residents*

taxable base: the base for the business income tax less the amount of the business tax paid.

Tax rate:	15 + 1%

TAX ON DIVIDENDS

Bearer shares	25 + 1%
Nominative shares of non-residents	19 + 1%

TAX ON INTEREST

Interest on bearer bonds	16%
interest paid to parent company	19 + 1%
Other interest	12 — 19% + 1%

ROYALTIES

Patents and similar	15 + 1%
"know how"	19 + 1%

With the object of stimulating investment activity in the unexplored rich, and scarcely inhabited regions east of the Andes, the Government has decreed tax exemptions for a period of ten years from all major taxes in an area approximately half the size of the entire country. Exemptions are provided from import duties for items to be used exclusively within this zone, and from duties, stamp taxes, business income tax, personal and business surtaxes, banking taxes on interest and overdrafts, etc.

Pursuing the policy of the developing of the industry, the following incentives have recently been granted:

1. Decree number 53 grants an exemption from import and stamp duties for machinery used in the preservation and transportation of fish for consumption. It also contains an exemption from the income tax for profits reinvested in the fishing or fish preservation industries, as well as certain other minor incentives for such industries.
2. Decree number 1 of 1964 grants similar exemptions for food preservation industries.

Decree of January 10, 1964 reduces again import taxes on merchandise from the countries associated with the Latin-American Association of Free Trade (Argentina, Brazil, Columbia, Chile, Ecuador, Mexico, Paraguay and Uruguay).

SAUDI ARABIA

TAX NEWS

Tax exemptions

The new Saudi Arabian Foreign Capital Investment Code, issued on February 25, 1964, contains several features which make foreign investment in the Kingdom more attractive.

Under the new law the enterprise in which foreign capital is to be invested shall be exempt from income and company taxation for 5 years, commencing with the beginning of production. This exemption is given on the condition that Saudi capital shall participate in the project with at least 25% of the total capital and shall remain in the enterprise during the period of exemption.

Furthermore, the exemption from customs duties enjoyed by Saudi capital under the Ordinance for the Protection and Encouragement of National Industries will be extended to foreign capital.

The 2 limitations to the new code are that foreign capital cannot be invested in petroleum or mineral enterprises and that the project must be approved by the Office of Foreign Capital Investment. The main criterion for approval of an enterprise is that the project contribute to the economic development of Saudi Arabia.

This code does not apply to foreign investment projects in existence before the promulgation of this law.

This new foreign investment law replaces the 1957 law, which required majority participation of Saudi capital.

Source: International Commerce, April 6, 1964.

SPAIN

BIBLIOGRAPHY

Ley General Tributari, Boletin Oficial del Ministerio de Hacienda, Madrid, 1964, pp. 110.

This special issue of the General Tax Law contains information on taxable transactions, fiscal domicile, determination of the tax base, tax collection, defaults and various administrative procedures.

Memoria correspondiente al Ejercicio 1962, Dirección General de Tributos Especiales, Madrid, 1963, pp. 271.

Annual report of the General Direction of Special Taxes, summarizing the organization and its procedure for the collection of special taxes.

Boletines del Gabinete de Estudios Financieros, Contables, Tributarios y de Organización Administrativa, release number 60, Madrid, pp. 30.

This bulletin discusses the taxation of cooperatives and recent legislation.

Notas sobre los principios generales del orden tributario, Boletin Informativo de Legislación Fiscal, Instituto de Contabilidad de Madrid.

This is a study of the new Spanish General Tax, with emphasis on the practicality of its provisions.

SOUTH-AFRICA

TAX NEWS

Tax Changes

The South African Budget includes the following proposed tax changes according to information supplied by the Board of Inland Revenue Library (Foreign Section).

Rates of tax

The rate for companies remains at 30 per cent; for other persons the new scales are:

R.	R.	*Married persons* per cent	*Others* per cent
First	600	6	7½
600–	1,000	7	9
1,000–	2,400	8	9
2,400–	3,000	8	10
3,000–	4,600	9	11
4,600–	5,000	10	12
5,000–	6,000	20	21
6,000–	7,000	29	30
7,000–	8,000	32	33
8,000–	9,000	34	35
9,000–	10,000	38	39
10,000–	12,000	39	41
12,000–	14,000	40	42
14,000–	16,000	44	45
16,000–	18,000	47	48
Over	18,000	40	50

As for 1962-63, the tax so computed and after deduction of rebates is subject to a 5 per cent discount.

Source: Taxation, 25 April, 1964.

UNITED STATES

TAX INFORMATION

Starting with the next issue the BULLETIN will present an article each month on some aspect of United States taxation which may be of interest to our subscribers outside of the United States. This is being instituted because of the interest shown by so many of our subscribers. These articles will be presented by various United States attorneys. Those of our readers who may be interested in a certain aspect of United States taxes should communicate directly with the United States Editor of the BULLETIN, International Bureau of Fiscal Documentation, Sarphatistraat 124, Amsterdam, Holland.

Swiss Measures against abuse of Tax-Conventions

The International Bureau of Fiscal Documentation has published the 19th Supplement to the Bulletin.

This 90-page publication contains:

- Explanatory articles by
  DR. KURT LOCHER, Deputy Director of the Swiss Federal Tax Administration and DR. WALTER RYSER, Assistant Manager of the Fiduciaire Générale, SA, Berne;
- The Decree of the Federal Council;
- The Circular Letter of the Federal Administration and
- Schematic Examples, given by the Federal Tax Administration.

The official documents being reproduced are both in the English and in the original languages.

Price (Including Postage) 25/- $ 3.50 *Dfl.* 12,50

United States taxation of Foreign Investment

The New Approach

by Alan R. Rado

This publication was prepared for the International Bureau of Fiscal Documentation by one of America's leading tax experts. The widespread interest abroad in the changes that took place recently in the United States taxation of Foreign income prompted the publication of this study. Attention is directed to the measures designed to prevent the postponement and avoidance of United States tax on certain foreign earnings.
This study is preceded by an examination of the basic concepts of the United States taxation of foreign income.

Price (Including Postage) £ 2 $ 5,75 *Dfl.* 20,—

III

TREATIES

CONVENTION ENTRE LA FRANCE ET ISRAEL

TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À ÉTABLIR DES RÈGLES D'ASSISTANCE ADMINISTRATIVE RÉCIPROQUE EN MATIÈRE D'IMPOTS SUR LE REVENU

Le Gouvernement de la République française et le Gouvernement de l'Etat d'Israël, désireux d'éviter les doubles impositions en matière d'impôts sur les revenus, notamment pour encourager le commerce et les investissements internationaux, et d'établir des règles d'assistance administrative, sont convenus à cet effet des dispositions suivantes:

ARTICLE PREMIER

(1) Les impôts actuels auxquels s'applique le présente convention sont:

A. En ce qui concerne la France:
   1° l'impôt sur le revenu des personnes physiques;
   2° la taxe complémentaire;
   3° l'impôt sur les bénéfices des sociétés et autres personnes morales.

B. En ce qui concerne Israël:
   1° l'impôt sur le revenu:
   2° l'impôt sur les sociétés:
   3° l'impôt sur les gains provenant de la vente des terres perçu en vertu de la loi portant imposition de la plus-value des terres.

(2) La convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, à la fin de chaque exercice budgétaire, les modifications apportées à leur législation fiscale.

(3) Les autorités compétentes des deux Etats se concerteront dans le cas où des modifications affectant sensiblement la nature, le caractère ou le taux des impôts visés au paragraphe 1 du présent article seraient apportées à la législation fiscale de l'un ou de l'autre Etat.

ARTICLE 2

(1) Pour l'application de la présente convention:

1. Le terme «France» désigne la France métropolitaine et les départements d'outremer (Guadeloupe, Guyane, Martinique, Réunion).

Le terme «Israël» désigne l'Etat d'Israël.

2. Le terme «personne» désigne:
a) les personnes physiques;
b) les personnes morales;
c) les groupements de personnes physiques n'ayant pas la personnalité morale.

3. *a*) Au sens de la présente convention, on entend par «résident d'un Etat contractant» toute personne qui, en vertu de la législation dudit Etat, est assujettie à l'impôt dans cet Etat, en raison de son domicile, de sa résidence, de son siège de direction ou de tout autre critère analogue.

b) Lorsque, selon la disposition de l'alinéa (a) ci-dessus, une personne physique est considérée comme résident de chacun des Etats contractants, le cas est résolu d'après les règles énoncées ci-dessous:

(aa) Cette personne est réputée résident de l'Etat contractant où elle dispose d'un foyer d'habitation permanent. Lorsqu'elle dispose d'un foyer d'habitation permanent dans chacun des Etats contractants, elle est considérée comme résident de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

(bb) Si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou si elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme résident de l'Etat contractant oú elle séjourne de façon habituelle;

(cc) Si cette personne séjourne de façon habituelle dans chacun des Etats contractants ou si elle ne séjourne de façon habituelle dans aucun d'eux, les autorités competentes des Etats contractants tranchent la question d'un commun accord.

c) Lorsque, selon la disposition de l'alinéa (a) ci-dessus, une personne morale est résident de chacun des Etats contractants, elle est réputée résident de l'Etat contractant où se trouve son siège de direction effective. Il en est de même des sociétés de personnes et des associations qui, selon les lois nationales qui les régissent, n'ont pas la personnalité juridique.

4. Le siège de direction effective d'une entreprise, au sens de la présente convention, est le lieu où se trouve le centre de la direction générale de l'affaire.

5. Le terme «entreprise française» désigne une entreprise industrielle ou commerciale exploitée par un résident de la République française.

Le terme «entreprise israélienne» désigne une entreprise industrielle ou commerciale exploitée par un résident d'Israël.

Les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre

Etat contractant» désignent une entreprise française ou une entreprise israélienne, selon les exigences du contexte.

6. Le terme «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.

a) Constituent notamment des établissements stables:

(aa) un siège de direction;

(bb) une succursale;

(cc) un bureau;

(dd) une usine;

(ee) un atelier;

(ff) une mine, carrière ou autre lieu d'extraction de ressources naturelles;

(gg) un chantier de construction ou de montage dont la durée dépasse douze mois.

b) On ne considère pas qu'il y a établissement stable si:

(aa) il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;

(bb) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;

(cc) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;

(dd) une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;

(ee) une installation fixe d'affaires est utilisée aux seules fins de publicité, de fourniture d'informations, de recherche scientifique ou d'activités analogues qui ont pour l'entreprise un caractère préparatoire ou auxiliaire.

c) Une personne agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant — autre qu'un agent jouissant d'un statut indépendant, visé à l'alinéa (e) ci-après — est considérée comme «établissement stable» dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne soit limitée à l'achat de marchandises pour l'entreprise.

d) Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat dès l'instant que, par l'intermédiaire d'un représentant n'entrant pas dans la catégorie des personnes visées à l'alinéa (e) ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situées sur ce territoire.

e) On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y effectue des opérations commerciales par l'entremise d'un courtier, d'un commissionnaire général

ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

f) Le fait qu'une société résident d'un Etat contractant contrôle ou est contrôlée par une société qui est résident de l'autre Etat contractant ou qui y effectue des opérations commerciales (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces deux sociétés un établissement stable de l'autre.

7. (1) L'expression «autorités compétentes» désigne: dans le cas d'Israël, le Ministre des Finances; dans le cas de la France, le Ministre des Finances et des Affaires économiques, ou leurs représentants dûment autorisés.

(2) Pour l'application de la présente convention par l'un des Etats contractants, tout terme non défini dans cette convention recevra, à moins que le contexte ne l'exige autrement, la signification que lui donnent les lois en vigueur dans l'Etat considéré, en ce qui concerne les impôts visés dans cette convention.

ARTICLE 3

(1) Les revenus provenant de biens immobiliers ne sont imposables que dans l'Etat contractant où ces biens sont situés.

(2) L'expression «biens immobiliers» est définie conformément au droit de l'Etat contractant où les biens considérés sont situés. L'expression englobe en tout cas les accessoires, le cheptel mort ou vif des entreprises agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droits à des redevances variables ou fices pour l'exploitation de gisements minéraux, sources et autres richesses du sol; les navires, bateaux et aéronefs ne sont pas considérés comme biens immobiliers.

(3) Les dispositions des paragraphs (1) et (2) ci-dessus s'appliquent aux revenus provenant de l'exploitation directe, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers, y compris les revenus provenant des entreprises agricoles ou forestières. Elles s'appliquent également aux bénéfices provenant de l'aliénation de biens immobiliers.

(4) Les dispositions des paragraphes (1) à (3) ci-dessus s'appliquent également aux revenus provenant des biens immobiliers d'entreprises autres que les entreprises agricoles et forestières ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

ARTICLE 4

(1) Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce une activité industrielle ou

commerciale dans l'autre Etat par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce une telle activité, l'impôt peut être perçu dans l'autre Etat sur les bénéfices de l'entreprise, mais uniquement dans la mesure où ces bénéfices sont imputables audit établissement stable.

(2) Lorsqu'une entreprise d'un Etat contractant exerce une activité industrielle ou commerciale dans l'autre Etat par l'intermédiaire d'un etablissement stable qui y est situé, il est imputé, dans chacun des deux Etats, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

(3) Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'Etat où est situé cet etablissement stable soit ailleurs.

(4) S'il est d'usage, dans un Etat contractant, de déterminer les bénéfices imputables à un établissement stable sur le base d'une répartition des bénefices totaux de l'entreprise entre ses diverse parties, aucune disposition du paragraphe 2 du présent article n'empêche cet Etat contractant de déterminer les bénéfices imposables selon la répartition en usage; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.

(5) Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

(6) Aux fins des paragraphes précédents, les bénéfices à imputer à l'etablissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.

ARTICLE 5

Lorsque:

a) une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre Etat contractant, ou que

b) les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un Etat contractant et d'une entreprise de l'autre Etat contractant,

et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées, qui different de celles qui seraient conclues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entre-

prises mais n'ont pu d'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

ARTICLE 6

Les bénéfices de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant où se trouve le siège de la direction effective de l'entreprise.

ARTICLE 7

(1) Les revenus provenant de la cession d'une participation dans une société de capitaux ne sont imposables que dans l'Etat contractant dont le cédant est le résident.

(2) Le paragraphe (1) ne s'applique pas quand la participation cédée fait partie de lijactif d'u établissement stable que le cédant possède dans l'autre Etat. Dans ce cas, l'article 4 est applicable.

ARTICLE 8

(1) Les sociétes résidentes d'Israel qui possèdent un établissement stable en France, restent soumises en France, en ce qui concerne les répartitions de bénéfices qu'elles effectuent, à l'application, au titre de l'impôt sur le revenu des personnes physiques, d'une retenue à la source, dans les conditions prévues à l'article 109-2 du Code général des impôts.

Toutefois, la fraction des répartitions de bénéfices effectivement passible de la retenue susvisée ne peut dépasser le montant des bénéfices réalisés par l'établissement stable français tel que ce montant est retenu pour l'assiette de l'impôt qui frappe les bénéfices réalisés par cet établissement dans les conditions prévues par les dispositions de la présente convention.

(2) Une société résidente d'Israël ne peut être soumise en France à la retenue visée au paragraphe (1) ci-dessus en raison de sa participation dans la gestion ou dans le capital d'une société résidente de France ou à cause de tout autre rapport avec cette société, mais les bénéfices distribués par cette dernière société et passibles de cette retenue sont, le cas échéant, augmentés pour l'assiette de ladite retenue de tous les bénéfices ou avantages que la société résidente d'Israël aurait indirectement retirés de la société résidente de France dans les conditions prévues à l'article 5 ci-dessus, la double imposition étant évitée en ce qui concerne ces bénéfices et avantages conformément aux dispositions de l'article 20.

ARTICLE 9

(1) En ce qui concerne la France, le taux de la retenue à la source appliquée, au titre de l'impôt sur le revenu des personnes physiques, aux revenus de valeurs

mobilières définis au paragraphe 3 ci-après, ne peut excéder 15 % lorsque ces revenus bénéficient à un résident d'Israël ne possédant pas en France un établissement stable auquel se rattachent les participations productives desdits revenus.

Toutefois, ce taux ne peut excéder 10 % sur les dividendes distribués par une société résident de France à une société résident d'Israël qui possède depuis un an, sous la forme nominative, des actions ou parts d'intérêt représentant au moins 50 % du capital de la première société, à moins que ces actions ou parts ne se rattachent à l'exploitation d'un établissement stable que la société bénéficiaire des dividendes posséderait en France.

(2) Les revenus de valeurs mobilières tirés de sources israéliennes par un résident de France ne possédant pas en Israël un établissement stable auquel se rattachent les participations productives de ces revenus sont exonérés en France de la retenue à la source appliquée, au titre de l'impôt sur le revenu des personnes physiques, aux revenus de valeurs mobilières définis au paragraphe 3 ci-après, lorsqu'ils ont supporté l'impôt israélien sur le revenu. Ils sont également exonérés de cette retenue lorsqu'ils sont affranchis de l'impôt israélien sur le revenu en application des articles 11 et 15 de la loi israélienne modifiée 5710-1950 ou des articles 46, 47, 47 A, 48 et 53 de la loi israélienne modifiée 5719-1959, tendant à encourager les investissements de capitaux.

(3) Sont considérés comme «revenus de valeurs mobilières» les produits d'actions, de parts de fondateur et de parts bénéficiaires, ainsi que les parts de société à responsabilité limitée. Sont également considérés comme «revenus de valeurs mobilières», du côté français, les produits de parts de commandite dans les sociétés en commandite simple.

ARTICLE 10

(1) Les intérêts provenant d'un Etat contractant et payés à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

(2) Toutefois, l'Etat contractant d'où proviennent les intérêts qui sont payés à un résident de l'autre Etat contractant conserve le droit d'imposer ces intérêts. S'il use de ce droit, le taux de l'imposition qu'il établit ne peut excéder 15 % du montant des intérêts. Les autorités compétentes des deux Etats s'entendent sur les modalités d'application de cette limitation.

(3) Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunt, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et des créances de toute nature, ainsi que tous autres produits assimilés par la législation fiscale aux revenus de sommes prêtées.

(4) Les dispositions des paragraphes précédents ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un Etat contractant, a, dans l'autre Etat

contractant d'où proviennent ces intérêts, un établissement stable auquel se rattache effectivement la créance qui les produit. Dans ce cas, l'article 4 concernant l'imputation des bénéfices aux établissements stables est applicable.

(5) Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui même, une subdivision politique, une collectivité locale ou un résident dudit Etat. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un Etat contractant, possède dans un Etat contractant un établissement stable pour les besoins duquel a été réalisé l'emprunt productif des intérêts et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat contractant où l'établissement stable est situé.

(6) Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec de tierces personnes, le montant de l'intérêt payé, compte tenu de la créance pour laquelle il est versé, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire de l'intérêt reste imposable conformément aux législations nationales des Etats contractants et compte tenu des autres dispositions de la présente convention.

ARTICLE II

(1) Les redevances et autres rémunérations pour l'usage ou le droit à l'usage de brevets, de marques de fabrique ou de commerce, de dessins ou de modèles, de plans, de procédés ou de formules secrets ou de tous biens ou droits analogues provenant de sources situées sur le territoire d'un des Etats contractants à un résident de l'autre Etat sont imposées dans le premier Etat à un taux qui ne peut excéder 10 %.

(2) Sont traitées comme les redevances visées à l'alinéa précédent, les sommes payées pour la location ou le droit d'utilisation des films cinématographiques, les droits de location et rémunérations analogues pour l'usage ou le droit à usage d'équipements industriels, commerciaux ou scientifiques et pour la fourniture d'informations concernant des expériences d'ordre industriel, commercial ou scientifique.

(3) Les redevances versées en contrepartie de l'usage ou du droit à l'usage de droits d'auteur sur des oeuvres littéraires, artistiques ou scientifiques, non compris les films cinématographiques, ne sont imposables que dans l'Etat dont les bénéficiaires des redevances sont les résidents.

(4) Les paragraphes 1 à 3 s'appliquent également aux bénéfices provenant de l'aliénation des biens et droits mentionnés auxdits paragraphes.

(5) Les dispositions des paragraphes 1 à 3 ne s'appliquent pas lorsque le bénéficiaire des redevances ou autres rémunérations entretient dans l'Etat

contractant d'où proviennent ces revenus un établissement stable ou une installation fixe d'affaires servant à l'exercice d'une profession libérale ou d'une autre activité indépendante et que ces redevances ou autres rémunérations sont à attribuer à cet établissement stable ou à cette installation fixe d'affaires. Dans ce cas, ledit Etat a le droit d'imposer ces revenus conformément à sa législation.

ARTICLE 12

Les revenus qu'un résident d'un Etat contractant retire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que ce résident ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base, la partie des revenus qui peut être attribuée à cette base est imposable dans cet autre Etat.

ARTICLE 13

(1) Sous réserve des dispositions des articles 14, 15, 16 et 17, les salaires, traitements et autres rémunérations similaires qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.

(2) Nonobstant les dispositions du paragraphe 1 ci-dessus, les rémunérations qu'un resident d'un Etat contactant reçoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:

a) le bénéficiaire séjourne dans l'autre Etat pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée;

b) les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de l'autre Etat; et

c) les rémunérations ne sont pas déduites des bénéfices d'un établissement stable ou d'une base fixe que l'employeur a dans l'autre Etat.

(3) Nonobstant les dispositions précédentes du présent article, les rémunérations afférentes à une activité exercée à bord d'un navire ou d'un aéronef en trafic international sont imposables dans l'Etat contractant où le siège de la direction de l'entreprise est situé.

ARTICLE 14

(1) Les rémunérations, y compris les pensions, versées directement ou par prélèvement sur des fonds constitués par un Etat contractant ou l'une de ses subdivisions politiques ou collectivités locales, à une personne physique au titre de services rendus à cet Etat ou à cette subdivision ou collectivité dans l'excercice de fonctions de caractère public, ne sont imposables que dans cet Etat.

Toutefois, cette disposition ne trouve pas a s'appliquer si le bénéficiaire des rémunérations n'a pas la nationalité dudit Etat.

(2) Les dispositions des articles 13, 15 et 16 s'appliquent aux rémunérations et pensions versées au titre de services ayant trait à l'excercice d'une activité commerciale ou industrielle par l'un des Etats contractants ou l'une de ses subdivisions, politiques ou collectivités locales.

ARTICLE 15

Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident d'un Etat contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est résidente de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

ARTICLE 16

Sous réserve des dispositions du paragraphe 1 de l'article 14, les pensions, les rentes viagères et autres allocations similaires ne sont imposables que dans l'Etat contractant dont le bénéficiaire est résident.

ARTICLE 17

Nonobstant les dispositions de la présente convention, les revenus que les professionnels du spectacle, tels les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité ne sont imposables que dans l'Etat contractant ou ces activités, sont exercées.

ARTICLE 18

Les sommes qu'un étudiant ou un stagiaire de l'un des Etats contractants, séjournant dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

ARTICLE 19

Les professeurs ou instituteurs résidents de l'un des Etats contractants qui, au cours d'un séjour provisoire d'un maximum de deux ans, perçoivent une rémunération pour une activité pédagogique exercée dans une université, une école supérieure, une école ou un autre établissement d'enseignement dans l'autre Etat ne sont imposables au titre de cette rémunération que dans le premier Etat.

ARTICLE 20

Il est entendu que la double imposition sera évitée de la manière suivante:

A. — En ce qui concerne la France:

1. Les revenus autres que ceux visés aux paragraphes 3 à 5 ci-après sont exonérés des impôts français mentionnés à l'article 1, paragraphe (1), A de la présente convention lorsque l'imposition en est attribuée exclusivement à l'Etat d'Israël.

2. Nonobstant les dispositions du paragraphe 1 ci-dessus, les impôts français visés à ce paragraphe peuvent être calculés sur les revenus imposables en France en vertu de la présente convention, au taux correspondant à l'ensemble des revenus imposables d'après la législation française.

3. Les revenus visés au paragraphe 2 de l'article 9 de la présente convention tirés par des résidents de France de sources israéliennes sont imposables en France, conformément à la législation interne et compte tenu des dispositions dudit paragraphe.

Pour cette imposition, la retenue à la source dont l'exonération est prévue à ce paragraphe en ce qui concerne les revenus affranchis de l'impôt israélien en application des dispositions légales qui s'y trouvent visées, sera considérée comme ayant été effectivement opérée.

4. Pour l'imposition des intérêts visés à l'article 10, provenant de sources israéliennes et qui ont supporté l'impôt israélien dans les conditions prévues au paragraphe 2 de cet article, la France accorde l'imputation de ce dernier impôt:

— s'il s'agit d'intérets d'obligations et autres titres d'emprunts négociables, sur la retenue à la source à laquelle le bénéficiaire des intérêts est assujetti en application des règles du droit commun;

— s'il s'agit des intérêts de tous autres emprunts, soit sur la taxe complémentaire et, le cas échéant, sur l'impôt sur le revenu des personnes physiques, soit sur l'impôt sur les sociétés dont le bénéficiaire des intérêts est redevable sur les mêmes revenus.

Pour cette imputation, les intérêts affranchis de l'impôt israélien en application de l'article 47 A de la loi israélienne modifiée 5719-1959 tendant à encourager les investissements de capitaux, seront considérés comme ayant effectivement supporté l'impôt israélien dans les conditions prévues au paragraphe 2 de l'article 10 de la présente convention.

5. Les revenus visés à l'article 11 de la présente convention provenant à des résidents de France de sources israéliénnes sont imposables en France conformément à la législation interne.

Toutefois, la France accorde au bénéficiaire de ces redevances un crédit d'impôt correspondant au montant de l'impôt israélien et imputable soit sur la

taxe complémentaire et, le cas échéant, sur l'impôt sur le revenu des personnes physiques, soit sur l'impôt sur les sociétés dont ce bénéficiaire est redevable sur les mêmes revenus.

B. — En ce qui concerne Israël:

Nonobstant toute autre disposition de la présente convention, Israël, en déterminant les impôts incombant à ses résidents, sociétés ou autres collectivités, peut comprendre dans les bases de ces impôts toutes les catégories de revenus imposables en vertu de la législation fiscale israélienne, comme si la présente convention n'existait pas. Toutefois, Israël déduira des impôts ainsi calculés le montant de l'impôt français frappant les revenus ayant leur source en France et qui sont compris dans les bases d'imposition des deux Etats contractants, cette imputation étant cependant limitée à la fraction de l'impôt israélien correspondant au rapport existant entre les revenus en question et le revenu global imposable en Israël.

ARTICLE 21

(1) Les nationaux d'un Etat centractant ne sont soumis dans l'autre Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y rélatives auxquelles sont ou pourront être assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

(2) Le terme «nationaux» désigne:

1. En ce qui concerne la France, toutes les personnes physiques qui possèdent la nationalité française;
2. En ce qui concerne Israël, tous les citoyens israéliens;
3. Toutes les personnes morales, société de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

(3) Les apatrides ne sont soumis dans un Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront être assujettis les nationaux de cet Etat se trouvant dans la même situation.

(4) L'imposition d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant n'est pas établie dans cet autre Etat d'une façon moins favorable que l'imposition des entreprises de cet autre Etat qui exercent la méme activité dans les mêmes conditions.

Cette disposition ne peut être interprétée comme obligeant un Etat contractant à accorder aux résidents de l'autre Etat contractant les déductions personnel-

les, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.

(5) Les entreprises d'un Etat contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat contractant, ne sont soumises dans le premier Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.

(6) Le terme «imposition» désigne dans le présent article les impôts de toute nature et dénomination.

ARTICLE 22

(1) Les autorités compétentes des deux Etats contractants se communiqueront tous les renseignements dont elles disposent ou qu'elles peuvent obtenir et qui seront nécessaires pour appliquer les dispositions de la présente convention et assurer l'exacte perception des impôts qui en font l'objet.

(2) Tous renseignements ainsi échangés devront être tenus secrets et ne pourront être révélés, en dehors du contribuable ou de son mandataire, à aucune personne autre que celles qui s'occupent de l'établissement et du recouvrement des impôts visés à la présente convention, aini que des réclamations et recours relatifs à ces impôts.

(3) Les dispositions du présent article ne peuvent avoir pour effet d'imposer aux autorités fiscales de l'un des deux Etats l'obligation de communiquer soit des renseignements qui, en raison de leur nature, ne peuvent être obtenus d'après sa propre législation fiscale ou d'après celle de l'autre Etat, soit des renseignements dont elles estimeraient que la communication impliquerait la violation d'un secret industriel, commercial ou professionnel. Ces dispositions ne peuvent, non plus, être considérees comme imposant aux autorités fiscales de l'un des deux Etats l'obligation d'accomplir des actes qui ne seraient pas conformes à sa réglementation ou à ses pratiques administratives. L'assistance pourra également être refusée lorsque l'Etat requis considérera qu'elle serait de nature à mettre en danger sa souveraineté ou sa sécurité ou qu'elle porterait atteinte à ses intérêts généraux.

(4) L'échange des renseignements aura lieu d'office ou sur demande visant des cas concrets. Les autorités compétentes des deux Etats s'entendront pour déterminer la liste des informations qui seront fournies d'office.

ARTICLE 23

(1) Lorsqu'un résident d'un Etat contractant estime que les mesures prises

par l'un des Etats contractants ou par les deux entrainent ou entraineront pour lui une imposition non conforme à la présente convention, il peut, indépendamment des recours prévus par la législation nationale de ces Etats, soumettre son cas à l'autorité compétente de l'Etat contractant dont il est résident.

(2) Cette autorité compétente s'efforcera, si la réclamation lui parait fondée et si elle n'est pas elle-même en mesure d'apporter une solution satisfaisante, de régler la question par voie d'accord amiable avec l'autorité compétente de l'autre Etat contractant, en vue d'éviter une imposition non conforme à la présente convention.

(3) Les autorités compétentes des Etats contractants s'efforcent par voie d'accord amiable de résoudre les difficultés ou de dissiper les doutes auxquels peuvent donner lieu l'interprétation ou l'application de la présente convention. Elles peuvent aussi se concerter en vue d'éviter la double imposition dans les cas non prévus par la présente convention.

(4) Les autorités compétentes des Etats contractants communiquent directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vues peuvent avoir lieu au sein d'une commission mixte composée de représentants des autorités compétentes des Etats contractants.

ARTICLE 24

(1) La présente convention peut être étendue, telle quelle ou avec les modifications nécessaires, aux Territoires d'Outre-Mer de la République française ou à l'un ou plusieurs d'entre eux, à condition qu'ils perçoivent des impôts de caractère analogue à ceux auxquels s'applique ladite convention. Une telle extension prend effet à partir de la date, avec les modifications et dans les conditions (y compris celles relatives à la cessation d'application) qui sont fixées d'un commun accord entre les Etats contractants par échange de notes diplomatiques ou selon toute autre procédure conforme aux dispositions constitutionnelles de cet Etats.

(2) A moins que les Etats contractants n'en soient convenus autrement, la dénonciation de la présente convention en vertu de l'article 28 ci-après par l'un deux met fin à l'application de ses dispositions à tout territoire auquel elle a été étendue conformément au présent article.

ARTICLE 25

Les autorités compétentes des deux Etats contractants se concerteront pour déterminer d'une commune entente, dans la mesure nécessaire, les modalités d'application de la présente convention.

ARTICLE 26

La présente convention remplace l'accord conclu entre les Etats contractants le 24 janvier 1952 pour l'exonération réciproque de la double imposition en faveur des entreprises de navigation maritime et aérienne.

ARTICLE 27

(1) La présente convention sera approuvée conformément aux dispositions constitutionnelles en vigueur dans chacun des deux pays.

(2) Elle entrera en vigueur le premier jour du mois qui suivra l'échange des notifications constatant que de part et d'autre il a été satisfait à ces dispositions, et s'appliquera pour la première fois:

a) aux impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers mis en paiement après l'expiration d'un délai de trois mois suivant l'entrée en vigueur de la convention;

b) aux autres impôts établis au titre de l'année d'imposition au cours de laquelle interviendra l'échange des instruments de ratification.

ARTICLE 28

La présente convention restera en vigueur pendant une période indéterminée. Cependant, après l'expiration d'une période de cinq ans à compter de la date à laquelle elle sera entrée en vigueur, chacun des Etats contractants pourra, moyennant un préavis de six mois, notifier à l'autre Etat contractant son intention d'y mettre fin, et, dans ce cas, la présente convention cessera de produire ses effets à partie du premier jour de l'exercice budgétaire suivant la notification. Ses dispositions cesseront alors d'être appliquées:

a) en ce qui concerne les impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers, aux revenus dont la mise en paiement interviendra après l'expiration de l'exercice budgétaire pour la fin duquel la dénonciation aura été notifiée;

b) en ce qui concerne les autres impôts, pour les années d'imposition commençant le ou après le premier jour de l'exercice budgétaire suivant immédiatement celui au cours duquel la convention aura été dénoncée.

Fait à Paris, le vingt août mil neuf cent soixante-trois, en deux originaux, dont l'un en français et l'autre en hébreu, les deux textes faisant également foi.

Pour le Gouvernement
de la République francaise,
Signé: CARBONNEL.

Pour le Gouvernement
de l'Etat d'Isaël,
Signé: W. EYTAN.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

This issue contains *inter alia* the main points of the 1965 Canadian, Pakistan and South African Budgets. A number of problems invite attention; in general measures to counter the inflationary trend, closing loopholes in tax laws, promoting domestic investment and an increase in the public influence on investments are salient features of the several budgets. These are features which are also to be found in the financial policy of countries other than those considered here. It may, therefore, be useful to devote some attention to these three budgets.

In South Africa, as stated on page 327 of this issue, the maintenance of the tax levels and the introduction of a loan levy will not be too heavy a price to pay, if as a result thereof the inflationary trend is curbed. In the long run, stability of living costs is worth more to the taxpayer than a slight reduction in his taxes.

The loan levy will carry simple interest at 5%. No date is fixed for repayment. Thus, the levy will be repayable only when the Treasury decides to do so. Presumably repayment will not occur, before the inflationary trend has been stopped.

In Canada a small reduction in the rates of tax on personal income has been proposed. No relief is granted to corporations, nor is any reduction of sales tax provided. On page 317 of this issue the suggestion is made that the reduction of personal income tax may be intended to serve political ends. Tax reductions are always welcome and normally have been an accurate forecast of an impending federal election in Canada. In taxation it can always easily be demonstrated: theorists propose, politicians dispose!

In the EEC a large number of official and unofficial proposals for tax harmonisation have been made. The Chambers of Commerce of the EEC countries discuss harmonisation of depreciations rules within the EEC. Fiscal depreciation must take full account of rapid technological development! The resolutions have been published on page 324 of this issue. In case of substantial price increases depreciation on the basis of replacement value has been proposed. This is a problem which does not lend itself to a simple solution. Continuity of the enterprise, however, is not only a problem of the entrepreneur, but a matter of public interest. A tendency toward greater public (and governmental) influence on domestic investments are evident in the budgets of Canada and Pakistan.

In Pakistan incentives for the conversion of private companies into broad-based public companies are granted (see p. 325); in Canada the proposed incorporation of a Canadian Development Corporation presents an interesting marriage between government ownership of Canadian industry and private enterprise (see p. 317).

Change is the law of life. (Fisher Williams, 1932). The life of the law is not logic but experience (Justice Holmes). The future belongs to those who work to frame law and to establish it on the firm foundations of public conviction and public confidence (Nicholas Murray Butler, 1929).

J.C.L. Huiskamp

CONTENTS

I

AVOIDING DOUBLE TAXATION-A REORIENTATION OF THE ROLE OF TAX TREATIES

by SIDNEY I. ROBERTS*

I suggest a new focus of attention in respect of the role that tax treaties should play in the taxation of corporate foreign income.

A major focus of attention has been on the issue of whether "domestic neutrality"—requiring foreign operations to bear the same tax burden as domestic operations—is a desirable touchstone of the United States policy for the taxation of foreign income. Whatever may be the outcome of this great debate, it seems clear that the current tax policy of the United States is premised on domestic neutrality.[1]

In that posture of today's world, I submit that now is an appropriate time to shift the focus, from the traditional attention to achieving domestic neutrality to insuring that result; to ask that our government be less concerned with increasing the tax burden on foreign operations of United States corporations (in order that foreign operations bear as heavy a burden as domestic operations) and to be more concerned with decreasing the tax burden on foreign operations so that foreign operations are not taxed more severely than domestic operations.

This issue of insuring that foreign operations do not bear a heavier overall income tax —United States and foreign—than domestic operations, has been made crucial by recent developments: the reduction of the United States corporate tax rates, the increases in foreign statutory rates and the more subtle increase in the effective foreign rates that results from a different basis for computing income, for example, the foreign country's disallowance of properly allocable home office expenses incurred in the United States, in computing the income of a foreign permanent establishment.[2]

But perhaps the most significant development is the increased enforcement of § 482 by our own Internal Revenue Service. If income reported as earned by the foreign subsidiary is taxed under § 482 to the United States parent corporation, unless the income so taxed is relieved of the foreign tax, the United States parent will pay a higher tax on that income than the 48% rate paid by United States corporations not engaged in foreign operations. That is not the domestic neutrality that is the premise of United States tax policy.

Commendably, the Treasury Department has recognized this problem in Revenue Procedure 64-54.[3] Under that Revenue Procedure, a United States parent will be allow-

* Attorney at law; Roberts & Holland, New York.

1 See Surrey, International Tax Relationships, 17 The Tax Executive 104, 129 (Jan. 1965). Compare: Bulletin 1964, p. 441, 485.

2 The increasing importance of this issue of insuring domestic neutrality is illustrated by the attention on utilization of excess foreign tax credits, e.g., see Chapman and de Kosmian, Excess Foreign Tax Credit, 22 Journal of Taxation 296 (May 1965).

3 Internal Revenue Bulletin 1964-52, December 28, 1964.

ed to offset—i.e., credit against the United States tax attributable to the § 482 allocation—the amount of foreign tax already paid on the same income by its foreign subsidiary. In effect then, the United States revenue—not the taxpayer—bears the burden of double taxation that results from the fact that the foreign subsidiary is paying a foreign tax on the same income that the United States is taxing under § 482. However, this Revenue Procedure, is applicable only to taxable years ending before January 1, 1963.

This brings us to a serious problem in the taxation of foreign operations: how to insure that the United States and the foreign government will agree upon the amount of income properly allocable to each country. This issue arises not only in the case of a domestic parent and its foreign subsidiary, but also in the case of a domestic corporation with a permanent establishment in the foreign country, and as we shall see, in the case of a taxpayer merely receiving income from the foreign country subject to withholding tax. In any such case, unless the United States and the foreign country agree as to amount of taxable income allocable to each country, the effective overall rate may exceed the 48% domestic rate. The reason for this is of course that in the limitation of the foreign tax credit, the numerator is taxable income from foreign sources determined under United States concepts. Thus, even if the effective foreign rate is 48%, the same as the United States rate, the overall tax will be more than 48% if the foreign country subjects to its tax more income than the United States determines to be from such foreign sources.

> The problem has been recognized by Mr. Surrey: ". . . efforts must be made to develop treaty mechanisms which permit appropriate accomodation of allocations made by the tax authorities of one country and accepted as proper both by the taxpayer and the tax authorities of the other country. Such a treaty could, for example, remove impediments of domestic law to the accomodation, such as the statute of limitations or the finality of previous assessments. Further, where the tax authorities agree as to the appropriate allocation, mechanisms should be sought which would permit any resulting double tax burden to be shared among the two Governments and the taxpayer in proper fashion so that all three would have an interest in keeping differences in allocation approaches to a minimum. Indeed, this subject of proper international allocations and the mechanisms for handling changes in allocations and the differences that arise in concrete cases represents one of the most important areas of treaty development."[4]

With respect to the statute of limitations, in a later address[5] Richard Loengard, the Treasury's Special Assistant for International Tax Affairs, stated that the more recently negotiated treaties eliminate the "procedural" barriers to any agreement that is reached between the two Governments in the case of inconsistent determinations of the allocation of income.

Intergovernmental Negotiation

I suggest, however, going beyond elimination of merely procedural barriers. If the two

4 Surrey, *supra*, 116.

5 Remarks Before the Tax Executives Institute, March 19, 1965, at p. 8.

Governments disagree as to allocation of income, should not the taxpayer be permitted to step out of the negotiations and leave it to the two Governments to reconcile their differences? Certainly, the two Governments are in a better position to bargain as equals. Moreover, the fact that the United States, for example, and not a United States corporation, will bear the burden of the outcome of the negotiation, will insure the strength and zeal of advocacy by the Treasury Department. Moreover, if the suggestion is adopted, the Treasury will be in a position to negotiate with a bag-full of cases—able to trade one case against another with no concern that one taxpayer will benefit at the expense of another. Indeed, the Treasury will be able to bring to bear in that negotiation the entire panoply of elements that enter into diplomatic trading between two Governments.

Of course, appropriate safeguards will be required, for example, to insure the cooperation of the taxpayer in the Treasury's negotiation. It is not inconceivable that the United States taxpayer will lose some of its zeal if it had nothing to lose in the inter-Government negotiation. Moreover, as a condition of Treasury Department's assumption of the burden of avoiding double taxation, perhaps the taxpayer should be required to establish that it acted in good faith in making a reasonable allocation. In any event, the taxpayer should not be relieved of the burden of any tax that it would bear if there were no disagreement between the two Governments as to the amount of income allocable to each country. Thus, it may be required to pay an amount computed at the foreign tax rate on the income in dispute where that is more than the United States 48% rate.

This suggestion that the Governments assume the burden of insuring against double taxation is not so novel as may first appear. Two instances where the United States assumes the burden of insuring domestic neutrality come to mind. The first has previously been referred to: In Revenue Procedure 64-54 the United States revenue suffers where the foreign country has already taxed the income reallocated under § 482 to the United States taxpayer. This is a direct reduction of United States tax collections that would otherwise be payable if the Internal Revenue Code were strictly applied.

A second instance reflects an indirect reduction of the United States tax collection that occurs commonly in the course of treaty negotiation. For example, where a treaty provides for a reduction or elimination of tax on interest, dividends or royalties, the effect—if not the purpose—of that reduction on United States corporations is to reduce their foreign tax. This reduces double taxation, potential or actual, since it leaves some margin in the calculation of the foreign tax credit limitation. Generally, however, the foreign country concedes such reduction of its withholding tax in return for a concession on the part of the United States, at the expense of United States tax collections. So here we see a second instance of a reduction of double taxation for United States taxpayers at the expense of U.S. tax revenues with the effect of achieving domestic neutrality.

Modifications in the Grievance Procedure

Even if we do not thrust upon the Governments the burden of insuring against double taxation of the same income, less startling improvements might be sought in the "grievance procedure" provision.

As you know the treaties generally provide that where the taxpayer establishes that the action of one of the Governments has resulted or will result in double taxation contrary

to the provisions of the treaty, he may present his claim to his country and if it determines that the claim is worthy of consideration, the two countries shall endeavor to come to an agreement to avoid double taxation.

In the first place, a few treaties—for example, Canada, Denmark, Finland and France—the provision expressly applies only where the action of one of the Governments has resulted in double taxation. These treaties should be brought in line with most of the other treaties to provide for application of the grievance procedure where the action of one of the countries merely threatens to result in double taxation. Perhaps the anticipated negotiations with Canada on the withholding rate for non-resident Canadian corporations[6] and the renegotiation of the French treaty will permit clarification of this point.

More important perhaps, it has been suggested that the grievance procedure is applicable only where a single taxpayer is involved, for example, in allocation of income as between a home office in the United States and a permanent establishment abroad, but not in the case of allocation of income, for example, as between a U.S. parent and a foreign subsidiary.[7] If any country so interprets the treaty, certainly the provision should be clarified. For this purpose reference may be made to the New Zealand provision[8] which expressly includes within the ambit of the grievance provision double taxation that results from reallocation of profits from related entities.

A little noticed statement, not in a treaty, but in an accompanying report, would be most helpful in avoiding double taxation if it were generally accepted by the United States and all the foreign countries which are parties to U.S. treaties. The statement appears in the Report of the Department of State[9] on the treaty with the Union of South Africa, a treaty which has no separate article prescribing source rules. This Report recognizes that the Union imposes its tax primarily on income from sources within the Union and that there are conflicts in the source rules of the two countries. The Report states:

> "The Convention lays down certain rules by which the settlement of such questions may be facilitated. The provisions relating to administrative assistance are intended, and in fact, are essential, to make fully effective the substantive provisions regarding exemptions and credits."

We have recently had the occasion of determining the application of this provision under the Union treaty in this case: A motion picture producer in the Union rents a film to a U.S. distributor for distribution in the United States. The Union of South Africa rules that the film rental received by the Union producer is from sources in the Union, where the picture was produced, whereas the United States imposes a 30% withholding tax on the film rental as income from United States sources. (The Union exempts income from sources within the United States rather than allowing a foreign tax credit

6 Treasury Department Release, April 13, 1965.

7 See Short, Allocation of Income Connected Enterprises, International Corporate Tax Conference, 1964 (Canadian Tax Foundation) 9, 11; Stock, The Thoughtful Tax Man, 42 Taxes 403, 406 (1964).

8 Article XVIII(1).

9 April 23, 1947.

therefor.[10] Since the Union taxes such income as derived from sources within the Union, this appears to be the type of situation which the Report suggests was intended to be covered by the grievance provision.[11]

It should be recognized that to accomplish the avoidance of double taxation in this situation, one or the other country must relinquish a tax which it is otherwise entitled to. Such a case serves as a third illustration (in support of my earlier proposal that the two countries bear the ultimate burden of alleviating double taxation) where double taxation is avoided at the expense of the revenue of the two countries rather than at the expense of the taxpayer.

International Definitions of Terms

Definitions that are common to both countries are essential to the fulfillment of the function of the treaties. Nevertheless, the treaties generally leave a wide area where a term has a different meaning in the two countries and therefore a provision may be applied differently in each country.

Generally the treaties contain a definitional article which defines such terms as "permanent establishment," "industrial and commercial profits," "enterprise," "resident," etc. However, they further provide that "any term not otherwise defined shall, unless the context otherwise requires," have the meaning which it has under the tax laws of the taxing country.[12]

Whenever the application of a treaty requires reference to internal tax law, and the internal tax laws of the two countries differ, the mutuality of the treaty is defeated, i.e., residents of one country having certain contacts with the other country having the same contacts with the first country. Moreover, it defeats the purpose of preventing double taxation in respect of a particular taxpayer. For this reason the OECD Commentary on the Draft Convention recognizes the importance of uniform definitions and interpretations.[13]

While generally the source rule in a treaty is equally applicable to both countries, it should not be hastily assumed that identical language will produce the same rule in each country. For example, consider a treaty provision that the source of income from the sale of personal property is treated as derived from the country in which such property is "sold".[14] In some foreign countries, property may be considered to be "sold" where the contract is executed. Since the term "sold" is not defined in the treaty, it may well be that the source of sales income of the United States taxpayer, for the purpose of determining its foreign tax, depends upon where the contract is executed; whereas the source of income of a foreign taxpayer, for the purposes of determining its United States tax,

10 Art. IV(2).

11 See also Rev. Rul. 54-5, 1954-1 Cum. Bull. 130, where the "grievance" provision of the Canadian treaty was expressly relied upon to allocate income from the operation of United States and Canadian bus companies which operate routes in both countries.

12 See, e.g., Australia, Art. II. Similarly, Belgium Art. II(2); Greece, Art. II(2); Japan, Art. II(2); United Kingdom, Art. II(3). While such a provision is not found in the treaties with France and Sweden, the Treasury Regulations so provide. Reg. §514.104(a) (France); §520.103(a) (Sweden).

13 See, 1963 OECD Report 10, Par. (5).

14 See, e.g., Japan, Art. XIII(c), Honduras, Art. XVII(c); Luxembourg, Art. XVII(b).

turns on where title passes. If that is the result, the failure to provide a completely mutual provision, a result of the failure of the treaties to define all terms by a common reference, defeats an important function of the source rule, namely, to coordinate the foreign tax with the United States foreign tax credit.

For example, suppose a contract for the sale of property is executed by a United States corporation in a foreign country which has a treaty containing the source rule under discussion, but title passes in the United States. If the foreign country applies its own law to interpret the word "sold" in the treaty to mean the place of execution of the contract, and there is no other provision in the treaty exempting such income from the foreign tax, the United States corporation pays the foreign tax. However, the income from such sales, being considered income from United States sources for United States tax purposes is not included in the numerator of the limiting fraction of the foreign tax credit, thus denying (or at least reducing) the availability of such foreign tax as a credit against United States tax.

Effort must be made to reduce the area in which provisions do not mean the same in both countries. The traditional avenues are available but could be pressed more vigorously; more definitions in treaties; more exchanges of correspondence between representatives of the negotiating countries as to the meaning of doubtful terms;[15] more regulations by the Treasury Department so that at least the foreign countries are aware of United States interpretation. A less traditional approach that should be considered is a set of regulations that is approved by the administrative authorities of both countries.

And, finally, we should consider whether the traditional rule that reference be made to the internal law of the taxing jurisdiction should not be revised, modified or clarified. Three possibilities suggest themselves. First, undefined terms should be determined by reference to the internal tax law of the country other than the one which imposes the tax. This would put the burden on the Governments to ascertain what the other country's law is, so that it would have an impetus to state very precisely what is intended. While this suggestion may appear unusual, it must be evaluated against the present rule which requires, for example, the United States taxpayer to determine what the foreign law is and places him in an unenviable position if, for example, he must argue with the Japanese tax agency as to what the Japanese law is.

An alternative is to provide that if as a result of reference to the law of the taxing jurisdiction, income is considered as being derived from sources in that country, the home country shall respect that determination for purposes of its foreign tax credit.[16] Conceivably, it could be argued that this result should be reached under the grievance procedure. But there may be some difficulty in successfully so contending.[17] If this result cannot be reached, we would leave the taxpayer worse off under a treaty which has

15 See, e.g., S. Ex. Rep. 10, 88th Cong., 2nd Sess. 41 *et. seq.*

16 *Cf.* Article XIV(a) of the Japanese treaty signed April 16, 1954 (certain interest treated as from Japanese sources for the purposes of the foreign tax credit "to the extent so treated under the laws of Japan"), deleted by Supplementary Protocol signed May 7, 1960. *Cf.* also, Ex. Rept. No. 11, 87th Cong., 1st Sess. (1961) (Estate Tax Convention with Canada) 7, 28, 45-46. The text of the Japanese treaty has been published in the July-issue 1965 of the Bulletin.

17 Cf. Rev. Rul. 56-251, 1956-1 Cum. Bull. 46.

a specific source rule than under a treaty, e.g., that with the Union of South Africa, which has no separate article specifying source rules, although obviously the intention of prescribing specific source rules was to help the taxpayer in the kind of case described.

This discussion suggests a third possibility. In addition to any source rules expressed in the treaty there should be added in the source rules a "catch-all" provision, along the lines of the Department of State Report on the Union of South Africa treaty, to the effect that the two countries may agree upon a common source rule in any case in which the application of the treaty in the context of the internal law results in a different source rule in each country. The Treasury Department release (October 7, 1964) on the United States -Israel Convention suggests that such a provision may appear therein.

WORLD TAX REVIEW

ARGENTINA

TAX NEWS

NEW SUMMARIES OF COMPANY TAXATION IN 1965

In late June 1965 the Congress approved Law No. 16.663 pursuant to which Argentina returns to the rates in force on December 31, 1964[1].

The rates mentioned in the July 1965 issue of the Bulletin (p. 273) are, as a result of these later developments, not always applicable in 1965. For purposes of convenience and in order to avoid possible confusion a new summary of company taxation in Argentina is included in this issue.

I *National companies*

1 General income tax
Taxable base: net income
33%
15% Emergency surcharge

2 Income tax on dividends
Taxable base: amount of dividends (stock dividends included)
Tax rate: 8% Withholding tax
15% Emergency surcharge

3 Substitute inheritance tax
Taxable base: net worth
Tax rate: 1.50%

II *Foreign companies*

1 General income tax
Taxable base: income from Argentine sources
Tax rates: 38,36%
15% Emergency surcharge

2 Substitute inheritance tax
Taxable base: net worth of branches
Tax rate 1,50%

III *Taxation of interests*

Taxable base: amount of interests (90% in case of foreign loans)
Taxe rate:

A – for interests on loans
Normal income tax if paid to residents
38,36% plus 15% emergency surcharge if paid to non-residents.

B – for interest on debentures
individuals
8% for the general income tax
15% emergency surcharge
other than individuals
38,36% plus 15% emergency surcharge

IV *Taxation of royalties*

Taxable base: amount of royalties
(If there are research expenses paid to foreign companies the Law assumes them to be 10% of royalties remitted)
Tax rate: Normal income tax if paid to residents
38,36% plus 15% emergency surcharge if paid to non residents

1 Compare editorial note Bulletin, July issue 1965, p. 276.

v *Foreign boards of directors*
Tax base: amount of fees
Tax rates: 38,36% plus 15% Emergency surcharge

(If payments are made for technical and/or financial assessment from foreign countries, 10% of them are assumed as cost and expenses of payments.)

Reported by: Horacio Hirsch Buenos Aires

CANADA

TAX NEWS

1965 BUDGET

On Monday, April 26th, the Minister of Finance presented his annual Budget to the House of Commons. The principal features of the Budget are:

a the provision of some relief which is not as substantial as might have been expected for tax-burdened Canadian individuals;
b the proposed incorporation of a Canadian Development Corporation with an issued capital of $1,000,000,000; and
c sustained tax tinkering (which was commenced in 1963) to close loopholes, particularly in the areas of "abuse" of pension plans and deferred profit sharing plans, use of trusts with non-resident beneficiaries and off-shore dividend stripping.

The Minister also closed a loophole existing in s. 83A, by which tax was avoided on the sale of oil and gas properties, and has tightened up tax relief granted to the mining industry.

Section 138A will apparently remain in the Act until the Minister has received the report of the Royal Commission on Taxation.

The Minister also stated that the Income Tax Amending Bill will contain further tax changes which will be designed primarily to increase the equity of the present tax system and to close more loopholes.

Perhaps the greatest objection to the Budget lies in the non-tax area of the proposed Canadian Development Corporation, which presents an interesting marriage between government ownership of Canadian industry and private enterprise. Certainly the potential degree of government control over investment power of this magnitude and the effect of such control on industrial projects will merit careful consideration.

The following contains a more detailed commentary on the tax changes announced.

Reduction of Personal Income Tax

Tax reductions are always welcome and normally have been an accurate forecast of an impending federal election. Perhaps the reduction of personal income tax granted by the Minister of Finance in his Budget is intended to serve political ends. It is noteworthy that the reduction applies only to *personal* rates of tax: no relief is granted to corporations, nor is there any reduction of sales tax, the two areas of taxation of which the Canadian public generally sees the least.

The reduction for the 1965 calendar year is to be 5% of the basic tax otherwise

provided or $300, whichever is the lesser. For subsequent years, the reduction will be 10% of the basic tax or $600, whichever is the lesser. It is noteworthy that the maximum limitations of $300 or $600 in the reduction of tax take effect only where taxable income exceeds approximately $20,000 in any year. There seems to be little explanation for the imposition of these maximum limitations other than, of course, political expediency in an apparent attempt to limit the tax relief available to higher income groups and to increase the already top-heavy burden of the rate structures under the Income Tax Act.

Consequent upon this change, Paragraph 18 of the Income Tax Resolution states that an amendment will be made to the Federal-Provincial Fiscal Arrangements Act to adjust the fractions set out therein in the definition of "standard individual income tax" so that there will be no reduction in the amount of equalization payments made to any province in consequence of the reduction of personal income tax.

In giving his Budget address. Mr. Gordon stated that he would not expect the provincial governments to move in to raise their income taxes to take advantage of the reduction of rates now proposed by the Federal Government.

Deductions Allowed to Individuals in Computation of Taxable Income

As well as reducing personal taxes, the Minister of Finance has introduced a number of changes, most of which are effective for the 1965 and subsequent taxation years, which will allow a taxpayer new deductions in computing taxable income. Paragraphs 2 and 3 of the Resolution allow a taxpayer to claim dependency for the support of an aunt, uncle, niece and nephew resident in Canada, in limited circumstances.

Because the pension under the Old Age Security Act will be available in 1966 to a person at age 69, decreasing by one year for the next ensuing 5 years, when it will become available to persons attaining the age of 65 in 1970, s. 26 (1) (e) will be amended so that the additional personal exemption of $500 allowed under s. 26 (1) (e) will be available only if the taxpayer was not in receipt of an old age pension during any month of the taxation years 1966 to 1969 inclusive.

Paragraph 5 of the Resolution will be welcomed by members of the professions and by trade union members. This Paragraph provides, in effect, that for the 1965 and subsequent taxations years, taxpayers may deduct dues paid to maintain membership in a trade union or to maintain a professional status recognized by statute and also claim the standard deduction of $100 provided by s. 27 (1) (ca).

The Canada Pension Plan will come into effect on January 1, 1966, and consequently, for the 1966 and subsequent taxation years, contributions made under the Canada Pension Plan or under the Quebec Pension Plan may be deducted in computing income. Presumably, this will apply to both employer and employee deductions, and also to contributions by self-employed persons.

Section 79B (5) of the Act presently provides that the maximum amount deductible in computing the income of a taxpayer for contributions to a registered retirement savings plan is the lesser of $1,500 or 10% of his earned income if he is a contributor to a registered pension plan, or the lesser of $2,500 or 10% of his earned income if he is not a contributor. Paragraph 8 increases to 20% the maxi-

mum percentage deduction under a registered retirement savings plan. It will be noted, however, that the existing limits of $1,500 and $2,500 were not increased by the Budget Resolution.

Business Expenses

Paragraph 10 of the Resolution provides that corporations and individuals carrying on business in the 1965 and subsequent taxation years will have the right to deduct certain business expenditures that have hitherto been non-deductible. The deductions now allowed are:

a amounts paid by a lessor to a lessee with whom he is dealing at arm's length to obtain cancellation of a lease;
b amounts expended for landscaping business property;
c amount expended for clearing land or laying tiled drainage;
d the costs incurred in investigating the suitability of a site for a structure to be used by the taxpayer in connection with his business; and
e the cost of making representations to a Government or other public authority in connection with business activities.

It is hoped that the last-mentioned item will be given a broad interpretation and will perhaps clarify s. 11 (1) (w) (introduced last year), making it clear that the cost of making representations in tax disputes before the notice-of-objection stage is deductible.

Accelerated Capital Cost Allowances

In the portion of the Minister of Finance's Budget Speech dealing with tax changes, the Minister stated that the amendments to the Act in 1963 allowing an accelerated rate of capital cost allowance on new manufacturing machinery and equipment, due to expire on June 13, 1965, will be extended to cover machinery and equipment acquired up until the end of December, 1966. Presumably, amendments to the Regulations will be introduced to provide for such extension.

The Minister of Finance also proposed changes in capital cost allowances to help farmers who are facing difficulty in marketing corn and other grain crops in areas where there is a shortage of grain storage facilities. Under Regulations to be passed, the cost of all new grain storage facilities constructed in the period May 1, 1965, to December 31, 1966, may be fully depreciated for tax purposes over four years.

Further, amendments to the Regulations will be introduced to permit capital expenditures made until the end of 1966 by businesses for the purpose of preventing water pollution to be written off over a two-year period. Such provision will also be reviewed following receipt of the Report of the Royal Commission on Taxation.

Scientific Research and Development

The Minister referred to the amendments introduced in 1962 which permit corporations making expenditures on scientific research to deduct not only the whole of such expenditures from income in the year in which they are incurred, but also an additional 50% of the increase in research expenditures over those incurred in the 1961 base year. This legislation is due to expire at the end of the 1966 taxation year. In this connection, Mr. Gordon considered that the inducement to carry on scientific research and development could be made fairer and more effective if it were in a form that was of more value to new and small companies subject to the lower rate of tax, and for those companies faced with losses. Consequently, the Minister proposes

to bring forward a Bill which will, for the 1967 and subsequent taxation years, reward scientific research with either a cash grant or a credit against tax liability. The amount in either case will be equal to 25% of "defined amounts" of expenditures by the business on scientific research or development which is carried out directly by the taxpayer or by contract with others in Canada. For the 1966 taxation year, a business will be permitted to elect whether to receive the benefits available now under the Income Tax Act or the benefits to be provided under the proposed legislation.

Limitation of an Employee's Right to Average Tax on Retiring Allowances and Lump Sum Payments Out of Pension Plans and Profit Sharing Plans

To close a loophole which seems to have been well explored in recent months, the Minister now proposes that with respect to payments received after April 26, 1965 (other than payments made on the death of an employee), the amount that a taxpayer may elect to have taxed under s. 36 of the Act shall not exceed in the case of single payments out of pension plans, deferred profit sharing plans and employee profit sharing plans, $1,500 times the number of years during which the employee was a member of such plan, and in the case of a single payment made on retirement or in respect of the loss of office, $1,000 times the number of years during which the employee was an employee of the employer who made the payment.

This amendment will close the door to many taxpayers who have made substantial past service contributions to pension plans under s. 76(1) of the Income Tax Act in the expectation of controlling their incomes in the three years prior to the winding-up of the plan, so that the sum held in the pension plan at date of retirement may be repaid to the taxpayer, and the calculation of tax on this amount will result in an artificially low tax burden under the s. 36 formula.

Taxpayers will also be limited by this amendment in reducing taxes by controlling at low levels their salary or other remuneration in the three years prior to retirement and taking a healthy termination or retirement allowance as a lump sum payment with the appropriate beneficial averaging of tax under s. 36.

It is noteworthy that in the Budget there was no mention made of any proposed amendment to s. 76 of the Act nor in respect of the practice previously adopted by the Department of National Revenue in respect of the "approvals" issued under this section. Therefore, taxpayers may apparently continue to make past service contributions on the same basis as was previously done except that they no longer can look forward to permanent tax relief through winding-up the pension plan and appropriating to themselves large sums in the plan taxable at low rates.

To keep track of the activities of pension plans, registered retirement savings plans, or deferred profit sharing plans, the Government will now require annual returns of these plans. No doubt the furnishing of annual returns will highlight for the benefit of the Revenue any abuses as they develop, in order to give it an opportunity for proper legislative correction.

Transfer of Retiring Allowances to Pension Plans, Registered Retirement Savings Plans or Deferred Profit Sharing Plans

Paragraph 9 of the Income Tax Resolation states that for 1965 and subsequent taxa-

tion years a taxpayer may take a deduction from a retiring allowance paid to him in the year if, during the year or within 60 days after the end of the year, a portion thereof is contributed to a registered pension plan, a registered retirement savings plan or a deferred profit sharing plan. This provision will open new areas for deferred compensation arrangements where an executive employee retires without adequate pension arrangements and the employer's pension plan does not permit lump sum funding for the benefit of the retiring employee. In such circumstances, the employee will be permitted to pay his retiring allowance into the employer's pension plan or to establish his own registered retirement savings plan and make a contribution to it, thereby postponing the incidence of tax on the retiring allowances until such times as they are paid out to him as a regular annuity under the plan.

Advertising in Newspapers and Periodicals

Paragraph 19 contains a draft of new s. 12A, implementing the Minister's long-awaited legislation implementing Government policy in connection with the protection of Canadian periodicals and to ensure that Canadian newspapers do not fall under foreign ownership.

Section 12A provides, in effect, that in computing income of a business no deduction may be made in respect of an otherwise deductible outlay or expense for advertising in an issue of a non-Canadian newspaper or periodical from and after December 31, 1965, where the advertisement is directed primarily to a market in Canada. A Canadian issue is defined as one in which the type is set, the editorial work is done and the publication is made in Canada. Further, and perhaps more surprisingly, a Canadian newspaper or periodical is defined as a newspaper or periodical, the ownership of which is vested in a Canadian citizen, a partnership which is three-quarters controlled by Canadian citizens or a corporation incorporated in Canada if the Chairman and at least three-quarters of the directors "or other similar officers" are Canadian citizens and of which three-quarters of the shares, having full voting rights under all circumstances and representing in the aggregate at least three-quarters of the paid-up capital, are owned by Canadian citizens.

Section 12A may have been drafted in haste: it is hoped that the Government will reconsider the far-reaching effect of this new legislation prior to its enactment.

If the legislation is to have the effect intended, substantial tightening up of the language will be necessary, as the definition of "Canadian newspaper or periodical" is shot full of the same type of loopholes as existed in s. 139A of the Act when it was first introduced.

Additionally, we point out that the legislation as now drafted may force many of the smaller foreign-language newspapers out of business, because many of these newspapers may not in fact be operated by Canadian citizens, although most are operated by *bona fide* Canadian residents. Another possible result of s. 12A, which may be unintended, is that a person such as Lord Thompson of Fleet, a former Canadian citizen, could be prohibited from acquiring any substantial interest in Canadian newspapers.

In cases where Canadian publication companies have distributed their shares to the public, the publication company may be completely unable to identify the beneficial owners of the shares and thus unable to satisfy its advertisers that it is a "Canadian newspaper or periodical". Therefore,

the effect of this new section may be that the ownership of Canadian newspapers and periodicals will remain closely held by Canadians, but the new law may inhibit distribution of shares to the Canadian public.

Concurrently with the introduction of s. 12A, the Resolution to amend the Customs Tariff introduced a prohibition against the entry into Canada of non-Canadian periodicals containing advertisements primarily directed to a market in Canada which do not appear in identical form in all of the editions of the issue of that periodical. Exempted from this so called "split run" or "foreign edition" prohibition are *Time* and *Reader's Digest*. The Resolution further states that foreign periodicals in which more than 5% of the total advertisements state that the product advertised is available in Canada are also to be denied entry into Canada.

Off-shore Bail-outs

The Minister in his Budget address stated that he was continuing the measures introduced in 1963 to prevent tax avoidance, obviously intending that s. 138A (1) of the Act would remain with us at least until the report of the Royal Commission on Taxation is received.

It has been thought that dividend stripping may still be continued despite s. 138A (1) by reliance upon s. 81 (7) in a transaction in which a corporation resident in Canada ceases to carry on business, obtains non-resident management and control and issues to non-residents of Canada preference shares having full voting rights in all circumstances so that non-residents hold more than 50% of the voting shares of such company. The company would then surrender its charter and distribute its assets, and the Canadian residents who hold all of the common shares of such corporation would receive the proceeds on surrender of charter presumably free of income tax.

If this loophole ever existed, it is now closed. Paragraph 11 of the Budget Resolution states that for 1965 and subsequent taxation years a corporation incorporated in Canada shall be deemed to be resident in Canada throughout the year if (a) it was incorporated after April 26, 1965, or (b) it was incorporated before April 27, 1965, and was resident in Canada in its taxation year that included April 26, 1965, or any subsequent taxation year.

This Budget resolution does not purport to make resident in Canada corporations that have been incorporated in Canada and that are now non-residents for income tax purposes.

In this area it should also be noted that the U.S. Internal Revenue Service recently announced its intention to renegotiate the Canada-U.S. Income Tax Convention in order to eliminate a loophole which presently exists giving such non-resident Canadian corporations the benefits of the Canada-U.S. Convention and the low U.S. withholding tax rates without such corporations being subject to Canadian income tax[1]. Because of the limitations of Paragraph 11 of the Budget Resolution, it would seem that he negotiations now commenced with the Internal Revenue Service will probably be pressed forward.

Individuals Deemed to be Resident in Canada

Paragraph 6 of the Budget Resolution provides that, for the 1966 and subsequent taxation years, if an individual, resident in

1 Editorial note: Compare Tax News Service II - 26 (1965)

Canada for the preceding year, was performing services in a country other than Canada under a prescribed international development assistance programme of the Government of Canada, he will be deemed to be resident in Canada throughout a taxation year. This Paragraph, in effect, extends s. 139(3) of the Income Tax Act to provide that persons serving in the so-called "Peace Corps of Canada" in a foreign country will be deemed to be resident in Canada throughout the taxation year in which they perform services outside of Canada.

Non-Resident Beneficiaries of Trusts Earning Income in Canada

Paragraph 13 has been introduced to prevent persons from arranging to have business income taxed at the non-resident withholding tax rate of 15% through the use of a trust with non-resident beneficiaries which carries on business in Canada. If the trust provided that all its income was distributable to the non-resident beneficiaries, the income so distributable was taxed at the 15% rate of s. 106(1)(c), and if the non-resident beneficiaries were corporations, arrangements might be made to repatriate to Canada such income (after 15% tax) free of further tax by the use of s. 28(1)(d) of the Act. The Budget Resolution provides, in effect, that for taxation years commencing after April 26, 1965, a trust or estate (other than a trust or estate arising on death) that has income from a business carried on by it in Canada may not deduct in computing its income an amount paid or payable to a beneficiary who is a non-resident of Canada, an N.R.O. Investment Corporation or another trust or estate resident in Canada (except in certain circumstances). Further, the amount paid or payable by the trust carrying on business in Canada will be included in the income of its beneficiaries notwithstanding the fact that the payor trust is not entitled to deduct the amount in computing its income. There could therefore be double taxation of business income of trusts in certain circumstances.

It should be noted that in his speech the Minister of Finance stated that because of the various uses of trusts, it would be difficult to foresee the effect that the Budget Resolution may have. Consequently, modifications of this proposal will be considered if representations show that the amendments outlined in the Resolution will have an unintended impact upon trust arrangements where tax avoidance is not a factor.

Disposition of Oil and Gas Properties Through a Joint Exploration Corporation

Prior to Budget night, a loophole apparently existed in s. 83A of the Act pursuant to which oil and gas properties might be disposed of without attracting tax on the proceeds of disposition of such properties under s. 83A (5b) and (5c) of the Act. In so disposing of properties, the holder of the properties would incorporate a joint exploration corporation as defined by s. 83A (3e) (a) and would sell to such joint exploration corporation its oil and gas properties at fair market value, thereby incurring an income inclusion under s. 83A (5b). The joint exploration corporation would then elect in prescribed from to renounce in favour of the vendor an amount equal to the purchase price of the oil and gas properties (which is deemed to be a drilling or exploration expense—s. 83A (5a)), and the former owner of the oil and gas properties would have an equal and offsetting deduction from income and therefore suffer no

tax in respect of the disposition of the property.

Paragraph 15 of the Budget Resolution states that where a joint exploration corporation acquires after April 26, 1965, an oil or gas property, the cost of such property may not be renounced in favour of a shareholder corporation. This provision will have the effect of blocking this method of avoidance of tax.

Prospectors' and Grub-Stakers' Exemption
Paragraph 16 of the Budget Resolution states that for 1965 and subsequent taxation years, the prospectors' and grub-stakers' exemption contained in s. 83 of the Income Tax Act will not extend to a share of profits, a royalty or a payment based on production, received by the prospector or the grub-staker as consideration for a mining property.

New Mine Exemption From Income
In order to reverse the effect of *Hollinger North Shore Exploration Co. Ltd.*, 63 DTC 1031, affirming 60 DTC 1077, *644, Paragraph 14 of the Budget Resolution states that for 1965 and subsequent taxation years the new mine exemption of s 83 (5) of the Act will apply only to income from the operation of the mine *by* the corporation.

SOURCE: *McDonald's Current Taxation, volume 6, issue 18.*

COMMON MARKET

DOCUMENTS

HARMONISATION DES REGLES D'AMORTISSEMENT DANS LES LEGISLATIONS FISCALES DES PAYS DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE *

LA CONFERENCE PERMANENTE DES CHAMBRES DE COMMERCE ET D'INDUSTRIE DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE,

Constatant,
– que, dans les législations fiscales des six pays de la Communauté Economique Européenne, les dispositions relatives à l'amortissement présentent des différences sensibles;
– que ces divergences, en se prolongeant, ne peuvent que nuire à la réalisation d'un véritable Marché Commun et à l'égalisation des conditions de concurrence entre les entreprises industrielles et commerciales;
– qu'en chargeant un groupe de travail d'examiner ce problème, la Commission Européenne a sagement préparé les voies d'une harmonisation souhaitable;

Attire l'attention des experts sur l'importance de la notion d'amortissement et sur les exigences fondamentales auxquelles elle doit répondre et *insiste tout particulièrement sur les points suivants*:

1 Dans toutes les législations, le droit d'amortir intégralement toutes les dépenses consenties pour des investissements en biens corporels ou incorporels doit être affirmé et

* English summary in European Taxation, July 1965.

traduit par la reconnaissance à chaque contribuable, du droit de constituer en franchise d'impôt un fonds, destiné à permettre le renouvellement des biens qui devront être mis hors d'usage pour des raisons matérielles ou techniques.

2 Le droit d'amortissement ne doit être soumis à aucune limitation, à condition que les amortissements des entreprises soient déterminés en conformité avec les nécessités d'une saine gestion commerciale, tenant compte de la rapidité des progrès techniques, et préalablement à l'harmonisation des règles administratives dans les pays de la C.E.E.

3 Le contribuable ne doit pas pouvoir renoncer à l'exercice de son droit; dès lors qu'il correspond aux nécessités de la gestion d'une entreprise, et afin de sauvegarder les bilans, l'amortissement est donc obligatoire.

4 Lorsque les amortissements sont effectués au cours d'exercices déficitaires, leur imputation pourra être reportée sans limitation de durée sur les bénéfices ultérieurs.

5 Le montant des annuités d'amortissement doit pouvoir varier selon les conditions d'utilisation effective des biens dans l'entreprise.

6 L'amortissement linéaire (par annuités constantes pendant toute la durée de l'utilisation des biens) ne doit pas être seul admis. Les contribuables doivent pouvoir procéder, s'ils le désirent à un amortissement dégressif ou même progressif si les biens en cause subissent des dépréciations inégales selon les années pendant leur utilisation.

7 En cas de réduction exceptionnelle de la valeur d'un bien, ou en cas de vieillissement de ce dernier, la valeur des annuités d'amortissement doit pouvoir être modifiée.

8 La valeur des biens à amortir doit être égale à leur coût d'acquisition, toutefois au cas de hausse des prix pendant la période d'amortissement, la valeur des biens à amortir doit pouvoir être calculée sur les coûts de remplacement.

9 La période d'amortissement doit commencer dès la commande du bien.

Amsterdam, le 10 juin 1965

PAKISTAN

TAX NEWS

1965 BUDGET

The Annual Budget of the Central Government was placed before the National Assembly by the Finance Minister on 14th June, 1965.

In a speech, the Finance Minister enunciated the Government's taxation policy. Apart from raising resources, the object of the fiscal policy was to promote savings, to encourage investment and capital formation, to maximise industrial and agricultural production, to encourage exports, to hold down consumption without inflating the cost of essential consumer goods, to check concentration of economic power and wealth and to encourge the setting up of a strong middle class.

The measures by which the Finance Minister hopes to achieve this objective are embodied in the Finance Bill, 1965, the sa lient features of which are described below:

Income Tax and Super Tax

1 In order to provide a strong incentive for the conversion of private companies into broad based "public" companies, the differential rate of tax rebate admissible to "public" companies has been raised from 5 to 10 per cent. Thus the total tax liability of various types of companies is now as follows:

Type of company	*Rate of Income-tax*	*Rate of Super-tax*	*Total*
i. Foreign companies Whether private or public	30%	30%	60%
ii. Pakistani private companies	30%	25%	55%
iii. Pakistani public companies	30%	15%	45%

2 New industrial undertakings enjoying Tax Holiday for varying periods according to regional location are required to plough back 60 per cent of their tax free profits into special reserves. Bonus shares issued out of such reserves were exempt from tax, but will henceforth be liable to tax as dividend income. Bonus shares issued out of other reserves will, however, continue to be taxed at the preferential rate of $12^1/_2$ per cent in the hands of the issuing company.

3 Unexplained credits in the books of the assessee and any unrecorded investments will henceforth be treated as taxable income.

4 The tax free limit of Rs. 2,000 on dividend income has been raised to Rs 3,000 for non-company shareholders.

5 In order to encourage the formation of broadbased "public" companies, Section 23 A lays down various tests for companies in which the public are substantially interested. Briefly, these are:
(i) The company should not be a private company, and its shares carrying not less than 50 per cent of the voting power should be freely transferable and be held by the Government, a public corporation, The National Investment (Unit) Trust or the "public" including a company which itself qualifies as a "public" company in this sense.
(ii) Furthermore, 19 or less persons should not hold 50 per cent or more of voting shares. In computing the number of 19, the Government, a public corporation, The National Investment (Unit) Trust, a "public" company and a foreign association declared to be a company, are not to be taken into account.

6 Initial depreciation at the enhanced rate of 15 per cent on new industrial buildings is to be allowed up to 30th June, 1970. Labour housing and plant and machinery continue to enjoy initial depreciation at 25 per cent, but additional depreciation which resulted in doubling the normal charge for the first five years of the life of an asset has been discontinued.

7 The tax exemption for 3 years allowed to foreign technicians, will now be available during the installation and pre-production stages. Foreign technicians employed by firms of consultants and engineers will also be eligible for this exemption. However, no tax-on-tax is to be charged for 5 years if a foreign technician continues to be employed after the tax exemption period of 3 years has expired, and the employer pays the tax on his behalf.

8 The top two brackets of personal income-tax have been reduced from 75 and 65 to 70 and 60 per cent respectively.

9 The limit of 10 per cent of total income on donations to charitable institutions has been raised to 20 per cent. Compa-

nies will, however, as before get relief for income-tax only.

10 A further relief given on personal income-tax is the increase of Investment Allowance from Rs. 12,000 to Rs. 15,000, provided the additional Rs. 3,000 is invested in National Investment Trust Units.

11 Persons over 65 years of age will enjoy complete exemption from income-tax in respect of their income from pensions.

12 Recognised chambers of commerce and industry will be exempt from income-tax.

13 The intercorporate tax remains at 15 per cent in the case of dividends derived from "public" companies and 20 per cent in other cases. U.K. "public" companies holding more than 50 per cent shares in a Pakistani subsidiary, however, pay intercorporate tax at 10 per cent by virtue of the Double Taxation Treaty.

Capital Gains Tax

The concessional rate of Capital Gains Tax has been extended to cover stock brokers, if the capital asset is held by them for at least one year.

Customs Duties

The rates previously in force in respect of machinery and component parts (i.e. $12^1/_2$ per cent for West Pakistan and $7^1/_2$ per cent for East Pakistan) have been raised to 25 per cent and 20 per cent respectively. Although this will increase the capital cost of new projects, this factor is unlikely to influence investment decisions unduly.

Note: The Finance Bill received the President's assent on June 30, 1965 and has been enacted as the Finance Act 1965 (No. 5 of 1965).

Reported by:
Rashid Ahmed

SOUTH AFRICA

TAX NEWS

THE BUDGET

The budget speech has presented no surprises. No-one expected any particular largesse because of the bigger than usual surplus (about 10% in excess of last year's estimate). On the contrary there is cause for relief (if relief is the appropriate word in the circumstances) that some of the gloomier forecasts of increased taxation have not materialised.

The Minister of Finance in his 1965 role as tailor has attempted to cut and trim his cloth to allow the economic figure a comfortable fit with some tightness at various points. Some think he should have allowed more room for expansion.

If in the result the inflationary trend is curbed, the maintenance of the tax levels and the addition of the levy will not be too heavy a price to pay. In the long run stability of living costs is worth more to the taxpayer than a small reduction in his taxes.

The Minister of Finance has balanced his budget exactly, but if the record is any guide we can expect to be told next year, unless something entirely unexpected happens, that the Treasury has ended the year with another big surplus.

The details of the budget in so far as they affect income tax and estate duty are set out below.

INDIVIDUALS

Rate of normal tax

The rate of normal tax (including the 5% discount) for the year of assessment ending 28th February. 1966, remains the same as that for the year of assessment ended 28th February, 1965. A loan levy, however, is imposed equal to 5% of the normal tax payable before the deduction of the 5% discount. Taxpayers whose normal tax after rebates is less than R100 will be exempt from this levy. This exemption, according to the Minister of Finance, will cover about two-thirds of the taxpayers. The levy will carry simple interest at 5% per annum and no date is fixed for repayment. In other words the levy will be repayable only when the Treasury decides to do so. Probably there will be regulations made in regard to repayment on death or insolvency.

In effect the proposal, for those taxpayers who are affected, converts the 5% discount into a loan, repayable at some unknown date.

It should be noted that the levy is calculated only on the normal tax payable and not also on the provincial tax. In calculatint the levy fractions of a rand are disregarded.

Because of the exemption the following taxpayers will not be affected by the levy:

Unmarried persons whose taxable income is under R1,721:

Married persons with no children whose taxable income is under R2,225:

Married persons who are entitled to a child rebate and whose taxable income,

where there is one child, is under R2,650:

where there are two children, is under R3,066;

where there are three children, is under R3,500;

where there are four children, is under R3,930;

where there are five children, is under R4,370;

where there are six children, is under R4,780.

Where there are additional rebates for insurance, provident and benefit funds, and dependants the level of exemption is increased accordingly.

The following table shows the loan levy payable at various levels of income.

MARRIED PERSONS

Taxable Income R	*No Child* R	*One Child* R	*Two Children* R	*Three Children* R
3,000	8.00	—	—	—
3,600	10.00	9.00	7.00	5.00
4,000	12.00	10.00	9.00	7.00
5,000	17.00	15.00	13.00	11.00
6,000	27.00	25.00	23.00	21.00
8,000	57.00	56.00	54.00	52.00
10,000	93.00	92.00	90.00	88.00
12,000	132.00	131.00	129.00	127.00
14,000	172.00	171.00	169.00	167.00
16,000	216.00	215.00	213.00	211.00
18,000	263.00	262.00	260.00	258.00

exceeding R18,000, 2.5% of such excess.

UNMARRIED PERSONS

Taxable Income R	*Loan Levy* R
2,000	6.00
3,000	11.00
4,000	16.00
5,000	22.00
6,000	32.00
7,000	47.00
8,000	64.00
9,000	81.00
10,000	101.00
12,000	141.00
14,000	184.00
16,000	229.00
18,000	277.00

exceeding R18,000, 2.5% of such excess.

Taxation of Husband and Wife

Two amendments to the taxation of husband and wife have been proposed. The one relates to the taxation of spouses living apart, but not judicially separated. In 1962 the Act was amended to include in the income of the husband the income of his wife if the spouses were separated by a written agreement entered into after 21st March, 1962. The previous position is now being restored, and it is difficult to see why the Act was amended in the first place. The proposal, however, goes further than merely restoring the previous position. Husband and wife will be separately taxed on their separate incomes if they are separated in circumstances which in the opinion of the Secretary for Inland Revenue indicate that the separation is likely to be permanent. This proposal covers the case also where the spouses are separated by oral agreement or are in fact separated without any agreement, for example where there has been desertion.

The other provision relating to husband and wife deals with the taxation of their combined incomes. The present position is that the incomes of the spouses are aggregated and taxed as one income at the applicable rates. The proposal is to grant relief by reducing the rate on the combined incomes. It is intended for spouses whose combined incomes do not exceed R8,000, but to avoid certain anomalies some small relief is given in respect of incomes over that figure.

Up to R8,000 the combined incomes will be taxed at the rate applicable to the average rate of tax on an amount equal to the greater of the two incomes plus one-half of the lower income (If the incomes are equal the amount will be the one plus half the other.)

Thus if the one spouse has an income of R3,000 and the other an income of R2,000, the joint income of R5,000 will be taxed at the rate applicable to R4,000 (i.e. R3,000+R1,000). If the respective incomes are R4,000 and R1,000 the applicable rate will be that on R4,500 (i.e. R4,000+R500).

The average rate on the relevant amount is obtained by taking the tax payable thereon (before rebates and discount) and dividing the tax by the relevant amount. Thus, taking the first example, the tax on R4,000 is R314 and the average rate is R314÷R4,000 = 7,85%. This rate then applies to the remaining R1,000 of the joint income, so that the calculated tax on R5,000 is R314+R78.50=R392.50.

Another and simpler way of calculating the tax is to take the tax on the relevant amount and multiply the calculated tax by the proportion the combined income bears to the relevant amount, thus:

Tax on R4,000=R314.00

$$\text{Tax on R5,000} = \text{R314} \times \frac{5{,}000}{4{,}000} = \text{R 392.50.}$$

After the tax has been calculated in this way the rebates are deducted and also the discount.

The optimum benefit applies where the incomes of the spouses are equal and the relief diminishes as the disparity between the incomes grows.

Because provincial income tax is calculated on the net normal tax payable, it follows that the relief extends to provincial income taxes as well. Personal tax is not affected.

Where the combined incomes of the spouses exceed R8,000, relief is determined on the following formula: The greater income+one-half of the lesser+2 (combined income—R8,000). Thus if the spouses have a combined income of R8,500 and the incomes are respectively R4,500 and R4,000, the average rate is ascertained on

an amount equal to R4,500+R2,000+2 (R8,500—R8,000)=R7,500. If the incomes were R7,000 and R1,500 respectively, the applicable rate would be on an amount equal to R7,000+R750+2 (R8,500—R8,000)=R8,750. As this amount is greater than the combined incomes the formula will not apply, since it only applies if it will result in relief. On the optimum proportion between the spouses' incomes, the formula provides no relief when the combined incomes reach R9,100.

The following table of net normal and provincial taxes at various levels of income indicates the extent of tax saving, which varies according to the proportions between the respective incomes. The taxes are calculated on the basis that the taxpayers have two children and are resident in the Transvaal. No account is taken of the loan levy.

Combined Taxable Income	*Husband's Income*	*Wife's Income*	*Tax Payable*	*Previous Tax*
R	R	R	R	R
2,000	1,200	800	23.30	28.30
2,500	1,500	1,000	73.30	78.30
3,000	2,000	1,000	124.30	128.30
3,600	2,400	1,200	184.30	195.80
3,600	1,200	2,400	184.30	195.80
5,000	3,000	2,000	342.53	361.90
6,000	4,000	2,000	463.90	611.90
6,000	5,000	1,000	544.62	611.90
8,000	5,000	3,000	1,010.36	1,374.40
8,000	6,000	2,000	1,134.75	1,374.40
8,500	4,500	4,000	1,343.24	1,586.90
9,000	4,500	4,500	1,745.75	1,799.40
9,000	6,000	3,000	1,799.40	1,799.40

COMPANIES

Rate of Tax

The rates of tax for companies remain the same except for the following changes:

a there is a surcharge of 5% on the amount of tax calculated on the taxable income (excluding income derived from gold and diamond mining). Thus the effective rate of tax is increased from 30 cents in R1 to 31.5 cents in R1. This increased rate is effective in respect of each year of assessment of a company ending during the period of twentyfour months ending on 31st December 1966. A company's year of assessment is its financial year. Accordingly a company whose financial year ends in the calendar year 1965 will be liable for tax at the increased rate and will be similarly liable for the 1966 tax year;

b in regard to income derived from diamond mining there is a surcharge of 5% on the amount of tax calculated on such income i.e. the effective rate is increased from 45 cents in R1 to 47.25 cents in R1. This increased rate is also effective in respect of each year of assessment ending during the period of twenty-four months ending on 31st December, 1966;

c In addition to the surcharge referred to in (a) and (b), companies must pay an amount equal to 5% on the calculated tax (i.e. the tax before the surcharge of 5%). This additional amount is a loan levy carrying simple interest at 5% and repayable at such times and in such manner as may be provided. In calculating this levy fractions of a rand must be disregarded. The levy will not be payable if it amounts to less than R5.

The levy is payable by companies in respect of their financial year ending during the period 1st January to 31st December, 1966 (inclusive).

The levy does not apply to income derived from gold mining.

EXEMPT INCOME

It is proposed to issue a new series of Treasury Bonds, the income from which will be exempt from tax. Taxpayers will be allowed to invest up to R20,000 free of income tax. The interest rate will be 5% per annum.

ALLOWABLE DEDUCTIONS

Aircraft

It is proposed to extend to taxpayers operating aircraft allowances similar to those given to operators of ships. No details have been given. Ship owners are, subject to certain conditions, granted an initial allowance of 40% of the cost of acquisition, as well as an annual allowance equal to 10% of the cost. There are also special provisions relating to recoupment on loss, sale or disposal of ships. Presumably the allowances for aircraft will be substantially the same.

Foreign Holding Companies

Last year the Act was amended to allow, subject to conditions, the transfer of an assessed loss incurred by a foreign company in carrying on a trade in South Africa to its local subsidiary to whom it transfers the South African undertaking. It is proposed to extend the provisions to cover cases in which the foreign companies are not yet in a position to use this provision. No details of the proposed extension were given.

P.A.Y.E.

It is proposed to alter the provisional tax payments from three to two per annum. Payments in future will have to be made within six months and twelve months respectively from the beginning of the year of assessment. (In the case of a company this means the beginning of its financial year.) In the case of individuals this alteration will be effective for the year of assessment ending 28th February, 1966. Accordingly the first provisional payment for the 1966 year will be due by 31st August instead of 30th June and the next one only on or before 28th February, 1966. Where a taxpayer renders a return to a period other than 28th February, his periods will be calculated from the beginning of the period for which he renders a return.

In the case of a company the provision first becomes effective for its financial year ending between 1st January and 31st December, 1966 (inclusive). Companies whose current financial year ends on or before 31st December 1965 will still have to make the three payments for this year.

ESTATE DUTY

Section 3 (3) (*a*) of the Estate Duty Act includes in the dutiable amount the proceeds of policies on the life of the deceased. This, according to the Minister of Finance, has led to discrimination between payments from pension funds which are underwritten by insurers and fall within this provision, and similar payments from pension funds which are not so underwritten and are accordingly not covered by this provision. It is proposed to bring the latter within the ambit of the Act by providing as follows:

> "so much of any benefit which is due and payable by any fund on or as a result of the death of a person as exceeds the aggregate amount of any contributions or consideration proved to the satisfaction of the Secretary for Inland Revenue

to have been paid by the beneficiary, together with interest at six per cent per annum calculated upon such contributions or consideration from the date of payment to the date of death, shall be deemed for estate duty purposes to be the property of the deceased".

This wording is substantially the same as the present section 3 (3) (*a*) dealing with policies. The effect is that benefits payable by any fund in consequence of the death of a person will be subject to estate duty in so far as the amount of the benefits exceeds the contributions made or consideration paid by the beneficiary plus interest at 6% from date of payment to date of death.

In the case of insurance policies, there is an allowable deduction up to a maximum of R15,000. It is proposed to allow the same deduction in respect of the benefits now taxable. Presumably the allowable deduction will be alternative to and not cumulative with the deduction for insurance policies i.e. the maximum aggregate deduction for insurance policies and benefits from funds will be R 15,000.

SOURCE: *The Taxpayer, a monthly journal devoted to the law, practice and incidence of income tax and death duties, Cape Town, vol. XIV, no. 3.*

III

TREATIES

FRANCE - JAPAN

CONVENTION ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANCAISE ET LE GOUVERNEMENT DU JAPON TENDANT À ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU.

Le Gouvernement de la République française
et
Le Gouvernement du Japon,
Désirant conclure une convention pour éviter les doubles impositions en ce qui concerne les impôts sur le revenu,
Sont convenus des dispositions suivantes:

ARTICLE PREMIER

Le présente convention s'applique aux personnes qui sont des résidents d'un Etat contractant, sous réserve des dispositions des articles 20, 24 et 25.

ARTICLE 2

1 Les impôts auxquels s'applique la présente convention sont:
a en ce qui concerne la France; l'impôt sur le revenu des personnes physiques, la taxe complémentaire et l'impôt sur les bénéfices des sociétés et autres personnes morales (ci-après dénommés l'«impôt français»);
b en ce qui concerne le Japon: l'impôt sur le revenu, l'impôt sur les sociétés, l'impôt préfectoral sur le revenu des habitants et l'impôt communal sur le revenu des habitants (ci-après dénommés l'«impôt japonais»).
2 En ce qui concerne les entreprises de navigation maritime et aérienne, la convention s'applique également aux impôts visés au paragraphe 2 de l'article 8.
3 La convention s'appliquera en outre à tous autres impôts, analogues aux impôts visés aux paragraphes précédents qui seraient établis pour le compte de l'Etat ou de ses collectivités locales, en France ou au Japon après la date de la signature de la convention. Les autorités fiscales nationales des Etats contractants se communiqueront, à la fin de chaque année, les modifications apportées à leurs législations fiscales respectives.

ARTICLE 3

1 Au sens de la présente convention, à moins que le contexte n'exige une interprétation différente:
a le terme «France» désigne la France métropolitaine et les départements d'outre-mer (Guadeloupe, Guyane, Martinique et Réunion),

le terme «Japon» employé dans un sens géographique désigne l'ensemble du territoire dans lequel sont en vigueur les lois relatives à l'impôt japonais;

b les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la France ou le Japon;

c l'expression «société française» désigne toute personne morale ou toute entité qui est considérée comme une personne morale pour l'application de l'impôt français et qui est dirigée et contrôlée en France et qui n'a pas son siège social au Japon; et l'expression «société japonaise» désigne toute société ou toute autre personne juridique (y compris toute organisation n'ayant pas la personnalité juridique considérée comme une personne juridique pour l'application de l'impôt japonais) qui a son siège social au Japon et qui n'est pas dirigée et contrôlée en France.

d l'expression «résident de France» désigne toute personne physique qui réside en France pour l'application de l'impôt français et qui ne réside pas au Japon pour l'application de l'impôt japonais et toute société française; et l'expression «résident du Japon» désigne toute personne physique qui réside au Japon pour l'application de l'impôt japonais et qui ne réside pas en France pour l'application de l'impôt français et toute société japonaise; et les expressions «résident d'un Etat contractant» et «résident de l'autre Etat contractant» désignent un résident de France ou un résident du Japon selon les exigences du contexte;

e l'expression «entreprise française» désigne une entreprise industrielle ou commerciale exploitée par un résident de France; et l'expression «entreprise japonaise» désigne une entreprise industrielle ou commerciale exploitée par un résident du Japon: et les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent une entreprise française ou une entreprise japonaise selon les exigences du contexte;

f l'expression «bénéfices industriels et commerciaux» ne comprend pas les revenus des biens immobiliers visés à l'article 5, les revenus des exploitations agricoles ou forestières visées à l'article 6, les revenus sous forme de dividendes, intérêts (y compris les annuités visées au paragraphe 3 de l'article 12), loyers ou redevances, gains en capital ou rémunérations de services personnels;

g l'expression «autorités fiscales nationales» désigne, dans le cas de la France, le Ministre des Finances et des Affaires économiques ou ses représentants dûment autorisés: dans le cas du Japon, le Ministre des Finances ou ses représentants dûment autorisés.

2 Pour l'application de la convention par un Etat contractant toute expression qui n'est pas autrement définie a le sens qui lui est attribué par la législation dudit Etat régissant les impôts faisant l'objet de la convention, à moins que le contexte n'exige une interprétation différente.

ARTICLE 4

1 Au sens de la présente convention, l'expression «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.

2 L'expression «établissement stable» comprend notamment:

a un siège de direction,

b une succursale,
c un bureau,
d une usine,
e un atelier,
f une mine, carrière ou autre lieu d'extraction de ressources naturelles,
g un chantier de construction ou de montage dont la durée dépasse douze mois.

3 Une entreprise d'un Etat contractant est considérée comme ayant un établissement stable dans l'autre Etat contractant si:

a elle exerce pendant plus de douze mois sont activité dans des conditions telles qu'elle peut être regardée, en raison notamment du pouvoir de direction qu'elle détient, comme exécutant pour son propre compte un contrat de construction ou de montage dans cet autre Etat contractant;
b elle exerce une activité consiste à fournir dans l'autre Etat contractant, les services des professionnels du spectacle visés à l'artice 18.

4 On ne considère pas qu'il y a établissement stable si:

a il est fait usage d'installation aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
b des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
c des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
d une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;
e une installation fixe d'affaires est utilisée, pour l'entreprise, aux seules fins de publicité, de fourniture d'informations, de recherches scientifiques ou d'activités analogues qui ont un caractère préparatoire ou auxiliaire.

5 Une personne agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant — autre qu'un agent jouissant d'un statut indépendant, visé au paragraphe 7 — est considérée comme «établissement stable» dans le premier Etat contractant si:

a elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne soit limitée à l'achat de marchandises pour l'entreprise, ou si
b elle dispose, dans le premier Etat contractant, d'un stock de marchandises appartenant à l'entreprise sur lequel elle prélève régulièrement des commandes consécutives à un contrat préalablement passé par cette entreprise mais qui ne précise ni la qualité à livrer, ni la date et le lieu de livraison.

6 Une entreprise d'assurances d'un Etat contractant est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant que, par l'intermédiaire d'un représentant (autre qu'un agent joissant d'un statut indépendant auquel s'applique le paragraphe 7), elle perçoit des primes sur le territoire de cet autre Etat ou assure des risques situés sur ce territoire.

7 On ne considère pas qu'un entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y exerce son activité par l'entremise d'un

courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

8 Le fait qu'une société qui est un résident d'un Etat contractant contrôle ou est contrôlée par une société qui est un résident de l'autre Etat contractant ou qui y exerce son activité (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces sociétés un établissement stable de l'autre.

ARTICLE 5

1. Les revenus provenant de biens immobiliers sont imposables dans l'Etat contractant où ces biens sont situés.

2 L'expression «biens immobiliers» est définie conformément au droit de l'Etat contractant où les biens considérés sont situés. L'expression englobe notamment les droits à des redevances variables ou fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres richesses du sol; les navires, bateaux et aéronefs ne sont pas considérés comme biens immobiliers.

3 Les dispositions du paragraphe 1 s'appliquent également aux profits provenant de l'aliénation de biens immobiliers.

4 Les dispositions des paragraphes 1 et 3 s'appliquent également aux revenus provenant des biens immobiliers d'une entreprise ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

ARTICLE 6

Les revenus provenant des exploitations agricoles ou forestières situées dans un Etat contractant sont imposables dans cet Etat contractant.

ARTICLE 7

1 Une entreprise d'un Etat contractant n'est imposable que dans cet Etat, en ce qui concerne ses bénéfices industriels et commerciaux, à moins qu'elle n'exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre Etat contractant mais uniquement dans la mesure où il sont imputables audit établissement stable.

2 Lorsqu'une entreprise d'un Etat contractant exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chaque Etat contractant, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3 Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'Etat où est situé cet établissement stable, soit ailleurs.

4 S'il est d'usage, dans un Etat contractant, de déterminer les bénéfices imputables à

un établissement stable sur la base d'une répartition des bénéfices totaux de l'entreprise entre ses diverses parties, aucune disposition du paragraphe 2 n'empêche cet Etat contractant de déterminer les bénéfices imposables selon la répartition en usage; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.

5 Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

6 Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.

ARTICLE 8

1 Nonobstant les dispositions de l'article 7, les bénéfices qu'une entreprise d'une Etat contractant retire de l'exploitation de navires ou d'aéronefs ne seront imposables que dans cet Etat contractant.

2 En ce qui concerne l'exploitation de navires ou d'aéronefs, l'entreprise française sera exonérée au Japon de l'impôt sur les entreprises et une entreprise japonaise sera de même exonérée en France de la patente et des taxes additionnelles à la patente.

3 L'accord entre les Etats contractants constitué par les notes échangées à Paris, le 21 décembre 1962, en vue de l'exonération réciproque des bénéfices des transports internationaux maritimes ou aériens, cessera de s'appliquer, lors de l'entrée en vigueur de la présente convention, à partir des dates auxquelles les dispositions de ladite convention prendront effet.

ARTICLE 9

Lorsque:

a une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre Etat contractant, ou que

b les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un Etat contractant et d'une entreprise de l'autre Etat contractant,

et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées, qui diffèrent de celles qui seraient conclues entres des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

ARTICLE 10

1 Une société japonaise ne sera pas soumise en France à la retenue à la source sur les revenus de capitaux mobiliers visée à l'article 109-2 du Code général des impôts français, à moins qu'elle ne possède un établissement stable en France. Dans tous les cas, le revenu

imposé en vertu de l'article 109-2 ne peut excéder le montant des bénéfices imputables à l'établissement stable en France, déterminé conformément aux dispositions des articles 7 et 9.

2 Une société japonaise ne sera pas soumise en France à la retenue à la source visée au paragraphe 1 en raison de sa participation à la direction ou dans le capital d'une société française, ou à cause de tout autre rapport avec une telle société.

ARTICLE 11

1 Les dividendes payés par une société qui est résident d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat contractant.

2 Toutefois, ces dividendes peuvent être imposés dans l'Etat contractant dont la société qui paie les dividendes est un résident et selon la législation de cet Etat contractant, mais l'impôt ainsi établi ne peut excéder 15% du montant brut des dividendes.

Ce paragraphe ne concerne pas l'imposition de la société pour les bénéfices qui servent au paiement des dividendes.

3 Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions de jouissance, parts de fondateur ou autres parts bénéficiaires, à l'exception des créances, ainsi que les revenus d'autres parts sociales assimilés aux revenus d'actions par la législation fiscale de l'Etat contractant dont la société distributrice est un résident.

4 Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des dividendes, résident d'un Etat contractant, a, dans l'autre Etat contractant dont la société qui paie les dividendes est un résident, un établissement stable auquel se rattache effectivement la participation génératrice des dividendes. Dans ce cas, l'article 7 concernant l'imputation des bénéfices aux établissements stables est applicable.

ARTICLE 12

1 Les intérêts provenant d'un Etat contractant et payés à un résident de l'autre Etat contractant sont imposables dans cet autre Etat contractant.

2 Toutefois, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent et selon la législation de cet Etat contractant, mais l'impôt ainsi établi ne peut excéder 10% du montant des intérêts.

3 Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunt, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et des créances de toute nature, ainsi que tous autres produits assimilés aux revenus de sommes prêtées par la législation fiscale de l'Etat contractant d'où proviennent les revenus, ainsi que les annuités versées en vertu d'un contrat passé avec une compagnie d'assurances ou d'un autre contrat analogue.

4 Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un Etat contractant, a, dans l'autre Etat contractant d'où proviennent les intérêts, un établissement stable auquel se rattache effectivement la créance génératrice des intérêts. Dans ce cas, l'article 7 concernant l'imputation des bénéfices aux établissements stables est applicable.

5 Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le dé-

biteur est cet Etat lui-même, une collectivité locale ou un résident de cet Etat contractant. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel l'emprunt (autre que celui exposé dans le cadre de l'achat de navires ou d'aéronefs) générateur des intérêts a été contracté et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat contractant où l'établissement stable est situé.

6 Si, par suite des relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec une tierce personne, le montant des intérêts payés, compte tenu de la créance pour laquelle ils sont versés, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des paiements reste imposable conformément à la législation de chaque Etat contractant et compte tenu des autres dispositions de la présente convention.

ARTICLE 13

1 Les redevances provenant d'un Etat contractant et payées à un résident de l'autre Etat contractant sont imposables dans cet autre Etat contractant.

2 Toutefois, ces redevances peuvent être imposées dans l'Etat contractant d'où elles proviennent et selon la législation de cet Etat contractant, mais l'impôt ainsi établi ne peut excéder 10% du montant brut des redevances.

3 Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle d'un plan, d'une formule ou d'un procédé secrets, ainsi que pour l'usage ou la concession de l'usage d'un équipement industriel, commercial ou scientifique ou pour des informations concernant l'expérience acquise dans les domaines industriel, commercial ou scientifique, ainsi que les revenus provenant de l'affrètement coque nue d'un navire ou d'un aéronef.

4 Les dispositions des paragraphes 1 et 2 s'appliqueront également aux profits réalisés dans un Etat contractant en raison de l'aliénation d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets, ou de la cession du droit à l'usage d'un tel bien, ainsi que des informations concernant l'expérience acquise dans les domaines industriel, commercial ou scientifique et versés à un résident de l'autre Etat contractant.

5 Les dispositions des paragraphes 1, 2, et 4 ne s'appliquent pas lorsque le bénéficiaire des redevances ou profits, résident d'un Etat contractant, a, dans l'autre Etat contractant d'où proviennent les redevances ou profits, un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances ou profits. Dans ce cas, l'article 7 concernant l'imputation des bénéfices aux établissements stables est applicable.

6 Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec une tierce personne, le montant des redevances ou profits payés, compte tenu de la prestation pour laquelle ils sont versés, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions

du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des paiements reste imposable conformément à la législation de chaque Etat contractant et compte tenu des autres dispositions de la présente convention.

ARTICLE 14

1 Les profits provenant de l'aliénation d'un bien autre que ceux visés au paragraphe 3 de l'article 5 et au paragraphe 4 de l'article 13 ne sont imposables que dans l'Etat contractant dont le cédant est un résident.

2 Nonobstant les dispositions du paragraphe 1:

a les profits provenant de l'aliénation d'un établissement stable ou d'une base fixe situés dans un Etat contractant ou de l'aliénation de biens en capital (à l'exclusion des navires ou aéronefs) qui se rattachent audit établissement stable ou à ladite base fixe sont imposables dans cet Etat contractant;

b les profits que tire un résident d'un Etat contractant de l'aliénation de biens mobiliers dans l'autre Etat contractant au cours de son séjour dans cet autre Etat contractant sont imposables dans cet autre Etat contractant;

c les profits que tire un résident d'un Etat contractant de l'aliénation d'actions d'une société qui est un résident de l'autre Etat contractant (autres que celles qui se rattachent à un établissement stable ou une base fixe situés dans cet autre Etat contractant) sont imposables dans cet autre Etat contractant, si:

i) les actions qui sont détenues ou possédées par le cédant (y compris les actions qui sont détenues ou possédées par d'autres personnes apparentées et qui peuvent être ajoutées à celles du cédant) représentent 25% au moins du capital global de ladite société pendant une période quelconque au cours de l'année d'imposition et

ii) le montant global des actions aliénées par le cédant et lesdites personnes apparentées au cours de cette année d'imposition s'élève à 5% au moins du capital global de la société,

étant entendu que l'impôt ainsi perçu pour le compte de l'Etat n'excédera pas 25% du montant de ces profits.

ARTICLE 15

1 Les revenus qu'un résident d'un Etat contractant retire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat contractant, à moins que ce résident ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base fixe, les revenus sont imposables dans l'autre Etat contractant mais uniquement dans la mesure où ils sont imputables à ladite base fixe.

2 L'expression «professions libérales» comprend notamment les activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique ainsi que les activités indépendantes des médecins, avocats, ingénieurs, architectes, dentistes et comptables.

ARTICLE 16

1 Sous réserve des dispositions de l'article 17 et des articles 19 à 22, les salaires, traite-

ments et autres rémunérations similaires qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat contractant, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.

2 Nonobstant les dispositions du paragraphe 1, les rémunérations qu'un résident d'un Etat contractant recoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat contractant si:

a le bénéficiaire séjourne dans l'autre Etat contractant pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année civile considérée.

b les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de l'autre Etat contractant et

c la charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat contractant.

3 Nonobstant les dispositions précédentes du présent article, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef en trafic international, sont imposables dans l'Etat contractant dont l'employeur est résident.

ARTICLE 17

Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident d'un Etat contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est un résident de l'autre Etat contractant sont imposables dans cet autre Etat contractant.

ARTICLE 18

Nonobstant les dispositions des articles 15 et 16, les revenus que les professionnels de spectacle, tels les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité sont imposables dans l'Etat contractant où ces activités sont excercées.

ARTICLE 19

Sous réserve des dispositions des paragraphes 1 et 3 de l'article 20, les pensions et autres rémunérations similaires, versées à un résident d'un Etat contractant au titre d'un emploi antérieur, ne sont imposables que dans cet Etat contractant.

ARTICLE 20

1 Les rémunérations, y compris les pensions, versées par un Etat contractant ou une des collectivités locales, soit directement, soit par prélèvement sur des fonds auxquels ils ont contribué, à une personne physique qui est un ressortissant de cet Etat contractant, au titre de services rendus à cet Etat ou à cette collectivité dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet Etat contractant.

2 Les dispositions du paragraphe 1 ne sont pas applicables aux rémunérations ou pensions versées en considération de services rendus dans le cadre d'une activité industrielle ou commerciale exercée à des fins lucratives.

3 Les paiements effectués en vertu d'un système légal d'assurances sociales dans un Etat contractant sont imposables dans cet Etat contractant.

ARTICLE 21

1 Les sommes qu'un étudiant ou un stagiaire qui était auparavant un résident d'un Etat contractant et qui séjourne dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles ne soient pas supportées par un établissement stable situé dans cet autre Etat contractant ou par une organisation de cet autre Etat.

2 Une personne physique d'un Etat contractant qui est temporairement présente dans l'autre Etat contractant pour une période qui ne dépasse pas deux ans en tant que bénéficiaire d'une bourse ou allocation ayant pour objet principal de lui permettre de faire des études ou des recherches et qui lui est versée par une organisation gouvernementale, religieuse, charitable, scientifique, littéraire ou éducative est exemptée d'impôt dans cet autre Etat contractant sur le montant de cette bourse ou allocation.

3 Une personne physique d'un Etat contractant qui est employée d'une entreprise — ou sous contrat avec une entreprise — de cet Etat contractant ou de toute autre organisation de cet Etat contractant visée au paragraphe 2 et qui est temporairement présente dans l'autre Etat contractant pour une période n'excédant pas un an uniquement pour acquérir une expérience technique, professionnelle ou commerciale auprès d'une personne autre que cette entreprise ou organisation est exemptée d'impôt dans cet autre Etat contractant sur les sommes provenant du premier Etat contractant et destinées à subvenir à ses besoins.

ARTICLE 22

Un professeur ou un instituteur d'un Etat contractant qui se rend temporairement dans l'autre Etat contractant, pendant une période ne dépassant pas deux ans, en vue d'y enseigner dans une université, un collège, une école ou autre établissement d'enseignement n'est imposable que dans le premier Etat contractant pour la rémunération qu'il perçoit du chef de son enseignement.

ARTICLE 23

Les éléments du revenu d'un résident d'un Etat contractant qui ne sont pas expressément mentionnés dans les articles précédents de la présente convention ne sont imposables que dans cet Etat contractant.

ARTICLE 24

1 *a* Lorsqu'un contribuable résident de France perçoit des revenus du Japon et que ces revenus, conformément aux dispositions de la présente convention, sont imposables au Japon, la France, sous réserve des dispositions de l'alinéa *b*), exempte ces revenus de son impôt. Toutefois, les impôts français peuvent être calculés sur les revenus imposables en France en vertu de la présente convention, au taux correspondant à l'ensemble des revenus imposables d'après la législation fiscale française.

b Lorsqu'un contribuable résident de France perçoit des revenus du Japon et que ces revenus, en vertu des dispositions des articles 11, 12 et 13, ainsi que du paragraphe 2 c) de l'article 14, sont imposables au Japon, la France peut comprendre ces revenus dans la base d'imposition mais doit déduire de l'impôt frappant les revenus de ce contribuable un montant égal à l'impôt acquitté au Japon. Toutefois, cette déduction ne peut excéder la fraction de l'impôt français, calculé avant application de la déduction, qui est afférente aux revenus provenant du Japon

c dans les alinéas *a*) et *b*), l'expression «contribuable résident de France» désigne toute personne physique qui est considérée comme résident de France pour l'application de l'impôt français et toute personne morale ou toute entité regardée comme une personne morale aux fins d'imposition qui est dirigée et contrôlée en France.

2 *a* Le Japon, pour le calcul de l'impôt applicable à un contribuable résident du Japon, peut, nonobstant toute autre disposition de la présente convention, comprendre dans la base d'imposition toutes les catégories de revenus imposables en vertu de la législation japonaise. La disposition qui précède ne peut être interprétée comme s'opposant à l'application des dispositions du paragraphe 1 de l'article 20 et des articles 21 et 22.

b Lorsqu'un contribuable résident du Japon perçoit des revenus de France et que ces revenus, en vertu des dispositions de la présente convention, sont imposables en France, un montant égal à l'impôt français exigible est admis en déduction de l'impôt japonais dû sur les revenus de ce contribuable résident, sous réserve des dispositions de la législation japonaise. Toutefois, cette déduction ne peut excéder la fraction de l'impôt japonais, calculé avant application de la déduction, qui est afférente aux revenus provenant de France.

c Dans les alinéas *a*) et *b*), l'expression «contribuable résident du Japon» désigne toute personne physique qui est considérée comme résident du Japon pour l'application de l'impôt japonais et toute personne juridique (y compris toute organisation n'ayant pas la personnalité juridique considérée comme une personne morale pour l'application de l'impôt japonais) qui a son siège social au Japon.

ARTICLE 25

1 Les nationaux d'un Etat contractant ne sont soumis dans l'autre Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

2 Dans le présent article, le terme «nationaux» désigne:

a dans le cas de la France, toutes les personnes physiques qui possèdent la nationalité française et toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur en France;

b dans le cas du Japon, toutes les personnes physiques qui possèdent la nationalité japonaise et toutes les sociétés ou autres catégories de personnes juridiques créées ou organisées conformément à la législation japonaise et toutes les organisations n'ayant pas la personnalité juridique qui sont considérées, pour l'application de l'impôt japonais, comme des personnes morales créées ou organisées conformément à la législation japonaise.

3 L'imposition d'un établissement stable qu'une entreprise d'un Etat contractant a dans

l'autre Etat contractant n'est pas établie dans cet autre Etat d'une façon moins favorable que l'imposition des entreprises de cet autre Etat contractant qui exercent la même activité.

4 Les entreprises d'un Etat contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat contractant, ne sont soumises dans le premier Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat contractant.

5 Le terme «imposition» désigne dans le présent article les impôts de toute nature et dénomination.

6 Les dispositions du présent article ne peuvent être interprétées:

a comme obligeant un Etat contractant à accorder aux résidents de l'autre Etat contractant les déductions personnelles, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents; ou

b comme affectant les dispositions de la loi japonaise en vertu desquelles les bénéfices distribués sont, en ce qui concerne les sociétés japonaises, imposés à un taux moins élevé que les bénéfices non distribués.

ARTICLE 26

Les dispositions de la présente convention ne peuvent pas être interprétées comme limitant d'une manière quelconque tous exonération, abattement, déduction, crédit ou autre réduction qui sont ou qui pourront être accordés par la législation de l'un des Etats contractants pour le calcul de l'impôt de cet Etat contractant.

ARTICLE 27

1 Lorsqu'un résident d'un Etat contractant estime que les mesures prises dans l'autre Etat contractant entraînent ou entraîneront pour lui une imposition non conforme à la présente convention, il peut, indépendamment des recours prévus par la législation nationale de ces Etats contractants, soumettre son cas aux autorités fiscales nationales de l'Etat contractant dont il est résident.

2 Ces autorités fiscales nationales consulteront, si la réclamation leur paraît fondée et si elles ne sont pas elles-mêmes en mesure d'apporter une solution satisfaisante, les autorités fiscales nationales de l'autre Etat contractant en vue d'éviter une imposition non conforme à la convention.

3 Les autorités fiscales nationales des Etats contractants peuvent communiquer directement entre elles en vue de donner leur plein effet aux dispositions de la convention et de résoudre les difficultés concernant l'application de ladite convention.

ARTICLE 28

Les dispositions de la présente convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

ARTICLE 29

1 La présente convention pourra être étendue, telle quelle ou avec les modifications nécessaires, aux Territoires d'outre-mer de la République française qui perçoivent des impôts de caractère analogue à ceux auxquels s'applique ladite convention. Une telle extension prendra effet à partir de la date, avec les modifications et dans les conditions, y compris les conditions relatives à la cessation d'application, qui seront fixées d'un commun accord entre les Etats contractants par échange de notes diplomatiques ou selon toute autre procédure conforme aux dispositions constitutionnelles de ces Etats.

2 A moins que les Etats contractants n'en soient convenus autrement, la dénonciation par un Etat contractant de la présente convention en vertu de l'article 31 mettra fin à l'application de ladite convention à tout territoire auquel elle aura été étendue conformément au présent article.

ARTICLE 30

1 La présente convention sera approuvée conformément aux dispositions constitutionnelles en vigueur dans chacun de deux Etats. Elle entrera en vigueur un mois après la date de l'échange des notifications constatant que, de part et d'autre, il a été satisfait à ces dispositions.

2 La présente convention sera applicable:

a en France:

(i) en ce qui concerne les impôts perçus par voie de retenue à la source sur les dividendes, intérêts en redevances, visés aux articles 11, 12 et 13 aux produits dont la mise en paiement interviendra à compter de la date de son entrée en vigueur, et

(ii) en ce qui concerne les autres impôts, aux revenus afférents à l'année civile au cours de laquelle interviendra l'échange des notifications ou aux exercices clos au cours de ladite année et aux revenus afférents aux années ou aux exercices postérieurs.

b au Japon:

aux revenus afférents à toute année d'imposition commençant à partir du premier janvier de l'année civile au cours de laquelle la présente convention entrera en vigueur.

ARTICLE 31

La présente convention restera en vigueur aussi longtemps qu'elle n'aura pas été dénoncée par un Etat contractant. Chaque Etat contractant pourra dénoncer ladite convention, après une période de cinq ans à compter de la date de son entrée en vigueur, en notifiant son intention d'y mettre fin six mois avant la fin de toute année civile. Dans ce cas, la convention cessera de s'appliquer:

a en France:

(i) en ce qui concerne les impôts perçus par voie de retenue à la source sur les dividendes, intérêts et redevances visés aux articles 11, 12 et 13, aux produits dont la mise en paiement interviendra à compter du premier janvier de l'année civile suivant celle au cours de laquelle la dénonciation aura été notifiée, et

(ii) en ce qui concerne les autres impôts, aux revenus afférents à ladite année civile ou aux exercices clos au cours de ladite année civile et aux revenus afférents aux années ou aux exercices postérieurs;

b au Japon:

aux revenus afférents à toute année d'imposition commençant à compter dudit premier janvier.

En foi de quoi, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé la présente convention.

Fait à Paris, le vingt-sept novembere mil neuf cent soixante quatre, en double exemplaire, en langues française et japonaise, les deux textes faisant également foi.

Pour le Gouvernement de la Republique française,

Signé: F. LEDUC.

Pour le Gouvernement du Japon,

Signé: TORU HAGUIWARA.

PROTOCOLE ADDITIONNEL

Au moment de procéder à la signature de la convention entre le Gouvernement de la République française et le Gouvernement du Japon tendant à éviter les doubles impositions en matière d'impôts sur le revenu, les soussignés sont convenus des dispositions suivantes qui forment partie intégrante de la convention.

I

1 Les dispositions du paragraphe 2 de l'article 11, du paragraphe 2 de l'article 12 et des paragraphes 2 et 4 de l'article 13 de la convention s'appliquent dans chacun des Etats contractants par voie de non-perception de la fraction de l'impôt excédant le taux limite de 15% ou de 10% prévu par lesdits articles, lorsque le bénéficiaire des revenus visés par ces articles est un résident de l'autre Etat au sens de l'article 3 de la convention.

2 Les membres de la mission diplomatique et les membres des postes consulaires d'un Etat contractant, qui résident dans l'autre Etat contractant ou dans un Etat tiers et possèdent la nationalité de l'Etat d'envoi, sont considérés comme résidents de ce dernier Etat s'ils y sont astreints au paiement d'impôts sur le revenu visés à l'alinéa 1 ci-dessus.

3 Par dérogation à l'alinéa 1 ci-dessus, les organisations internationales, leurs organes et leurs fonctionnaires, ainsi que les membres de la mission diplomatique et les membres des postes consulaires d'un Etat autre que les Etats contractants qui sont des résidents d'un Etat contractant et y sont exonérés des impôts sur le revenu visés à l'alinéa 1 ci-dessus ne peuvent bénéficier dans l'autre Etat contractant de l'application des taux réduits prévus au paragraphe 2 de l'article 11, au paragraphe 2 de l'article 12 et aux paragraphes 2 et 4 de l'article 13 de la convention.

II

1 En vue d'obtenir la réduction aux taux de 15% ou de 10% de l'impôt japonais retenu à la source sur les revenus visés aux articles 11, 12 et 13 de la convention, le bénéficiaire de ces revenus qui est fondé à obtenir cette réduction devra envoyer, par l'intermédiaire du débiteur desdits revenus et avant leur paiement, une demande écrite au bureau des im-

pôts nationaux japonais compétent. Cette demande devra être établie en conformité avec les règles qui pourraient être fixées par l'autorité fiscale nationale du Japon.

2 S'il est constaté que le véritable bénéficiaire de revenus a bénéficié à tort du tarif réduit visé à l'alinéa 1 ci-dessus, l'administration fiscale française transmettra à l'autorité fiscale du Japon un bulletin de renseignements contenant les éléments nécessaires au redressement de la perception.

III

1 En vue d'obtenir la réduction de 15% ou de 10% de l'impôt français retenu à la source sur les revenus visés aux articles 11 et 12 de la convention, l'ayant droit ayant la qualité de résident du Japon doit adresser avant l'encaissement des revenus imposables ou, au plus tard, lors de cet encaissement, une demande écrite au débiteur desdits revenus ou à l'établissement chargé par ce dernier du service de ses titres.

2 La demande doit indiquer avec précision les titres et revenus en cause et ne peut se rapporter qu'à des revenus de même nature (dividendes ou intérêts) distribués par un seul et même débiteur résident de France.

La demande doit être établie en deux exemplaires sur un imprimé spécial mis à la disposition des usagers par l'autorité fiscale nationale du Japon.

3 Sur cet imprimé, le requérant ou son représentant éventuel (établissement de banque, notamment) déclare que le bénéficiaire des revenus est un résident du Japon au sens de l'article 3 de la convention et remet les deux exemplaires de la demande au bureau des impôts nationaux du Japon qui a compétence sur le lieu de la résidence ou du siège social du bénéficiaire.

4 Ce bureau vérifie et atteste sur la demande que le bénéficiaire des revenus a la qualité de résident du Japon pour l'application de l'impôt japonais. Il conserve un des exemplaires de l'imprimé et rend l'autre au requérant.

5 La remise de la demande de dégrèvement au débiteur des revenus résident de France ou à l'établissement chargé du service de ses titres entraîne pour lui l'obligation de payer l'intégralité des revenus sous la seule déduction de l'impôt français retenu à la source au taux de 15% sur les dividendes ou de 10% sur les intérêts, en se conformant, le cas échéant, aux prescriptions de la réglementation des changes.

6 Lorsque la retenue a été appliquée au taux réduit prévu par la convention, le débiteur des revenus résident de France transmet la demande de dégrèvement, dans le délai et selon les modalités fixées par l'administration fiscale française, au bureau des impôts dont il relève pour la perception de la retenue à la source sur le revenu des capitaux mobiliers.

Fait à Paris, le vingt-sept novembre mil neuf cent soixante quatre, en double exemplaire, en langues française et japonaise, les deux textes faisant également foi.

Pour le Gouvernement de la Republique française,

Signé: F. LEDUC.

Pour le Gouvernement du Japon,

Signé: TORU HAGUIWARA.

PROJET DE LOI

(No. 1436)

AUTORISANT L'APPROBATION DE LA CONVENTION, SIGNÉE A PARIS LE 27 NOVEMBRE 1964, ENTRE LE GOUVERNEMENT DE LA REPUBLIQUE FRANCAISE ET LE GOUVERNEMENT DU JAPON TENDANT À ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU,

(Annexe au procès-verbal de la séance du 10 juin 1965)

EXPOSÉ DES MOTIFS

MESDAMES, MESSIEURS,

En 1958, le Gouvernement japonais, soucieux de développer ses relations économiques avec les Etats européens, s'était montré disposé à conclure une Convention fiscale avec la France; la perspective d'une réforme fiscale française n'avait pas permis de donner immédiatement suite à ce projet.

Depuis lors, l'absence d'une Convention fiscale franco-japonaise a été vivement regrettée par d'importantes entreprises françaises qui ont, à plusieurs reprises, appelé l'attention sur les difficultés qu'elles éprouvaient pour s'implanter sur le marché japonais et sur la situation désavantageuse dans laquelle elles se trouvaient, du fait de la superposition des impôts français et japonais, par rapport à leurs concurrents étrangers appartenant à des pays ayant conclu des conventions fiscales avec le Japon.

Aussi, des négociations ont-elles été engagées à l'effet de combler cette lacune dans le réseau français des conventions fiscales. Elles ont abouti à la signature, le 27 novembre 1964 à Paris, de l'accord qui est soumis à votre approbation.

Cette Convention comprend des clauses destinées à éviter les doubles impositions pour chacune des différentes catégories de revenus. Y figurent également divers articles plus généraux visant notamment à protéger les contribuables. Ainsi, les articles 25 et 26 posent en principe que les nationaux de l'un des deux Etats ne peuvent être soumis, dans l'autre Etat, à un traitement fiscal discriminatoire; il s'ensuit notamment qu'ils y bénéficient des mesures de faveur accordées pour charges de famille.

Les dispositions essentielles de l'accord sont analysées ci-après:

L'article premier précise la portée de la Convention quant aux personnes. L'article 2 énonce les impôts visés par la Convention, à savoir pour la France, l'impôt sur le revenu des personnes physiques, la taxe complémentaire et l'impôt sur les bénéfices des sociétés et autres personnes morales. Les articles 3 et 4 définissent la portée territorial de l'accord ainsi que divers termes fréquemment utilisés dans la suite des articles.

Les articles 5 à 24 posent les règles suivant lesquelles la matière imposable sera répartie entre les deux Etats et énoncent les méthodes qui seront employées pour que la double imposition soit effectivement évitée.

Ainsi la taxation des revenus des biens immobiliers, tels qu'ils sont définis à l'article 5, est réservée à l'Etat où ces biens sont situés.

De même, les bénéfices des exploitations agricoles ou forestières sont imposables dans l'Etat où sont situées les dites exploitations (art. 6).

Les bénéfices industriels et commerciaux ne peuvent être imposés que dans l'Etat où l'entreprise possède un établissement stable et dans la mesure où ces bénéfices sont imputables à cet établissement (art. 7). Mais, par dérogation, les revenus qu'une entreprise de l'un des Etats retire de l'exploitation de navires ou d'aéronefs ne sont imposables que dans cet Etat (art. 8), cette clause se borne à confirmer la situation résultant déjà d'un accord particulier en date du 21 décembre 1962, qui cessera d'ailleurs de s'appliquer

lors de l'entrée en vigueur de la Convention. L'article 9 règle le cas des transferts déguisés de bénéfices entre entreprises dépendantes.

L'article 10 laisse à la France le droit d'appliquer sa retenue à la source aux bénéfices distribués par les sociétés japonaises qui possèdent en France un établissement stable. Toutefois, il est convenu que la fraction des distributions passible de la retenue ne peut excéder le montant des bénéfices réalisés par l'établissement stable.

Les dividendes sont imposables, en principe, dans l'Etat dont le bénéficiaire est le résident. Mais l'Etat dont la société qui distribue les dividendes est résidente conserve le droit de les imposer, sans que cette imposition puisse excéder 15 % du montant brut de ces produits (art. 11)..

D'un façon analogue, les intérêts de fonds d'Etat, d'obligations négociables et de toutes autres créances sont imposables dans l'Etat dont le bénéficiaire de ces produits est le résident, mais l'Etat contractant d'où proviennent ces revenus peut également les imposer dans la limite d'un taux correspondant à 10 % de leur montant (art. 12).

Les modalités pratiques d'application des dispositions des articles 11 et 12 prévoyant la réduction du taux de l'impôt prélevé par l'Etat de la source des revenus ont été fixées dans un protocole additionnel signé en même temps que la Convention et dont il fait partie intégrante.

De plus, selon les prévisions de l'article 24, l'impôt ainsi prélevé sur les dividendes et les intérêts par l'Etat de la source de ces produits constitue un crédit à valoir sur l'impôt dû par le bénéficiaire, au titre des mêmes revenus, dans le pays où il réside.

Toutefois, ces dispositions ne s'appliquent pas lorsque le bénéficiaire des dividendes ou des intérêts a dans l'autre Etat contractant un établissement stable auquel se rattache la participation génératrice des dividendes ou l'emprunt producteur de ces intérêts. Dans ce cas les dividendes ou intérêts sont imposés avec les bénéfices de l'établissement stable.

Les redevances sont, en principe, imposables dans l'Etat où réside celui qui les perçoit. Toutefois, l'Etat de la source conserve le droit d'appliquer son impôt au taux maximal de 10 % (art. 13). S'il est fait usage de ce droit, il est accordé au bénéficiaire de la redevance un crédit d'impôt correspondant au montant de l'impôt prélevé dans l'autre pays (art. 24, 1, b).

Les profits provenant de l'aliénation d'un bien ne sont, en principe, imposables que dans l'Etat dont le cédant est résident, sous réserve d'un certain nombre de règles spéciales qui concernent notamment les biens immobiliers, les biens dépendant d'un établissement stable, les actions de sociétés (art. 14).

Les revenus des professions libérales et autres activités indépendantes ne peuvent être taxés que par l'Etat sur le territoire duquel réside le bénéficiaire. Toutefois, si ce dernier dispose d'une base fixe dans l'autre Etat, celui-ci peut imposer la partie des revenus qui est imputable à cette base (art. 15).

Les salaires de source privée sont, sous réserve de dispositions particulières qui concernent le cas de la mission temporaire et le sort du personnel navigant des entreprises de navigation maritime et aérienne, imposables dans l'Etat de résidence à moins que l'emploi salarié ne soit exercé dans l'autre Etat; dans cette dernière hypothèse, l'impôt est prélevé par cet autre Etat (art. 16).

Cependant, les traitements et pensions versés par un Etat contractant ou l'une de ses collectivités locales à un ressortissant dudit Etat ne sont, en principe, imposables que dans celui-ci (art. 20).

Quant aux pensions d'origine privée, elles sont imposables dans l'Etat de résidence du bénéficiaire (art. 19).

Les tantièmes et jetons de présence perçus en qualité de membre de conseil d'administration ou de surveillance d'une société sont imposables dans l'Etat de la source (art. 17).

Les professionnels du spectacle ainsi que les sportifs sont, pour leurs activités personnelles, imposables dans l'Etat où ils exercent ces activités (art. 18).

Les étudiants et les stagiaires de l'un des Etats qui séjournent dans l'autre Etat ne sont pas, en principe, imposés dans ce dernier Etat pour les sommes qui sont destinées à couvrir leurs frais d'entretien, d'études ou de formation (art. 21). Une exemption d'impôt dans l'Etat du séjour temporaire est également prévue en faveur des bénéficiaires d'une bourse d'études ou de recherche ainsi que pour les personnes qui suivent un stage de formation technique, professionnelle ou commerciale. Quant aux membres du corps enseignant de l'un des Etats qui exercent leur activité dans un établissement d'enseignement de l'autre Etat pendant une période de résidence qui n'excède pas deux ans, il ne sont imposables, au titre de cette activité, que dans le premier Etat (art. 22).

Enfin, les revenus non spécialement visés par les dispositions conventionnelles analysées ci-dessus —

telles les rentes viagères — ne sont imposables que dans l'Etat de résidence du bénéficiaire (art. 23).

La double imposition est évitée, du côté français, par application des règles qui viennent d'être précisées. Les impôts français sont calculés au taux correspondant à l'ensemble des revenus imposables d'après la législation française afin que l'exonération de certains revenus n'aboutisse pas, le cas échéant, à priver le Trésor français du bénéfice de la progression de l'impôt (art. 24, 1).

L'article 27 institue, au profit des redevables, des recours pour éviter des impositions non conformes aux dispositions conventionnelles.

La Convention pourra être étendue aux territoires d'outre-mer de la République française (art. 29).

Enfin, l'accord doit entrer en vigueur un mois après l'échange des notifications constatant l'accomplissement des procédures constitutionnellement requises dans chacun des deux Etats (art. 30). Toutefois, à l'issue des cinq premières années d'application, chaque Etat pourra le dénoncer moyennant un préavis de six mois (art. 31).

La Convention dont les dispositions viennent d'être analysées, est de nature à encourager, d'une façon sensible, les relations entre la France et le Japon en facilitant la circulation des personnes et des capitaux. Elle permettra aux entreprises françaises de poursuivre, avec efficacité, leur pénétration sur le marché japonais et, plus généralement, en Extrême-Orient. Dans le cadre de l'action actuellement entreprise pour resserrer les liens qui, sur le plan économique, unissent la France et les pays d'Asie, l'existence de cet accord apportera une utile contribution. Il serait donc souhaitable qu'il soit approuvé et puisse entrer en vigueur aussi rapidement que possible.

IV

BIBLIOGRAPHY

1. BOOKS

CEYLON

A SUPPLEMENT TO ASIAN TAXATION 1964 by *Japan Tax Association,* Tokyo, Japan. February 1965, 17 pp.

This additional chapter to Asian Taxation 1964 pertains to the taxation on income and net worth with respect to individuals and corporations, either resident or non-resident, for the assessment years 1963/64 and 1964/65, the chapter does not include the net worth tax rates 1964/65 as modified by the Inland Revenu (Amendment) Act (No. 12 of 1964) applicable to individuals and non-resident companies having immovables in Ceylon. See Tax News Service II - 2(1965). A summary of the taxation of gifts is given.
The basic work has been reviewed in Bulletin, July issue 1965, p. 308.

COMMON MARKET

WIRKUNGEN EINES KURZFRISTIGEN ABBAUS DER STEUERGRENZEN IN DER EWG UNTER DEN ZUR ZEIT GEGEBENEN STEUERLICHEN BEDINGUNGEN, Schriftenreihe der Wirtschaftsvereinigung Eisen- und Stahlindustrie zur Wirtschafts- und Industriepolitik, Heft 6, by *Senf, P.,* Düsseldorf Verlag Stahleisen m.b.H., 1964, 82 pp., DM 8.20.

The sixth brochure of a series on turnover tax harmonization in the Common Market. This booklet emphasizes the possible methods and stages for the abolition of turnover tax frontiers between the Common Market countries. Both the principles of turnover levy in the country of source and in the country of consumption are discussed. The author favours the former principle and he considers the actual breaking of turnover tax frontiers from that point of view.

GERMANY

KÖRPERSCHAFTSTEUERGESETZ MIT DURCHFÜHRUNGSVERORDNUNGEN, NEBENGESETZEN UND VERWALTUNGSANWEISUNGEN, by *Blümich, W., O. Klein, W. Steinbring, H. Stutz,* Berlin, Verlag Franz Vahlen GmbH, Willdenowstr. 6, 1965, fourth edition, 1454 pp., DM 114.

The third edition of this well known handbook on corporate taxation, begun by the late W. Blümich and O. Klein, was published in 1956. Since then there have been many developments in statutory and case law, including the Income Tax Amendment 1965 (see 5 Eur. Tax. 7 (1965)). This fourth edition of this perspicuous reliable commentary has been completely revised and brought up to date to March 1, 1965.

INDIA

CURRENT INDIAN INCOME-TAX ACT, Volume III, third edition, 1965. by *Janeshwar Dass Jain* and *Parmeshwar Dass Jain*; published by the Law Literature House, 2646, Ballimaran, Delhi; printed at the Lucky Press, Delhi; 1728 pp.

This publication of the current Indian Income-tax Act consists of three volumes. Volumes I and II deal with the Income-tax Rules 1962, with Notifications and Orders. Volume III pertains to the Indian Income-tax Act of 1961, as amanded up to the Finance Act 1964. An extract of the Finance Act 1964 (5 of 1964) and the Direct Taxes (Amendment) Act 1964 (31 of 1964) is appended making the treatise up to date for practical use. The authors, both advocates and members of the Supreme Court of India, discuss the Income Tax Act of 1961 in all its aspects, with relevant updated case law and exhaustive commentary.

ISRAEL

ISRAEL INCOME TAX LAW, Series: Business Diary Tariffs and Fees, amendment No. 76; Israel Business Books, Ltd.; 1965, 55 pp. Subscription fee for Business Diary Tariffs and Fees I £ 50 per annum, including one year's amendments, renewal fee I £ 35.

An up-to-date unofficial translation of the Israel Income Tax legislation, including, *inter alia,* the recently enacted amendments introducing a capital gains tax.

ESTATE DUTY LAW 5709—1949; Series: Business Diary Tariffs and Fees, amendment No. 73; Israel Business Books, Ltd., Haifa; 1964 10 pp.

Price: Subscription fee for Business Diary Tariffs and Fees I £ 50 per annum, including one year's amendments, renewal fee I £ 35.

NETHERLANDS

BEDRIJFSOPVOLGING IN DE MIDDENSTAND, Series: "Recht en Praktijk No. 1, by *Dijk P.L.* and others; printer: AE.E. Kluwer, Deventer, Antwerpen; 1964, 127 pp.

Survey of most important aspects of the transfer of a business to children or third parties and the consequences of the various ways in which a transfer can be accomplished.

KLUWER'S ZAKBOEK SOCIALE VERZEKERING by *Veraart J.J.M.* and others, Printed by AE. E. Kluwer, Deventer; loose-leaf.

A loose-leaf service containing the major aspects of social security legislation in the Netherlands.

ZEGELWET 1917, Nederlandse Staatswetten, Editie Schuurman & Jordens, by *de Vogel, J.H.*, Zwolle, W.E.J. Tjeenk Willink, 17th edition, 1964, 308 pp., Dfl. 3.25.

A new edition of the Netherlands Stamp Duties Act, containing the text of the Act plus annotations.

BELASTINGWETGEVING, Editie Cremers, by *van Vucht, J.C.J.*, Arnhem, S. Gouda Quint – D. Brouwer & Zn., 1965, loose-leaf, Dfl. 12.90, plus supplements.

The "Editie Cremers", the well-known series of Netherlands Acts with annotations, which includes, *inter alia*, the Civil and Penal Law Codes as well as many other important Acts, has now been extended by a new volume on Tax Legislation, in loose-leaf form. The new volume incorporates the new Income Tax Act, 1964, fully annotated, and will be kept up-to-date through regular supplements.

PHILIPPINES

6th ANNUAL REPORT 1964, Manila, Joint Legislative-Executive Tax Commission, 1965, 88 pp.

This annual report includes discussions of the proposed tax code, local finance in Manila, some fiscal aspects of the Laurel-Langley Agreement, tax conventions and current developments in tariff revision. Three appendices include the Republic Act No. 2211, the First Annual Report, and Tax Laws Enacted in 1964.

A STUDY OF TAX BURDEN BY INCOME CLASS IN THE PHILIPPINES, Manila, Joint Legislative-Executive Tax Commission, 1964, 122 pp.

A study of the nature and history of Philippine taxes, the apportionment of the tax burden by types of taxes, and patterns of tax payments, household income and expenditures. Many charts and tables are included. Among the conclusions of this study are that the bulk of the Government's tax revenue is derived from taxes on production and sale, and that, of the 57 different types of taxes, only 10 might be considered as major sources of revenue.

SOUTH AFRICA

1964 SUPPLEMENT TO SILKE ON SOUTH AFRICAN INCOME TAX, by *Silke, A. S.*, Cape Town, Juta and Company, Limited, 1964, 57 pp.

The first part of this supplement contains a commentary on the Income Tax Act 1964. The second provides a service to the main volume, Silke on South African Income Tax 1963, and brings the book up to date in relation to the new amendments, recent court decisions and new departmental practices.

UNITED KINGDOM

THE ACCOUNTANT, THE TAXPAYER, AND THE REVENUE by *Hames, Jack H.*, St. Albans, Herts, The Fiscal Press, third edition, 1965, 69 pp., Sh. 35.

A practical guide for the professional accountant who, as point of communication between his clients and the Revenue, often finds himself in a delicate position.

U.S.A.

PRACTICAL PROBLEMS IN TAXATION OF FOREIGN OPERATIONS, New York, The Journal of Taxation, Inc., 1965, pp. 218, $ 15.

Eleven papers from a symposium held June 1964 by the Institute of US Taxation of Foreign Income, Inc. on how to deal with the practical problems created by the rules governing US taxation of business operations abroad, arranged and edited by the Technical Staff of the Journal of Taxation. Each chapter reflects the state of the law as of March 10, 1965.

CUMULATIVE INDEX 1965

January – July

IFA members in overwhelming numbers participated in the recently concluded 19th Congress in London. Anglophiles, the ranks of which will be swollen by many Congress participants, may echo the words of Dr. Johnson: "When a man is tired of London, he is tired of life, for there is in London all that life can afford".

U.K. tax advisers, including Welshmen, seemingly feel, at least as evidenced by the Congress seminar on British taxation, that the new capital gains and corporation taxes are indeed "all that life can afford".

Others may feel that the Royal Assent to these taxes having been given, there remains less a question of "to be or not to be", than of how to make do. We hope to publish in the near future some critical remarks on the new British tax system.

In the current issue we publish in the original German text the new tax treaty between Sweden and Switzerland. This treaty and especially the remarkable article 25(2) will abruptly ground tax flights to Switzerland by Swedish taxpayers. One may expect to hear some of the "disgruntled mutterings" that the closing of tax loopholes occasion.

A survey of the treaty will be published in English in a coming issue of European Taxation in addition to an English translation of the treaty in Supplementary Service.

Finally, we draw your attention to the German document, published on page 364. The German "Länder" have agreed to a common Ordinance providing control measures to prevent tax avoidance resulting from the transfer by German enterprises of their income and capital to tax haven countries (a short discussion of this ordinance has been published in European Taxation, July 1965).

Tax avoidance traffic meets newly erected barriers!

J.C.L. Huiskamp

CONTENTS

I

MARKET-ENFORCED SELF-ASSESSMENT FOR REAL ESTATE TAXES*-I

by JOHN STRASMA**

CONTENTS

I. INTRODUCTION

Few are the Finance Ministers in Latin America (and probably in other underdeveloped areas as well) who have not longed for increased revenue from real estate taxes. Inflation

* Revised English version. I am greatly indebted to students and colleagues who have criticized earlier drafts. Gonzalo Arroyo, Solon Barraclough, Juan Braun, Robert Brown, Arthur Domike, Peter Dorner, Eduardo García, Francisco García H., Keith Griffin, Carlos Hurtado, Dino Jarach, Mateo Kaufmann, Fernando Mateo, Pedro Moral López, Roberto Maldonado, José Pistono, E. Ríofrio V., Daniel Stewart, William Thiesenhusen, Luis Vega, and my students in the University of Chile's Graduate School of Latin American Economic Studies (ESCOLATINA) all commented on drafts in Spanish circulated in 1964 by the Instituto de Economía of the Universidad de Chile.

Several of these, as well as Richard Bird, Rudolph Blitz, Vincent Brett, John Copes, Alejandro Foxley, Arnold Harberger, Bruce Herrick, Karl Lachmann, Oliver Oldman, Daniel Schydlowsky, and Ronald Welch made further valuable comments on an English draft circulated in April 1965 by the Land Tenure Center of the University of Wisconsin. They have aided enormously in spotting problems and clarifying issues. Many remained skeptical of the whole idea, however, giving added force to the usual warning that I alone am responsible for what follows.

** Visiting Professor, Land Tenure Center and Department of Agricultural Economics, University of Wisconsin. This study is supported in part by the Land Tenure Center, a cooperative research and training program of the Agency for International Development, the American Nations and the University of Wisconsin and is published by permission of both the author and the Land Tenure Center.

and population growth without corresponding increases in property tax values have reduced this traditional revenue source to insignificance, both in total revenues and in its economic impact on property owners.[1] Could it not again become an important source of tax revenue, helping finance urgent development programs or reducing the inflationary pressure of unbalanced budgets? Could it not create a pressure tending to the more efficient use of urban and rural land? Where the real estate tax is a source of revenue for local governments, could it not greatly improve the ability to solve local problems, aiding both development and "grass roots" democracy?

The most conspicuous bottleneck in Latin American economic development has been the agricultural sector, whose output has not even kept up with population growth. Population is growing at 2.7 to 2.8% annually, yet total farm production has averaged only 1.6% annual growth over the last five years.[2] Per capita food production in 1963/64 was actually 3% below the level of a decade earlier, and the trend is downward.[3] Yet there are notoriously large quantities of privately-owned agricultural land idle or grossly under-utilized in relation to available labor and existing demand for agricultural products.[4] One symptom of this problem is the dramatic contrast in the value of output per hectare of agricultural land. For six countries included in the "first-round" CIDA studies, family units (those occupying 2.0 to 3.9 persons) averaged three times the production per hectare of the large multi-family units (employing over 12 workers).[5]

There are many hypotheses as to just why this land is under-utilized, but heavier taxation could theoretically overcome many of the presumed causes. If it were possible to levy a heavy annual tax on agricultural land, idle land would be put into production or sold, land prices would fall, traditional tenure structures would become more flexible, and both output and employment should rise considerably. These changes would all be steps toward the objectives of agrarian reform, and the added revenue would help finance development projects or programs.

Too, a large part of private wealth in underdeveloped countries is typically invested in land and in urban construction. Given the practical and incentive difficulties of implementing effective progressive taxes on income and profits, are not higher real estate taxes the most feasible way to achieve a mild redistribution of wealth, and to encourage equity investments in enterprises?

1 The present state of property taxation in Latin America was discussed at two international conferences on taxes, held in Buenos Aires (1961) and in Santiago (1962). The Proceedings are available (in Spanish) from the Joint IDB/OAS Tax Program, Pan American Union, Washington, D.C.

2 Inter-American Development Bank, Social Progress Trust Fund, *Fourth Annual Report*, 1964, p. 107.

3 FAO, "The State of Food and Agriculture, 1964," Rome, 1964, p. 16. Quoted in Inter-American Development Bank, *op. cit.*, p. 108.

4 This long-standing observation by scholars doing field study appears to be consistent with the findings of ICAD research reported in FAO, "Agrarian reform policies," a paper prepared for the Latin American Conference on Food and Agriculture, Viña del Mar, 1965. ICAD, better known by its Spanish initials as CIDA (Comité Interamericano de Desarrollo Agrícola), is an association of five international agencies working to aid Latin American agriculture: ECLA, FAO, IDB, IIAS, and the OAS.

5 Calculated from provisional CIDA data reported in FAO, "Agrarian reform policies," table 3, for Argentina, Brazil, Chile, Colombia, Ecuador, and Guatemala. Idle land on very large properties is, of course, only one of several factors accounting for the output differences.

A *The objective of this proposal: accelerated reassessment*

Efforts to increase property taxes in underdeveloped countries are naturally resisted by the landowners, as well as by others who aspire to more drastic changes, and therefore do not want the incumbent government to solve any of its problems. Most frequently, however, these tax efforts fail because it is physically impossible to revalue real estate in the fleeting period (often one year or less) during which a president, finance minister, or political party typically enjoys the power *and* has the will to raise property taxes effectively.[6] The opposition generated is tremendous but takes time to get organized. Therefore, a rapid revaluation has some chance of success, but a careful, painstaking reassessment effort by traditional means is likely to be abolished or compromised into innocuousness before the planned effective date.

This article describes techniques—chiefly index number adjustments and owner self-assessment enforced by private offers to buy undervalued properties—by which tax values could be brought close to market values, rapidly and yet without intolerable injustice or inequity among owners. These tactics should succeed despite gross inadequacy of tax valuation personnel, equipment, vehicles, budget, etc., when measured against the demands of traditional assessment and reassessment methods.[7]

In addition, the approach here suggested is compatible with longer-term programs to upgrade valuation staffs and to carry out cadastral surveys. Practical technical assistance experience shows that it takes five years to get into full stride and ten to finish, with firm political support throughout that period.[8] In fact, if such long-term projects are undertaken, the measures here proposed will increase revenues meanwhile, helping cover the cost of traditional appraisals. Since land values will already be near market prices, landowner resistance to the new survey may even be lessened.

B *Some things this proposal will not do*

Many novel economic policy recommendations made to underdeveloped nations by "expert" advisers err by attempting to resolve too many problems at once. Criticism of earlier drafts of the present proposal stressed its failure to solve various pressing problems of underdevelopment or to eliminate all corruption in the tax service. The present proposal is not a panacea. All it aims to do is to reassess a country's (or a municipality's) real estate for tax purposes, rapidly, effectively, inexpensively and justly.

6 A rate increase is seldom a satisfactory substitute. Congresses are not likely to accept increases of 300 or 400%, though reassessments often average 1/3 or 1/4 of market value. Reliance on rate changes perpetuates injustices among owners and does not catch properties not now assessed at all. And continued underassessment hampers application of taxes on income, capital and inheritances, and reduces the theoretical progression in rate schedules.

7 Traditional assessment and reassessment are here understood to mean at least the preparation of a rough plot, inventory of taxable improvements, crude field measurement of farms or of urban buildings and an individual calculation by a tax valuer, of an assessed value for each property unit. The principal problems are establishing unit values or other guidelines, corruption, and the sheer physical task of inspecting every unit. Detailed instructions for the organization, training, and implementation of a traditional reassessment in an underdeveloped country may be found in the United Nations' forthcoming *Manuel on Land Tax Assessment.*

8 Mr. John Brett, conversation with the author at U. N. Headquarters, February 1965.

Heavier land taxation, however achieved, will not—for instance—do much to redress the unequal bargaining power of landlord, tenant, and landless laborers. It will thus not achieve that massive redistribution of wealth, opportunity, and social structure sought in land reform. Heavier land taxes could even lead to the demand—by landlord or by tenant —of even harder labor at even lower wages, although this might indirectly favor reform by building up resentment and workers' willingness to take the risk of agitating for reform.

In the cities heavier taxation of land could accelerate construction of some kind on the vacant lots now held off the market for speculative purposes, or as inflation hedges. This may lead to overbuilding or to the wrong kind of construction as seen by planners. Cities will be more pleasant places in which to live if some space remains open (hopefully, in parks). Also, assuming that the buildings are themselves taxed, a heavier tax may lead to overcrowding, unsafe building practices, or unaesthetic architecture. This proposal cannot substitute for competent city planning and zoning, although the resulting increased revenue could perhaps finance the planning agency heretofore considered an impossible luxury.[9]

Just as it cannot substitute for land reform, nor for urban planning, this proposal cannot eliminate all forms of corruption in public administration. The procedures suggested seek to reduce the opportunity for corruption in tax administration, principally by drastically reducing the number of properties to be appraised by public employees. Incentives are provided for the correction of unduly low tax assessments upon the initiative of private individuals. Less skill is required of the staff who may therefore be more content with public employees' salaries than are highly-skilled appraisers. In fact, the procedures suggested are simple enough that much of the work can be done by employees shifted temporarily from other duties. But if 100% of the employees of an agency are dishonest, neither this nor any other procedure is likely to succeed.

Likewise, if there is anarchy—no government officials and control at all in some zones —neither this nor any other proposal is likely to implement a land tax in such areas. The present proposal, however, can certainly be implemented more quickly than traditional reassessment techniques, once an area is recovered.

Finally, this proposal will not lead to unemployment for the appraisers and lawyers who are overworked—but often doing quite well personally—under traditional assessment practices in underdeveloped countries. They are still needed to appraise certain complex properties (see paragraph 53 below). They are often needed as valuers in land reform and urban housing programs. In almost every underdeveloped country the lawyers who now thrive on representing landowners contesting tax assessments could perform a socially more useful service. They are needed in government programs to clear titles for thousands of squatters, colonists, and other small farmers whose credit,

(ocupante ilegal)

9 This proposal will not remove all the distortions produced by rent control, in underdeveloped countries, or in New York City. In fact, governments must not be persuaded to allow landlords to pass on higher taxes in rents, lest tenants as well as homeowners join the fight against tax reform. Far better would be first to increase the supply of low-rent housing, then end rent control, and *then* raise taxes "to capture for the community landlord profits from the end of rent control."

welfare, security, and incentives are undermined by uncertain title to the public lands they till.[10]

II. LATIN AMERICAN EXPERIENCE WITH SELF-ASSESSMENT IN LAND TAXES

Ideally, every country needs a cadastral survey. Revenue considerations apart, it aids agricultural planning at all levels and most claims to land, water, and improvements tend to be defined and registered in the process. Thanks to aerial photography and photo interpretation, Chile recently completed a reassessment for some 200,000 rural properties in a record three years as part of such a survey.[11] The project was greatly facilitated by the relatively high competence and morale of Chile's Internal Revenue Service and by foreign loans, grants, and technical assistance supplied originally to help plan reconstruction following the 1960 earthquake.

For many countries, however, scientific reassessment is too expensive and takes too long, even with the aid of modern techniques. Short cuts must be found. Most Latin American nations undertaking reassessments have concentrated on city property and allowed or even ordered rural landowners to declare the value of their own land, usually under oath. This is rapid, costs little, flatters the owner's belief that no one else knows his property as he does, and in any event is the only way to get any valuation at all for many rural properties, given the very limited budget and lack of vehicles for the revenue services in most countries.

In practice, these self-assessments have been unsatisfactory, although the best possible under the circumstances. No owner wanted to pay more than his fair share in relation to others and many were quite willing to pay less.[12] Tax values for similar properties varied widely. Although tax inspectors had legal power to challenge the values declared, they usually did so arbitrarily or not at all.

Some governments attempted to obtain more honest declarations by threatening that in the event of expropriation for public purposes or for land reform, compensation would be limited to the amount declared by the owner as the value for tax purposes. In other cases, banks were supposed to limit mortgage loans to fixed percentages of the tax valuation. Such threats were made in Cuba and Colombia for years; the mortgage limit is reported to have been used in Central America.

10 Dr. Enrique Peñalosa, Manager of the Colombian Agrarian Reform Institute, justly stresses the contribution made by his teams of lawyers who were able to clear and issue 10,434 titles (to a total of 528,000 ha.) in 1962 and 1963 to the tillers of public lands. INCORA, *Segundo Año de Reforma Agraria*, Bogotá, 1963, p. 8.

11 Details, including costs, are included in J. Strasma, "Técnicas de tasación y la planificación fiscal en Chile," in a collection of essays being published by the Instituto de Economía of the Universidad de Chile in 1965. An English version of this paper will be prepared if there is sufficient interest; inquiries should be directed to the Land Tenure Center, University of Wisconsin.

12 The landowners' interest in underassessment is even greater when the income tax includes a presumption as to income from land related to its tax assessed value.

Naturally, landowners cannot be guaranteed payment of any price declared, no matter how high. Expropriation proceedings may still include a formal valuation—but actual compensation may not exceed the most recent tax value, plus the value of improvements exempt from taxation or added after the last tax declaration was filed. This is the form of the law currently applied in Colombia, for example.[13] If such stipulations were omitted, landowners might become still wealthier city dwellers by overvaluing their properties, paying taxes for one year, and then abusing tenants or laborers until they strike, seize the property, or otherwise force the government to expropriate the property.[14]

Such "declarations of value in the event of expropriation" will actually approach true commercial value if, and only if, landowners are convinced that agrarian reform is a reality, and that it will actually expropriate their lands in the near future. If the expropriation threat is not credible, self-assessment will fail. If the land reform agency has no funds, if the Constitution must be amended before land can be expropriated with payment in bonds, or if for any other reasons land reform seems remote, the threat will not be credible. Owners with confidence in their political relations in the capital will not fear expropriation or will be confident of advance warning that will allow them to declare much higher values before expropriation proceedings begin.[15]

From a fiscal viewpoint, self-assessment techniques will be useless for the small property whose owner has no reason to fear expropriation. They are equally unpromising in countries where land reform has supposedly already happened once-and-for-all (e.g., Mexico and Bolivia) or where important Government figures assure landowners that it is not even needed (Argentina?). And they will not work for properties up to the size limit that large owners are usually permitted to reserve for themselves and their sons. Since these parcels are exempt from expropriation, the threat is not credible.

III. MARKET-ENFORCED SELF-ASSESSMENT

The original problem is still unsolved: whether for revenue purposes or as a land reform measure, or both, how can underdeveloped countries obtain up-to-date property tax assessments rapidly and at low cost, without adequate valuation departments. Or, how can this be done even approximately, before and during the five to ten years required to organize and complete a reassessment even with the aid and help of technical assistance programs?

Self-assessment, in which the owner does most of the work of identifying, describing,

13 Decreto 2895 of 1963 and the reglamentary Decreto 181 of 1964. Owners may file new declarations once every two years. The first such opportunity ended on February 29, 1964; 12,298 declarations were made. This was less than 1% of all rural properties, but they accounted for 10% of previous assessed valuation. The average value declared was double the existing assessments; the total rural property tax base rose from 18, 771 million to 20,495 million pesos. I am particularly grateful to Richard M. Bird for help in obtaining and evaluating these figures.

14 I am indebted to E. H. Jacoby for this observation.

15 Albert O. Hirschman, *Journeys Toward Progress* (New York: Twentieth Century Fund, 1963), pp. 116-138, attributes the failure of self-assessment in Colombia, at least prior to 1963, to these reasons.

and evaluating his property, still seems to be the only approach possible for most underdeveloped countries. The success of the system depends, however, on making the threat of having to sell at the declared value credible to all owners.[16]

A *A government agency*

One approach might be to create a government agency to buy (and resell) property of any size which it deemed to be grossly undervalued. Such an agency should be able either to produce substantial profits for the state or to frighten owners into making honest declarations—provided the agency has honest and efficient management. However, it would be hard to justify taking such personnel from existing agencies, including the revenue service, where they are badly needed if development plans are to succeed.

The experience of many governments when real estate dealings are involved—including some U.S. cities—suggests also that such an agency might soon be corrupted. On the one hand, political pressure or bribery might be applied to force the manager to buy property on which values well over market prices had been declared; the owners would become rich, but the agency would soon be insolvent. On the other hand, landowners holding congressional seats or otherwise politically powerful might reason that no government employee would dare touch *their* lands, no matter how shamelessly undervalued.

The weakest link in the government realty agency as an enforcement technique is precisely that it is part of the government, yet the appreciation of market value is essentially subjective and even in part intuitive. An employee who had been bribed or pressured to buy or to ignore a specific property could not be detected; he would always be able to state that in his opinion the price was reasonably declared. Much the same problem prevented control of the old systems of fiscal appraisers and inspectors who were supposed to make inspections and revise self-assessments upward as needed, even where vehicles and staff were available for field trips.

B *The private sector*

The remaining possibility, then, is somehow to enlist help from the private sector. In centuries past, sovereigns often authorized individuals or companies to assess and/or collect various kinds of taxes for a percentage of the revenue.[17] In extreme cases the collectors were obliged to remit only a flat sum, keeping as profit everything additional

16 Mr. John Copes has suggested an alternative in corrrespondence over an earlier draft. Owner honesty would be obtained by threatening a stiff fine should subsequent professional assessment come up with a value much higher than that declared. In Latin America, at least, this would merely increase the vested interest of landowners in blocking reassessment. To put the new values into effect, the government would have to condone the fines after all, as hardly anyone would take this sort of threat seriously, hence all would be affected.

17 A variant of this system persisted in Peru until it was eliminated by President Belaunde in 1963. Collection was handled by a bank-owned enterprise for a percentage of taxes collected. The banks at times advanced money, at interest, against future receipts. Some critics believed that the banks already had the money in their rural offices and delayed in remittance in order to earn interest by lending the government what amounted to its own money. (Conversation in the Finance Ministry in early 1961).

they could take from the taxpayers by fair means or foul. Such "tax farming" is hardly an acceptable solution in the middle of the 20th century, however.

A far more promising suggestion was made by Arnold Harberger in 1962, to the Santiago Conference on Fiscal Policy sponsored by the Organization of American States, Inter-American Development Bank, and the Economic Commission for Latin America. Harberger suggested that the threat of purchase at tax value would become credible if private citizens, as well as the state, were allowed to buy real estate at the price declared by owners, plus some margin (say, 20%) of profit for the owner.[18] Participants in the conference generally rejected the idea, chiefly objecting to forced sale to another person even with a profit margin.[19]

c *Problems in forced sale*

Forced sale is generally accepted as a necessary evil when land is needed for public purposes; this has been extended to include the expropriation of land for urban renewal or agrarian reform, even though it is subsequently sold or given to other private citizens.[20] For "mere" under-declaration of taxes, however, forced sale seems to be excessive punishment, especially for owners who declare in good faith, but simply are ignorant of the current value of their property.[21]

Harberger assumed implicitly that everyone ought to be perfectly happy to sell any of his property, to anyone, at any time, for some price, and that he should pay taxes on that price. Some critics defended the right of a man not even to consider at what price he *would* be willing to sell, when it is a matter of the family home for the last 5 generations. Most, however, felt that the tax should be based on the market value assuming a willing seller and an informed buyer, rather than on a value sufficiently higher to overcome the seller's reluctance or inertia. They could have found a useful precedent, in the fact that expropriation indemnities are often set explicitly at market value, ruling out sentimental and other non-market losses felt by owners.[22]

One critic feared the "insecurity" which the system would cause owners, and another feared that investment would be greatly discouraged.[23] The real problems here are whether the system will work if owners can somehow escape forced sale, and whether

18 "Aspectos de una reforma tributaria para América Latina," *Documentos y Actas* (Washington: Pan American Union, 1964), pp. 183-185.

19 The discussion is summarized in *Documentos y Actas*, *Ibid.*, pp. 197-204.

20 Oliver Oldman, in a letter commenting on an earlier draft, pointed out that it would be "a vast extension of the public purpose notion to allow one private party to obtain another private party's property for the purpose of assuring "good" property tax administration."

21 Readers who question whether most owners are really unaware of property values should bear in mind that many Latin American legislatures and judges are still reluctant to deal as harshly with willful income tax evaders as with pickpockets or chicken thieves. An unbounded presumption of good faith favors the solvent citizen. This is one more reason why other citizens may be more efficient tax enforcers than government employees and the courts.

22 For example, in the Venezuelan Land Reform Law of March 19, 1960, article 25.

23 Respectively, Carlos Matus and Ifigenia M. de Navarrete, *Documentos y Actas*, *op. cit.*, pp.193 and 199.

improvements should be included in the property tax base at all.[24] (Of course, if land titles are really uncertain, as with squatters or Indian communities, improvements are the only property that can be taxed at all.)

If new buildings, etc., are to be tax exempt during 5 years, for example, it would be necessary to require their declaration, with proof of cost. The owner would also declare the total price which he would want to receive for the property, including improvements. The differences would be the value assigned the land; this amount would be taxable, but any offer would have to include the entire, amount for land plus exempt improvements.[25] One great advantage of self-assessment enforced by the market, however, is that it removes the complexities of depreciation policy from the valuation of improvements. The owner uses historic cost, replacement cost, or whatever he likes—but if he strays far below true current market value, an offer brings him back into line.

D *Other objections*

Richard Goode observed at the Santiago Conference that landowner rights would be abused under Harberger's scheme, because "insiders" would learn of proposed highways or other developments that would raise land prices in a given area and would buy up the land at present market values through the tax-enforcement mechanism.[26] Insiders do this now, however. This objection falls in the class of those made by persons who reject the proposal not for any great defect as it stands, but because it fails to solve unrelated problems which bother them. In this case, the real problem obviously is to make sure that such windfall gains are instead collected by the community through betterment levies and capital gains taxes.[27]

Another critic also criticized Harberger's proposal as "apparently simple, but impractical," only to suggest that the state correct assessed values by raising them when a property was sold for a higher price.[28] The critic's alternative is certainly itself "simple, but impractical," for transfer prices are notoriously underdeclared to evade transfer taxes in most countries.[29] In addition, the hacienda owners who never sell any land,

24 In my own opinion, improvements should be taxable, except for possible tempoıary exemption of truly low-rent housing meeting minimum quality standards, and major factory installations. Machinery and motor vehicles should be taxed; the former in part to offset a tendency to overmechanization in terms of social opportunity costs of labor and foreign exchange in Latin America. Licensing and credit are generally more effective than tax exemptions in stimulating and orienting investment. See, for instance, Albert Lauterbach "Government and Development: Managerial Attitudes in Latin America," *Journal of Interamerican Studies*, April, 1965, pp. 201-225.

25 There would, of course, be possible evasion through over-valuing of exempt improvements; these should perhaps be held to cost or book value as accepted under income tax depreciation rules. Also once the fiscal appraisers are caught up on other work, they could give first attention to official, definitive assessment of properties whose owners claim large exemptions. See paragraph 50 below.

26 *Documentos y Actas, op. cit.*, p. 201.

27 A point on which Mr. Goode agrees completely.

28 Carlos Matus, *Documentos y Actas, op. cit.* p. 193.

29 Matus himself admits this; *Ibid.* In addition, as the exception that proves the rule, we might note Venezuela, where the absence of a transfer tax and the influence of recorded prices in fixing land reform compensation seems to lead to over-declaration!

transferring it only within the family, by inheritance, would be immune from the system.

Above all, this critic objected to anyone's realizing a private profit from ending someone else's tax fraud. This thought appeared to disturb him more than the evasion itself.[30] Other remarks suggest that perhaps this critic was not even interested in achieving an effective property tax, because it would end a privilege of the rich which now can be pointed to as a reason for overthrowing the present form of political and economic organization. Just like the typical spokesmen for the rich, he insisted that assessments should not be fixed in any simple way, nor by any one functionary, but rather by an entire commission, with various opportunities for owners to appeal to the courts, etc.[31] Yet most of those present at the conference agreed that this traditional system was not working in Latin America and had numerous flaws in richer countries able to afford large, well-equipped tax services.

E *Proposed solutions*

Even if we reject the strangely similar criticism of those motivated by a vested interest in private property—or in its elimination—there are still serious problems in Harberger's scheme. Inevitably, there will be some citizens who do not wish to sell their property now at any price. They might suffer forced sale even if they declare full market value, simply because someone dislikes them.[32] They might also be subject to extortion by someone threatening to make an offer which would force them to move.

As an alternative to forced sale, Nicholas Kaldor then proposed that owners be permitted to retain their properties after an offer, provided they accepted a new tax assessment even higher than the offer they rejected.[33] Harberger reluctantly accepted this variation, provided owners were also fined, to discourage them from undervaluing until such an offer were made. However, he pointed out that the system would be weaker because it assured the owner that he could in some way escape forced sale and because the probable refusal of the owner to sell would eliminate all incentive to others to appraise the property and make an offer if it were declared for much less than the market value.[34]

Thus we return to the question of "security" for property owners. Those who invoke it most frequently seem, when pressed, little mollified when an escape is provided subject to a penalty. Apparently, and this is especially frequent among lawyers accustomed to defending clients against tax authorities, what they really seek is "security" against

30 Matus, *loc. cit.*

31 *Ibid.*

32 Americans can visualize the use of the system by persons seeking to break, or to preserve, residential segregation by races.

33 *Documentos y Actas, op. cit,*. p. 202. In all fairness, we must note that Kaldor, Harberger, and Matus presented other substantial contributions to the Santiago meeting; this particular scheme was a relatively minor part of their respective participations.

34 *Ibid.*, p. 204. In his paper, Harberger also proposed that if adoption of his scheme were frustrated by the "lawyers," assessors could themselves be rewarded or fined according to how closely their assessments came to the actual prices at which property was subsequently sold. But how to determine true transfer prices? (See note 29 and corresponding text above.)

having to pay any significant tax on property. But the security we seek is another kind: security for the honest taxpayer, that others are also paying the taxes specified by law and that if their property is worth as much as his, they pay as much in taxes. And security for the finance minister, that he has an effective, just, practical revaluation, despite the well-known deficiencies of his tax service. If we can achieve this security, without forcing anyone actually to lose his property for false declaration, we are being merciful. But to keep down the number of would-be tax evaders, we need a secure incentive for the enforcers. This, then, will give the evader the final security: that he will probably be tripped up and suffer a fine.

(to be concluded in the next issue)

WORLD TAX REVIEW

GERMANY

DOCUMENTS

VERLAGERUNG VON EINKÜNFTEN UND VERMÖGEN IN SOGENANNTE STEUEROASENLÄNDER

(GLEICHLAUTENDER LÄNDERERLASZ)

In dem Bericht der Bundesregierung an den Deutschen Bundestag über die Wettbewerbsverfälschungen, die sich aus Sitzverlagerungen und aus dem zwischenstaatlichen Steuergefälle ergeben können (Bundestagsdrucksache IV/2412)* ist bereits darauf hingewiesen, daß Einkommens- und Vermögensverlagerungen in niedrig besteuernde Länder („Oasenländer") gegen das bestehende Recht verstoßen können. Bei der Prüfung derartiger Fälle bitte ich folgendes zu beachten:

I

1. Wenn unbeschränkt steuerpflichtige Einkommen oder Vermögen auf von ihnen abhängige Kapitalgesellschaften oder andere selbständige Rechtsträger in „Oasenländern" verlagern, so ist zu prüfen, ob die Verträge, Geschäftsbeziehungen oder Vermögensübertragungen, so wie sie geltend gemacht werden, dem wahren Sachverhalt entsprechen.

Die steuerliche Anerkennung ist z.B. zu versagen, wenn der ausländische Rechtsträger zu Lasten des unbeschränkt Steuerpflichtigen Beträge erhält, ohne dafür tatsächlich die wirtschaftliche Leistung zu erbringen, die nach den behaupteten Geschäftsbeziehungen diesen Beträgen gegenübersteht. In Betracht kommen namentlich Fälle, in denen Einkaufs- oder Verkaufsrechnungen über den ausländischen Rechtsträger geleitet und von ihm mit einem Aufschlag umfakturiert werden, wobei in Wirklichkeit ein Leistungsaustausch zwischen dem unbeschränkt Steuerpflichtigen und dem ausländischen Rechtsträger fehlt. Dies ist z.B. der Fall wenn der unbeschränkt Steuerpflichtige alle Lasten und Risiken übernimmt, die der ausländische Rechtsträger, wenn er wirklich Ein- oder Verkäufer wäre, zu tragen hätte.

Gleiches gilt, soweit der unbeschränkt Steuerpflichtige für Leistungen des ausländischen Rechtsträgers eine Gegenleistung erbringt, die über dem Entgelt liegt, das ein unbeteiligter Dritter gewähren würde oder soweit der unbeschränkt Steuerpflichtige für seine Leistungen an den ausländischen Rechtsträger ein Entgelt erhält, das unter dem Entgelt eines unbeteiligten Dritten liegt.

Die steuerliche Anerkennung kann des weiteren schon der behaupteten Übertragung von Vermögenswerten und damit dem Übergang der aus ihnen bezogenen Erträge zu versagen sein, weil die Vermögenswerte in Wirklichkeit im rechtlichen oder wirtschaftlichen Eigentum (§ 11 Steueranpassungsgesetz) des unbeschränkt Steuerpflichtigen verblieben sind.

Soweit hiernach den Dispositionen eines unbeschränkt Steuerpflichtigen die steuerliche Anerkennung zu versagen ist, gilt folgendes:

Hat der Steuerpflichtige Betriebsausgaben geltend gemacht, so sind die Beträge als Kapitalzuführung an den ausländischen Rechtsträger dem inländischen Gewinn hinzu-

* A translation of this Report has been published in Supplementary Service to European Taxation, Section D, December 1964.

zurechnen, wenn die Beteiligung an dem ausländischen Rechtsträger zum inländischen Betriebsvermögen gehört, oder als Privatentnahmen zu behandeln, wenn die Beteiligung zum Privatvermögen gehört; wird die Beteiligung von den Gesellschaftern einer inländischen Kapitalgesellschaft gehalten, so sind die von der inländischen Kapitalgesellschaft stammenden Beträge als verdeckte Gewinnausschüttungen an die Gesellschafter anzusehen. Verlagerte Vermögenswerte einschließlich der daraus bezogenen Einkünfte sowie verlagerte Gewinne sind dem Vermögen oder Einkommen des unbeschränkt Steuerpflichtigen zuzurechnen.

2 Liegen die Voraussetzungen der Ziffer 1 nicht vor, so ist weiter zu prüfen, ob ein Mißbrauch von Formen und Gestaltungsmöglichkeiten des bürgerlichen Rechts gegeben ist (§ 6 Steueranpassungsgesetz). Danach ist der Einschaltung des ausländischen Rechtsträgers die steuerliche Anerkennung zu versagen, wenn er keine wesentliche eigene wirtschaftliche Funktion hat, sondern sich vornehmlich als Stützpunkt für die Verlagerung von Vermögen oder Einkünften ins Ausland darstellt. Solche ausländischen Rechtsträger werden vielfach als Oasengesellschaften, Domizilgesellschaften, internationale Hilfsgesellschaften u.ä. bezeichnet.
Ob ein Mißbrauch vorliegt, kann nur nach den Umständen des Einzelfalles entschieden werden. Die Spanne der möglichen Fallgestaltungen ist dabei ausserordentlich weit. Auf der einen Seite stehen die Fälle, in denen zum Beispiel unbeschränkt Steuerpflichtige in sogenannten Steueroasenländern über beherrschte Gesellschaften Produktionstätigkeiten ausüben; hier kann ein Rechtsmißbrauch selbst dann nicht bejaht werden, wenn die Produktionstätigkeit lediglich aus Gründen der geringeren Besteuerung von Inland ins Ausland verlagert worden ist. Auf der anderen Seite stehen die Fälle, in denen die wirtschaftliche Beziehung mit dem Inland in ihrem wesentlichen Gehalt unverändert bleibt und daher die gewählte, in das Oasenland führende Rechtskonstruktion schon in sich so ungewöhnlich ist, dass der Rechtsmißbrauch offenkundig ist. Das ist zum Beispiel anzunehmen, wenn ein unbeschränkt Steuerpflichtiger dem von ihm beherrschten ausländischen Rechtsträger Patente oder andere Schutzrechte überträgt oder sie bei diesem entstehen läßt und selbst darauf Lizenzen nimmt oder dem ausländischen Rechtsträger Kapitalien zuführt und sich diese als Darlehen zurückgewähren läßt; ähnlich liegen die Fälle, in denen in der Bundesrepublik ansässige Künstler als Angestellte ihres eigenen, beherrschten ausländischen Rechtsträgers auftreten.

Wo die Grenzen im Einzelfall liegen, läßt sich nur aus einer Gesamtwürdigung des Sachverhalts und der angestrebten Ziele einerseits und der gewählten Rechtskonstruktion andererseits beurteilen. So wird ein Mißbrauch in aller Regel zu bejahen sein, wenn die ausländische Gesellschaft, auf die aus dem Inland Vermögen übertragen worden ist oder in der der unbeschränkt Steuerpflichtige Vermögen hält, im wesentlichen nur die mit der Vermögenshaltung verbundene Tätigkeit ausübt. Ebenso liegt die Annahme eines Mißbrauchs nahe, wenn der bei Ein- oder Verkaufsgeschäften zwischengeschaltete ausländische Rechtsträger zwar die Stellung eines Ein- oder Verkäufers hat, aber die mit dem Abschluß und der Durchführung der Geschäfte verbundene Tätigkeit nicht selbst ausübt, sofern nicht schon nach der Gestaltung des Sachverhalts die Voraussetzungen des Abschnitts I Ziff. 1 als erfüllt anzusehen sind.

Vermögen und Einkünfte oder Gewinne, deren Verlagerung gemäß § 6 Steueranpassungsgesetz nicht anzuerkennen ist, sind dem unbeschränkt Steuerpflichtigen, dessen Vermögen oder Einkommen durch die Verlagering gemindert wurde, mit allen steuerlichen Folgen zuzurechnen. Handelt es sich um nicht anzuerkennende Betriebsausgaben, so gelten die Ausführungen im letzten Absatz zu Ziffer 1 entsprechend.

II

Die dargelegten Rechtsgrundsätze verlangen eine sorgfältige und intensive Prüfung aller in Betracht kommenden Fälle. Bei der Aufklärung von Auslandsbeziehungen geht die Verpflichtung des Steuerpflichtigen nach der ständigen Rechtsprechung des Reichsfinanzhofs und Bundesfinanzhofs (RFH-Urteil vom 30. Januar 1930 – III A 370/29–, RStBl. 1930, 151; BFH-Urteil vom 7. April 1959 – I 2/58 S – BStBl. 1959 III, 233, und vom 13. Juli 1962 – VI 100/61 U – BStBl. 1962 III, 428), zur Sachaufklärung weiter als bei der Pflicht zur Darlegung seiner inländischen Geschäftsbeziehungen. Der Steuerpflichtige darf seine Mitwirkung bei der Aufklärung von Tatsachen, die nur von ihm aufgeklärt werden können, nicht versagen (RFH-Urteil a.a.O.). Aus den Akten ersichtliche oder durch die Betriebsprüfung festgestellte Tatsachen, die nach der Lebenserfahrung einen Rückschluß auf einen bestimmten Sachverhalt gestatten, können die Steuerbehörden als festgestellt ansehen, wenn der Steuerpflichtige, über die beabsichtigte Feststellung der Steuerbehörde unterrichtet, die Verhältnisse im Rahmen des Zumutbaren nicht anderweitig aufklärt und notfalls glaubhaft macht (RFH a.a.O. sowie Urteil vom 9. Januar 1934 – I A 344/32 – Reichsteuerblatt 1934 S. 382). Bei der Ermittlung eines Sachverhalts hat das Finanzamt alle Beweismöglichkeiten auszuschöpfen. Insbesondere ist von der Möglichkeit Gebrauch zu machen, in Drittländer über Doppelbesteuerungsabkommen oder Amts- und Rechtshilfeverträge die sachdienlichen Auskünfte einzuholen. Falls bestehende Zweifel nicht auf andere Weise auszuräumen sind, kann die Steuerbehörde verlangen, daß der Steuerpflichtige die angegebenen Tatsachen an Eides Statt versichert (§ 174 Abgabeordnung). Auskunftspersonen, die Angaben über die Beziehungen zum Ausland machen können, können erforderlichenfalls angehalten werden, die Wahrheit ihrer Aussage durch Eid zu bekräftigen (§ 182 Abgabeordnung). Vor der Abgabe der eidesstattlichen Versicherung bzw. des Eides sind die Steuerpflichtigen bzw. Auskunftspersonen über die strafrechtlichen Folgen zu belehren.

III

Um eine Koordinierung der Ermittlungen zu ermöglichen, sind alle Fälle, für die dieser Erlaß in Betracht kommt, der Bundeskartei für Auslandsbeziehungen beim Bundesfinanzministerium schon bei Bekanntwerden mitzuteilen.

Fälle nach Abschnitt I Ziffer 2 dieses Erlasses sind mir vor Entscheidung vorzulegen, um eine einheitliche Rechtsanwendung zu gewährleisten und Unterlagen für etwaige gesetzgeberische Maßnahmen zu gewinnen.

Dieser Erlaß ergeht im Einvernehmen mit dem Herrn Bundesminister der Finanzen und den Herren Finanzministern (Finanzsenatoren) der Länder.

III

TAX TREATIES

BOTSCHAFT DES BUNDESRATES AN DIE BUNDESVERSAMMLUNG ÜBER DIE GENEHMIGUNG DES ZWISCHEN DER SCHWEIZ UND SCHWEDEN ABGESCHLOSSENEN ABKOMMENS ZUR VERMEIDUNG DER DOPPELBESTEUERUNG AUF DEM GEBIETE DER STEUERN VOM EINKOMMEN UND VOM VERMÖGEN

(Vom 13. Juli 1965)

Herr Präsident!

Hochgeehrte Herren!

Am 7. Mai 1965 ist in Stockholm ein Abkommen zwischen der Schweizerischen Eidgenossenschaft und dem Königreich Schweden zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen unterzeichnet worden. Wir beehren uns, Ihnen dieses Abkommen, das dasjenige vom 16. Oktober 1948 ersetzen wird, hiermit zur Genehmigung zu unterbreiten.

I. Vorgeschichte

1. Die Schweiz hat mit dem Königreich Schweden am 16. Oktober 1948 zwei Doppelbesteuerungsabkommen abgeschlossen, eines auf dem Gebiete der Steuern vom Einkommen und vom Vermögen (AS 1949, 437), das andere auf dem Gebiete der Erbschaftssteuern (AS 1949, 449). Beide Abkommen stehen seit 1949 in Kraft und haben sich für die Schweiz bewährt. Schweden dagegen zeigte sich schon bald nach Abschluss des Einkommens- und Vermögenssteuerabkommens, das als erstes schweizerisches Abkommen auch eine gegenseitige Entlastung von den Quellensteuern auf Einkünften aus beweglichem Kapitalvermögen vorsah, von der getroffenen Regelung insoweit nicht befriedigt, als ein Staat seine Quellensteuer nur dann (teilweise) erstatten muss, wenn auch der andere Staat Erträgnisse gleicher Art ebenfalls der Besteuerung an der Quelle unterwirft (sog. Reziprozitätsvorbehalt). Da Schweden Zinsen nicht an der Quelle besteuert, erhalten in Schweden ansässige Gläubiger schweizerischer Zinsen keine Entlastung von der eidgenössischen Verrechnungssteuer. Nachdem die Schweiz in ihren nach 1948 abgeschlossenen Doppelbesteuerungsabkommen den sogenannten Reziprozitätsvorbehalt eingeschrankt bzw. fallengelassen hatte und auch Staaten, die keine Quellensteuer erheben, eine teilweise Rückerstattung der Verrechnungssteuer zugestand waren schwedische Revisionsbegehren zu erwarten.

2. Schweden schlug deshalb im April 1961 die Aufnahme von Revisionsverhandlungen vor. Auf Grund der Ergebnisse von Umfragen der Eidgenössischen Steuerverwaltung vom Januar 1952 und Mai 1961 bei den kantonalen Finanzdirektoren und den interessierten Wirtschaftsverbänden wurde diesem Begehren grundsätzlich zugestimmt. Die Revisionsverhandlungen sollten sich nach schweizerischer Auffassung nicht nur auf die Frage der Rückerstattung der eidgenössischen Verrechnungssteuer von schweize-

rischen Zinsen erstrecken, sondern auch dazu benützt werden, die beiden Abkommen der neueren schweizerischen Vertragspraxis anzupassen und über gewisse schweizerische Begehren zu diskutieren, die seinerzeit unberücksichtigt geblieben waren. Bei der Revision sollte zudem auch den Arbeiten des Fiskalkomitees der Organisation für Europäische wirtschaftliche Zusammenarbeit, der heutigen Organisation für Wirtschaftliche Zusammenarbeit und Entwicklung (OECD) Rechnung getragen werden.

II. Gang der Verhandlungen

1. Am 11. und 12. Juli 1963 fanden in Bern schweizerisch-schwedische Vorbesprechungen über die Revision des Einkommens- und Vermögenssteuerabkommens statt. Eine allfällige Revision des Erbschaftssteuerabkommens wird in einem späteren Zeitpunkt vorgenommen.

Die schwedische Delegation bezeichnete von Anfang an die drei nachstehenden Postulate als Hauptziele der Verhandlungen:

a. Beseitigung der unter dem bestehenden Abkommen noch vorhandenen Fälle von Doppelbesteuerung;
b. Anpassung des Abkommens an den OECD-Mustervertrag;
c. Erschwerung der Steuerflucht aus Schweden in die Schweiz.

Die schweizerischen Vertreter stimmten den beiden ersten Postulaten zu. Zum dritten bemerkten sie, dass der Schweiz aus der Tatsache des relativ niedrigen Steuerniveaus kein Vorwurf gemacht werden könne. Um zu verhindern, dass ausländische Steuerpflichtige das zur Schweiz bestehende Steuergefälle ausnützen und die schweizerischen Doppelbesteuerungsabkommen missbrauchen, habe im übrigen der Bundesrat bereits am 14. Dezember 1962 (AS 1962, 1622) Massnahmen ergriffen.

Über die auf der Grundlage des OECD-Mustervertrages geführten Vorbesprechungen vom Juli 1963, die eine teilweise Einigung ergaben, aber verschiedene wichtige Fragen (Austausch von Informationen, Höhe des Quellensteuerabzuges bei Dividenden und Zinsen, Massnahmen zur Erschwerung der Steuerflucht aus Schweden in die Schweiz) offenliessen, hat das Finanz- und Zolldepartement am 9. Dezember 1963 den Kantonsregierungen, der Konferenz der kantonalen Finanzdirektoren und den am Abschluss von Doppelbesteuerungsabkommen interessierten Wirtschaftsverbänden Bericht erstattet.

2. Die schwedische Delegation unterbreitete im Februar 1964 einen neuen Abkommensentwurf, der vom 9. bis 11. Juni 1964 in Bern besprochen wurde. Dabei gelang zwar eine Einigung über den Quellensteuersatz von Zinsen (auf 5 Prozent). Beim Quellensteuersatz von nicht im Holdingverhältnis gezahlten Dividenden dagegen beharrten die schwedische (15 Prozent) und die schweizerische Delegation (Beibehaltung des Satzes von 5 Prozent) nach wie vor auf ihren Standpunkten. Bezüglich des Informationsaustausches erklärte die schwedische Delegation ihren Verzicht auf die Einfügung einer Bestimmung in das Abkommen, sofern die Schweiz in der Frage der Erschwerung der Steuerflucht aus Schweden in die Schweiz ein Entgegenkommen zeige.

Mit Kreisschreiben vom 2. Juli 1964 gab das Finanz- und Zolldepartement den Regierungen der Kantone, der Konferenz der kantonalen Finanzdirektoren und den am

Abschluss von Doppelbesteuerungsabkommen interessierten Wirtschaftsverbänden Kenntnis vom Ergebnis der Besprechungen vom Juni 1964.

3. In der dritten und letzten Verhandlungsphase, die vom 29. Oktober bis 2. November 1964 in Stockholm stattfand, konnte in allen offenen Fragen Einigung erreicht werden. Schweden akzeptierte schliesslich bei Dividenden einen einheitlichen Quellensteuersatz von 5 Prozent, also gleich wie im bestehenden Abkommen. Zur Erschwerung der Steuerflucht aus Schweden in die Schweiz erklärte sich die schweizerische Delegation bereit, in das Abkommen eine besondere Bestimmung (vgl. Art. 25, Abs. 2) aufzunehmen, die jedoch so begrenzt ist, dass keine angestammten schweizerischen Interessen verletzt werden.

4. Der Abkommensentwurf wurde von den Delegationschefs am 2. November 1964 paraphiert. Gleichzeitig unterzeichneten die Delegationschefs ein Verhandlungs- und Paraphierungsprotokoll, dessen Ziffer 5 folgendes festhällt:

„Zur Frage des von der schwedischen Delegation zur Diskussion gestellten *Austausches von Informationen* vertrat die schweizerische Delegation die Auffassung, dass der Zweck eines Doppelbesteuerungsabkommens in der Vermeidung der internationalen Doppelbesteuerung besteht und dass die für die richtige Anwendung und die Vermeidung des Missbrauchs eines Abkommens benötigten Informationen schon auf Grund der bestehenden Bestimmungen über das Verständigungsverfahren, über die Durchführung der Begrenzung der im Quellenstaat auf Dividenden und Zinsen erhobenen Steuern usw. ausgetauscht werden könnten. Eine besondere Bestimmung über den Austausch von Informationen sei deshalb entbehrlich; denn selbst eine ausdrückliche Bestimmung könnte wegen des Zwecks des Abkommens nur den Austausch von Informationen vorsehen, die zur richtigen Anwendung und zur Vermeidung der missbräuchlichen Inanspruchnahme eines Abkommens notwendig sind. Die schwedische Delegation hat diese Erklärung zur Kenntnis genommen und auf eine besondere Bestimmung über den Austausch von Informationen verzichtet. Sie würdigte den Umstand, dass die Schweiz durch den Erlass des Bundesratsbeschlusses vom 14. Dezember 1962 Massnahmen gegen die ungerechtfertigte Inanspruchnahme von Doppelbesteuerungsabkommen getroffen hat und dass auch die im Rahmen von Artikel 10 Absatz 2 und 11 Absatz 2 des Abkommens zwischen den zuständigen Behörden abzuschliessende Vereinbarung über die Durchführung der Begrenzung der beiderseitigen Quellensteuern vorsieht, dass sich die Eidgenössische Steuerverwaltung und das schwedische Finanzministerium gegenseitig in der Verhinde rung missbräuchlicher Steuerentlastungen unterstützen."

5. Das neue Abkommen ist am 7. Mai 1965 in Stockholm unterzeichnet worden.

III. Erläuterungen zu den einzelnen Bestimmungen des Abkommens

Das Abkommen folgt als erstes schweizerisches Abkommen dem OECD-Mustervertrag vom Juli 1963. Das im bestehenden Abkommen enthaltene Schlussprotokoll ist deshalb weggefallen. Da der OECD-Mustervertrag weitgehend die von der Schweiz von jeher für die Vermeidung der internationalen Doppelbesteuerung vertretenen Grundsätze verwirklicht, stimmt das Abkommen trotz abweichender Formulierung inhaltlich zur Hauptsache mit dem bestehenden Abkommen überein; auf wesentliche Änderungen werden wir in den Erklärungen zu den betreffenden Bestimmungen besonders hinweisen.

Der OECD-Mustervertrag ist nicht unverändert vom neuen schweizerisch-schwedischen Doppelbesteuerungsabkommen rezipiert worden. So fehlt, aus den unter Ziffer II, 4, hievor angegebenen Gründen, der Artikel über den Austausch von Informationen. Ferner sind aus dem bestehenden Abkommen einige Bestimmungen, die sich im schwei-

zerisch-schwedischen Verhältnis bewährt haben, in das neue Abkommen übernommen worden (z.B. Art. 2, Abs. 4; Art. 4, Abs. 4; Art. 14, Abs. 1). Das Abkommen enthält auch einige neue Bestimmungen, die weder aus dem OECD-Mustervertrag noch aus dem bestehenden Abkommen stammen (z.B. Art. 18, Satz 2; Art. 19, Abs. 2; Art. 20; Art. 21; Art. 25, Abs. 2, 4, 5, 7). Unter den zuletzt genannten Bestimmungen sind besonders diejenige über die Erschwerung der Steuerflucht aus Schweden in die Schweiz (Art. 25, Abs. 2) und diejenige über die Gewährung einer Entlastung von den schweizerischen Steuern für die in Schweden an der Quelle besteuerten Dividenden und Zinsen (Art. 25, Abs. 7) hervorzuheben.

Abschnitt I: Geltungsbereich des Abkommens

ARTIKEL 1: *Persönlicher Geltungsbereich*

In Übereinstimmung mit der heutigen allgemeinen und der schweizerischen Vertragspraxis findet das Abkommen Anwendung auf alle Personen, die in einem Vertragsstaat oder in beiden Vertragsstaaten ansässig sind, ohne Rücksicht auf deren Staatsangehörigkeit.

ARTIKEL 2: *Unter das Abkommen fallende Steuern*

1. Hervorzuheben ist, dass das Abkommen nicht nur für alle (bestehenden und künftigen, staatlichen und kommunalen) ordentlichen, sondern auch für alle ausserordentlichen Steuern vom Einkommen und vom Vermögen gilt (Abs. 2).

2. Neu unter das Abkommen fallen folgende schwedische Steuern (Abs. 3, Buchst. *a*):

a. Die Seemannssteuer (Ziff. 1). Dies ist eine seit 1959 erhobene Quellensteuer auf Arbeitseinkünften von nicht in Schweden wohnhaften Seeleuten, die auf schwedischen Schiffen Dienst leisten. Der Steuersatz beträgt 15 Prozent. Die Quellensteuer ersetzt die ordentliche staatliche Einkommenssteuer. Wenn der Seemann nachweisen kann, dass er für diese Einkünfte in einem anderen Staat besteuert wird, so wird die Quellensteuer nicht erhoben.

b. Die Abgabe auf besonderen Vorteilen und Gerechtigkeiten (Ziff. 2). Ihr unterliegen Ausländer oder im Ausland niedergelassene schwedische Staatsangehörige, die in Schweden öffentliche Vorstellungen geben oder an solchen mitwirken, für ihre Einkünfte aus diesen Vorstellungen. Die Steuer, deren Satz 20 Prozent beträgt, wird im Abzugsweg erhoben. Der Abzug gilt als Vorauszahlung an die nachträglich im Veranlagungsverfahren festzusetzende Einkommenssteuer.

c. Die Sondersteuer von Aktiengesellschaften aus Ausschüttungen bei Kapitalherabsetzung (Ziff. 3). Sie trifft die Vergütungen, die eine Aktiengesellschaft anlässlich der Liquidation oder einer Kapitalherabsetzung an ihre Aktionäre ausrichtet. Steuerschuldner ist die Aktiengesellschaft. Die Vergütungen gelten nicht als Dividenden und werden bei den Aktionären nicht besteuert. Wohnt ein Aktionär in der Schweiz, so unterliegt die ihm zufliessende Vergütung regelmässig den schweizerischen Einkommenssteuern. Dieselbe Vergütung wird somit einmal bei der schwedischen Aktiengesellschaft und alsdann beim schweizerischen Aktionär besteuert. Weil die schwedische Sondersteuer nun unter das Abkommen fällt, können solche, nach den bisherigen Er-

fahrungen sehr seltene Fälle von Doppelbesteuerung im Verständigungsverfahren nach Artikel 27, Absatz 3 geregelt werden.

3. Die Sondersteuer von Aktiengesellschaften bei Nichtausschüttung vorhandener Gewinne (Abs. 3, Buchst. *a*, Ziff. 3) entspricht der im bestehenden Abkommen (Anlage 1, Buchst. *d*) aufgeführten Ersatzsteuer. Sie findet insbesondere auf Familiengesellschaften Anwendung, die keine Gewinnausschüttung vornehmen und kann grundsätzlich mit der amerikanischen personal holding company tax verglichen werden. Der Steuersatz beträgt 25 Prozent des nichtausgeschütteten Gewinns.

4. Die im geltenden Abkommen (Anlage I, Buchst. *e*) erwähnte schwedische Waldpflegeabgabe wird nicht mehr erhoben.

5. Wie im bestehenden Abkommen sind die schwedischen Sondersteuern und die eidgenössische Verrechnungssteuer auf Gewinnen aus Lotterien und Wetten vom sachlichen Geltungsbereich des Abkommens ausgeschlossen (Abs. 4).

Abschnitt II: Definitionen

ARTIKEL 3: *Allgemeine Definitionen*

1. Der vorliegende Artikel enthält einige allgemeine Bestimmungen, die für die Auslegung der im Abkommen verwendeten Ausdrücke notwendig sind. Es ist aber zu beachten, dass verschiedene wichtige Ausdrücke in anderen Artikeln des Abkommens erläutert werden, so z.B. „ansässige Person" und „Betriebsstätte" in den Artikeln 4 und 5, „unbewegliches Vermögen", „Dividenden", „Zinsen", „Lizenzgebühren" in den Artikeln 6 und 10-12.

2. Der Ausdruck „Person" (Abst. 1, Buchst. *b*) umfasst natürliche Personen, Gesellschaften und alle anderen Personenvereinigungen. Aus der Definition des Ausdrucks „Gesellschaft" (Abs. 1, Buchst. *c*) folgt, dass der Ausdruck „Person" auch Rechtsträger (z.B. Stiftungen, Anstalten) umfasst, die, ohne Personenvereinigungen zu sein, für die Besteuerung wie juristische Personen behandelt werden.

3. Der Ausdruck „Gesellschaft" (Abs. 1, Buchst. *c*) wird insonderheit in den Artikeln 5, Absatz 6, 10 und 17 verwendet.

4. Absatz 2 enthält eine allgemeine Auslegungsregel. Sie wird eingeschränkt durch die als lex specialis anzusehende Auslegungsregel in Absatz 2 des Artikels 6 über die Einkünfte aus unbeweglichem Vermögen.

ARTIKEL 4: *Steuerlicher Wohnsitz*

1. Der Wohnsitz eines Steuerpflichtigen bestimmt sich zuerst nach dem internen Steuerrecht der beiden Vertragsstaaten (Abs. 1). Erst wenn danach ein Wohnsitz sowohl in der Schweiz als auch in Schweden gegeben ist, finden die in Absatz 2 angeführten Kriterien Anwendung. Bei den Körperschaften und Anstalten (Abs. 3) wird dabei nicht mehr – wie nach dem bestehenden Abkommen – auf den Sitz, sondern, gleich wie bei den Stiftungen, auf den Ort der tatsächlichen Geschäftsleitung abgestellt. Der Ort der tatsächlichen Geschäftsleitung ist auch bei den Personengesellschaften massgebend (Abs. 3).

2. Die Regel im bestehenden Abkommen über den Zeitpunkt des Aufhörens der

Steuerpflicht in dem Vertragsstaat, in dem der Wohnsitz aufgegeben worden ist, wurde beibehalten (Abs. 4).

ARTIKEL 5: *Betriebsstätte*

1. Durch die Übernahme des entsprechenden Musterartikels der OECD wurde der Begriff der Betriebsstätte gegenüber dem bestehenden Abkommen insoweit eingeschränkt, als Einkaufsstellen (Abs. 3, Buchst. *d*) und die Tätigkeit eines blossen Einkaufsagenten (Abs. 4) für das vertretene Unternehmen keine Betriebsstätte begründen. Desgleichen wird eine Betriebsstätte nicht mehr angenommen, wenn ein Unternehmen einen Vermittlungsagenten mit Warenlager unterhält (Abs. 4, in Verbindung mit Abs. 3).

2. Nicht ins Abkommen übernommen wurde die in Absatz 3, Buchstabe *e* des OECD-Musterartikels enthaltene Bestimmung, wonach nicht als Betriebsstätte gilt „eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen zu werben, Informationen zu erteilen, wissenschaftliche Forschung zu betreiben oder ähnliche Tätigkeiten auszuüben, die vorbereitender Art sind oder eine Hilfstätigkeit darstellen". Damit werden solche Geschäftseinrichtungen nicht automatisch zu Betriebsstätten; jedoch sind Zweifelsfälle im Lichte der Generalklausel (Abs. 1) gegebenenfalls im Verständigungsverfahren zu überprüfen und zu klären.

Abschnitt III: Besteuerung des Einkommens

ARTIKEL 6: *Einkünfte aus unbeweglichem Vermögen*

1. Einkünfte aus unbeweglichem Vermögen können – wie nach dem bestehenden Abkommen – in dem Vertragsstaat besteuert werden, in dem dieses Vermögen liegt (Abs. 1). Was als unbewegliches Vermögen anzusehen ist, bestimmt sich nach der lex rei sitae (Abs. 2). Damit werden Auslegungsschwierigkeiten darüber, ob ein Vermögenswert oder ein Recht als unbewegliches Vermögen zu gelten hat, vermieden. Absatz 2 zählt aber einzelne Vermögenswerte und Rechte auf, die stets bzw. nie als unbewegliches Vermögen zu behandeln sind. Auf Einkünfte aus Forderungen, die durch unbewegliches Vermögen gesichert sind, findet Artikel 11 Anwendung.

2. Dem Staate der gelegenen Sache steht das Besteuerungsrecht ohne Rücksicht auf die Art der Nutzung des unbeweglichen Vermögens zu (Abs. 3). Die Absätze 3 und 4 stellen ferner klar, dass die Bestimmungen des Artikels 6 nicht nur für Einkünfte aus land- und forstwirtschaftlichen Betrieben, sondern auch für Einkünfte aus unbeweglichem Vermögen gewerblicher Unternehmen sowie für Einkünfte aus unbeweglichem Vermögen gelten, das der Ausübung eines freien Berufes dient.

ARTIKEL 7: *Unternehmensgewinne*

1. Gewinne eines Unternehmens eines Vertragsstaates unterliegen wie bisher den Steuern des anderen Vertragsstaates nur dann, wenn das Unternehmen im anderen Vertragsstaat eine Betriebsstätte hat (Abs. 1). Ih einem solchen Fall kann der andere Vertragsstaat den Teil des Gewinns des Unternehmens besteuern, der der in seinem Gebiet gelegenen Betriebsstätte zuzurechnen ist. Der einer Betriebsstätte zuzurechnende Gewinn wird grundsätzlich nach der direkten Methode ermittelt (Abs. 2 und 3). Das

Abkommen lässt aber ausdrücklich auch die indirekte Gewinnermittlungsmethode zu, wenn das Ergebnis mit den Grundsätzen des Artikels 7 übereinstimmt. Wird die indirekte Methode angewendet, so kann ein Voraus von höchstens 10 Prozent zugunsten des Sitzes des Unternehmens in Rechnung gestellt werden (Abs. 4).

2. In Fortführung der bisherigen vertraglichen Ordnung und in Ergänzung des OECD-Musterartikels sieht Absatz 5 für die Ermittlung der Gewinne der Betriebsstätten von Versicherungsunternehmen ausschliesslich die indirekte Methode (unter Ausschluss jeder Koeffizientenmethode) vor. Als Schlüssel für die Aufteilung des gesamten Gewinns des Unternehmens gilt das Verhältnis der Rohprämieneinnahmen der betreffenden Betriebsstätte zu den gesamten Rohprämieneinnahmen des Unternehmens, wobei dem Sitz, entsprechend Absatz 4, von dem Absatz 5 einen besonderen Anwendungsfall darstellt, ebenfalls ein Voraus von höchstens 10 Prozent zuerkannt werden kann.

3. Auf Grund des blossen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebsstätte kein Gewinn zugerechnet (Abs. 6). Diese Bestimmung stellt die notwendige Ergänzung zu Artikel 5, Absatz 3, Buchstabe *d* dar, wonach Einkaufsstellen nicht als Betriebsstätten gelten.

ARTIKEL 8: *Seeschiffahrt und Luftfahrt*

1. Das Besteuerungsrecht für Gewinne aus dem Betrieb von Seeschiffen und Luftfahrzeugen im internationalen Verkehr steht ausschliesslich dem Vertragsstaat zu, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet (Abs. 1). Unter Betrieb im internationalen Verkehr ist jeder Betrieb von Seeschiffen oder Luftfahrzeugen zu verstehen, der sich über mehr als ein Land erstreckt, ohne Rücksicht auf die Zahl der Orte, die in einem bestimmten Land angelaufen oder angeflogen werden.

2. Gemäss übereinstimmender Auffassung der beiden Vertragsstaaten gilt der Ort der tatsächlichen Geschäftsleitung auch als Steuerort für Gewinne aus der Beteiligung an einem Pool, einer gemeinsamen Betriebsorganisation oder einer internationalen Betriebskörperschaft (Abs. 2).

ARTIKEL 9: *Verbundene Unternehmen*

Dieser Artikel befasst sich mit verbundenen Unternehmen, d. h. mit Mutter- und Tochtergesellschaften sowie mit Gesellschaften unter gemeinsamer Kontrolle. Er sieht vor, dass in diesen Fällen die Steuerbehörden eines Vertragsstaates zur Steuerermittlung die Bücher des Unternehmens berichtigen dürfen, wenn diese wegen der besonderen Beziehungen zwischen den Unternehmen die tatsächlich in diesem Staat entstandenen steuerlichen Gewinne nicht ausweisen (z. B. bei verdeckten Gewinnausschüttungen).

ARTIKEL 10, 11 UND 12: *Dividenden, Zinsen und Lizenzgebühren*

1. Die Besteuerung der Dividenden und Zinsen im Quellenstaat ist auf 5 Prozent des Bruttobetrages begrenzt; die diesen Betrag übersteigende Steuer wird auf Antrag zurückerstattet (Art. 10 und 11). Nach dem bestehenden Abkommen – das den Steuerabzug von Erträgnissen beweglichen Kapitalvermögens im Quellenstaat ebenfalls auf 5 Prozent des Kapitalertrages begrenzt – hängt die Rückerstattung der Quellensteuer des einen Staates davon ab, dass der andere Staat, der Wohnsitzstaat des Empfängers der

Kapitalerträge, Erträgnisse gleicher Art ebenfalls der Besteuerung an der Quelle unterwirft; dies hatte zur Folge, dass schwedische Gläubiger schweizerischer Zinsen die darauf verfallene Verrechnungssteuer nicht zurückfordern konnten. Dieser sog. Reziprozitätsvorbehalt ist aufgehoben. Dadurch erfährt der Anspruch auf Entlastung von der Quellensteuer im Vergleich zu bisher eine Erweiterung nicht nur bezüglich Zinsen, sondern auch mit Bezug auf Einkünfte aus Anteilen an einer schweizerischen GmbH, aus schweizerischen Genussscheinen und Gründeranteilen sowie mit Bezug auf schweizerische Gratisaktien und Liquidationsgewinne (Art. 10).

2. Die ausschliessliche Besteuerung der Lizenzgebühren im Wohnsitzstaat des Empfängers entspricht der bisherigen Regelung (Art. 12).

ARTIKEL 13: *Gewinne aus der Veräusserung von Vermögen*

1. Das Recht zur Besteuerung der Veräusserungsgewinne steht dem Staate zu, der vor der Veräusserung berechtigt war, sowohl den Vermögenswert als auch die Einkünfte daraus zu besteuern. Ein Gewinn aus der Veräusserung eines Vermögenswertes wird, ohne Rücksicht darauf, ob dieser Gewinn einen Veräusserungsgewinn oder einen Unternehmensgewinn darstellt, in dem selben Staate besteuert.

2. „Veräusserung von Vermögen" umfasst insbesondere Gewinne aus dem Verkauf oder dem Tausch – auch aus einer Teilveräusserung – von Vermögenswerten, der Enteignung, der Einbringung in eine Gesellschaft und dem Verkauf von Rechten.

3. Der in Absatz 2 verwendete Ausdruck „bewegliches Vermögen" umfasst Vermögen jeder Art mit Ausnahme des unter Absatz 1 fallenden unbeweglichen Vermögens. Dazu gehören auch immaterielle Vermögenswerte, wie der Firmenwert (Goodwill), Lizenzrechte u. dgl. Die Gewinne aus der Veräusserung solcher Vermögenswerte können in dem Staate besteuert werden, in dem die Betriebsstätte oder die feste Einrichtung liegt; dies stimmt mit den Regeln über die Besteuerung der Unternehmensgewinne (Art. 7) und der Einkünfte aus selbständiger Arbeit (Art. 15) überein. Eine Ausnahme von dieser Regel gilt für im internationalen Verkehr eingesetzte Seeschiffe und Luftfahrzeuge sowie für das dem Betrieb dieser Schiffe und Luftfahrzeuge dienende bewegliche Vermögen. Gewinne aus der Veräusserung solchen Vermögens können nur in dem Staat besteuert werden, in dem sich die tatsächliche Geschäftsleitung des Unternehmens befindet, das diese Schiffe und Luftfahrzeuge betreibt. Diese Regel steht im Einklang mit Artikel 8 über die Besteuerung der Gewinne aus der Seeschiffahrt und Luftfahrt und mit Artikel 24, Absatz 3 über die Besteuerung des Vermögens.

4. Die Regel, dass Gewinne aus der Veräusserung von in den Absätzen 1 und 2 dieses Artikels nicht genannten Vermögenswerten nur im Wohnsitzstaat des Veräusserers besteuert werden können. (Abs. 3), stimmt mit Artikel 24, Absatz 4 über die Besteuerung des Vermögens überein. Unter diese Regel fallen insbesondere Gewinne aus der Veräusserung von Anteilen an einer Kapitalgesellschaft, von Obligationen oder ähnlichen Wertpapieren.

ARTIKEL 14: *Ruhende Erbschaften: Personengesellschaften*

1. Die Bestimmung über die Besteuerung ruhender Erbschaften (Abs. 1) wurde aus dem bestehenden Abkommen übernommen. Sie ist auf die Regelung im schwedischen

Steuerrecht zurückzuführen, nach der eine unverteilte (ruhende) Erbschaft als solche sowohl für das Einkommen, das der Erblasser hatte, wie auch für das Einkommen, das dem Nachlass nach seinem Tode zufliesst, besteuert wird; die unverteilte Erbschaft wird in steuerlicher Hinsicht als schwedische juristische Person betrachtet, wenn der Erblasser zur Zeit seines Todes in Schweden Wohnsitz oder ständigen Aufenthalt gehabt hat, andernfalls als ausländische juristische Person. Die Bestimmung findet auch auf die Steuern derjenigen schweizerischen Kantone Anwendung, die unverteilte Erbschaften als Steuersubjekte behandeln.

2. Ein in Schweden ansässiger Teilhaber einer schweizerischen Personengesellschaft untersteht insoweit der schweizerischen Steuerhoheit. Schweden kann jedoch den in seinem Gebiet ansässigen Teilhaber für schwedische Einkünfte der schweizerischen Personengesellschaft, für welche diese nach dem Abkommen Anspruch auf Entlastung (Befreiung oder Ermässigung) von der schwedischen Steuer hat, besteuern, muss aber die schweizerischen Steuern gemäss Artikel 25, Absatz 1 an seine Steuern anrechnen (Abs. 2).

ARTIKEL 15 BIS 18: *Einkünfte aus Arbeit*

1. *Einkünfte aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art* (Art. 15) sind grundsätzlich im Wohnsitzstaat zu besteuern und können, wie bisher, nur dann im andern Vertragsstaat besteuert werden, wenn der Steuerpflichtige dort für die Ausübung seiner Tätigkeit regelmässig über eine feste Einrichtung verfügt und die Einkünfte dieser festen Einrichtung zugerechnet werden können. Einkünfte von selbständigen Künstlern und Sportlern dagegen werden gemäss Artikel 18 stets am Arbeitsort besteuert (vgl. Ziff. 4, hienach).

2. *Einkünfte aus unselbständiger Arbeit* (Art. 16) können, wie bisher, in dem Vertragsstaat besteuert werden, in dem die Arbeit ausgeübt wird. Von dieser Regel gibt es zwei Ausnahmen:

a. Hält sich ein Arbeitnehmer im Staat, in dem er die Arbeit verrichtet, nur vorübergehend auf, so können seine Arbeitseinkünfte unter bestimmten Voraussetzungen nur in dem Vertragsstaat besteuert werden, in dem er ansässig ist (Abs. 2). Diese Voraussetzungen sind zum Teil enger gefasst als im bestehenden Abkommen, in dem der vorübergehende Aufenthalt 183 Tage im Steuerjahr nicht übersteigen, der Arbeitgeber im Aufenthaltsstaat nicht ansässig sein und die Arbeitsvergütungen weder von einer Betriebsstätte noch von einer festen Einrichtung des Arbeitsgeber im Staate des Arbeitsortes getragen werden dürfen.

Diese Ausnahmebestimmung gilt nicht für die Einkünfte von Künstlern und Sportlern; sie werden nach Artikel 18 besteuert (vgl. Ziff. 4, hienach).

b. Einkünfte aus unselbständiger Arbeit an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr können in dem Vertragsstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet (Abs. 3). Diese Neuerung entspricht moderner schweizerischer Vertragspraxis.

3. *Aufsichtsrats- und Verwaltungsratsvergütungen* (Art. 17) können in dem Vertragsstaat besteuert werden, in dem die zahlende Gesellschaft ansässig ist, d.h. den Ort ihrer Geschäftsleitung hat. Vergütungen für Dienstleistungen, welche Mitglieder des Aufsichts-

oder Verwaltungsrates in anderer Eigenschaft beziehen, werden nach wie vor entweder nach Artikel 15 oder nach Artikel 16 besteuert.

4. *Einkünfte von berufsmässigen Bühnen-, Film-, Rundfunk- oder Fernsehkünstlern, Musikern oder Sportlern* (Art. 18) aus ihrer in dieser Eigenschaft persönlich ausgeübten Tätigkeit können in dem Vertragsstaat besteuert werden, in dem sie diese Tätigkeit ausüben. Dies gilt, ungeachtet des Umstandes, ob der Künstler oder Sportler selbständig oder unselbständig tätig oder von einem Arbeitgeber im andern Staat angestellt ist. Im letzteren Falle kann der Staat, in dem der Künstler auftritt, sowohl diesen für die Einkünfte, die er von seinem Arbeitgeber für sein Auftreten erhält als auch den Arbeitgeber selbst für die diesem aus dem Auftreten zufliessenden Einkünfte besteuern (Art. 18, Satz 2). Damit soll sichergestellt werden, dass der Vertragsstaat, in dem der Künstler oder Sportler tätig ist, die Vergütungen, die ihren Grund in der persönlichen Tätigkeit des Künstlers oder Sportlers haben, auch dann voll nach seinem nationalen Steuerrecht besteuern kann, wenn der Künstler oder Sportler in einem Anstellungsverhältnis zu einem ausländischen Arbeitgeber steht.

ARTIKEL 19: *Ruhegehälter*

1. Ruhegehälter, die auf Grund einer früheren Anstellung bei einem privaten Arbeitgeber gezahlt werden, können wie bisher nur im Wohnsitzstaat des Empfängers besteuert werden (Abs. 1).

2. Leistungen der schwedischen Sozialversicherung (Allgemeine Volkspension und Zusatzpension) an eine in der Schweiz ansässige Person können sowohl in der Schweiz als auch in Schweden besteuert werden. Jedoch muss Schweden die schweizerischen Steuern, die auf diese Leistungen entfallen, gemäss Artikel 25, Absatz 4 an seine Steuern anrechnen (Abs. 2); damit wird eine effektive Doppelbesteuerung vermieden. Diese Sonderordnung hat ihren Grund im Umstand, dass die Beiträge an die schwedische Sozialversicherung überwiegend vom Arbeitgeber bezahlt werden und bei ihm steuerlich voll absetzbar sind. Lebt der Leistungsempfänger in der Schweiz, so ginge Schweden ohne diese Bestimmung jedes Steueranspruches verlustig.

ARTIKEL 20: *Öffentlich-rechtliche Vergütungen*

1. Öffentlich-rechtliche Vergütungen für gegenwärtig erbrachte Dienste können nur in dem Vertragsstaat besteuert werden, aus dem sie stammen, wenn sie an einen Staatsangehörigen dieses Vertragsstaates gezahlt werden.

a. Öffentlich-rechtliche Vergütungen, die aus der Schweiz an einen in Schweden tätigen schweizerischen Staatsangehörigen gezahlt werden, können nur in der Schweiz besteuert werden. Schweden muss diese Vergütungen von der Besteuerung ausnehmen, kann sie aber bei der Festsetzung des auf die übrigen Einkünfte anwendbaren Steuersatzes in Rechnung stellen (Art. 25, Abs. 1). Davon profitieren z.B. die schweizerischen Angestellten der schweizerischen Verkehrszentrale in Stockholm. Fliessen die Vergütungen aus der Schweiz an einen in Schweden tätigen Angehörigen eines anderen Staates, so steht das Besteuerungsrecht Schweden zu, es sei denn, dass der Empfänger seinen Wohnsitz in der Schweiz hat und sich nur vorübergehend in Schweden aufhält (Art. 16, Abs. 2). Die schwedischen Angestellten der schweizerischen Verkehrszentral in Stockholm

haben deshalb inskünftig ihre Saläre in Schweden zu versteuern; sie können dagegen der schwedischen Sozialversicherung beitreten, was nicht möglich war, solange ihre Saläre nach dem bestehenden Abkommen in Schweden steuerfrei waren.

b. Öffentlich-rechtliche Vergütungen, die aus Schweden an einen in der Schweiz tätigen schwedischen Staatsangehörigen gezahlt werden, können nur in Schweden besteuert werden. Die Schweiz muss diese Vergütungen von der Besteuerung ausnehmen, kann sie aber bei der Festsetzung des auf die übrigen Einkünfte anwendbaren Steuersatzes in Rechnung stellen (Art. 25, Abs. 6). Fliessen die Vergütungen aus Schweden an einen in der Schweiz tätigen Angehörigen eines anderen Staates, so steht das Besteuerungsrecht der Schweiz zu, es sei denn, dass der Empfänger seinen Wohnsitz in Schweden hat und sich nur vorübergehend in der Schweiz aufhält (Art. 16, Abs. 2).

2. Öffentlich-rechtliche Vergütungen für früher erbrachte Dienste (Pensionen usw.) können nur in dem Vertragsstaat besteuert werden, aus dem sie stammen, wenn sie an einen Staatsangehörigen dieses Vertragsstaates gezahlt werden. Fliessen die Vergütungen an einen Angehörigen eines anderen Staates, so steht das Besteuerungsrecht dem Vertragsstaat zu, in dem der Empfänger ansässig ist (Art. 19, Abs. 1).

ARTIKEL 21: *Renten*

Nach dieser Bestimmung können Renten nur in dem Vertragsstaat besteuert werden, in dem der Empfänger ansässig ist. Dies entspricht ständiger schweizerischer Vertragspraxis.

ARTIKEL 22: *Studenten*

1. Zahlungen, die ein Student, Lehrling oder Pratikant für seinen Unterhalt, sein Studium oder seine Ausbildung erhält, werden in dem Vertragsstaat, in dem er sich zum Studium oder zur Ausbildung aufhält, nicht besteuert, wenn die Zahlungen aus Quellen ausserhalb des Aufenthaltsstaates stammen (Abs. 1). Voraussetzung für die Steuerbefreiung im Aufenthaltsstaat ist nicht mehr, wie im bestehenden Abkommen, dass die Zahlungen von Angehörigen, Stipendienfonds oder ähnlichen Einrichtungen mit Wohnsitz im andern Vertragsstaat erfolgen; es genügt, wenn die Zahlungen aus irgendeiner Quelle ausserhalb des Aufenthaltsstaates stammen.

2. Vergütungen, die ein Student, der in einem Vertragsstaat studiert, für seine 100 Tage im Steuerjahr nicht übersteigende praktische Ausbildungstätigkeit in dem anderen Vertragsstaat erhält, werden in dem anderen Vertragsstaat nicht besteuert (Abs. 2). Diese weitere Ausnahme von Grundsatz der Besteuerung der Einkünfte aus unselbständiger Tätigkeit am Arbeitsort soll den Aufenthalt von jungen Studenten zum Erwerb praktischer Erfahrungen und Kenntnisse im Ausland erleichtern. Ähnliche Regelungen gelten bereits mit Bezug auf Österreich, Finnland, die Vereinigten Staaten und Pakistan.

ARTIKEL 23: *Nicht ausdrücklich erwähnte Einkünfte*

Die Zuteilung des ausschliesslichen Besteuerungsrechts für die in den vorstehenden Artikeln dieses Abkommens nicht ausdrücklich erwähnten Einkünfte an den Vertragsstaat, in dem der Empfänger ansässig ist, entspricht der bisherigen Regelung (Generalklausel).

Abschnitt IV: Besteuerung des Vermögens

ARTIKEL 24

1. Die Regeln über die Besteuerung des Vermögens folgen denen über die Besteuerung der Einkünfte:

a. für unbewegliches Vermögen gilt die lex rei sitae (Abs. 1);

b. bewegliches Betriebsvermögen oder bewegliches Vermögen, das zu einer der Ausübung eines freien Berufs dienenden festen Einrichtung gehört, kann in dem Vertragsstaat besteuert werden, in dem sich die Betriebsstätte oder die feste Einrichtung befindet (Abs. 2);

c. Seeschiffe und Luftfahrzeuge und das ihrem Betrieb dienende bewegliche Vermögen können nur in dem Vertragsstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet (Abs. 3);

d. alle andern Vermögensteile können nur in dem Vertragsstaat besteuert werden, in dem die Person ansässig ist, der sie gehören (Abs. 4).

2. Entsteht im Falle von beweglichem Vermögen, das mit einem Nutzniessungsrecht belastet ist, infolge von unterschiedlichen Bestimmungen im schweizerischen und schwedischen Steuerrecht eine Doppelbesteuerung, so ist dieser Fall im Verständigungsverfahren (Art. 27) zu klären.

Abschnitt V: Methoden zur Vermeidung der Doppelbesteuerung

ARTIKEL 25

1. Im Gegensatz zur Schweiz, die die Methode der Steuerbefreiung anwendet (Abs. 6), befolgt Schweden die sog. Steueranrechnung. Eine in Schweden ansässige Person bleibt mithin auch für Einkünfte und Vermögensteile, die nach dem Abkommen in der Schweiz besteuert werden können, den schwedischen Steuern unterworfen. Schweden muss jedoch die auf diesen Einkünften und Vermögensteilen in der Schweiz gezahlten Steuern vom Einkommen und Vermögen an seine eigenen Steuern anrechnen (Abs. 1, Unterabs. 1).

Der Betrag der schweizerischen Steuern, deren Anrechnung an die schwedischen Steuern von einer in Schweden ansässigen Person verlangt werden kann, darf den Teil der schwedischen Steuern nicht übersteigen, der auf die betreffenden Einkünfte und Vermögensteile entfällt (Abs. 3).

2. Bezieht ein in Schweden ansässiger schweizerischer Staatsangehöriger aus der Schweiz öffentlich-rechtliche Vergütungen (einschliesslich Ruhegehälter) im Sinne von Artikel 20, so nimmt Schweden diese Vergütungen von der Besteuerung aus Schweden kann aber diese Vergütungen bei der Festsetzung des Steuersatzes, der auf das übrige Einkommen dieser Person Anwendung findet, in Rechnung stellen (Abs. 1, Unterabs. 2).

3. Natürliche Personen, die ihren Wohnsitz aus Schweden in die Schweiz verlegt haben, können von den schwedischen Steuerbehörden weiterhin als in Schweden ansässig betrachtet und entsprechend besteuert werden, wenn sie nicht nachweisen, dass sie den Mittelpunkt ihrer Lebensinteressen tatsächlich in die Schweiz verlegt haben (Abs. 2). Diese Bestimmung soll es Schweden ermöglichen, die im innerstaatlichen Recht einzu-

führenden Massnahmen zur Erschwerung der Steuerflucht aus Schweden ins Ausland auch unter dem neuen Abkommen mit der Schweiz durchzuführen; ohne eine entsprechende Bestimmung wäre nach Artikel 4 nur der Wohnsitz in der Schweiz massgebend. Die Tragweite dieser Sonderbestimmung konnte schweizerischerseits in verschiedener Hinsicht begrenzt werden: einmal findet sie nur Anwendung auf schwedische und in keinem Fall auf schweizerische Staatsangehörige, und zudem nur auf solche schwedische Bürger, die seit nicht mehr als drei Jahren aus Schweden weggezogen sind. Sind seit dem Wegzug aus Schweden drei Jahre vergangen, so fällt ein schwedisches Besteuerungsrecht auf Grund eines weiterbestehenden schwedischen Wohnsitzes dahin. Durch Absatz 2 wird die schweizerische Steuerhoheit nicht eingeschränkt, vielmehr hat Schweden zur Vermeidung einer Doppelbesteuerung die Einkommens- und Vermögenssteuern, die in der Schweiz von hier ansässigen Personen voll erhoben werden können, an seine eigenen Steuern anzurechnen. Hervorzuheben ist, dass schon nach internem schwedischem Recht keine Besteuerung eintritt, wenn der weggezogene Steuerpflichtige nachweisen kann, dass er den Mittelpunkt seiner Lebensinteressen tatsächlich von Schweden nach der Schweiz verlegt hat. Ausserdam soll nach dem Verhandlungs- und Paraphierungsprotokoll vom 2. November 1964 (Ziff. 4) die in Absatz 2 vorbehaltene interne schwedische Gesetzgebung normalerweise erst auf solche schwedische Staatsangehörige angewendet werden, die den Wohnsitz nach dem 31. Dezember 1965, jedoch nicht vor dem Inkrafttreten der neuen schwedischen Gesetzgebung, aus Schweden nach der Schweiz verlegt haben.

4. Leistungen der schwedischen Sozialversicherung an eine in der Schweiz ansässige Person unterliegen grundsätzlich der schweizerischen Steuerhoheit. Da solche Leistungen auf Grund von Artikel 19, Absatz 2 aber auch in Schweden besteuert werden können, wird eine allfällige Doppelbesteuerung dadurch vermieden, dass Schweden die auf diesen Leistungen bezahlten schweizerischen Steuern an seine Steuern anrechnet. Der anzurechnende Betrag ist jedoch begrenzt auf den Teil der schwedischen Steuern, der auf diese Leistungen entfällt (Abs. 4).

5. Weil das Schachtelprivileg nach internem schwedischem Steuerrecht nur für schwedische Dividenden gilt, verfügt Absatz 5 seine Ausdehnung auf Dividenden, die eine in der Schweiz ansässige Tochtergesellschaft an eine in Schweden ansässige Muttergesellschaft zahlt, aber immerhin mit verschiedenen Einschränkungen (Abs. 5, Satz 2). Diese sollen verhindern, dass Gewinne, die nur zu einem kleinen Teil oder überhaupt nicht aus einer kaufmännischen oder gewerblichen Tätigkeit in der Schweiz herrühren, bei der schwedischen Gesellschaft steuerfrei sind.

6. Einkünfte (ausgenommen Dividenden und Zinsen) und Vermögensteile einer in der Schweiz ansässigen Person, die nach dem Abkommen in Schweden besteuert werden können, nimmt die Schweiz von der Besteuerung aus; diese Einkünfte und Vermögensteile können aber bei der Festsetzung des auf das übrige Einkommen und Vermögen anwendbaren Steuersatzes in Rechnung gestellt werden (Methode der Steuerbefreiung mit Progressionsvorbehalt; Abs. 6). Dagegen ist die Schweiz nicht verpflichtet, Einkünfte und Vermögensteile eines in der Schweiz ansässigen schwedischen Staatsangehörigen von der Besteuerung auszunehmen, wenn diese Einkünfte und Vermögensteile auf Grund von Artikel 25, Absatz 2 in Schweden besteuert werden können (Abs. 6).

7. Da die Pflicht zur Steuerbefreiung nach Absatz 6 nicht gilt für schwedische Dividenden und Zinsen, die von Schweden mit einer Quellensteuer von maximal 5 Prozent belastet werden können (Art. 10, Abs. 2, und 11, Abs. 2), diese Kapitalerträgnisse mithin, unbeschadet der verbleibenden schwedischen Vorbelastung an der Quelle, der schweizerischen Einkommenssteuer unterliegen, hat sich die Schweiz in Absatz 7 verpflichtet, der dadurch entstehenden Doppelbesteuerung als Wohnsitzstaat des Ertragsgläubigers durch eine angemessene Entlastung Rechnung zu tragen. Diese Neuerung im schweizerischen Vertragsrecht entspricht einer im OECD-Mustervertrag enthaltenen Empfehlung; die bisher von der Schweiz in diesen Fällen praktizierte Nettobesteuerung (Abzug der nach Abkommen verbleibenden ausländischen Quellensteuer vom Bruttobetrag) ausländischer Dividenden und Zinsen genügt nicht zur Beseitigung der Doppelbesteuerung. Der Bundesrat wird, in Ausführung des Bundesbeschlusses vom 22. Juni 1951 über die Durchführung von zwischenstaatlichen Abkommen des Bundes zur Vermeidung der Doppelbesteuerung (AS 1951, 889) darüber entscheiden, welche der drei in Absatz 7 vorgesehenen Entlastungsmöglichkeiten im Verhältnis zu Schweden Anwendung finden soll (Steueranrechnung, pauschale Steuerermässigung, teilweise Steuerbefreiung).

Abschnitt VI: Besondere Bestimmungen

ARTIKEL 26: *Gleichbehandlung*

Der Artikel über die Gleichbehandlung will, als wertvolle Ergänzung des Abkommens, eine steuerliche Diskriminierung, die an die Staatsangehörigkeit oder an andere ähnliche Gründe anknüpft, ausschliessen. Der Schutz vor einer solchen Diskriminierung ist sehr umfassend und gilt nicht nur für die unter das Abkommen fallenden, sondern auch für alle andern von den beiden Vertragsstaaten erhobenen Steuern.

ARTIKEL 27: *Verständigungsverfahren*

1. Das Verständigungsverfahren kann nicht nur zur Beseitigung einer Effektiven, sondern auch einer virtuellen Doppelbesteuerung angerufen werden (Abs. 1 und 3). Der Meinungsaustausch zwischen den zuständigen Behörden der Vertragsstaaten kann schriftlich (Abs. 2) oder mündlich in einer Kommission (Abs. 4), die aus Vertretern dieser Behörden besteht, erfolgen, wenn dies für die Herbeiführung einer Einigung zweckmässig erscheint.

2. Die im Schlussprotokoll zum bestehenden Abkommen enthaltene Bestimmung, wonach der Steuerpflichtige die Einleitung des Verständigungsverfahrens in der Regel innert Jahresfrist nach Ablauf des Kalenderjahres, in dem er Kenntnis vom Bestehen einer Doppelbesteuerung erhalten hat, beantragen muss, ist im neuen Abkommen zwar nicht mehr zu finden; dennoch ist diese Verhaltensregel von den Steuerpflichtigen weiterhin zu beachten.

ARTIKEL 28: *Diplomatische und konsularische Beamte*

1. Nach dem bestehenden Abkommen haben die diplomatischen und konsularischen Beamten des einen Vertragsstaates, die im anderen Vertragsstaat oder im Drittausland

residieren, keinen Anspruch auf Rückerstattung der Quellensteuern von Dividenden und Zinsen durch den andern Vertragsstaat, da sie nicht als im Entsendestaat wohnhaft angesehen werden und eine besondere Bestimmung fehlt. Dieser unbefriedigende Zustand wird nun durch Absatz 3 beseitigt; danach gelten Angehörige einer diplomatischen oder konsularischen Vertretung, die ein Vertragsstaat im andern Vertragsstaat oder in einem dritten Staat unterhält, als im Entsendestaat ansässig – und damit als rückerstattungsberechtigt – wenn sie die Staatsangehörigkeit des Entsendestaates besitzen und dort zu den Steuern vom Einkommen und vom Vermögen wie in diesem Staat ansässige Personen herangezogen werden.

2. Um unerwünschte Steuervorteile zu verhindern, schliesst Absatz 4 die zwischenstaatlichen Organisationen, ihre Organe oder Beamten sowie Angehörige diplomatischer oder konsularischer Vertretungen eines dritten Staates, die in einem Vertragsstaat anwesend sind, aber in keinem der beiden Vertragsstaaten für Zwecke der Steuern vom Einkommen und Vermögen als dort ansässig behandelt werden, vom Anwendungsbereich des Abkommens aus.

Abschnitt VII: Schlussbestimmungen

ARTIKEL 29: *Inkrafttreten*

1. Das Abkommen tritt mit dem Austausch der Ratifikationsurkunden in Kraft; seine Bestimmungen finden erstmals Anwendung in der Schweiz auf das Steuerjahr 1967 und in Schweden auf die Einkünfte, die im Jahre 1966 erzielt werden sowie auf die staatliche Vermögenssteuer, die Gegenstand der Veranlagung des Jahres 1967 bildet (Abs. 2).

2. Das Einkommens- und Vermögenssteuerabkommen vom 16. Oktober 1948 wird, unter Vorbehalt der nachfolgenden Ziffer 3, durch dieses Abkommen aufgehoben; es findet letztmals Anwendung in der Schweiz auf das Steuerjahr 1966 und in Schweden auf die Einkünfte, die im Jahre 1965 erzielt werden, sowie auf die staatliche Vermögenssteuer, die Gegenstand der Veranlagung des Jahres 1966 bildet (Abs. 3, 1. Satz).

3. Das Einkommens- und Vermögenssteuerabkommen vom 16. Oktober 1948 gilt weiterhin für die Anwendung des am gleichen Tag abgeschlossenen Erbschaftssteuerabkommens, das durch dieses Abkommen in keiner Weise berührt wird (Abs. 3, 2. Satz).

ARTIKEL 30: *Ausserkrafttreten*

Dieses Abkommen bleibt in Kraft, solange es nicht von einem der Vertragsstaaten gekündigt worden ist. Eine Kündigung ist erstmals möglich auf Ende des Jahres 1969, unter Einhaltung einer Frist von mindestens 6 Monaten. Die letztmalige Anwendung des Abkommens ist entsprechend den Bestimmungen über die erstmalige Anwendung (Art. 29, Abs. 2) geregelt.

Das vorliegende Abkommen hat seine verfassungsmässige Grundlage in Artikel 8 der Bundesverfassung, nach welchem dem Bund das Recht zusteht, Staatsverträge mit dem Ausland abzuschliessen. Der Beschluss über die Genehmigung des Abkommens fällt nach Artikel 85, Ziffer 5 der Bundesverfassung in die Zuständigkeit der Bundesversamm-

lung. Das Abkommen ist zwar auf unbestimmte Dauer abgeschlossen, kann aber nach dem Jahre 1968, unter Einhaltung einer Frist von mindestens 6 Monaten, zum Ende jedes Kalenderjahres gekündigt werden. Der Genehmigungsbeschluss unterliegt deshalb nicht dem Staatsvertragsreferendum nach Artikel 89, Absatz 4 der Bundesverfassung.

Das vorliegende Abkommen ist das erste schweizerische Abkommen, dem der OECD-Mustervertrag von 1963 zugrunde gelegt worden ist. Die mit dem Abkommen vorgenommene Revision des Einkommens- und Vermögenssteuerabkommens mit Schweden von 1948 hat die Zustimmung der Kantone und der grossen Mehrheit der interessierten Kreise der schweizerischen Wirtschaft gefunden. Wir beantragen Ihnen deshalb, das Abkommen durch Annahme des beiliegenden Entwurfs zu einem Bundesbeschluss zu genehmigen.

Wir benützen auch diesen Anlass, um Sie, Herr Präsident, hochgeehrte Herren, unserer vollkommenen Hochachtung zu versichern.

Bern, den 13. Juli 1965.

Im Namen des Schweizerischen Bundesrates,

Der Bundespräsident:
Tschudi

Der Bundeskanzler
Ch. Oser

ABKOMMEN ZWISCHEN DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT UND DEM KÖNIGREICH SCHWEDEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG AUF DEM GEBIETE DER STEUERN VOM EINKOMMEN UND VOM VERMÖGEN

Der Schweizerische Bundesrat und die Regierung des Königreichs Schweden, vom Wunsch geleitet, ein Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen abzuschliessen, haben zu diesem Zweck zu ihrem Bevollmächtigten ernannt:

Der Schweizerische Bundesrat:

Herrn Fürsprecher Egbert de Graffenried, Botschafter der Schweizerischen Eidgenossenschaft in Stockholm,

Die Regierung des Königreichs Schweden:

Herrn Torsten Nilsson, Minister für Auswärtige Angelegenheiten, die, nachdem sie sich ihre Vollmachten mitgeteilt und diese in guter und gehöriger Form befunden, folgendes vereinbart haben:

Abschnitt I: Geltungsbereich der Abkommens

ARTIKEL 1

Persönlicher Geltungsbereich

Diese Abkommen gilt für Personen, die in einem Vertragstaat oder in beiden Vertragstaaten ansässig sind.

ARTIKEL 2

Unter das Abkommen fallende Steuern

1. Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen und vom Vermögen, die für Rechnung eines der beiden Ver-

tragsstaaten, seiner politischen Unterabteilungen oder seiner lokalen Körperschaften erhoben werden.

2. Als Steuern vom Einkommen und vom Vermögen gelten alle ordentlichen und ausserordentlichen Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschliesslich der Steuern vom Gewinn aus der Veräusserung bewegheben oder unbeweglichen Vermögens, der Lohnsummensteuern sowie der Steuern vom Vermögenszuwachs.

3. Zu den zur Zeit bestehenden Steuern, für die das Abkommende gehören insbesondere

a. in Schweden:

(1) die staatliche Einkommensteuer, einschliesslich der Seemannsteuer und der Couponsteuer;

(2) die Abgabe auf besondere Vorteile und Gerechtigkeiten (bevillningsavgifterna för särskilda förmaner och rättigheter);

(3) die Sondersteuern von Aktiengesellschaften bei Nichtausschüttung vorhandener Gewinne (ersättningsskatten) und auf Ausschüttungen bei Kapitalherabsetzung (utskiftningsskatten);

(4) die kommunale Einkommensteuer (den kommunala inkomstskatten); und

(5) die staatliche Vermögensteuer

(im folgenden als „schwedische Steuer" bezeichnet);

b in der Schweiz:

die von Bund, Kantonen und Gemeinden erhobenen Steuern

(1) vom Einkommen (Gesamteinkommen, Erwerbseinkommen, Vermögensertrag, Geschäftsertrag, Kapitalgewinn usw.) und

(2) vom Vermögen (Gesamtvermögen, bewegliches und unbewegliches Vermögen, Geschäftsvermögen, Kapital und Reserven usw.)

(im folgenden als „schweizerische Steuer" bezeichnet).

4. Das Abkommen gilt nicht

a in Schweden: für die Sondersteuern auf Gewinnen von Lotterien und Wetten;

b in der Schweiz: für die an der Quelle erhobene eidgenössische Verrechnungs-steuer von Lotteriegewinnen.

5. Das Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den zur Zeit bestehenden Steuern oder an deren Stelle erhoben werden. Die zuständigen Behörden der Vertragstaaten teilen einander am Ende eines jeden Jahres die in ihren Steuergesetzen eingetretenen Änderungen mit.

Abschnitt II: Definitionen

ARTIKEL 3

Allgemeine Definitionen

1. Im Sinne dieses Abkommens, wenn der Zusammenhang nichts anderes erfordert:

a. bedeuten die Ausdrücke „ein Vertragstaat" und „der andere Vertragstaat", je nach dem Zusammenhang, Schweden oder die Schweiz;

b. umfasst der Ausdruck „Person" natürliche Personen, Gesellschaften und alle anderen Personenvereinigungen;

c. bedeutet der Ausdruck „Gesellschaft" juristische Personen oder Rechtsträger, die für Besteuerung wie juristische Personen behandelt werden;

d. bedeuten die Ausdrücke „Unternehmen eines Vertragstaates" und „Unternehmen des anderen Vertragstaates", je nachdem, ein Unternehmen, das von

einer in einem Vertragstaat ansässigen Person betrieben wird, oder ein Unternehmen, das von einer in dem anderen Vertragstaat ansässigen Person betrieben wird;

e. bedeutet der Ausdruck „zuständige Behörde"

(1) in Schweden: der Finanzminister oder sein bevollmächtigter Vertreter;

(2) in der Schweiz: der Direktor der Eidgenössischen Steuerverwaltung oder sein bevollmächtigter Vertreter.

2. Bei Anwendung des Abkommens durch einen Vertragstaat hat, wenn der Zusammenhang nichts anderes erfordert, jeder nicht anders definierte Ausdruck die Bedeutung, die ihm nach dem Recht dieses Staates über die Steuern zukommt, welche Gegenstand des Abkommens sind.

ARTIKEL 4

Steuerlicher Wohnsitz

1. Im Sinne dieses Abkommens bedeutet der Ausdruck „eine in einem Vertragstaat ansässige Person" eine Person, die nach dem Recht dieses Staates dort auf Grund ihres Wohnsitzes, ihres ständigen Aufenthalts, des Ortes ihrer Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist.

2. Ist nach Absatz 1 eine natürliche Person in beiden Vertragstaaten ansässig, so gilt folgendes:

a. Die Person gilt als in dem Vertragstaat ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat (Mittelpunkt der Lebensinteressen).

b. Kann nicht bestimmt werden, in welchem Vertragstaat die Person den Mittelpunkt der Lebensinteressen hat, oder verfügt sie in keinem der Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat.

c. Hat die Person ihren gewöhnlichen Aufenthalt in beiden Vertragstaaten oder in keinem der Vertragstaaten, so gilt sie als in dem Vertragstaat ansässig, dessen Staatsangehörigkeit sie besitzt.

d. Besitzt die Person die Staatsangehörigkeit beider Vertragstaaten oder keines Vertragstaates, so regeln die zuständigen Behörden der Vertragstaaten die Frage in gegenseitigem Einvernehmen.

3. Ist nach Absatz 1 eine andere als eine natürliche Person in beiden Vertragstaaten ansässig, so gilt sie als in dem Vertragstaat ansässig, in dem sich der Ort ihrer tatsächlichen Geschäftsleitung befindet. Dasselbe gilt für die nach dem Recht eines Vertragstaates errichteten oder organisierten Personengesellschaften.

4. Bei natürlichen Personen, die ihren Wohnsitz endgültig von einem in den anderen Vertragstaat verlegt haben, endet die Steuerpflicht, soweit sie an den Wohnsitz anknüpft, im erstgenannten Staat mit dem Ablauf des Tages, an dem die Wohnsitzverlegung vollzogen ist.

ARTIKEL 5

Betriebstätte

1. Im Sinne dieses Abkommens bedeutet der Ausdruck „Betriebstätte" eine feste Geschäftseinrichtung, in der die Tätigkeit des Unternehmens ganz oder teilweise ausgeübt wird.

2. Der Ausdruck „Betriebstätte" umfasst insbesondere:

a einen Ort der Leitung,

b eine Zweigniederlassung,
c eine Geschäftsstelle,
d eine Fabrikationsstätte,
e eine Werkstätte,
f ein Bergwerk, einen Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
g eine Bauausführung oder Montage, deren Dauer zwölf Monate überschreitet.

3. Als Betriebstätten gelten nicht:

a Einrichtungen, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung von Gütern oder Waren des Unternehmens benutzt werden;
b Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung unterhalten werden;
c Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zu dem Zweck unterhalten werden, durch ein anderes Unternehmen bearbeitet oder verarbeitet zu werden;
d eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen Güter oder Waren einzukaufen oder Informationen zu beschaffen.

4. Ist eine Person – mit Ausnahme eines unabhängigen Vertreters im Sinne des Absatzes 5 – in einem Vertragstaat für ein Unternehmen des anderen Vertragstaates tätig, so gilt eine in dem erstgenannten Staat gelegene Betriebstätte als gegeben, wenn die Person eine Vollmacht besitzt, im Namen des Unternehmens Verträge abzuschliessen, und die Vollmacht in diesem Staat gewöhnlich ausübt, es sei denn, dass sich ihre Tätigkeit auf den Einkauf von Gütern oder Waren für das Unternehmen beschränkt.

5. Ein Unternehmen eines Vertragstaates wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Vertragstaat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.

6. Allein dadurch, dass eine in einem Vertragstaat ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Vertragstaat ansässig ist oder dort (entweder durch eine Betriebstätte oder in anderer Weise) ihre Tätigkeit ausübt, wird eine der beiden Gesellschaften nicht zur Betriebstätte der anderen.

Abschnitt III: Besteuerung des Einkommens

ARTIKEL 6

Einkünfte aus unbeweglichem Vermögen

1. Einkünfte aus unbeweglichem Vermögen können in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

2. Der Ausdruck „unbewegliches Vermögen" bestimmt sich nach dem Recht des Vertragstaates, in dem das Vermögen liegt. Der Ausdruck umfasst in jedem Fall die Zugehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Betriebe, die Rechte, auf die die Vorschriften des Privatrechts über Grundstücke Anwendung finden, die Nutzungsrechte an unbeweglichem Vermögen sowie die Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung von Mineralvorkommen. Quellen und anderen Bodenschätzen; Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.

3. Absatz 1 gilt für Einkünfte aus der unmittelbaren Nutzung, der Vermietung

oder Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens.

4. Die Absätze 1 und 3 gelten auch für Einkünfte aus unbeweglichem Vermögen eines Unternehmens und für Einkünfte aus unbeweglichem Vermögen, das der Ausübung eines freien Berufes dient.

ARTIKEL 7

Unternehmensgewinne

1. Gewinne eines Unternehmens eines Vertragstaates können nur in diesem Staat besteuert werden, es sei denn, dass das Unternehmen seine Tätigkeit im anderen Vertragstaat durch eine dort gelegene Betriebstätte ausübt. Übt das Unternehmen seine Tätigkeit in dieser Weise aus, so können die Gewinne des Unternehmens in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser Betriebstätte zugerechnet werden können.

2. Übt ein Unternehmen eines Vertragstaates seine Tätigkeit in dem anderen Vertragstaat durch eine dort gelegene Betriebstätte aus, so sind in jedem Vertragstaat dieser Betriebstätte die Gewinne zuzurechnen, die sie hätte erzielen können, wenn sie eine gleiche oder ähnliche Tätigkeit unter gleichen oder ähnlichen Bedingungen als selbständiges Unternehmen ausgeübt hätte und im Verkehr mit dem Unternehmen, dessen Betriebstätte sie ist, völlig unabhängig gewesen wäre.

3. Bei der Ermittlung der Gewinne einer Betriebstätte werden die für diese Betriebstätte entstandenen Aufwendungen, einschliesslich der Geschaftsführungs- und allgemeinen Verwaltungskosten, zum Abzug zugelassen, gleichgültig, ob sie in dem Staat, in dem die Betriebstätte liegt, oder anderswo entstanden sind.

4. Absatz 2 schliesst nicht aus, dass ein Vertragstaat die einer Betriebstätte zuzurechnenden Gewinne durch Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile unter Anrechnung eines Voraus von höchstens 10 von Hundert zu Gunsten des Sitzes des Unternehmens ermittelt; die Art der angewendeten Gewinnaufteilung muss jedoch so sein, dass das Ergebnis mit den Grundsätzen dieses Artikels übereinstimmt.

5. Übt ein Versicherungsunternehmen eines Vertragstaates seine Tätigkeit in dem anderen Vertragstaat durch eine dort gelegene Betriebstätte aus, so sind die dieser Betriebstätte zuzurechnenden Gewinne dadurch zu ermitteln, dass die Gesamtgewinne des Unternehmens im Verhältnis der Rohprämieneinnahmen dieser Betriebstätte zu den gesamten Rohprämieneinnahmen des Unternehmens aufgeteilt werden.

6. Auf Grund des blossen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebstätte kein Gewinn zugerechnet.

7. Bei Anwendung der vorstehenden Absätze sind die der Betriebstätte zuzurechnenden Gewinne jedes Jahr auf dieselbe Art zu ermitteln, es sei denn, dass ausreichende Gründe dafür bestehen, anders zu verfahren.

8. Gehören zu den Gewinnen Einkünfte, die in anderen Artikeln dieses Abkommens behandelt werden, so werden die Bestimmungen jener Artikel durch die Bestimmungen dieses Artikels nicht berührt.

ARTIKEL 8

Seeschiffahrt und Luftfahrt

1. Gewinne aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr können nur in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

2. Absatz 1 gilt auch für Gewinne aus der Beteiligung an einem Pool, an einer gemeinsamen Betriebsorganisation oder an einer internationalen Betriebskörperschaft.

ARTIKEL 9

Verbundene Unternehmen

Wenn

a ein Unternehmen eines Vertragstaates unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens des anderen Vertragstaates beteiligt ist, oder

b dieselben Personen unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens eines Vertragstaates und eines Unternehmens des anderen Vertragstaates beteiligt sind,

und in diesen Fällen zwischen den beiden Unternehmen hinsichtlich ihrer kaufmännischen oder finanziellen Beziehungen Bedingungen vereinbart oder auferlegt werden, die von denen abweichen, die unabhängige Unternehmen miteinander vereinbaren würden, so dürfen die Gewinne, die eines der Unternehmen ohne diese Bedingungen erzielt hätte, wegen dieser Bedingungen aber nicht erzielt hat, den Gewinnen dieses Unternehmens zugerechnet und entsprechend besteuert werden.

ARTIKEL 10

Dividenden

1. Dividenden, die eine in einem Vertragstaat ansässige Gesellschaft an eine in dem anderen Vertragstaat ansässige Person zahlt, können in dem anderen Staat besteuert werden.

2. Diese Dividenden können jedoch in dem Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 5 vom Hundert des Bruttobetrags der Dividenden nicht übersteigen.

Die zuständigen Behörden der Vertragstaaten regeln in gegenseitigem Einvernehmen, wie diese Begrenzungsbestimmung durchzuführen ist.

Dieser Absatz berührt nicht die Besteuerung der Gesellschaft in bezug auf die Gewinne, aus denen die Dividenden gezahlt werden.

3. Der in diesem Artikel verwendete Ausdruck „Dividenden" bedeutet Einkünfte aus Aktien, Genussaktien oder Genussscheinen, Kuxen, Gründeranteilen oder anderen Rechten – ausgenommen Forderungen – mit Gewinnbeteiligung sowie aus sonstigen Gesellschaftsanteilen stammende Einkünfte, die nach dem Steuerrecht des Staates, in dem die ausschüttende Gesellschaft ansässig ist, den Einkünften aus Aktien gleichgestellt sind.

4. Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Dividenden in dem anderen Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine Betriebstätte hat und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

5. Bezieht eine in einem Vertragstaat ansässige Gesellschaft Gewinne oder Einkünfte aus dem anderen Vertragstaat, so darf dieser andere Staat weder die Dividenden besteuern, die die Gesellschaft an nicht in diesem anderen Staat ansässige Personen zahlt, noch Gewinne der Gesellschaft einer Steuer für nichtausgeschüttete Gewinne unterwerfen, selbst wenn die gezahlten Dividenden oder die nichtausgeschütteten Gewinne ganz oder teilweise

aus in dem anderen Staat erzielten Gewinnen oder Einkünften bestehen.

ARTIKEL 11

Zinsen

1. Zinsen, die aus einem Vertragstaat stammen und an eine in dem anderen Vertragstaat ansässige Person gezahlt werden, können in dem anderen Staat besteuert werden.

2. Diese Zinsen können jedoch in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 5 vom Hundert des Betrags der Zinsen nicht übersteigen. Die zuständigen Behörden der Vertragstaaten regeln in gegenseitigem Einvernehmen, wie diese Begrenzungsbestimmung durchzuführen ist.

3. Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus öffentlichen Anleihen, aus Obligationen, auch wenn sie durch Pfandrechte an Grundstücken gesichert oder mit einer Gewinnbeteiligung ausgestattet sind, und aus Forderungen jeder Art sowie alle anderen Einkünfte, die nach dem Steuerrecht des Staates, aus dem sie stammen, den Einkünften aus Darlehen gleichgestellt sind.

4. Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Zinsen in dem anderen Vertragstaat, aus dem die Zinsen stammen, eine Betriebstätte hat und die Forderung, für die die Zinsen gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

5. Zinsen gelten dann als aus einem Vertragstaat stammend, wenn der Schuldner dieser Staat selbst, eine seiner politischen Unterabteilungen, eine seiner lokalen Körperschaften oder eine in diesem Staat ansässige Person ist. Hat aber der Schuldner der Zinsen, ohne Rücksicht darauf, ob er in einem Vertragstaat ansässig ist oder nicht, in einem Vertragstaat eine Betriebstätte und ist die Schuld, für die die Zinsen gezahlt werden, für Zwecke der Betriebstätte eingegangen worden und trägt die Betriebstätte die Zinsen, so gelten die Zinsen als aus dem Vertragstaat stammend, in dem die Betriebstätte liegt.

6. Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Zinsen, gemessen an der zugrundeliegenden Forderung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

ARTIKEL 12

Lizenzgebühren

1. Lizenzgebühren, die aus einem Vertragstaat stammen und an eine in dem anderen Vertragstaat ansässige Person gezahlt werden, können nur in dem anderen Staat besteuert werden.

2. Der in diesem Artikel verwendete Ausdruck „Lizenzgebühren" bedeutet Vergütungen jeder Art, die für die Benutzung oder für das Recht auf Benutzung von Urheberrechten an literarischen, künstlerischen oder wissenschaftlichen Werken, einschliesslich kinematographischer Filme, von Patenten, Marken, Mustern oder Modellen, Plänen, geheimen Formeln oder Verfahren oder für die Benutzung oder das Recht auf Benutzung gewerblicher, kaufmännischer oder wissenschaftlicher Ausrüstungen oder für die

Mitteilung gewerblicher, kaufmännischer oder wissenschaftlicher Erfahrungen gezahlt werden.

3. Absatz 1 ist nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Lizenzgebühren in dem anderen Vertragstaat, aus dem die Lizenzgebühren stammen, eine Betriebstätte hat und die Rechte oder Vermögenswerte, für die die Lizenzgebühren gezahlt werden, tatsächlich zu dieser Betriebstätte gehören. In diesem Fall ist Artikel 7 anzuwenden.

4. Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Lizenzgebühren, gemessen an der zugrundeliegenden Leistung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

ARTIKEL 13

Gewinne aus der Veräusserung von Vermögen

1. Gewinne aus der Veräusserung unbeweglichen Vermögens im Sinne des Artikels 6 Absatz 2 können in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

2. Gewinne aus der Veräusserung beweglichen Vermögens, das Betriebsvermögen einer Betriebstätte darstellt, die ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat hat, oder das zu einer festen Einrichtung gehört, über die eine in einem Vertragstaat ansässige Person für die Ausübung eines freien Berufes in dem anderen Vertragstaat verfügt, einschliesslich derartiger Gewinne, die bei der Veräusserung einer solchen Betriebstätte (allein oder zusammen mit dem übrigen Unternehmen) oder einer solchen festen Einrichtung erzielt werden, können in dem anderen Staat besteuert werden. Jedoch können Gewinne aus der Veräusserung des in Artikel 24 Absatz 3 genannten beweglichen Vermögens nur in dem Vertragstaat besteuert werden, in dem dieses bewegliche Vermögen nach dem angeführten Artikel besteuert werden kann.

3. Gewinne aus der Veräusserung des in den Absätzen 1 und 2 nicht genannten Vermögens können nur in dem Vertragstaat besteuert werden, in dem der Veräusserer ansässig ist.

ARTIKEL 14

Ruhende Erbschaften; Personengesellschaften

1. Die Vorschriften der Gesetze eines Vertragstaates über die Besteuerung ruhender Erbschaften finden insoweit keine Anwendung, als für das Einkommen, das aus der Erbschaft herrührt, oder das Vermögen, das zu ihr gehört, der Erwerber nach den Bestimmungen dieses Abkommens im anderen Vertragstaat besteuert werden kann.

2. Hat nach den Bestimmungen des Abkommens eine Personengesellschaft als eine in der Schweiz ansässige Person Anspruch auf Befreiung von der schwedischen Steuer oder auf Ermässigung dieser Steuer, so wird dadurch die Befugnis Schwedens nicht eingeschränkt, einen Teilhaber der Personengesellschaft, welcher nach schwedischem Steuerrecht als in Schweden ansässig gilt, zu besteuern; in diesem Fall ist Artikel 25 Absatz 1 anzuwenden.

ARTIKEL 15

Selbständige Arbeit

1. Einkünfte, die eine in einem Vertragstaat ansässige Person aus einem freien

Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art bezieht, können nur in diesem Staat besteuert werden, es sei denn, dass die Person für die Ausübung ihrer Tätigkeit in dem anderen Vertragstaat regelmässig über eine feste Einrichtung verfügt. Verfügt sie über eine solche feste Einrichtung, so können die Einkünfte in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser festen Einrichtung zugerechnet werden können.

2. Der Ausdruck „freier Beruf" umfasst insbesondere die selbständig ausgeübte wissenschaftliche literarische, künstlerische, erzieherische oder unterrichtende Tätigkeit sowie die selbständige Tätigkeit der Ärzte, Rechtsanwälte, Ingenieure, Architekten, Zahnärzte und Bücherrevisoren.

ARTIKEL 16

Unselbständige Arbeit

1. Vorbehältlich der Artikel 17, 19 und 20 können Gehälter, Löhne und ähnliche Vergütungen, die eine in einem Vertragstaat ansässige Person aus unselbständiger Arbeit bezieht, nur in diesem Staat besteuert werden, es sei denn, dass die Arbeit in dem anderen Vertragstaat ausgeübt wird. Wird die Arbeit dort ausgeübt, so können die dafür bezogenen Vergütungen in dem anderen Staat besteuert werden.

2. Ungeachtet des Absatzes 1 können Vergütungen, die eine in einem Vertragstaat ansässige Person für eine in dem anderen Vertragstaat ausgeübte unselbständige Arbeit bezieht, nur in dem erstgenannten Staat besteuert werden, wenn

a der Empfänger sich in dem anderen Staat insgesamt nich länger als 183 Tage während des betreffenden Steuerjahres aufhält.

b die Vergütungen von einem Arbeitgeber oder für einen Arbeitgeber gezahlt werden, der nicht in dem anderen Staat ansässig ist, und

c die Vergütungen nicht von einer Betriebstätte oder einer festen Einrichtung getragen werden, die der Arbeitgeber in dem anderen Staat hat.

3. Ungeachtet der vorstehenden Bestimmungen dieses Artikels können Vergütungen für unselbständige Arbeit, die an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr ausgeübt wird, in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

ARTIKEL 17

Aufsichtsrats- und Verwaltungsratsvergütungen

Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die eine in einem Vertragstaat ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrates einer Gesellschaft bezieht, die in dem anderen Vertragstaat ansässig ist, können in dem anderen Staat besteuert werden.

ARTIKEL 18

Künstler und Sportler

Ungeachtet der Artikel 15 und 16 können Einkünfte, die berufsmässige Künstler, wie Bühnen-, Film-, Rundfunk- oder Fernsehkünstler und Musiker, sowie Sportler aus ihrer in dieser Eigenschaft persönlich ausgeübten Tätigkeit beziehen, in dem Vertragstaat besteuert werden, in dem sie diese Tätigkeit ausüben. Dasselbe gilt, ungeachtet des Artikels 7, wenn die Einkünfte einer Person zufliessen, die den Künstler oder Sportler angestellt hat.

ARTIKEL 19

Ruhegehälter

1. Vorbehältlich des Artikels 20 können Ruhegehälter und ähnliche Vergütungen,

die einer in einem Vertragstaat ansässigen Person für frühere unselbständige Arbeit gezahlt werden, nur in diesem Staat besteuert werden.

2. Ungeachtet des Absatzes 1 können Pensionen, die auf Grund der schwedischen Sozialversicherung an eine in der Schweiz ansässige Person gezahlt werden, in Schweden besteuert werden; in diesem Fall ist Artikel 25 Absatz 4 anzuwenden.

ARTIKEL 20

Öffentlich-rechtliche Vergütungen

Vergütungen, einschliesslich der Ruhegehälter, die von einem Vertragstaat, einer seiner politischen Unterabteilungen oder lokalen Körperschaften, oder von einer juristischen Person des öffentlichen Rechts dieses Vertragstaates unmittelbar oder aus einem Sondervermögen an eine natürliche Person, welche die Staatsangehörigkeit dieses Vertragstaates besitzt, für gegenwärtig oder früher erbrachte Dienste gezahlt werden, können nur in dem Vertragstaat besteuert werden, aus dem diese Vergütungen stammen.

ARTIKEL 21

Renten

1. Renten, die aus einem Vertragstaat stammen und an eine im anderen Vertragstaat ansässige Person gezahlt werden, können nur in dem anderen Staat besteuert werden.

2. Der Ausdruck „Renten" bedeutet bestimmte, periodisch an festen Terminen, auf Lebenszeit oder während einer bestimmten oder bestimmbaren Zeitperiode als Gegenleistung für eine angemessene und volle Vergütung in Geld oder Geldeswert zahlbare Summen.

ARTIKEL 22

Studenten

1. Zahlungen, die ein Student, Lehrling oder Pratikant, der in einem Vertragstaat ansässig ist oder vorher dort ansässig war und der sich in dem anderen Vertragstaat ausschliesslich zum Studium oder zur Ausbildung aufhält, für seinen Unterhalt, sein Studium oder seine Ausbildung erhält, werden in dem anderen Staat nicht besteuert, sofern ihm diese Zahlungen aus Quellen ausserhalb des anderen Staates zufliessen.

2. Ein Student an einer Universität oder einer anderen höheren Lehranstalt in einem Vertragstaat, der in dem anderen Vertragstaat insgesamt nicht länger als 100 Tage während des betreffenden Steuerjahres beschäftigt ist, um im Zusammenhang mit seinem Studium eine praktische Ausbildung zu erhalten, wird für die Vergütung aus dieser Tätigkeit in dem anderen Staat nicht besteuert.

ARTIKEL 23

Nicht ausdrücklich erwähnte Einkünfte

Die in den vorstehenden Artikeln dieses Abkommens nicht ausdrücklich erwähnten Einkünfte einer in einem Vertragstaat ansässigen Person können nur in diesem Staat besteuert werden.

Abschnitt IV: Besteuerung des Vermogens

ARTIKEL 24

1. Unbewegliches Vermögen im Sinne des Artikels 6 Absatz 2 kann in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

2. Bewegliches Vermögen, das Betriebsvermögen einer Betriebstätte eines Unternehmens darstellt oder das zu einer der Ausübung eines freien Berufes dienenden festen Einrichtung gehört, kann in dem Vertragstaat besteuert werden, in dem sich die Betriebstätte oder die feste Ein-

richtung befindet.

3. Seeschiffe und Luftfahrzeuge im internationalen Verkehr und bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, können nur in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

4. Alle anderen Vermögensteile einer in einem Vertragstaat ansässigen Person können nur in diesem Staat besteuert werden.

Abschnitt V: Methoden zur Vermeidung der Doppelbesteuerung

ARTIKEL 25

1. Bezieht eine in Schweden ansässige Person Einkünfte oder hat sie Vermögen und können diese Einkünfte oder dieses Vermögen nach diesem Abkommen in der Schweiz besteuert werden, so rechnet Schweden

a auf die vom Einkommen dieser Person zu erhebende Steuer den Betrag an, der der in der Schweiz gezahlten Steuer vom Einkommen entspricht;

b auf die vom Vermögen dieser Person zu erhebende Steuer den Betrag an, der der in der Schweiz gezahlten Steuer vom Vermögen entspricht.

Bezieht eine in Schweden ansässige Person Einkünfte, die nach Artikel 20 nur in der Schweiz besteuert werden können, so nimmt Schweden diese Einkünfte von der Besteuerung aus; Schweden kann aber bei der Festsetzung der Steuer für das übrige Einkommen dieser Person den Steuersatz anwenden, der anzuwenden wäre, wenn die betreffenden Einkünfte nicht von der Besteuerung ausgenommen wären.

2. Eine in der Schweiz ansässige natürliche Person, die nach schwedischem Recht in Bezug auf die unter Artikel 2 des Abkommens fallenden schwedischen Steuern als in Schweden ansässig gilt, kann ungeachtet anderer Bestimmungen dieses Abkommens in Schweden besteuert werden; Schweden rechnet jedoch alle in der Schweiz vom Einkommen oder vom Vermögen gezahlten Steuern gemäss Absatz 1 auf seine Steuern an.

Es versteht sich, dass dieser Absatz nur für schwedische Staatsangehörige, die seit nicht mehr als drei Jahren aus Schweden weggezogen sind, und in keinem Fall für schweizerische Staatsangehörige gilt.

3. Der anzurechnende Betrag darf jedoch in keinem Fall den Teil der vor der Anrechnung ermittelten schwedischen Steuer vom Einkommen oder vom Vermogen übersteigen, der auf die Einkünfte, die in der Schweiz besteuert werden können, oder auf das Vermögen, das dort besteuert werden kann, entfällt.

4. Bezieht eine in der Schweiz ansässige Person Pensionen und können diese Pensionen nach Artikel 19 Absatz 2 in Schweden besteuert werden, so rechnet Schweden auf die vom Einkommen dieser Person zu erhebende Steuer den Betrag an, der der in der Schweiz auf diesen Pensionen gezahlten Steuer vom Einkommen entspricht. Der anzurechnende Betrag darf jedoch den Teil der schwedischen Steuer vom Einkommen nicht übersteigen, der auf die Personen entfällt.

5. Ungeachtet des Absatzes 1 diese Artikels sind Dividenden, die einem der Schweiz ansässige Gesellschaft an eine in Schweden ansässige Gesellschaft zahlt, von der schwedischen Steuer befreit, sofern die Dividenden nach schwedischem Recht von der schwedischen Steuer befreit wären, wenn beide Gesellschaften in Schweden ansässig sein würden. Dies gilt jedoch nur dann, wenn der wesentliche Teil der Gewinne der die Dividenden zahlenden

Gesellschaft, unmittelbar oder mittelbar, aus einer kaufmännischen oder gewerblichen Tätigkeit herrührt, die nicht in der Verwaltung von Wertschriften und anderem ähnlichem beweglichem Vermögen besteht, und wenn diese Tätigkeit in der Schweiz durch die die Dividenden zahlende Gesellschaft oder durch eine Gesellschaft, deren stimmberechtigte Anteile ihr zu mindestens 25 vom Hundert gehören, ausgeübt wird.

6. Bezieht eine in der Schweiz ansässige Person Einkünfte oder hat sie Vermögen und können diese Einkünfte oder dieses Vermögen nach dem Abkommen (ausgenommen Absatz 2 dieses Artikels) in Schweden besteuert werden, so nimmt die Schweiz diese Einkünfte (ausgenommen Einkünfte der in den Artikeln 10 und 11 genannten Art) oder dieses Vermögen von der Besteuerung aus; die Schweiz kann aber bei der Festsetzung der Steuer für das übrige Einkommen oder das übrige Vermögen dieser Person den Steuersatz anwenden, der anzuwenden wäre, wenn die betreffenden Einkünfte oder das betreffende Vermögen nicht von der Besteuerung ausgenommen wären.

7. Bezieht eine in der Schweiz ansässige Person Einkünfte, die nach den Artikeln 10 und 11 in Schweden besteuert werden können, so gewährt die Schweiz dieser Person auf Antrag eine Entlastung. Die Entlastung besteht

a in der Anrechnung der nach den Artikeln 10 und 11 in Schweden erhobenen Steuer auf die vom Einkommen dieser Person geschuldete schweizerische Steuer, wobei der anzurechnende Betrag jedoch den Teil der vor der Anrechnung ermittelten schweizerischen Steuer nicht übersteigen darf, der auf die Einkünfte, die in Schweden besteuert werden, entfällt, oder

b in einer pauschalen Ermässigung der schweizerischen Steuer, oder

c in einer teilweisen Befreiung der betreffenden Einkünfte von der schweizerischen Steuer, mindestens aber im Abzug der in Schweden erhobenen Steuer vom Bruttobetrag der aus Schweden bezogenen Einkünfte.

Die Schweiz wird gemäss den Vorschriften über die Durchführung von zwischenstaatlichen Abkommen des Bundes zur Vermeidung der Doppelbesteuerung die Art der Entlastung bestimmen und das Verfahren ordnen.

Abschnitt VI: Besondere Bestimmungen

ARTIKEL 26

Gleichbehandlung

1. Die Staatsangehörigen eines Vertragstaates dürfen in dem anderen Vertragstaat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen die Staatsangehörigen des anderen Staates unter gleichen Verhältnissen unterworfen sind oder unterworfen werden können.

2. Der Ausdruck „Staatsangehörige" bedeutet:

a alle natürlichen Personen, die die Staatsangehörigkeit eines Vertragstaates besitzen;

b alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in einem Vertragstaat geltenden Recht errichtet worden sind.

3. Die Besteuerung einer Betriebstätte, die ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat hat, darf in

dem anderen Staat nicht ungünstiger sein als die Besteuerung von Unternehmen des anderen Staates, die die gleiche Tätigkeit ausüben.

Diese Bestimmung ist nicht so auszulegen, als verpflichte sie einen Vertragstaat, den in dem anderen Vertragstaat ansässigen Personen Steuerfreibeträge, -vergünstigungen und -ermässigungen auf Grund des Personenstandes oder der Familienlasten zu gewähren, die er den in seinem Gebiet ansässigen Personen gewährt.

4. Die Unternehmen eines Vertragstaates, deren Kapital ganz oder teilweise, unmittelbar oder mittelbar, einer in dem anderen Vertragstaat ansässigen Person oder mehreren solchen Personen gehört oder ihrer Kontrolle unterliegt, dürfen in dem erstgenannten Vertragstaat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen andere ähnliche Unternehmen des erstgenannten Staates unterworfen sind oder unterworfen werden können.

5. In diesem Artikel bedeutet der Ausdruck „Besteuerung" Steuern jeder Art und Bezeichnung.

ARTIKEL 27

Verständigungsverfahren

1. Ist eine in einem Vertragstaat ansässige Person der Auffassung, dass die Massnahmen eines Vertragstaates oder beider Vertragstaaten für sie zu einer Besteuerung geführt haben oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach innerstaatlichem Recht dieser Staaten vorgesehenen Rechtsmittel ihren Fall der zuständigen Behörde des Vertragstaates unterbreiten, in dem sie ansässig ist.

2. Hält diese zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall durch Verständigung mit der zuständigen Behörde des anderen Vertragstaates so zu regeln, dass eine dem Abkommen nicht entsprechende Besteuerung vermieden wird.

3. Die zuständigen Behörden der Vertragstaaten werden sich bemühen, Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung des Abkommens entstehen, in gegenseitigem Einvernehmen zu beseitigen. Sie können auch übereinkommen, wie eine Doppelbesteuerung in Fällen, die in dem Abkommen nicht behandelt sind, vermieden werden kann.

4. Die zuständigen Behörden der Vertragstaaten können zur Herbeiführung einer Einigung im Sinne der vorstehenden Absätze unmittelbar miteinander verkehren. Erscheint ein mündlicher Meinungsaustausch für die Herbeiführung der Einigung zweckmässig, so kann ein solcher Meinungsaustausch in einer Kommission durchgeführt werden, die aus Vertretern der zuständigen Behörden der Vertragstaaten besteht.

ARTIKEL 28

Diplomatische und konsularische Beamte

1. Dieses Abkommen berührt nicht die steuerlichen Vorrechte, die den diplomatischen und konsularischen Beamten nach den allgemeinen Regeln des Völkerrechts oder auf Grund besonderer Vereinbarungen zustehen.

2. Soweit Einkünfte oder Vermögen wegen der den diplomatischen und konsularischen Beamten nach den allgemeinen Regeln des Völkerrechts oder auf Grund besonderer zwischenstaatlicher Verträge zustehenden steuerlichen Vorrechte im

Empfangsstaat nicht besteuert werden, steht das Besteuerungsrecht dem Entsendestaat zu.

3. Bei Anwendung des Abkommens gelten die Angehörigen einer diplomatischen oder konsularischen Vertretung, die ein Vertragstaat im anderen Vertragstaat oder in einem dritten Staat unterhält, als im Entsendestaat ansässig, wenn sie die Staatsangehörigkeit des Entsendestaates besitzen und dort zu den Steuern vom Einkommen und vom Vermögen wie in diesem Staat ansässige Personen herangezogen werden.

4. Das Abkommen gilt nicht für zwischenstaatliche Organisationen, ihre Organe oder Beamten sowie nicht für Angehörige diplomatischer oder konsularischer Vertretungen eines dritten Staates, die in einem Vertragstaat anwesend sind, aber in keinem der beiden Vertragstaaten für Zwecke der Steuern vom Einkommen und vom Vermögen als dort ansässig behandelt werden.

Abschnitt VII: Schlussbestimmungen

ARTIKEL 29

Inkrafttreten

1. Dieses Abkommen soll ratifiziert werden, und zwar schweizerischerseits durch den Bundesrat nach Genehmigung durch die Bundesversammlung und schwedischerseits durch Seine Majestät den König von Schweden mit Zustimmung des Reichstags; die Ratifikationsurkunden sollen so bald wie möglich in Bern ausgetauscht werden.

2. Dieses Abkommen tritt mit dem Austausch der Ratifikationsurkunden in Kraft, und seine Bestimmungen finden Anwendung

a in Schweden:

hinsichtlich der Steuern vom Einkommen auf Einkünfte, die am oder nach dem 1. Januar 1966 erzielt werden, und hinsichtlich der staatlichen Vermögensteuer auf die Steuer, die Gegenstand der Veranlagung des Jahres 1967 oder eines späteren Jahres bildet;

b in der Schweiz:

auf jedes Steuerjahr, das am oder nach dem 1. Januar 1967 beginnt.

3. Das am 16. Oktober 1948 in Stockholm unterzeichnete Abkommen zwischen der Schweizerischen Eidgenossenschaft und dem Königreich Schweden zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen wird aufgehoben und tritt für die Steuern ausser Kraft, auf die dieses Abkommen gemäss Absatz 2 Anwendung findet. Das erwähnte Abkommen gilt jedoch weiterhin für die Anwendung des am 16. Oktober 1948 in Stockholm unterzeichneten Abkommens zwischen der Schweizerischen Eidgenossenschaft und dem Königreich Schweden zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Erbschaftssteuern.

ARTIKEL 30

Ausserkrafttreten

Dieses Abkommen bleibt in Kraft, solange es nicht von einem der Vertragstaaten gekündigt worden ist. Jeder Vertragstaat kann nach dem Jahre 1968 das Abkommen auf diplomatischem Wege unter Einhaltung einer Frist von mindestens sechs Monaten zum Ende eines Kalenderjahres kündigen. In diesem Fall findet das Abkommen licht mehr Anwendung

a. Schweden:

ansichtlich der Steuern vom Einkommen auf Einkünfte, die am oder nach dem 1. Januar des auf die Kündigung folgenden Kalenderjahres erzielt wer-

den, und hinsichtlich der Vermögensteuer auf die Steuer, die Gegenstand der Veranlagung des zweiten auf die Kündigung folgenden Kalenderjahres oder eines späteren Jahres bildet;

b in der Schweiz:
auf jedes Steuerjahr, das am oder nach dem 1. Januar des zweiten auf die Kündigung folgenden Kalenderjahres beginnt.

Zu Urkund dessen haben die vorgenannten Bevollmächtigten dieses Abkommen unterzeichnet und mit ihren Siegeln versehen.

Gefertigt zu Stockholm, im Doppel, am 7. Mai 1965 in deutscher und in schwedischer Urschrift, die gleicherweise authentisch sind.

(gez.) **Egbert von Graffenried**
(gez.) **Torsten Nilsson**

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Tax policy can never be divorced from other political considerations, various policy threads being woven into the fabric of all tax laws. Mr. Phidias C. Kypris' article, "Taxation Chaos in Cyprus," (page 415 of this issue) should be of special interest. Five years of political chaos in Cyprus which comprises roughly 500.000 Greeks and 110.000 Turks is reflected in a tax law that is in fact three separate tax laws: the first applicable to Greek Cypriots, the second to Turkish Cypriots and the third to foreigners.

Political problems are of course not confined to Cyprus. Rhodesia has difficulties of its own, though they may not be apparent on the face of the 1965 Rhodesian Budget (published on page 430).

In order to promote Rhodesian exports, the Minister proposes an additional deductible allowance of 75 percent of the increase in export promotion expenditures over that incurred in the previous year. Increased tourist promotion is regarded as comparably essential. Thus, tourist promotion expenditures are to be treated in the same manner as export promotion expenditures. In view of recent political developments, we are considerably more sceptical than the Minister as to the likelihood of the proposed allowance acting as a substantial incentive to the tourist industry.

The second and final part of Mr. Strasma's article, "Market-Enforced Self-Assessment for Real Estate Taxes", is published in this issue. It should be of special interest with respect to developing countries and countries in which land reform has been substantially completed. Mr. Strasma suggests measures whereby an energetic Finance Minister with political support can effectively raise property tax assessments within his "political lifetime". Traditional methods cause excessive delay! Politics again! for technical fiscal objectives can be effectuated only in a stable political atmosphere.

It may be worthwhile to recall the words of the English philosopher Eric Gill: "Good politics are those which foster and encourage and develop human responsibility and enlarge the sphere of the creative imagination. And bad politics are those which discourage and diminish and destroy it".

J. C. L. HUISKAMP

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MARKET-ENFORCED SELF-ASSESSMENT FOR REAL ESTATE TAXES II*

by JOHN STRASMA

IV. A NEW PROPOSAL

The only hope for effective reassessment in poor countries lacking a large, honest, competent, and well-paid professional appraisal staff equipped with manuals, vehicles, etc., is to somehow enlist private individuals. Persons with knowledge of the market and a personal economic interest in the outcome can make fairly good decisions as to whether a given property has been declared at about the price it would bring in quick sale on the market.[35] The problem is to find a way to enlist persons qualified to make such judgments, without abusing the moral and constitutional rights of the innocent and of the inadvertent underdeclarer.

In particular, a way must be found to allow those who do not wish to cheat, but who do not know what their property is worth, to avoid forced sale. The system would also be more acceptable if those who did under-declare, even deliberately, could be punished in some way short of forced sale, without eliminating the incentive for the other person who enforces honest declarations by making offers.

Kaldor's suggestion eliminated the unjust forced sale by substituting an option to accept higher taxes. To discourage initial under-declaration, awaiting an offer, the owner should also be fined as suggested by Harberger [36] or the tax increase could be made retroactive for (say) three years. Next, the missing incentive element can be supplied by paying part of the tax increase and fine to the person who appraised the property and demonstrated his confidence in his valuation by making a bona fide offer to buy at a price well above the tax value declared by the owner. Even after sharing the tax increase, the government has gained substantially in present and future revenue, as compared with the permanent underassessment that is virtually inevitable with traditional methods.

It now appears that self-assessment could be made workable, even under present

* The first part has been published in the September 1965 issue.

35 It is true that private appraisals, at customary honoraria, cost more than appraisals made by public employees—unless the latter set lower values through sloth or corruption, which cost through reduced tax revenues. In any case, the private appraisers are often under-employed, the tax workers overworked. The 'social opportunity cost' of the time of the private individuals involved may be very low. In any event, we propose to obtain their services at no cost to the government. Their fees, in effect, will be paid by tax evaders.

36 *Documentos y Actas, op. cit.* p. 204.

deficiencies in tax administration and despite the imperfection of land markets in much of Latin America. With the aid of numerous friends, students, and colleagues, most of the remaining problems—and others that appeared in the road—seem to have been resolved.[37]

The first requisite, as under any assessment technique, is still that the government genuinely desire reassessment near market values. The second is that it have the will (and votes or rifles) to overcome the inevitable opposition of property owners, often allied with extremists who simply do not want to permit real solution of any problems by moderate governments. Given these two pre-conditions, the present form of the proposal appears to be practical, effective, and fair to all concerned. It would operate as follows:

A *The first and most essential step: the effective tax increase*

1. All existing assessments are arbitrarily multiplied by a factor which is expected to put the average assessment at about 'true market value.' If any rate reduction is contemplated, it should be reserved as a 'concession' to be made to the property owners once they exert organized pressure and—typically—threaten a massive taxpayer strike. Most Latin American rates, however, are far below the 2 to 4% effective rates on market values typical of the U.S.[38] Yet large real estate owners are often relatively higher in the distribution of their country's wealth than are landowners in the U.S.A. Despite the poverty of their workers, many Latin landowners could therefore well afford U.S. rate levels.

2. This is, afterall, the effective increase in taxes. If it is rammed through first, the landowner bloc is divided; many then stand to gain through reassessment. So long as the tax increase is delayed pending reassessment, reassessment will be resisted and sabotaged at every turn. Since the power and the will to impose reforms on the vested oligarchies is usually fleeting, found only at the very outset of reform regimes—whether elected or imposed through coup or revolution—the effective tax increase must be the very first step.

3. Determination of the multiplier should normally take three factors into account: general inflation; rising income-producing value of real estate as a result of population increase, roads, and other aspects of economic growth; and, the average initial underassessment of property. The first element can be estimated from price indices if available, or from exchange rates. Since the other two factors are invariably positive, the

37 Most of the practical touches in the present proposal grew out of post-conference conversation with Harberger, Albert Hart, Kaldor, Carlos Massad and José Pistono. The proposal first appeared in something like its present form in Strasma, 'Aspectos financieros y tributarios de la reforma agraria,' *Reforma Agraria* (Santiago: Instituto de Economía of the Universidad de Chile, January-March 1963), Vol. III, pp. 158-160. See also the acknowledgements in the note on p. 1.

38 The problem is not limited to Latin America. Wilfred Lewis, Jr., mentions that the Afghanistan land tax in some areas was only 1/100 of 1 % of land market values. The tax rate was doubled recently, but 'more ambitious measures' are to be submitted to the next Parliament. ('Approaches to Land Taxation,' unpublished manuscript, and correspondence with the author.)

multiplier should always be greater than the inflation adjustment alone.[39] How much greater may be estimated by comparing existing tax valuations with the court-determined figures for the same properties in inheritance tax proceedings or in cases of expropriation for public purposes. If there are any reliable market prices for recent property sales—at auction, perhaps—they are useful too.

B *Declarations by owners*

4. Once the new assessed value notices have gone out to owners, the tax offices would invite unhappy owners to file self-assessments which would take the place of the old assessments as adjusted. The following would be obliged to declare:

a. All persons unwilling to accept the prior assessed value as adjusted. Self-assessment would be the only appeals procedure; it would be simple, rapid, no lawyer would be required, and neither tax officials nor judges would be involved.
b. All persons whose properties had not previously been assessed or who for any reason received no notice. Very small properties need not be exempt, but their owners cannot be expected to know the value. The easiest way to handle them is to tax all owners declaring that the property is worth less than—say—$ 1,000, a round sum, such as $ 5.00 per year.
c. Any owner who felt that the adjusted assessment was less than the price he would demand in the event of expropriation or of private sale.
d. All persons owning more than a stated total area of rural land if the land reform agency felt that detailed, current declarations would help it implement its own program.

5. A stated period would be provided—perhaps 90 days the first time and 30 days a year thereafter—for these declarations. In the first round, all non-declarers would be deemed to have acquiesced in the adjusted values. If the country's laws do not accept such presumption of acquiescence, or if alleged non-receipt of notice, etc., is grounds for escaping the consequences of the system, then *all* owners would be required to declare in the second year.

6. Those satisfied with the adjusted value would merely sign and return a copy of the notice, as prepared automatically by accounting machines, with payment of the tax. They would, of course, be required to supply other information needed for planning or control purposes, such as the names of all persons holding an interest in the property, its size, and so forth (see next paragraph). Those not assessed or dissatisfied with the adjusted value would make a new declaration which would be accepted without question, together with the tax due on the value thus declared. A fine for non-declaration within the stated time should be set at a level such that it is not too high to be enforced

39 In Bolivia in 1961, I estimated that the factor should be 30 times for price inflation alone since the last revaluation in 1953. J. Strasma, 'Tax reform in Bolivia, 1961' (Report on a mission to the International Cooperation Administration), p. 21.

nor so low as not to cover the cost of sending out 'runners' to obtain declarations from substantially all owners.

7. The declaration should include, besides the value, the identity (and address to which legal notices are to be delivered) of the owner or owners and of tenants or others in possession of the property plus options outstanding, as well as all other persons with any degree of legal claim to its use, income, or value;[40] identification and location of the property and directions for reaching it; number of adults and children living therein;[41] area and class of land and buildings (even if tax-exempt) with sub-values for each;[42] year of acquisition and place where title papers are recorded and may be inspected.

8. The precision to be expected in this information will vary according to literacy and custom, as well as the degree to which land surveying, soil testing, etc., have been instituted. If most land could be identified precisely, with the exact area and market value, it is unlikely that assessed values (or the valuation department) would be in the bad shape typical of Latin America. Even in remote haciendas, however, it should always be possible to give directions for reaching the 'big house,' approximate boundaries, and a rough estimate of size.

9. As fast as air photos are completed (an early step both in agricultural and city planning and in longer-term tax valuation programs), owners should also be required to mark the boundaries they claim on a photo. These are then transferred to a mosaic and given a serial number which is then applied to the declaration and all other tax records. The area of the property can also be verified with a planimeter, from the photos. Completion of this process will leave the country looking like a swiss cheese, despite the classical idealizing of the land tax 'because the object of taxation cannot be hidden.'[43]

10. Owners whose claims overlap can be left to settle their disputes privately. When no one has claimed a parcel, however, there are several choices:

a. It may be seized for land reform. (In effect, compensation is at the value declared for taxes—zero.)

40 See footnote 58 below.

41 This information is extremely useful for land reform and city planning. Comparison with census figures also helps estimate the extent to which tax declarations are still lacking for rural and urban property in each district.

42 On the taxation of improvements, see III, C, above.

43 In the Chilean rural reassessment of 1961-64 holdings under 100 has. were declared accurately, but owners with more than 100 has. systematically 'forgot' or really underestimated their holdings, the bias increasing with true size of the holdings. It took 60 men with vehicles one year to resolve in the field some 60,000 cases of 'holes in the map,' gross underdeclaration, etc. René Parker, 'La aerofotogrametría como ayuda de un sistema tributario agrícola,' paper presented at the International Seminar on Agricultural Taxation, Santiago, 1963.

b. It may turn out to really be public land—in which case it should be duly recorded as such. Latin American experience is full of cases in which back-dated 'titles' to public land appeared mysteriously, following the building of a road or other events that made it valuable.

c. If it is under cultivation or grazing (see air photos), either the tax office or a land reform agent should visit the parcel, locate the person using it, and try to help him clear up the situation. If the owner, he must file a declaration and pay the fine. If not, he may qualify to receive title from the land reform agency.

C *Planning uses of declarations*

11. Much of the information required for planning land reform and agricultural development can be obtained in the annual declarations. In fact, with the aid of comparison with air photos (sooner or later), it should be possible to obtain much of the data now collected badly and infrequently in agricultural censuses in Latin America. Heretofore, census takers have shunned links with taxes, lest buildings, plantations, livestock and output be underdeclared. Since the overall tax value would now be set by the owner himself and not by a clerk working on the basis of the declaration, this reluctance might be lessened.

12. City property can similarly be inventoried and, with the aid of modern data processing, basic information for city planning, housing programs, and even school planning can be obtained. (Declarations included the number of rooms, area, and the number of adults and children living in each unit.)

13. Since property owners are to be clearly identified, including those with only a fractional interest, life estate, etc., it becomes possible to process the declarations for a distribution of total property holdings by size, legal form of the interest, and declared value. This makes it possible to determine how many large rural landowners have urban investments and the amount of land available for land reform, for different limits set on individual holdings.

14. Inevitably, some property will be held in the name of 'strawmen.' While this cannot be eliminated overnight, it can be greatly reduced by outlawing bearer shares and by requiring banks, trustees, and other agents to declare the true owners' name (and identification card number, accepted and universal in Latin American legal documents, however repugnant serial numbers are to most North Americans).[44]

15. Useful as the annual declaration is for obtaining planning data inexpensively, it should not be overloaded. Especially in the first year, the objective is to restore the

44 One way to reduce the use of 'strawmen' as nominal holders of title might be to decree that real estate does belong to the person or firm in whose name it is registered and that all private contracts to the contrary shall be null and void.

property tax as an effective revenue source—and declarations should be kept as simple as possible in that first year.

D *Enforcement*

16. The declarations would be made available for public perusal in the tax offices and a summary table indicating the name or location of the property, total area, and total value declared, would be published in major newspapers. The land reform agency would be encouraged to copy the rural property declarations in whatever form it found most useful. In the interest of wide compliance, however, the taxpayer should not be asked to submit his declaration in triplicate.

17. If the property, or any portion of it, were required for public purposes, including urban renewal and agrarian reform, compensation in no case could exceed the declared value of the portion taken, plus the cost of improvements made after the last declaration. This would apply equally to land expropriated and that acquired in 'friendly' negotiations.[45]

18. In addition, for all properties for which no sale to the state is pending, any individual may make a written offer to buy any property which he believes worth more than the amount declared. He may offer any price he likes, except that it must not be less than 10% (for example) above the value declared or $ 1250 for properties whose owners have declared that the value is less than $ 1,000.[46] While declarations are supposed to be 100% of commercial value, the 10% 'profit' would compensate the owner for the nuisance of moving and cover the transfer tax (see 20 below).

E *Options of the owner*

19. The owner, on being notified of the offer at the address given in his declaration, must choose in writing one of three courses of action within 30 days. He may:

a. Accept the offer;
b. Reject it, but accept a new tax assessment at the amount rejected; or

45 Ordinary expropriations of portions of properties, such as rights-of-way for roads, will be greatly facilitated by the itemized declaration of value of fields and individual buildings. Naturally, compensation in such cases might be increased above the partial tax value to reflect damage to the remainder as a unit and reduced to reflect benefit to the remainder from the public project involved, taking into account any betterment levy which may also be involved. In land reform, when the owner is allowed to retain a good-sized commercial farm for himself, no increased compensation for the effects of breaking up the larger unit is required. Reform aims to wipe out certain values of very large estates, such as monopoly in the labor market or control of water, and extra compensation would nullify the intended redistribution. It would be as absurd as compensating the rich for the effects of the progressive income tax.

46 The margin may be varied to suit the reader's taste and the Finance Minister's political judgment. A more sophisticated system might permit bids for a portion of a large property, with a higher margin to cover the cost of giving easement to the part bought, or of disruption to the rest of the unit. This seems an undesirable complication for now.

c. Reject the offer, but request assessment by the tax service at his own expense. Taxes must be paid meanwhile on the amount offered and rejected, subject to prompt refund if the appraisal is lower.

20. If the offer is high, the owner may accept it (*Option a*). In this case, since the property changes hands at a price known to the tax service, that price automatically becomes the current tax value unless the new owner chooses to declare an even higher amount to forestall future offers (and fines). No fine would be levied on the former owner, but the transfer tax (typically 2 to 6%) would increase current fiscal revenue. (It should be charged entirely to the seller because the buyer has agreed to a price supposedly slightly above 'commercial value.') The reward to the person making the offer, of course, is that he obtain the property at what he presumably deemed an attractive price. Another advantage to the government is accurate recording of the transfer price, which helps in future valuation efforts and in calculation of index adjustments in existing assessments each year.

21. If *option b* is chosen, the owner must pay the tax difference, plus a fine of double the annual tax difference, within 180 days. Alternatively, the increase could be made retroactive—but that produces problems if the tax system has been changed or the property has changed hands during the last three years. Some penalty is vital, however, to ensure reasonable initial declarations by the majority of owners. If taxes were to rise only for the future, all owners would naturally declare low until an offer obliged them to accept an honest valuation. Since the number of persons who know the real estate market well is limited, as is their capital, the more owners who declare full values at the start, the faster the rest will be brought into line by offers.[47]

22. The frustrated buyer, in effect, has helped make an appraisal which the tax agency would probably have not been able to make under traditional systems in underdeveloped countries. He should be compensated with a share of the increased taxes and fine when he is unable to buy the property because the owner invokes *option b or c*. Suppose, for instance, that a property had been declared at $ 5,000 and someone bid $ 15,000 ,which the owner considered still below market value. If the owner chose option b, the valuation would be increased. If the rate were 15 per mil, for example, the $ 10,000 valuation increase would mean an extra $ 150 a year in taxes, plus a fine of $ 300.[48] The individual who made the offer could well be given 50% (or $ 225) for his trouble.[49]

23. When the owner does not wish to sell at the price bid, yet thinks that his property is not worth that much on the market and so refuses to pay taxes on that basis, he can

47 Also, so long as they are underassessed and fear an offer, owners will pressure and demonstrate, seeking the repeal of the enforcement system. Once they have accepted full-value assessment, the owners properly turn their political activity toward the rate, rather than the enforcement mechanism.

48 Note that this system is independent of the rate structure. It determines values; rates may be proportional, progressive, or even a mixture of exemptions and rates varying by land use or total holdings.

49 Payment should be prompt and not depend on whether the owner is prompt or tardy in paying the tax arrears and fine. *Collection* of taxes, as opposed to assessment, is not the task of the bidder.

request the tax service to determine the market value at his expense *(option c)*. Pending that determination, which may take several years if the appraisers are few and many owners request the service, he must pay taxes on the amount offered. Once the appraisal is made, he must also pay the fine, less the charge for appraisal, less (or plus) the tax difference between the value of appraisal and the amount refused. The bidder receives his share once the tax value is finally set, with interest at the government bond rate.

24. The owner may make the same request, without even waiting for an offer, if he objects to the adjusted old assessment or knows that he does not want to sell at any price. If he makes the request (paying the fee in advance) at the start of the new system, he can also avoid any penalty, because he will not declare at all under it. He pays taxes meanwhile on the adjusted old assessment or for new buildings on the cost of construction, properly documented. However, the cost of appraisal may well come to as much as a full year's taxes, depending on tax rates and the type and location of the property.[50]

25. When the owner requests official valuation, the tax service retains a professional appraiser (or sends one of its own staff). The figure set by the appraiser will then be accepted by the service as the definitive assessment for, say, five years (subject to overall adjustments for inflation, applied to all property), and no private offers will be accepted during that period. Should the property change hands at a higher price, the assessment should be raised. Lower transfer price reports would be ignored, however, to avoid increased temptation to fraudulent reports.

26. Since the appraisers are human, it would be difficult to force owners to accept the result with no possibility of appeal. They would therefore always be permitted to return to the self-assessment system (and its consequences). Likewise, either owners or the tax service could request a second appraisal by a different valuer, at the expense of the party making the request, the resulting figure to be averaged with the first appraisal. The great advantage of the self-assessment system continues to be its removal of assessments from the courts without leaving taxpayers with no recourse from tax officials' administrative determinations.

27. When owners request appraisal after an offer is made *(option c)*, the fine and reward depend on the outcome. If the appraisal figure is not more than, say, 20% above the

50 Agricultural appraisal requires soil maps, irrigation studies, etc. These should be made by the Ministry of Agriculture rather than charged to owners if they have been made in other regions without charge to landowners. Still, the cost of appraisal should be set high enough to discourage massive use of this option at the start. In California, appraisal of scattered farms takes about three days a piece (letter from Ronald B. Welch, Assistant Executive Secretary, Property Taxes, California State Board of Equalization). In Peru the typical time required would be a week (conversation with Ing. Luis Vega, member of the Cuerpo Técnico de Tasaciones, a society of professional appraisers). Houses, of course, are easier and from one to eight per day can be done, depending on how close together they are (letter from Welch).

value declared by the owner, no fine would be levied.[51] Reward would be paid only on the amount by which the appraisal figure exceeded the original declared value—just as when *option b* is invoked. However, in this case the actual amount bid becomes irrelevant. Comparison of such bids with subsequent appraisals may give a useful idea of the level of bids in general, however.

28. If an owner, duly notified as in other legal processes, makes no response within the 30-day period, he shall be deemed to have exercised *option b* and the tax service will bill him accordingly, creating a lien on the property for the increased taxes and fine with the full force of all other tax assessments.

F *Inflation*

29. If there is a significant inflationary trend in the economy, valuations—no matter how determined—will shortly be obsolete.[52] It is necessary to adjust them automatically from year to year and the most practical method is to raise them according to the change in an index of prices to consumers, or wholesale prices, or perhaps of building costs. An index of real estate prices may become possible when transactions following the choice of *option a* (to sell) provide a source of honest transfer prices. While any index will be imperfect, adjustment will be more just than allowing property taxes to remain frozen while salaries and retail prices (and the taxes levied on them) rise.

30. Any owner who feels that the taxable value of his property as adjusted by an index is out of line may declare a new value under the market-enforced self-assessment system; there is thus a simple, permanent appeal system in which the appellant's figure is always accepted.

31. Should a currency devaluation of 10.0% or more occur between the deadline for declarations and the deadline for presenting bids in any quarter, that 'round' shall be suspended and bids returned. Owners who feel that the index adjustment in succeeding months does not reflect property value accurately may, of course, file a new declaration prior to the closing date for the next regular bidding period.

32. Offers and appraisals will be made as of the closing date for declarations each year. Actual transfers resulting from *option a* will be payable at those prices adjusted by actual increase in the Consumer Price Index through the month just prior to actual payment for the property; the transfer tax will also be calculated on this adjusted amount.[53]

51 If it were no higher than the previous declared value, it would seem unfair even to have charged for the assessment. I would suggest refunding any sum by which the new assessment failed to exceed the sum of the old valuation and the charge made for the assessment, up to a full refund. The state share of fines on other cases would finance the refunds, since the appraiser should receive his fee in any case.

52 It should be noted that not all Latin American countries suffer from inflation in any given year and these adjustments might not be needed at all in some of them.

53 Delinquent taxes should also be adjusted for inflation since the due date. If this is not done, inflation gives taxpayers every incentive to delay payment until the property is about to be auctioned.

G *Disclosure laws*

33. Existing laws prohibiting the disclosure of tax declarations to third parties will have to be repealed. Although supposedly designed to protect the privacy of individuals and encourage fuller declaration of income from dubious sources, this provision fails because the shady taxpayer knows that the tax authorities are not as efficient as the police. If the police have not detected his activities, the tax agency won't.

34. In practice, secrecy serves to protect the dishonest from publicity and to punish employees (or newspapers) that dare expose declared values which the public will know are false.[54] The failure of rewards for informers to elicit much useful information in Latin America arises from delays in payment, possible reprisals, and especially from the fact that people who would know whether declarations were false have no legal way to learn the amounts declared.

H *Some procedural safeguards*

35. To ensure that offers are bona fide, each should be accompanied by a bank guarantee, bonds, money order, or cash for (say) 5% of the amount bid.[55] If the owner accepts the offer *(option a)*, but the person who made it fails to appear or to complete the transaction within (say) 90 days, the deposit is forfeited. The owner receives 80% of it for the nuisance caused him and the assessment remains where it was.

36. The 20% of the deposit that goes to the state covers costs of notification and also prevents owners from bidding very high prices for their own properties, through an agent, and of course, failing to carry through any transaction—keeping actual tax assessments low at no cost to themselves.

37. For farm land, transfers normally occur after the harvest, so the time limit for transfer would be 60 days after the end of the agricultural year in the area, if the previous owner so requested when choosing option a.[56]

Improvements made after the date of the tax declaration and increased value of trees or plantations would be valued by mutually-agreed-upon appraisers or, in their absence,

54 As I understand existing Chilean law, the punishment given a tax service employee who divulged information about income tax declarations could easily be more severe than the punishment of a tax evader who was turned in as a result of public knowledge of the amounts declared. Thus have the legislators helped evaders protect themselves!

55 Since the nuisance to the owner and the disincentive to new investment in land will be considerable even if an offer is not bona fide, one would prefer a larger guarantee deposit. However, in many poor countries the banks are controlled by landowners. They will hardly lend or provide guarantees for this purpose, so the deposit has to be kept low so that real estate brokers, lawyers, and other middlewealth individuals can make bids on the strength of their own capital.

56 Likewise, where an owner or tenant with an unexpired lease showed that relocation would cause undue hardship for reasons of health, the courts could grant up to three successive 60-day extensions for possession of the property. Neither in this case nor in the 'crop year' extension could the previous owner change to option b after the end of the 30-day decision period.

by a court. (Hence the need for itemized declaration of existing improvements, even if tax-exempt.) Tenants might be protected by allowing them to match the price to be paid (see paragraph below); the bidder in such a case should at least receive a consolation payment of the first years's tax increase and the land reform agency should reimburse his expenses.

38. If the transfer cannot be completed within the time limit because the title is not clear, or because the owner refuses to deliver the property, the person making the offer which was accepted need only deposit the balance of the cash down payment with the appropriate court, which will order effective possession for the buyer.[57] The former owner, however, will receive no money unless he clears and transfers the title within a stated time.[58] Should he be unable to do so, the court will issue a new and unchallengeable title. The money will remain on deposit for the period prescribed by law, as definitive indemnity to all persons who, within the prescription period, might subsequently prove that they had had valid title(s) to the land. (If titles are generally cloudy, special courts or laws may be needed to improve the definition of property rights— but that is outside the scope of this paper.) Note that the tax office itself is in no way involved either in transfer or in title and boundary disputes.

39. To avoid continuous bother for owners and the tax service, offers would be received only during the first week of each calendar quarter; there would thus be four 'rounds' of tax value tightening each year.[59]

40. Transfers, rentals, issuance of options, or other changes in ownership and rights in the property must be declared in the local tax office, where they will be displayed for the information of prospective bidders. Non-declaration shall make such rights or transfer null and void should a tax offer be made, and any parties injured thereby must look for damages to the person named as owner in tax records as of the date of the offer. No changes will be received, nor take effect, during the week of reception of offers or thereafter, until any offer is disposed of.

41. To discourage corruption of the process, offers would be made on printed forms, folded and sealed to conceal from tax office employees the identity of the property involved and the amount of the offer made. The person bringing in the offer would receive

57 Should the actual area be less than that declared, the courts would decide an appropriate price reduction. If greater, indicating possible tax evasion, the price would not be increased. For rules as to the cash down payment and period for settlement of the balance, see numbers 61-66.

58 Should any person with an interest in the land not have received notices, etc., because his interest was not declared by the owner/occupier who filed the declaration, the law should protect the title of the new owner by limiting the actions of the injured party to suit against the ex-owner who failed to report that interest.

59 In countries with rapid inflation, the offers and deposit should be made in terms of money of the month of the tax declaration, with actual payment of the balance to be made in the same purchasing power, whenever actually made to the owner or to a court.

a signed receipt bearing a serial number identical to that on the outside of the offer form. The clerk would certify the amount and form of the guarantee presented in the same receipt and on the outside of the offer itself.

42. After the deadline for presenting offers, these would be opened and examined.[60] Those for which the guarantee was insufficient for the amount bid, would be set aside. All others would be sorted according to the property involved, and all but the highest offer for each property would be set aside. The amount of the successful offer would be noted on each of the unsuccessful ones, and the unsuccessful bidders would be entitled to information as to the option subsequently exercised by the owner. (This is further to hamper corruption and to improve knowledge of the market by those bidding in it.)

43. The highest offer would then be communicated to the owner; the rest would be returned (with the guarantees) to those presenting the numbered receipts.

44. While owners would normally be welcome to raise declared values at any time, 'amended' declarations would not be accepted during the week before the offer period, not during the offer period itself, including the delay until owners had been notified. An owner whose property had attracted an offer could not file a new declaration at all, but must choose one of the three options.[61]

45. On the first day of the week before the offer period, notice would be posted in the tax offices identifying the properties for which amended declarations, transfers, leases or options had been presented after the initial declaration. Prospective bidders would be entitled to the details so that their bids would reflect current status of the property.

46. An offer once presented could not be withdrawn without forfeiting the deposit in favor of the state if the offer had not yet been relayed to the owner, or of the owner and the state if it had.[62]

47. To avoid intimidation of possible bidders and vengeance on those who do make bids, offers should be anonymous. The guarantee could be posted in bearer bonds, bank drafts, or cash. The numbered receipt, which in effect would be freely transferable, would identify a person entitled to buy a property or if the offer were rejected, to recover the guarantee and collect any reward.

48. However, if agrarian reform laws limit landholdings of any person or family, or of foreigners, no land could be bought by or for persons for whom the property involved

60 This procedure seeks to prevent private 'leaks' by tax service employees to owners or to prospective bidders, as to the amounts bid or even to the fact that an offer has been made for specific properties. The numbered receipts and notation of data right on the offer aims to prevent the 'mislaying' of offers and other sabotage efforts through landowner bribery in the tax office.

61 See paragraph 19 above.

62 See paragraphs 35 and 36 above.

would exceed the legal limit; this control should be exercised by the registrar of deeds who formalizes land transfers, rather than by the tax agency.

49. Since it would be hard to evaluate large rural properties from public roads, if any, owners would be obliged to permit free entry during daylight hours, limited to roads, canals, fencelines, etc., during the week following publication of declared values. Visitors would not be permitted to enter buildings, nor to approach closer than, say, 50 meters to the owner's dwelling. This would, of course, only be necessary for properties so large that they cannot be inspected otherwise—the very properties most frequently the concern of land reform, tax reform, and agricultural development programs. Another approach would be to require permanent easement for the public along roads of properties housing more than, say, 25 persons. Private enclaves and company towns, separated from the rest of the country by armed guards and 'No entry' signs are seldom compatible with national integration, a frequent goal of the underdeveloped countries.

50. The tax office reserves the right, of course, to proceed on a cadastral survey, as well as to assess specific properties or all property. This power would be used in cases or areas when market-enforced self-assessment does not seem to be working; it is the only definitive way to cope with evasion through over-valuation of exempt improvements. For these assessments, appeal would be to the courts.

1 *Getting started*

51. To ease the installation of the new system, ample information about its working should be spread to the community. It may be best to indicate zones or types of property where it should be introduced first, proceeding gradually to the whole country. Only those unwilling to accept the old assessment as arbitrarily adjusted, plus those never before assessed, would be subject to offers in the first year (see paragraph 4 above). Yet it must be remembered that until the day when they are obliged to accept fullvalue assessments, property owners will try to repeal the system—piecemeal introduction may thus be more vulnerable and less effective than nationwide reform at once.

52. Persons judged so worthy or so politically powerful that they must be excluded from market enforcement should have their properties valued by the index adjustment without appeal or being subject to offers, provided land use had not changed. This would usually include land reform beneficiaries, for whom the reform agency would set the tax assessment together with the price for the land they receive.[63] It would also apply to low-cost public or private subsidized low-income housing whose tax valuation would be based on the cost as determined by the public agency involved.

63 Reform governments should resist the temptation to exempt land reform beneficiaries from land taxes. Taxes prevent lapse into pure subsistence farming and ensure future contribution by the sector to general revenue, even after reform is completed. If they are exempted initially, taxpayer strikes, as in France, will frustrate future efforts to tax small holders.

53. Owners of complex properties, such as city department stores and factories, would doubtless choose professional assessment from the start (see paragraph 24 above). New factories receiving tax incentives might well receive courtesy appraisal without the usual charge and with or without their own declaration as a starting point. The tax agency will still need a staff of professional assessors, highly skilled, even after the new system is well installed, for requested appraisals, inheritance tax valuations, etc.

J *Corporations*

54. Corporation landowners would pose no problem to this system. The tax base is the real estate held by the corporation, not the corporation itself. When someone considers that realty undervalued, he bids for it, without thereby assuming any responsibility for other assets, liabilities or activities of the corporation. The same applies to cooperatives and other forms of multiple ownership.

55. The tax assessment policy here proposed is independent of the rate structure. However, if that structure includes progressive rates to discourage holdings in excess of certain limits, or if land reform legislation prohibits holdings above such limits, bearer shares in landowning corporations must be prohibited and the tax declaration must include the list of shareholders and the number of shares owned by each.

56. Prohibition of bearer shares for corporations of all kinds would greatly facilitate enforcement of all taxes and especially those on income and inheritance.[64] The only real use of bearer shares in Latin America today is tax evasion, so no self-respecting government should tolerate them. The so-called 'substitute' annual taxes (as used in Argentina and Uruguay) of 1% or so on capital are no real substitute for the inheritance tax. They are largely shifted to consumers and workers as a cost, and they nullify the progression purportedly built into the inheritance tax rate tables.[65]

K *Very large units*

57. When one taxpayer owns a great deal of land, separate declaration should be required for each operating unit. Even so, some operating units (especially livestock operations) will be so large that few persons will have the capital to make an offer. Those who do are likely to feel a sense of solidarity with the landowners and will not make offers. Again, if the banks are controlled by the wealthy, they will not finance the deposit—let alone the purchase—of land by a tax bidder.

64 Uruguay recently went further; instead of eliminating bearer shares in landholding corporations, now common, corporation ownership of agricultural land was outlawed entirely by law 13318 of Dec. 28, 1964, Art. 213-216. All land must be held only by natural persons and title registered in the name of the true owner or owners within two years.

65 See J. Strasma, 'La tributación del capital y el desarrollo economico' (Santiago: Instituto de Economía, 1965), chapter 3.

58. However, it is precisely the largest units, not the small or medium ones, that are of greatest interest to land reform agencies. Enforcement of reasonable tax valuations of these largest properties requires the existence of a land reform agency, with a will and resources adequate to represent a genuine threat of purchase.

59. In many countries such a land reform agency does not exist, or is ineffective, often for the same reason that tax assessments are far below market values. As a stopgap, then, owners of units over a certain value, once adjusted by the index, should *not* be permitted to appeal by declaring lower values subject to bids that the owners know will not be forthcoming. Rather, owners of all properties assessed over a given figure, say, $ 100,000 after index adjustment, could appeal only by *option c*.

60. Naturally, owners would still be obliged to submit *higher* values than the index-adjusted figures, if they are unwilling to settle for those figures in the event of expropriation. Failure to so declare would constitute ratification of the index-adjusted value as a ceiling for compensation in that (unlikely) event.

L *Payment terms for option a transfers*

61. The mode of payment required of the buyer (if the owner chooses *option a)* should depend on the use and value of the property. A house or farm occupied by its owner and bought at less than, say, $ 12,000 should be paid for in cash except that the buyer would assume any existing mortgages if he wished.

62. Mortage lenders, normally sympathetic with owners of large properties, might try to sabotage the process. All mortgage lenders would therefore be obliged to accept the substitution of debtors unless they could satisfy the Superintendent of Banks and Credit that the property value did not really cover the unpaid balance. Since this would imply that they had made an imprudent loan in the first place, few banks would dare make such claims. Other lenders would likewise hesitate to allow the Superintendent to probe into their (now uncontrolled) lending practices.

63. Rental dwellings, commercial buildings, industrial plants, and houses and farm properties over the limit set would be treated according to the terms on which such properties are regularly sold by willing sellers to normal buyers. This would usually mean that existing debt would be assumed, a certain fraction (perhaps 10%) of the total price be paid at the time of transfer and the balance be paid in notes due over, say, 3 years, with a second lien on the property to guarantee payment. Again, lenders would be obliged to show cause for refusal to accept substitution of borrowers for any existing mortgages.

M *Land reform transfers*

64. If a land reform agency bids for the land, then the owner has *no* option. He must transfer title and he must accept payment in bonds on the same terms as those applied to expropriations for land reform purposes. However, he at least receives the full amount

he declared for tax purposes. If the land had been expropriated, it would have been subject to appraisal. He could not have received more and he might possibly have received less than his declared value.[66]

65. To encourage 'spontaneous' land reform, tenants could be permitted to buy the land they will at the tax value declared by the owner at any time, paying only the current year's legal rental down and the balance in bonds obtained from the land reform agency.

66. If the agency is proceding by zones or is overworked, reform could be speeded by allowing groups of persons eligible for reform parcels to choose a property and submit a plan of division or of cooperative operation to the reform agency. If the plan met minimum standards laid down by the agency, it would bid or would provide land bonds to the interested parties so that they could acquire even very large properties with minimum effort by the reform agency itself. However, they would have to pay the value declared. If that value was inflated by prestige considerations, monopoly power over a captive labor force, etc., it might be a little cheaper to wait for the reform agency to expropriate.

V. CONCLUSIONS

This paper suggests measures with which a Finance Minister who so wills and who has the political backing, can effectively raise property tax assessments and complete the job during his own 'political lifetime.' Private property, itself a creation of the state, is taxed and logically should be valued by the state. The present proposal does not change the state's responsibility of control. What it does do is enlist voluntary cooperation for a prospective reward just as every country does in enforcing the income tax.

A *The effective tax increase*

The first step is an index adjustment of all existing assessments aimed to put the average property at or above market values. This will separate the inevitable opposition to higher taxes from the legitimate discussion of the most practical and just way to assess those taxes. A rate increase won't do because it confuses issues and perpetuates under-assessment, hampering the operation of other taxes related to property values (e.g., income and inheritance taxes).

B *Appeal by self-assessment*

The second step is to escape the enormous burden of traditional appeals, replacing recourse to the courts with permission for owners unhappy with the index-adjusted values to substitute their own valuations. Owners of properties not previously assessed at all would also be required to declare the value. Owners would hesitate to understate

66 In expropriation, the law might allow the owner to retain part of the land. When the reform agency used the method here suggested, that would not necessarily apply—unless the agency allowed him to request a parcel, together with other candidates.

market values more than 20% or so because any person or company could make a bid for self-assessed property at 10% or more than the value declared. If the owners declined to sell, the tax value would be raised to the amount rejected and a fine would be levied, to be shared with the frustrated bidder.

In a third stage, *all* assessed values would be published and subject to bids. Owners whose properties were still under-assessed even after the index-adjustment would thus be brought into line; previously only those who thought their property over-assessed were involved.

C *Appeal by appraisal*

All assessments, declarations, and offers would be subject to automatic adjustment should inflation exceed certain rates per year or month, or in cases of sudden devaluation.

Owners unwilling to be subjected to this procedure could request fiscal assessment, but would be obliged to pay the full cost thereof to the tax service. The charge would be high enough that the service could obtain appraisers whose desire to continue receiving such fees (from the tax service) would offset the temptation to accept bribes from owners. At the very least, corruption should be much less than at present, when appraisers are usually overworked and are paid salaries so low that they feel obliged to accept 'gratuities' from property owners.

Appraisals set would be reviewed by the tax service which could reject the first one and assign a second appraiser (at its own expense). The owner, if dissatisfied with the first appraisal, could likewise request a second valuation—at his expense. In either of these cases, the two values would be averaged for the tax valuation. The tax service would have no further appeal; the owner could only appeal by submitting his own value and returning to the market-enforced system.

D *Reassessment and land reform*

The net result would be a great relief of court calendars and of the tax services. Appraisers and lawyers now working for owners would lose a lucrative practice whose social value in underdeveloped countries has sometimes been questionable. Both, however, would have socially-useful employment in land reform programs and urban renewal, in acquisitions and in clearing up titles for small holders. Some will also continue to earn handsomely—by making bids for undervalued property in the new system.

Market-enforced self-assessment will not solve every problem associated with taxation and public administration. Corruption can be greatly reduced through procedures here suggested, though including these details here may make the system appear more complicated than it really is. Those who dislike private profits from enforcement of taxes should consider whether they should not dislike even more the present profits made by evaders of property taxes government is unable to assess under older systems.

In the longer run, technical assistance and training programs (financed with part of the higher property tax revenues) would permit a cadastral survey. Such assistance would make possible the organization of the technically-competent, responsible valuation department and land use planning agency that are essential to modern public administration.

The measures here suggested are intended for use right now, with the staff, the quality of public administration, and the character of taxpayers as they now are, in underdeveloped countries. They are not a valid substitute for land reform.[67]

At times the political situation permits enactment and implementation of either tax reform or land reform, but not both at once. In such cases—Ecuador, Peru, and Chile in 1964-65 may possibly be examples—land reform should come first, in my judgment. It breaks drastically with custom and with a power structure, and this will subsequently make it easier to apply the tax reform here described. In addition, since the principle of compensation at tax values is fairly well established,[68] the very eve of land reform is not a logical moment for government to allow owners to raise tax values!

In many underdeveloped countries, however, the land reform movement has not yet achieved the strength needed to bring about reform—by violence or at the polls. Yet in some of those countries, and in others such as Mexico, Bolivia, and Venezuela where reform is largely completed, there may, at times, be the lesser strength needed to enact a tax reassessment. Traditional methods have often failed or delayed many years in bringing this about.

E *One final problem: a practical test*

The proposals made here appear to offer a chance to achieve effective property tax reassessment during the political life of a cabinet or a finance minister. The next step is in the hand of the reader: to arrange a test application in a country, province, state, or municipality that genuinely wants reassessment. And if at first the idea is rejected indignantly, public discussion may at least force governments to decide whether they *want* to reassess. If this paper does nothing more than stimulate more effective work by traditional methods by tax officials trying to show that the new technique is not needed, that too will be a contribution.

67 Land redistribution is painful to a few large landowners, but its potential beneficiaries are numerous and can often be organized to demonstrate for land reform or to defend reform governments. Property tax increases, on the other hand, affect thousands of small holders, urban as well as rural, while no one perceives any very direct benefit. Sophisticated landlords therefore often argue for tax increases as more 'objective' or 'impersonal' than land redistribution. While tax measures could, in time, attain many of the objectives of land reform, landowners advocating tax reform usually merely hope thereby to escape any reform at all.

68 See United Nations, *Fourth Report On Progress in Land Reform* (New York, 1965), chapter 3.

TAXATION CHAOS IN CYPRUS

by

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Article 188 of the Constitution of the Republic of Cyprus provides, *inter alia,* the following:

'. . . all laws in force on the date of the coming into operation of this Constitution shall . . . continue in force on or after that date . . . provided that . . . any law imposing duties or taxes may continue to be in force until the 31st day of December, 1960.'

Paragraph 2 of article 78 of the Constitution provides the following: 'Any modification . . . of any law imposing duties or taxes shall require a separate simple majority of the Representatives elected by the Greek and the Turkish Communities respectively taking part in the vote.'

The above two articles of the Constitution were destined to create the taxation chaos which followed the declaration of independence of Cyprus and were, in fact, the beginning of the friction between the two communities which culminated in the armed clash in December 1963.

The Constitution came into operation on August 16, 1960, when Cyprus was declared an Independent Republic.

According to article 188 all taxation laws were to expire on December 31, 1960, and, as this provided too short a time for the preparation of new taxation laws, the Government prepared a bill providing for the extension of the life of all laws imposing taxes for a period of six months after the 31st December 1960.

After considerable discussions in the House of Representatives between the Greek members and the Turkish members the bill was made into law on December 30, 1960. The extension period, however, was reduced to three months, viz. up to March 31, 1961, as a compromise to the Turkish members who originally accepted an extension of only two months. It is worthy of note that the law was successful by a very narrow majority. Out of the 25 Greek members who were present 19 voted for the bill and 6 abstained. Out of the 13 Turkish members who were present 7 voted for the bill, 5 voted against it and 1 abstained. So the bill was made into law by a majority of two Turkish delegates who could, if they chose to follow the 5 dissenters, throw the country into the taxation chaos which was to follow in three months.

The tax laws which existed at that time were to a certain extent out-dated because they had been meant for a colony. Now that Cyprus had emerged from the colonial status and had joined the chorus of independent states all laws had to be framed in such a way as to tally with the Constitution. This was not, of course, an easy task and the Executive were unable to prepare new taxation laws within the extension time of three months mentioned above. So a new bill was prepared providing for the extension of all tax laws for a further period of three months.

It is not the purpose of this article to get into the details of the discussions which took place in the House of Representatives on the 30th and 31st of March 1961. By doing this, one may run the danger of being involved into politics. The result, however, was that the bill was not made a law and so the tragedy began. The outcome of the voting was as follow:

	MPs present	*Voted in favour*	*Voted against*	*Abstained*
Greeks	25	25	—	—
Turks	13	—	11	2

The Cyprus Government went illegal, not because it lacked the support of the people but because the Constitution, which was definitely not in conformity with the principles of the Charter of the United Nations, allowed it. On the first of April 1961 Cyprus was left without tax laws and so all levies became illegal.

Fortunately the overwhelming majority of the people reacted in a miraculous way. They were able to see that if they refused to pay their dues the State would be destroyed for the good of no one. So they continued to pay the taxes despite the fact that the laws imposing these taxes were dead letters. Of course there were exceptions and a number of tax-payers resorted to the High Constitutional Court seeking relief against the State. These cases cannot, of course, be discussed within the limits of an article.

The term 'any law imposing duties or taxes', as used by article 188 of the Constitution, has not been judicially interpreted but it is easy to see that it is a very wide term. Apart from the laws which are taxation laws in the eye of every citizen, such as the Income Tax Law, Custom Duties Law etc., a great number of other laws impose some sort of taxation, as for instance the Wireless Telegraphy Law which imposes an annual licence of one pound for each radio. So it proved impossible for a young State to revise all laws which directly or indirectly imposed some sort of due within the stupidly narrow limits allowed by the Constitution.

As, however, we cannot relate the story of every law imposing taxation, we shall limit ourselves to the examination of one major branch—Income Tax. This choice has not, of course, been made at random. It was purposeful. The phases of the Income Tax chaos are really the most tragic of the Cyprus drama and bear ample evidence to the fact that a bad Constitution is not better than no Constitution at all.

On the 1st of April, 1961, Cyprus was left, as explained above, without an Income Tax Law. The confusion which followed is indescribable. The Commissioner of Income Tax continued to tax the citizens, the overwhelming majority of whom paid without grumbling. However, there were citizens who, either because they believed that they had a genuine case against the Commissioner, or because they wanted to take advantage of the 'lawlessness', flooded the High Constitutional Court with appeals. On the other hand, the employers were at a loss as far as deducting income tax from the salaries of their employees was concerned. Some employers, seeing that deducting such income tax was definitely illegal, stopped doing so. Others, acting on the principle that 'salvus

populi summa lex' continued to deduct the tax and pay it over to the Government. The net result was that nobody knew where he stood.

In the Autumn of 1961 an Income Tax Bill was finally ready for discussion by the House of Representatives. Before discussion on the substance of the bill was started, a number of Turkish MPs who had formed the 'Independent Turkish Group' put forward the following suggestion: that a new article be added to the bill providing 'that this law shall expire at the end of each year unless it is renewed by the House'. This created a very thorny problem because it meant that at the end of each year a majority of the MPs of either community could stop the Income Tax machine. For the moment, however, it was by-passed and the House proceeded to the discussion of the substance. This was done on December 11, 12, 14, 15 and 18, 1961. All articles were voted by both communities, but article 25, which governed the income tax scales in appendix II to the Bill, was not passed. This, of course, was the crux. An Income Tax Law without income tax scales is no law at all.

The 'Independent Turkish Group' came forward with the suggestion that the law should be passed as a whole but that appendix II should expire on December 31 of each year unless previously renewed by the House. After hot and animated discussions the Turkish Group modified their suggestion as follows: 'The Law will be in force without limit, apendix II will be in force up to December 31, 1963, if then it is renewed by decision of the House it will be in force for a further period of two years and so on. But if on 31st December, 1963 it is not renewed it will be in force for a period of 3 months'.

This suggestion was put to the vote and dropped by 30 Greeks voting against and 14 Turks voting in favour. There were no abstentions.

After this deadlock the Bill as a whole was put to the vote. All the 30 Greeks who were present voted in favour, but 10 of the Turks voted against it. Four of the Turks abstained.

Once more Cyprus lost her hope for a peaceful and prosperous future. The country was left without the most pivotal of taxes—Income Tax. It was by then clear in the minds of all that the Constitution was not workable.

The solution which was found was the solution of a drowning man who clutches at a serpent. All the political leaders were able to see that the country could not go on without income tax and that the tax levied from big foreign companies, such as the Cyprus Mines Corporation, was essential to the very existence of the State. So the House passed law No. 58 of 1961 which was cited as 'The Income Tax (Foreign Persons) Law, 1961', and which was a facsimile of the Bill which failed on December 18, 1961. But what, then, about the Cypriots? Should they go untaxed? The two Communal Chambers then entered the picture. The Greek Chamber passed a 'Personal Contributions' Law for the taxation of Greek citizens and the Turkish Chamber passed its own for the taxation of the Turkish citizens. These two communal laws together with the Income Tax (Foreign Persons) Law, 1961, were published in the Official Gazette on December 29, 1961.

This was the last act of the drama. Cyprus, a small country of roughly 500,000 Greeks and 110,000 Turks was to have three different income tax laws—one for the Greeks, one for the Turks and one for the foreigners. But this act, however, is in itself a new drama which needs a separate staging.

GREAT BRITAIN'S PART IN THE DEVELOPMENT OF DOUBLE TAXATION RELIEF*

by

R. WILLIS**

Income tax was first imposed in Great Britain in 1799. It was abolished in 1815 but reintroduced as a temporary measure in 1842. For some years there were high hopes that it would indeed be temporary but these hopes gradually faded. The tax, however, still expires at the end of each financial year and must be reimposed for the ensuing year by fresh legislation. But so far Parliament has never failed to reimpose it, and I think we must recognise that this perfect solution to the problem of double taxation is unlikely to be adopted.

So far as I know, double taxation of income was not an issue in the period up to 1815, but it is now over a hundred years since it first gave rise to complaints in this country. In 1860 income tax was introduced in British India and in 1861 the first protests began to arrive from residents of the United Kingdom who had become liable to income tax both in Britain and in India upon income and profits arising in India. These complaints were the subject of debate in the House of Commons, when the general view seems to have been that the United Kingdom income tax, which had already been in existence for nearly 20 years, ought not to be altered just because another country chose to adopt the same system of taxation. The Chancellor of the Exchequer of the day apparently recognised that there was a problem here which might well be further investigated; but nothing came of it and the matter was allowed to drop.

Ten years later, in 1872, Great Britain made its first double taxation agreement. The agreement was with the Swiss Canton of Vaud and related to death duties—that is, so far as Great Britain was concerned, the legacy and succession duties. It was a rather curious agreement, possibly because the officials of the Inland Revenue were never consulted about it. The apparent intention was to protect the estates of British subjects who happened to die while temporarily resident in the Canton from being charged to the Cantonal death duties on property situated in Britain and elsewhere. However, it subsequently emerged that a foreigner residing in the Canton of Vaud could technically remain a temporary resident for as long as he pleased, provided that he abstained from making a formal declaration of his intention to establish his domicile in the Canton. This was highly satisfactory to the many British subjects who retired to that beautiful region, but some years ago the Cantonal authorities came to feel that the treatment which these British subjects enjoyed was unduly generous and represented to us that the

* Address to the 19th IFA Congress in London, September 13, 1965.

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agreement should be terminated. We felt bound to agree that the Canton's case was a good one and the agreement was terminated in 1958 after a life of over 80 years.

The next landmark in the double taxation field in Britain was also concerned with death duties. I doubt whether it was recognised as a landmark at the time, but it was in fact the first introduction into the British tax system of relief for double taxation by way of credit. In 1894 the British estate duty was introduced and provision was made in the legislation for duty charged in other countries of the British Empire on property situated in those countries to be deducted—that is, allowed as a credit—against the British duty on the same property. It was a condition of the relief that the rules governing the situation of property for death duty purposes must be the same in the colony as in Great Britain, and this to some extent limited the scope of its operation. Nevertheless, the system established in 1894 was still applicable in relation to a considerable number of countries in what we now call the Commonwealth right up to 1962. In that year it was decided that the relief should be generalised and a unilateral credit system on conventional lines is now in operation and applies to foreign countries as well as to countries of the Commonwealth.

To return to the income tax, in the 1890's a number of countries within the British Empire began to impose taxes on income and in the following years repeated representations were made to Parliament on the subject of double taxation within the Empire. The problem was discussed in Parliament from time to time but all suggestions for giving relief were resisted by the Government. Thus, in one of these debates in 1907, Mr. Asquith, then Chancellor of the Exchequer, argued that if a man for reasons of his own resided in the United Kingdom and enjoyed the protection of British laws it was only fair that, in consideration of this voluntary act on his part and the protection extended to him by the Government, he should contribute income tax on the whole of his income wherever that income arose. In 1911 the question was discussed at an Imperial Conference of Colonial Prime Ministers. On this occasion the British attitude was somewhat less rigid, though the effective result was the same. The Chancellor of the Exchequer, who was now Mr. Lloyd George, expressed sympathy with the suggestion that double taxation should be abolished within the Empire but said that he could not afford to make any remissions of British tax.

It is noteworthy that such discussions as there had been in Britain in these early days on the question of eliminating double taxation had all been directed to the problem of double taxation within the Empire; there seems to have been little if any concern about the situation of a United Kingdom taxpayer whose income had been taxed in a foreign country. There were a number of reasons for this. In the first place, no doubt, the great mass of British investment abroad was in countries of the British Empire, so that it was to be expected that the main demand for double taxation relief should arise out of taxation in the colonies. Further, few countries at that time imposed a general income tax comparable to that imposed in the United Kingdom, where residents of the country were charged on their income from all sources, whether it arose in Britain or abroad (income flowing to non-residents from Britain being also charged). It is true that some countries did have a graduated tax on total income, but they relied also in impersonal or schedular taxes on particular categories of income which had no counterpart in the United King-

dom. In any case rates of tax were relatively low and one can only infer that such taxes as British residents suffered in foreign countries were not so heavy as to cause the taxpayer serious concern. I am speaking, of course, of double taxation as between the United Kingdom and other countries. The problem of double taxation was no doubt more serious as between Continental countries with close economic ties and broadly similar systems of taxation, and already towards the end of the nineteenth century certain agreements for the avoidance of double taxation had been made between such countries.

Finally, taxation within the British Empire taken as a whole was considered to be on rather a special footing. The Empire was conceived of as essentially a single homogeneous unit and it could thus be argued with some force that it was inequitable to require a taxpayer to make two contributions of income tax for purposes which could be regarded as in some measure a single purpose, namely the well-being of the British Empire.

This, then, was the situation 50 years ago: considerable anxiety about double taxation within the Empire, but so far nothing done about it.

Then came the first World War. Rates of income tax in Britain rose steeply, and new or increased taxes were imposed in other parts of the Empire also. But perhaps the most important new factor was a technical change in the United Kingdom tax law. Up to 1914 a United Kingdom resident who derived income from overseas investments was not automatically charged to tax on the full amount of the income; he was charged only on the amount of income actually remitted to this country. If the income was taxed in the country where it arose he could avoid double taxation by leaving it there—that is, if he could afford to do without the immediate use of the income. In 1914, however, the income tax charge was extended to the whole of the income from investments abroad, whether or not it was brought into the United Kingdom (there were certain exceptions which I need not go into).

As a result of these changes the incidence of double taxation began to cause great dissatisfaction and the Government decided that something must be done. In 1916 legislation was passed giving relief from United Kingdom tax where a person had paid both United Kingdom tax and 'colonial' tax—that is, tax in an Empire country—on the same income. Briefly, relief was given on the doubly taxed income at the colonial rate of tax, but it was provided that the United Kingdom rate was not to be reduced as a result below 17½%; the standard rate of income tax at the time was 25%. The main defect of this arrangement was that it brought no relief to the less wealthy taxpayers whose rate of United Kingdom tax was in any case less than 17½%; and from the United Kingdom's standpoint it was also a defect that the whole burden of relieving the double taxation within the Empire fell upon the United Kingdom. The arrangement, however, was regarded as no more than a temporary expedient, which was not to prejudice future consideration of the relative claims of the exchequers of the United Kingdom and the Dominions. An Imperial Conference in 1917 recommended that the question of relief for double taxation within the Empire should be taken up as soon as the war was over.

Early in 1919 a Royal Commission was appointed to enquire into all aspects of the British income tax. The Commission appointed a sub-committee to consider the problems of double taxation within the Empire, and representatives of the self-governing Dominions—that is, Canada, Australia, New Zealand, South Africa and India—were

added to the sub-committee. The final outcome of these discussions was the introduction in 1920 of the scheme of 'Dominion income tax relief', which for the next 25 or 30 years was the means adopted for avoiding double taxation within the Empire. Under this system the United Kingdom gave full relief for Dominion tax against United Kingdom tax where the Dominion rate was less than one-half of the taxpayer's appropriate rate of United Kingdom tax; where the Dominion rate was higher than this the relief was limited to half the United Kingdom rate. It is worth noting that the relief was not confined to United Kingdom residents or to income arising in the Dominion as opposed to the United Kingdom. The test was simply whether the income was subject to both United Kingdom tax and Dominion tax; if it was, the United Kingdom gave relief.

As I have said, the relief was limited to half the taxpayer's rate of United Kingdom tax. The discussions in the sub-committee took place on the footing that it was in the common interest of all parts of the Empire that double taxation should be eliminated and that any sacrifice of revenue necessary to remove hardship should be a mutual sacrifice. The United Kingdom was prepared to assume the major part of the burden in order to secure agreement, but it was part of the scheme as envisaged by the sub-committee that, where surrender of half its tax by the United Kingdom still left the taxpayer subject to some double taxation, the Dominion would give the further relief necessary to wipe out the lower of the two taxes. Thus it was envisaged that if the United Kingdom rate was, say, 25% and the Dominion rate was 15%, the United Kingdom would give relief of 12½% and the Dominion would give the balance of 2½%. The scheme as passed into law, however, did not make this reciprocity a condition of relief.

In the result not all Dominions made provision in their own law for reciprocal relief. Relief was introduced in India, and similar provision was usually made by the colonies—that is, the dependent territories as distinct from the self-governing Dominions. In the case of the colonies the effect was often to limit their regular rate of tax to half the rate in force in the United Kingdom; if the colony's main source of tax revenue was the profits of United Kingdom companies operating in its territory there was little to be gained by imposing a rate of tax higher than half the United Kingdom rate, since it would be inoperative in relation to the United Kingdom companies.

Those Dominions which criticised the concept of reciprocal relief could fairly claim that they were already avoiding double taxation in other ways. Australia, for example, based its tax system exclusively on the principle of the origin or source of the income, and did not tax the overseas income of its residents. It held strongly to the view that the country of origin had the primary right to tax, to the exclusion if necessary of the country of residence of the recipient; in the discussions in the sub-committee it argued that, if taxation on a residence basis was also admissible, Australia had already made its proper sacrifice in any reciprocal arrangement within the Empire by not taxing on that basis. (In fairness to Australia I must make it clear that, despite these views, she did subsequently provide reciprocal relief.)

To this it was replied that no State could be expected to surrender the right to tax its own residents, particularly as the exemption of overseas income would be incompatible with the principle—to which the United Kingdom attached great importance—of 'ability to pay'. The United Kingdom could not accept a situation in which the total

burden of income tax borne by one United Kingdom resident was greater than that borne by another resident with the same income merely because part of the latter's income was derived from another part of the Empire where rates of tax were lower than in the United Kingdom. And, quite apart from the principle of ability to pay, the acceptance of an exclusive origin basis would have thrown the cost of eliminating double taxation almost entirely on the United Kingdom.

Here we see already the conflict of views between the capital-importing and capital-exporting countries which emerged so clearly in the following years in the international discussions held under the auspices of the League of Nations.

The solution by means of a credit system, to be given by the country of residence, was also ventilated in the sub-committee's discussions. This too appeared unacceptable to the United Kingdom because it would place the home exchequer at the mercy of the country of origin, which would be able to increase its rates of tax on the non-resident entirely at the expense of the country to which the non-resident belonged. The United States had introduced a unilateral credit system for foreign taxes at about this time, but to the United Kingdom at least such a relief seemed extraordinarily generous as well as rather rash.

The sub-committee in which these discussions took place was only concerned with the problem of double taxation within the Empire. The Royal Commission itself also considered the problem in relation to foreign countries, but they did not regard it as so urgent since the factor of the mutual interest of all parts of the Empire in the well-being of the Empire as a whole was not present in the case of foreign countries. Furthermore, they rightly foresaw serious difficulties in working out acceptable solutions. Their conclusion was that any change could only come about as the result of reciprocal arrangements between the United Kingdom and particular foreign countries, and that such arrangements could only be arrived at by means of a series of conferences, possibly (they suggested) under the auspices of the League of Nations.

This was in 1920. As is well known, the League of Nations began its work on the avoidance of double taxation in the following year. Sir Josiah Stamp, a former official of the British Board of Inland Revenue who had later been a member of the Royal Commission on the Income Tax, was one of the four distinguished economists who undertook the first, theoretical, study of the problem. This is not the occasion for discussing the economists' work in detail, but it will be recalled that they put forward the principle of 'economic allegiance' as the ideal basis for deciding how an individual's total tax liability—calculated according to his ability to pay—should be divided between competing States. The factors which they considered should be primarily taken into account for this purpose were the place in which the income arose, and the place in which the taxpayer was resident. They drew attention to certain other factors, but considered that origin and residence were the most important ones. They went on to suggest four methods by which double taxation might be eliminated in the practical world. The first was the method of tax credits to be given by the country of residence, which had already been adopted by the United States. The second method was to exempt all income flowing from the country of origin to non-residents; thus the whole of a taxpayer's income would be taxed in the country of his residence and would be taxed in that country only. The third

method was to divide the tax on some agreed basis between the country of origin and the country of residence—the kind of arrangement which had been adopted in the Dominion income tax relief. The fourth method was to assign certain types of income by agreement to the country of origin, while other types of income going from that country to non-residents would be exempted; the country of residence would retain the right to tax income which had already been taxed in the country of origin but would give credit for that tax.

This last method is, of course, the method which in the end has proved most generally acceptable. The economists themselves, however, favoured the pure residence basis, that is, the exemption of the non-resident from tax in the country of origin of the income. They did not claim that this was necessarily the best solution from a theoretical standpoint but they regarded it as the most practical solution of the difficulties of double taxation.

It is a fair comment that the four economists came from developed countries whose interests were likely to be best served by the pure residence basis. When the problem was handed over for further consideration to a wider body of technical experts (representing governments) it soon became clear that many countries, and particularly, of course, the debtor countries, were still firmly committed to the principle of taxation on the basis of origin. The technical experts came to the conclusion that no single solution was possible to the problem of double taxation owing to the different fiscal systems of different countries. Later a further Committee of technical experts reviewed the matter and largely endorsed the conclusions of the first body. Subsequently the approach of different countries was illustrated by the drafting of three model conventions giving different degrees of weight to the competing principles of origin and residence.

The United Kingdom took part in all these technical discussions, and also in the work of the Fiscal Committee of the League of Nations which was subsequently established as a permanent body. We continued, however, to support the pure residence basis throughout these discussions; but it must be confessed that the British representative's was a lone voice.

The result of this difference of opinion between the United Kingdom on the one hand and the other European countries on the other was that all attempts made by the United Kingdom to reach comprehensive double taxation agreements came to nothing, and thus between the wars the United Kingdom made no general double taxation agreement with any overseas country.

I hasten to say that there was one very important exception, namely the agreement which was made in 1926 between the United Kingdom and the Republic of Ireland, then known as the Irish Free State. When the Irish Free State was set up it continued to follow the United Kingdom system of taxation, and, as financial and economic relations between the United Kingdom and the new State remained closely intertwined, it was clear that double taxation would arise in an acute form unless special arrangements were made. At first temporary arrangements were adopted on the lines of the Dominion income tax relief, but the agreement of 1926 adopted the principle of residence in its entirety. An Irish resident is totally exempt from United Kingdom income tax, and a United Kingdom resident is totally exempt from Irish income tax. This agreement is still in force, and

I believe it is the only one of its kind. The two countries themselves made different arrangements, importing the concept of permanent establishment and relief by way of credit, when in 1949 an agreement was concluded in regard to double profits tax—that is, the taxes which by then both countries were charging on company profits in addition to income tax.

I might mention here that we also have arrangements with the Irish Republic for avoiding double stamp duties. This is a form of double taxation which has not aroused much international concern, but in Britain the stamp duties used to be an important source of revenue and even today they still produce some £m 75 a year. There are similar stamp duties in force in the Irish Republic, and also in Northern Ireland which imposes its own stamp duties separate from those operative in Great Britain (that is, in England, Wales and Scotland). Since 1923 therefore arrangements have been in force between the three taxing authorities under which each accepts the stamp duty paid on a document in one of the other countries as satisfying its own duty on the same document. If its own duty is higher than the duty already paid, only the difference between the two rates is charged. In short, it is a credit system.

I said just now that apart from the Irish agreement we made no general double taxation agreement between the wars. We did, however, make a considerable number of agreements for the reciprocal exemption of shipping profits, following the example of the United States, which as early as 1921 took power to exempt foreign shipping from United States tax on a basis of reciprocity. In this limited field the residence basis soon became widely accepted, at any rate by countries with important shipping interests, as the best solution to the special difficulties in the field of double taxation which arose in the case of international shipping. This solution accorded with the general views of the United Kingdom and between 1923 and 1939 we made agreements with the United States, Canada and about ten other countries. The agreement with the United States was the first occasion on which the United Kingdom had made arrangements with a foreign country, as distinct from the Dominions, for the relief of double income tax. In 1931 power was taken to make similar agreements in regard to profits from air transport, and agreements were subsequently made with France, Germany and the Netherlands.

We also, from 1930 onwards, made a number of agreements for the reciprocal exemption of profits arising to non-residents through certain agencies. In the presence of Mr. Carroll, I need not remind you of the creative work which was being done at that time in the Fiscal Committee on such subjects as the allocation of income and the concept of permanent establishment. In the United Kingdom we perhaps looked rather sceptically at such a novel phrase as 'permanent establishment', and I think that our predecessors might be surprised to see the highly sophisticated definition which now appears in the model convention of the O.E.C.D., the Organisation for Economic Co-operation and Development. In the conditions of 1930 it seemed sufficient to provide in the agreements that the non-resident should not be liable to United Kingdom tax in respect of profits arising through an agency in the United Kingdom unless the agent held a stock of goods in the United Kingdom or—to quote the actual words—he 'has and habitually exercises a general authority to negotiate and conclude contracts'. I am glad that this familiar phrase still lives on in one corner of the O.E.C.D. definition.

Thus all the limited agreements which the United Kingdom entered into between the wars allocated the right to tax to the country of residence. Nevertheless the United Kingdom came at last to the view that it would be in our interests to enter into comprehensive double taxation agreements even though it meant deviating from a principle to which we had been so firmly committed. It was clear that our views were not shares by other countries (including the United States) which had been entering into reciprocal arrangements which gave far more weight to the principle of origin. During the second World War rates of tax had risen to great heights all over the world, and the double burden could no longer be regarded as tolerable. Britain's foreign earnings would be of vital importance to her economy in the post-war world, and British traders operating overseas would be at a serious disadvantage if they continued subject to double taxation while their competitors were relieved. In 1944, therefore, in response to an approach from the United States, we entered into negotiations and in 1945 our first comprehensive double taxation agreement was signed. The League of Nations model convention which held the field at that time was the Mexico draft, which relied rather heavily on the origin principle; the United Kingdom's agreement with the United States gave considerably more weight to the residence principle, and I think one may say that that agreement had its influence on the final League of Nations model, the London draft, which was produced in 1946.

Once a start had been made we moved fairly quickly, and before long we had agreements with most of the countries of the Commonwealth; agreements with other European countries followed, more slowly. We now have over 60 agreements for the relief of double taxation on profits and income. Most of these were made before the Fiscal Committee of the O.E.C.D. completed its model convention but, for the most part, our agreements are substantially in line with the O.E.C.D. recommendations (although there are variations), and when we make agreements with additional countries, or revise existing agreements, we seek to follow the O.E.C.D. model as closely as possible.

I might say in passing that we also have nine death duties agreements with other countries—that is, for the avoidance of double taxation of the estates of deceased persons. As I mentioned earlier, credit for overseas death duties is now given unilaterally where there is no agreement.

I should perhaps confess that when the proposal to set up a Fiscal Committee of what was then O.E.E.C. was first put forward the United Kingdom reaction was somewhat guarded. A great deal of work had already been done in the League of Nations and subsequently in the United Nations, and we doubted whether much profit would arise from studying further refinements. We had, for example, some reservations about the possibility of producing a model convention that could be put into effect among all the members of O.E.E.C. multilaterally (though I may say that we are now playing a full part, in co-operation with other members of the European Free Trade Association and Finland in a study of the possibility of drawing up an acceptable multilateral convention). However, once the Fiscal Committee had been set up I think it is fair to say that the United Kingdom has taken a full share in the work, particularly in regard to the attribution of business profits and the definition of permanent establishment. If I was asked what has been the characteristic British contribution I would say that our wide experience in

double taxation negotiations, derived from the large number of agreements we have concluded, has enabled us to contribute valuable comment from the viewpoint of the practical administrator.

I must say a few words about the United Kingdom arrangements for giving credit for overseas taxes. It was originally provided that relief by way of credit should only be allowed in the context of a double taxation agreement; given that the cost of eliminating double taxation ought to be shared equitably between the two countries, it seemed that the credits to be given in the country of residence (which are part of the cost) should be one of the factors to be brought into account in arriving at an agreement. But after the first wave of agreements had been concluded it became apparent that future progress was going to be considerably slower, particularly when it was a question of negotiating with countries whose tax codes were not so closely comparable with our own as those of the English-speaking countries. Pressure developed for relief to be given unilaterally to the United Kingdom resident when there was no agreement with the country from which he derived the income. In 1950 therefore legislation was passed under which credit for overseas tax—whether paid in a Commonwealth country or a foreign country—would be given against the United Kingdom tax on the same income, whether or not a double taxation agreement with the other country was in force. At the same time the Dominion income tax relief was abolished. The new relief was at first limited to one half of the rate of United Kingdom tax, but as income arising within the Commonwealth had enjoyed favourable treatment for over 30 years it was considered desirable to maintain this preference and the limit was raised to three-quarters of the rate of United Kingdom tax where the overseas tax was paid to a Commonwealth country. In 1953, following a recommendation made by the Royal Commission on the Taxation of Profits and Income, these limits were removed, and since then credit has in all cases been given for the whole of the foreign tax, subject, of course, to the limitation that it should not exceed the United Kingdom tax on the same income.

One further elaboration of our provisions for double taxation relief deserves a mention. Many developing countries have resorted to 'pioneer industry' reliefs under which a new industry may, for example, be exempted from tax for the first few years of its operation. The difficulty about these exemptions is that they are of no effective benefit to a non-resident enterprise if the payment of less tax in the developing country only means that it receives less credit in its home country; the beneficiary in such a case is the home country's exchequer. In order to prevent these pioneer reliefs being frustrated in this way the United Kingdom now has power to enter into agreements under which the tax given up by the developing country is treated for credit purposes by the United Kingdom as if it had been paid. We have so far made agreements with Pakistan, Israel, Malta and Jamaica which include provision on these lines.

This address has been designed as a historical survey, and I have now reached the present day. As to the future, great changes are on the way with the introduction of the new corporation tax. The Chancellor of the Exchequer has discussed his taxation policy in an article in 'European Taxation', and I shall not repeat what he has said. But I might in conclusion say a few words about the implications of the new system for our double taxation agreements.

The important feature here is the new treatment of dividends, which springs from the separation of the taxation of the company from the taxation of the dividend paid to the shareholder. Up till now the United Kingdom has never levied a separate tax on dividends, whether paid to its own residents or to residents of other countries, over and above the tax charged on the company's profits. Thus, unlike many other countries, we had no holding tax on dividends going to non-residents; the United Kingdom tax which is deducted by the company paying the dividend is in fact no more than the income tax on the company's profits, passed on in effect to the shareholder.

With the introduction of the corporation tax we shall have a taxation system comparable to that of most other countries. There will be a tax on dividends quite separate from the tax on the profits of the company. This means that we shall have to seek revision of all our double taxation agreements which say nothing about the United Kingdom's right to levy a withholding tax but restrict the other country to a prescribed limit. When the necessary revisions have taken place it should be easier to deal with dividends in future agreements because our taxation system will be more in conformity with the system of the country with which we are negotiating.

We shall also have to review a large number of our agreements which provide specifically that neither the United Kingdom nor the other country is to impose any tax on dividends over and above the tax charged on the company's profits. To what extent we shall be content with the existing provisions in this type of agreement, and to what extent we shall seek to introduce reciprocal rates of withholding tax, I cannot at this moment say.

It may take some time to secure the revision of all our agreements which restrict the other country to a prescribed rate of withholding tax but impose no such limitation on the United Kingdom. It has therefore been decided, as the Chancellor of the Exchequer announced in the House of Commons last month, that legislation will be introduced next year so that, for the time being, we shall restrict our rate of withholding to whatever level the agreement imposes on the other country.

It is also provided in many of our agreements that a shareholder resident in one country and drawing dividends from a company resident in the other shall be given credit, not only for the other country's withholding tax on dividends, but also for the tax which the company has to pay on the profits out of which it finds the dividends. This system of giving relief to the shareholder in respect of tax paid by the company is inherent in the present United Kingdom system, and such relief was given generally under the old scheme of Dominion income tax relief. The introduction of corporation tax, separating the taxation of the company from the taxation of the shareholder, renders a relief of this kind inappropriate except where the shareholder is a company with a genuine trade investment in the company paying the dividend. Here again we shall have to seek the revision of all relevant agreements.

Over the last twenty years the United Kingdom has been very active in the field of double taxation relief, both in bilateral negotiations and in the international discussions in O.E.C.D. and elsewhere. It is clear that further arduous days lie ahead.

WORLD TAX REVIEW

ARGENTINA

TAX NEWS

RURAL TAXATION

The Department of Agriculture has submitted to the Treasury Department a preliminary plan to modify, for a period of four years, the existing regime in relation to rural taxation. The project is based on the authority of the Executive to reduce taxes when this is considered desirable.

Reductions in taxable income would be 50% of investments to increase the productivity of land, by fences, stock-yards, throughs for cattle, watering stations, wind-mills, water tanks, pumps, wells, watering places for cattle, dams, bathing places, facilities for animal hygiene, dairies.

Also included are installations for the drying and preservation of grain, and investments in pesticides.

A 100% deduction would be granted on investments destined to readapt and maintain soils suitable for agriculture and cattle breeding.

reported by Horacio Hirsch
Buenos Aires

BRAZIL

TAX NEWS

DEDUCTION OF EXPENSES BY A BRANCH OF A FOREIGN ENTERPRISE-CASE LAW

Foreign enterprises establishing a branch in Brazil must normally deposit an amount in dollars with the Bank of Brazil. This deposit is considered as a guarantee for the loan in cruzeiros which the Bank of Brazil is required to make to the branch for the purpose of providing this branch with the necessary capital. The Bank of Brazil charges interest on such loans, and, of course, the dollars given as guarantee may be returned to the foreign company.

A problem arose with respect to an enguiry made by the Bank of Tokyo Ltda., as to whether the interest paid on the amount borrowed from the Bank of Brazil was deductible from the branch office's taxable income for purpose of the income tax or not.

The "Directorate of the Income Tax" refused the deduction on the ground that it was an expense of the head office and not of the branch.

The establishment of the branch was deemed to be an interest of the foreign company only (-RFLF 574-62-) or, in other words, the branch has no right to the deduction. An appeal before the Council of Taxpayers was also rejected on the grounds that the decision of the "Directorate of Income Taxes" was given in accordance with the law.

A new appeal for reconsideration before

this Council has resulted in a new judgment stating that the relevant expense is deductible from the taxable income for the income tax of the branch because it is necessary for the normal course of business of the branch, and Art. 37 of the regulation in force at the date of the "enquiry" allowed the deduction of expenses incurred for the obtention of income and maintenance of its source.

Decision no. 56,414, dated 4-XI-'63

RHODESIA

TAX NEWS

THE 1965 BUDGET

The following extracts of the 1965 Budget Statement cover the Minister's proposals in regard to income tax.

Supertax

Regarding the attraction, and retention, of highly skilled persons, I am very concerned at the steep rate at which supertax falls upon the individual taxpayer; too high a rate of direct taxation makes it difficult, if not impossible, to attract professional and other skilled people to the country. The present rate for the first £ 1,000 of supertaxable amount of a family taxpayer, i.e. with income between £ 4,000 and £ 5,000 per annum, is 3*s.* for every £ 1 of supertaxable amount; for every £ 1 of supertaxable amount in excess of £ 5,000 the rate is 4*s.* 3*d.* in the £ 1. In effect, from an income tax rate of 7*s.* 3*d.* in the £ 1 at an income of £ 4,000, the family taxpayer's combined income and supertax rate rises to 10*s.* 3*d.* in the £ 1 at £ 4,001, and then to 11*s.* 6*d.* in the £ 1 at £ 5,001. It is my intention to modify supertax to some extent, firstly by eliminating the two-tier system of supertax between family and single taxpayers and, secondly, by reducing the impact of supertax.

For the assessment year ended 31st March last, I propose to raise the supertax abatement for the family taxpayer from £ 4,000 to £ 4,500 and for the single person, from £ 2,000 to £ 2,250. I also propose that the rates of supertax for both family and single taxpayers be 1*s.* 6*d.* for each £ 1 of the first £ 1,000 of supertaxable amount, 3*s.* for each £ 1 of the second £ 1,000 of supertaxable amount and 4*s.* 6*d.* in the £ 1 thereafter.

The effects of these proposals will be, firstly, to raise the income level before supertax becomes payable to £ 4,500 for the family taxpayer and to £ 2,250 for the single taxpayer; secondly, to raise the maximum combined rate of income tax and supertax from 11*s.* 6*d.* in the £ 1 to 11*s.* 9*d.* in the £ 1 for family taxpayers with incomes in excess of £ 6,500 and, for single taxpayers, with incomes in excess of £ 4,250. The third effect is that, because of the increased abatements and the lower supertax rates applicable to the first two steps of supertaxable amounts, the family taxpayer will only pay more in combined income tax and supertax this year if his income exceeds £ 26,000; and, in the case of the single taxpayer, if his income exceeds £ 10,500.

Undistributed profits tax

As I foreshadowed in my 1964 Budget, I propose a flat rate of undistributed profits tax at 5*s.* 8*d.* in the £ 1.

Investment credits

I am continuing the system of investment credits but I am proposing to limit the total investment credit to tax-exempt bodies to £ 1,000 which is the same maximum at present applicable to an individual.

Widows

It is my intention to make a minor change in the system of taxation of widows. At present, the surviving wife with no minor children is taxed as a single person from the date of death of the husband. I propose to amend the legislation so that the widow is treated as a married person for the remaining portion of the assessment year in which the death occurred.

Export promotion expenditure

I now turn to the tax incentives which I am proposing for the productive sector of the economy. I have stressed the importance of Rhodesia's export trade, and of export promotion; I hope to add some further substance to my words. I propose the Income Tax Act be amended to allow as a deduction, for tax purposes, of 125 per cent of export promotion expenditure incurred in the assessment year beginning on the 1st April, 1965. The definition of export promotion expenditure in the amending legislation, which should be available to the public in the next few days, will apply to all fields of export promotion, including outlays on tourist promotion. This is not all. I am anxious to spur Rhodesian exporters to make a greater drive in promotion of exports. Accordingly I also propose to provide an additional deductible allowance of 75 per cent of any increase in export promotion expenditure over that incurred in the previous year. This concession will apply in respect of expenditure incurred from 1st April, 1965. An example will illustrate what I have in mind.

Company A incurs export promotion expenditure of £ 10,000 in the assessment year 1964/65; this expenditure is increased to £ 20,000 in the subsequent assessment year. The expenditure allowed for tax purposes in the 1965/66 year, under my proposals, would be 125 per cent of £ 20,000, that is, £ 25,000, plus an additional 75 per cent of the increase of £10,000, that is, £ 7,500; the total allowance, therefore, would amount to £ 32,500 which compares with the £ 20,000 actually expended. If, in the subsequent assessment year, 1966/67, actual export promotion expenditure rises to £ 25,000, the total allowance for tax purposes will be £ 35,000. If in the 1967/68 assessment year the actual export promotion expenditure remains unchanged at £ 25,000 the allowance will be £ 31.250. It will be seen, therefore, that the system is designed to encourage a continued effort of export promotion. Once an exporter has reached a fixed level of promotional expenditure, he is encouraged to maintain the impetus by having the 125 per cent allowance available.

I regard tourist promotion expenditure as essentially export promotion expenditure. It is open to the tourist industry to play its part in the drive to increase our foreign exchange earnings through this medium.

I believe the proposed allowance should be a substantial incentive to exporters; although I cannot forecast exporters' intentions, the cost to the fiscus of this allowance may be substantial in the first full year, that is, in the financial year ending 30th June, 1967; but money likely to be well spent.

Industrial buildings and farm improvements

In relation to the question of attracting investment, I have given much thought to the problem of tax allowances on industrial buildings, farm improvements, and plant and machinery. I do not consider any change in plant and machinery allowances is merited. The position is rather different in the case of industrial buildings, and farm improvements, and I propose as from the assessment year, beginning 1st April, 1965, that the investment allowance for industrial buildings, including licensed hotels, and for farm improvements and fencing, be raised from 5 per cent to 15 per cent; that the special initial allowance in respect of these assets, other than fencing which is allowed in full in the year in which the expenditure is incurred, be raised from 10 per cent to 30 per cent. Although I do not propose any change in the rate of wear and tear allowance, which is 5 per cent per annum on a straight-line basis, on the type of buildings I have enumerated, I wish to see a change in the method of application of this allowance. The present annual wear and tear allowance is applied to the original cost, for tax purposes, of the industrial building after deduction of the special initial allowance and without taking account of the investment allowance. I propose that the wear and tear allowance be applied to the original cost for tax purposes of the industrial building or farm improvement, before deduction of the special initial allowance. The investment allowance, being in the nature of a tax gift, will not be brought into the computation. The effect of my proposal is simply this: the 5 per cent wear and tear allowance will apply to the 100 per cent original cost, for tax purposes, of industrial buildings and farm improvements, and not to 90 per cent, as at present. The total allowances in respect of special initial and wear and tear allowances will, however, not exceed 100 per cent of the original cost.

I might add that a lessor of a new industrial building, who leases such building for use in the manufacturing or licensed hotel business will qualify for the investment allowance.

I must emphasize to hon. members, and industrialists, what these various proposals mean. In the first assessment year, an industrialist will be allowed 50 per cent of the value of industrial buildings; and similarly for the farmer in respect of farm improvements. This 50 per cent is the 30 per cent initial allowance, the 15 per cent investment allowance and the 5 per cent wear and tear allowance for the year. Since the rate of wear and tear remains at 5 per cent, an investor is able to recoup his investment in 11 years.

An example may be useful. Suppose an investment of £ 1,000 was made in the assessment year which ended on the 31st March, 1965, on the existing basis, the industrialist would receive in his first year, allowances amounting to £ 195. On the basis of my new proposals, which will be effective in respect of expenditure incurred from the 1st April, 1965, his allowances will be £ 500 in the first year; that is to say, he is better off to the extent of £ 305. In terms of income tax liability he will have saved himself a further £ 110 11*s.* 3*d.* at the current company rate of tax of 7*s.* 3*d.* in the £ 1. Percentagewise, assuming the availability of profits, an additional 11 per cent of investment is recouped through the tax allowance system in the first year.

Much has recently been written in overseas countries about tax incentives, and their impact on investment outlook. It has been argued that business enterprises

do not take tax allowances into consideration when making investment decisions. I do not wholly accept this view. But it is undeniable that insufficient attention is paid to what the various tax allowances mean in terms of resources and assistance to industry. I trust that every opportunity will be taken by national organizations to publicize the generous tax allowances which the Rhodesian tax system provides, and their effect on the profitability of enterprise.

Drought-stricken cattle farmers

On the 3rd May, I made a statement about the taxation of drought-stricken cattle farmers. I do not intend to say anything further on this subject this afternoon; the necessary provisions to implement my proposals will be contained in legislation shortly to be presented to the House.

1965 RATES OF INCOME TAX, SUPERTAX AND UNDISTRIBUTED PROFITS TAX AND ABATEMENTS

Income Tax

PERSONS OTHER THAN COMPANIES

	For each £ s.	d.
First £300 of taxable amount	2	3
Second £300 of taxable amount	3	6
Third £300 of taxable amount	4	9
Fourth £300 of taxable amount	6	0
Balance of taxable amount	7	3

COMPANIES

	s.	d.
For each £ of taxable income	7	3

Supertax

ALL PERSONS INCLUDING COMPANIES LIABLE TO SUPERTAX

	For each £ s.	d.
First £1,000 of supertaxable amount	1	6
Second £1,000 of supertaxable amount	3	0
Balance of supertaxable amount	4	6

Undistributed Profits Tax

TAX LEVIABLE ON THE UNDISTRIBUTED PROFITS OF CERTAIN PRIVATE COMPANIES

	s.	d.
For each £ of undistributed profits	5	8

ABATEMENTS

Income Tax

	£
Family taxpayers: primary abatement	960
each child	144
Single persons: primary abatement	450
Dependant (maintained to the extent of at least £60 but not exceeding £144)	60
Dependant (maintained in excess of £144)	144
Blind person	960
Blind wife	960
Insurance premiums, excess contributions to approved pension funds, contributions to benefit funds *(max.)*	144
Medical expenses in excess of £50 and invalid appliances *(max.)*	144

Maximum abatements (excluding blind person's abatement):

	£
Family taxpayer	1,800
Single person	900

Supertax

	£
Family taxpayers	4,500
Single persons and companies liable to supertax	2,250

Notes.

1 Only certain companies incorporated after 31st March, 1953, outside Rhodesia which fall within the definition contained in the Income Tax Act, 1954, are liable to supertax.

2 Under the abatement system the tax payable is calculated on the taxable amount which is determined by deducting the abatement from the taxable income.

The Rhodesian Income Tax Service Bulletin No. 28, June 30, '65.

URUGUAY

TAX NEWS

MAJOR SUMMARIES OF COMPANY TAXATION*

Domestic companies

1. *Tax on income from industry and commerce*
   taxable base: Income from industry adjusted according to law or estimated in certain cases.
   tax rate: 6%
2. *Corporation tax*
   taxable base: Income from Uruguayan sources,
   tax rate: 4%
3. *Tax on excess profits*
   taxable base: income exceeding 20% of the net worth,
   tax rate:

income exceeding	20%	net worth			10%
„	„	25%	„	„	15%
„	„	30%	„	„	25%
„	„	35%	„	„	35%
„	„	40%	„	„	50%
„	„	50%	„	„	65%

4. *Net worth taxes*
   taxable base: Difference between assets and liabilities as adjusted,
   tax rate: 1% (1965).
5. *Substitute inheritance tax*
   taxable base: capital and reserves
   tax rate: 1%.

Permanent establishment of foreign companies
The same as for domestic corporations, but the permanent establishment must, in addition, withhold 10% of the profits remitted or credited to the head office.

Non-resident foreign companies
taxable base: income from Uruguayan sources as adjusted.
tax rate: 20% (withheld).

Taxation of dividends
taxable base: gross dividends.
tax rate: 10% (withheld).

Taxation of interest
taxable base: amount of interest (for tax purposes the minimum rate is 12% of the capital).
tax rate: 20% (withheld).

Taxation of royalties
taxable base: amount of the royalties less up to 50% for justified and verified expenses.
tax rates: corporation tax rate for domestic companies and branches of foreign companies.
20% for non-resident foreign companies withheld).

* Compare Bulletin 1965, p. 110.

IV

BIBLIOGRAPHY

1. BOOKS

BELGIUM

LES CODES LARCIER (Tome IV) Droit Fiscal, by *Guissart, J.*, Maison Ferdinand Larcier, SA, Bruxelles, 1965, 286 pp. BFrs 535.

The 'Codes Larcier' contain the text of the most significant Belgian laws, with cross references and case notes. It is published under the direction of Mr. Joseph Guissart, Judge of the Court of Liège and Law Director of the 'Bulletin Législatif Belge'.

Volume IV contains, *inter alia,* the laws with respect to individual and corporate income tax, turnover tax, stamp duty, registration duty and succession duty.

FRANCE

LES CESSIONS DE VALEURS MOBILIÈRES PAR UNE PERSONNE MORALE OU À SON PROFIT, Association Nationale des Sociétés par Actions (A.N.S.A.) A.N.S.A. 15, Place Malesherbes, Paris (XVIIe), France, June 1965. 42 pp.

This booklet discusses the consequences of articles 16 and 17 of the revised Budget 1964. These articles prohibit the transfer of securities without the intermediation of a qualified broker. Prior to December 23, 1964, the date on which the articles concerned came into force, every owner of securities was permitted to sell these directly to a third party with whom he had business relations without a stockbroker, as intermediary. This was the case even where the securities, e.g., shares, were quoted on the Stock Exchange. Transfers of registered shares were effected by simple notification to the company that had issued the stock and transfers of bearer shares were effected by simple hand-over.

LE REMPLOI DES PLUS-VALUES SUR TERRAINS A BATIR, Association Nationale des Sociétés par Actions (A.N.S.A.), Paris, 15, Place Malesherbes, 1965, 44 pp.

Article 40 of the General Tax Code ("Code Général dès Impôts") provides that capital gains on fixed assets need not be added to taxable profits but can be put in a tax-free reserve, provided this reserve is used within three years for the acquisition of a replacing fixed asset. Article 5 of the December Law of December 19, 1963, provides that capital gains on building sites, or shares in corporations the assets of which consist mainly of building sites, can only qualify for the special treatment under article 40 GTC under certain conditions. These conditions are published in various Ministerial Rulings. This booklet summarizes all the laws and decrees applicable to the tax treatment of capital gains realized on building sites.

GERMANY

ÜBERTRAGUNG STILLER RESERVEN, Steuerrecht und Steuerpolitik, Heft 4, by *Thiel, R.,* Heidelberg, Verlagsgesellschaft „Recht und Wirtschaft", 1965, 150 pp.

Handy guide to an important provision of the Income Tax Law, introduced by the 1964 Income Tax Amendment Act on the non-recognition of capital gains where certain business assets are alienated and replaced by qualified assets which may be of a different nature. The author analyses the legal situation and comments on its practical application.

DIE ZURÜCKNAHME, Änderung und Ersetzung von Verfügungen der Steuerverwaltungsbehörden by *Wörner, L.* Stuttgart, Schäffer und Co., GmbH, 1965. 80 pp.

Guide to the practical application of statutory and case law on the problem of whether to what extent and within what period of time, the dicisions of tax officials may be revoked, modified, amended or replaced.

REISEKOSTEN UND BEWIRTUNG VON GESCHÄFTSFREUNDEN, by *Schropp and Anwärter.* Stuttgart, Schäffer und Co., G.m.b.H., 1965. 132 pp.

Guide to the practical application of statutory and case law on the deductibility of expenses for travel and entertainment in computing the taxable base for the income tax.

DIE BESTEUERUNG DER GESELLSCHAFTEN; DES GESELLSCHAFTERWECHSELS UND DER UMWANDLUNGEN, by *Brönner, H.*, Stuttgart, Schäffer und Co., GmbH., 1965. 1180 pp. 11. Auflage.

This handbook is an excellent guide to German taxation of resident enterprises. The first part contains a comparison of various types of enterprises, according to civil and commercial law and their respective tax burden. In the second part the taxation of partnerships (including sole proprietorships) is discussed, with reference to the income tax; business tax on income; net-wealth tax; business tax on net-wealth; turnover tax and other taxes; thereafter the taxation of corporations (and other legal entities) dealing with the same types of taxes with special attention to affiliated corporations.

The third part is an extensive study of family enterprises and the fourth part of a special type of concern, in which one corporation is a producing unit whereas another corporation acts as a sales unit.

Taxation on incorporations, establishment and increase of capital (both of partnerships and corporations) is discussed in part five; part six deals with partial and complete liquidation; the seventh part deals with the supply of capital by a partner or bookholder and the refund of capital to such persons when they enter into or depart from the enterprise.

Mergers and other types of consolidations are discussed in the last part of the handbook.

TUNISIA

PRECIS DE TAXES SUR LE CHIFFRE D'AFFAIRES EN TUNISIE, by *Sitbon, M.*, Tunis, Editions de la Fiscomptor, 7, rue Amilcar, 1965, 178 pp.

This book is a practical guide to the complicated field of Tunisian turnover taxes. The author comments on the articles of the laws and decrees concerned. The book is provided with an alphabetic summary which greatly increases its usefulness.

USA

AMERICAN PUBLIC FINANCE, by *Schultz, W. A. J., C. L. Harriss*, Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1965, 8th edition. 565 pp.

The eighth edition of this textbook is designed to provide a basic foundation for dealing with problems of public finance. It presents a broad survey—balanced and penetrating—of the American fiscal structure and theory. Emphasis is given to current issues, which are analyzed against a background of historical, legal, political, economic and social factors. Sections include discussions of government expenditure; principles of taxation; federal, state and local revenue; intergovernmental fiscal relations; government borrowing and indebtedness; fiscal policy.

EUROPE, AFRO-ASIA, LATIN AMERICA, U.S. AND CANADA

INVESTING, LICENSING AND TRADING CONDITIONS IN 50 COUNTRIES. Business International, N.Y. 1964 8th edition 431 pp.

This volume is a research report on investing, licensing and trading conditions in 18 countries of Europe, 15 of Afro-Asia, 15 of Latin America, plus the United States and Canada, prepared by a large network of correspondents and the editorial staff of Business International. Each chapter, devoted to a separate country, is divided into 11 sections which concern such factors as the establishment of a local branch or company, rules of competition, remittability of funds, incentives, labor licensing, taxes, capital sources and foreign trade. Each section is further subdivided into several categories. Thus, the section concerning taxes, for example, considers corporate income taxes, depreciation, excess profits, capital and capital gains, dividends and interest, foreign-source income, turnover, sales and excise taxes, personal taxes and tax treaties. The current bound volume will ultimately be replaced by a loose-leaf service. The latter service will commence on October 15th, 1965, when the first four revised and updated chapters with a new binder will be mailed to subscribers. Thereafter 4 new chapters will be mailed each month until the service is complete. Furthermore, it will then be possible to provide subscribers with information as to the latest developments in the appropriate countries soon after they occur, rather than waiting for the next edition.

The bound version is available at $ 120. After October 1, 1965 the loose-leaf service plus the bound volume will be available at $ 180 per year.

2. LOOSE-LEAF SERVICES

Releases received between June 15th 1965 and August 1st 1965

AUSTRALIA

Law Book Company's Taxation Service, releases nos. 113-114: Law Book Co. of Australasia – Sydney

AUSTRIA

Erbschaftssteuergesetz, release no M: Fellner-Linz.
Österreichische Steuer- und Wirtschaftskartei, releases nos 10-11: Linde-Wien
Oesterreichische Steuer- und Wirtschaftskartei, releases nos. 13, 14: Linde-Wien

BELGIUM

Documentatie Vandewinckele – De Nieuwe Inkomstenbelasting, releases nos 254-260: Vandewinckele-Brugge
Guide Fiscal Permanent, release no 263: Ed. Viobu-ro-Bruxelles

BENELUX

Benelux-Textes de Base de l'Union Economique release no 9: Secrétariat Benelux Bruxelles

CANADA

Canada Tax Service Letter, release no 91: R. de Boo – Toronto
Canada Tax Service Releases, release nos 174-177: R. de Boo – Toronto
Canadian Income Tax, release no 29: Butterworth-Toronto
McDonald's Current Taxation, releases nos 19, 20, 21; 26-28: Butterworth-Toronto
Provincial Taxation Service, releases nos 191-192: De Boo-Toronto

DENMARK

Skattebestemmelser i systematisk fremstilling, release no. first half year 1965: Skattekartoteket – København

FRANCE

Dictionnaire Fiscal Permanent, releases nos 12-18: Ed. Législatives et Administratives – Paris
Documentation Pratique de Sécurité Sociale et de Législation du Travail, releases nos 5-7: Francis Lefebvre – Paris
Documentation Pratique Impôts directs et droits d'Enregistrement, release no 6: Francis Lefebvre – Paris
Droit des Affaires, releases nos 6, 7: Ed. Législatives et Administratives – Paris
Feuillets de Documentation Pratique – Enregistrement, release no 1: Francis Lefebvre – Paris
Juris Classeur Fiscal – Chiffre d'Affaires, release no 5140: Ed. Techniques – Paris
Juris Classeur Fiscal – Impôts Directs, release no 140: Ed. Techniques – Paris
Memento Lamy, releases nos. F-I: Services Lamy – Paris
Problèmes d'Outre Mer, releases May-July: Centre d'Etude des Problèmes d'Outre Mer – Paris
Receuils Pratique du Droit des Affaires dans les Pays du Marché Commun, release no 30: Ed. Jupiter – Paris

GERMANY

ABC Führer Lohnsteuer, release no 52: Schäffer – Stuttgart
AO – Kommentar, release no 42: O. Schmidt – Köln
Beck'sche Steuerkommentare, release no 3: Beck – München
Handbuch der Einfuhrnebenabgaben, releases nos 4-5: V.d. Linnepe – Hagen
Hermann, Heuer-Einkommensteuer, releases nos 63-64: O. Schmidt – Köln
Neue Wirtschaftsbriefe, release no 22: Neue Wirtschaftsbriefe – Berlin
Steuererlasse in Karteiform, releases nos 44-46: O. Schmidt – Köln
Steuergesetze, release April-May: Beck'sche Verlagsbuchhandlung – München
Steuerrechtsprechung in Karteiform, releases nos 160-163: O. Schmidt – Köln

LUXEMBOURG

Etudes Fiscales, releases nos 9-10: Ed. A. Peiffer – Luxembourg

MOROCCO

Codes Marocains, releases nos 1-4: Fiduciaire Marocaine – Casablanca

NETHERLANDS

Beknopte Belastinggids, releases nos. 30-31: Veen's Uitgeversmij. – Amsterdam
Belastingberichten, releases nos 2-7: Samsom – Alphen a/d Rijn
Belastingwetgeving serie – Inkomstenbelasting, release no 2: Noorduyn – Gorinchem
Belastingwetgevingserie – Motorrijtuigenbelasting, release no 7: Noorduyn – Gorinchem
Belastingwetgevingserie – Zegelwet, release no 2: Noorduyn – Gorinchem

Fed's Fiscaal Register, releases nos 1-2: FED – Amsterdam
Fed's Fiscaal Repertorium, releases nos 1-2: FED – Amsterdam
Fed Losbladig Fiscaal Weekblad, releases nos 993 t/- 1003: FED – Amsterdam
Fed's Losbladige Fiscale Wetten, release no 980: FED – Amsterdam
Fiscale Wetten, releases nos 3-4: FED – Amsterdam
Handboek voor de Europese Gemeenschappen – Verdragsteksten, releases nos 12-13 Kluwer – Deventer
Handboek voor In- en Uitvoer – Belastingheffing bij Invoer, releases nos 49-50: Kluwer – Deventer
Handboek voor In- en Uitvoer – Tarief van Invoerrechten, releases nos 37-38: Kluwer – Deventer
Kluwer's Fiscaal Zakboek, releases nos 3-4: Kluwer – Deventer
Kluwer's Tarievenboek, releases nos 44-45: Kluwer – Deventer
Nederlandse Belastingwetten, releases nos 8-10: Samsom – Alphen a/d. Rijn
Nederlandse Regelingen Internationaal Belastingrecht, release no 1: Kluwer – Deventer.
Nederlandse Wetboeken, releases nos 71-73: Kluwer – Deventer
Omzetbelasting, releases nos 88-90: Vuga Boekerij – Arnhem
Parlementaire Behandeling Nieuwe Belastingontwerpen, releases nos 21-22 Samsom – Alphen a/d Rijn
Regelingen Euromarkt, releases nos. 61, 62: Vermande – IJmuiden
Teruggaaf Omzetbelasting bij Uitvoer, release no. 159: Samsom – Alphen a/d. Rijn
Vademecum voor In- en Uitvoer, releases nos 311-312: Kluwer/Samsom – Deventer/Alphen a/d Rijn
Vakstudie – Alg. Wet Rijksbelastingen, release no: 11 Kluwer – Deventer
Vakstudie Belastingwetgeving, release no 4: Kluwer – Deventer
Vakstudie – Inkomstenbelasting, release no May, Kluwer – Deventer
Vakstudie – Loonbelasting, releases nos 66-67: Kluwer – Deventer
Vakstudie – Personele Belasting en Grondbelasting: release no 30: Kluwer – Deventer
Vakstudie – Vennootschapsbelasting, releases nos 50-51: Kluwer – Deventer
Vakstudie – Vermogensbelasting, release no 28: Kluwer – Deventer
Vakstudie – Wet op de Inkomstenbelasting 1964, releases nos 5-6: Kluwer – Deventer
Vakstudie – Wet op de Loonbelasting, release no 3: Kluwer – Deventer
Vakstudie – Wet op de Vermogensbelasting, releases nos 4-5: Kluwer – Deventer
Wetshistorie Fiscale Wetten, release no 1: Kluwer/FED – Deventer/Amsterdam

NEW ZEALAND
New Zealand Taxation – Board of Review Decisions, releases nos 37-41: Butterworth – Wellington

SOUTH AFRICA
Law and Practice of South African Income Tax, release no 8: Butterworth – Durban
Legislation Service of the Rhodesian Income Tax Service, release no 11: Juta – Capetown

SPAIN
Circulares, releases nos 75, 76: Gabinete de Estudios (T.A.L.E.) – Madrid

SWITZERLAND
Rechtsbuch der schweizerischen Bundessteuern, release no 38: Verlag für Recht und Gesellschaft – Basel
Die Steuern der Schweiz – Les Impôts de la Suisse, releases nos 2-3, part 4: Verlag für Recht und Gesellschaft – Basel

SYRIA
Code Syrien, release no 28: Code Fiscal Syrien – Damas

TUNISIA
Fiscomptor, release no. Index: La Fiduciaire – Tunis

TURKEY
Türk Argüs Ajansi, releases nos 3372 – 3421: Iş Bankasi Hani Galata – Istanbul

UNITED KINGDOM
British Tax Encyclopedia, release no 10: Sweet and Maxwell – London
Simon's Income Tax Service, release no. 50: Butterworth – London

U.S.A.
Federal Tax Guide Reports, releases nos 31-41: Commerce Clearing House – New York
Federal Taxes Report Bulletin, releases nos 18-28: Prentice Hall – Englewood Cliffs
Federal Taxes Report Bulletin – Treaties, release no 5: Prentice Hall – Englewood Cliffs
State Tax Guide, releases 324-329: Commerce Clearing House – Chicago
Tax Treaties, releases nos 155, 157-160: Commerce Clearing House – Chicago

CUMULATIVE INDEX 1965

No. 1–9

(1) *Books*

PUBLICATIONS OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION
PUBLICATIONS DU BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE

EUROPEAN TAXATION (monthly)	Europe	DFL 125
(including TAX NEWS SERVICE)	Non-Europe	US $ 42.50
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	Non-Europe	US $ 10
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BULLETIN	without supplements	$ 7.50
	with supplements	$ 10.—

Supplements to the Bulletin:

PUBLICATIONS No. 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 14 — out of print

PUBLICATION No. 6:
Dr. F. E. Koch et Jean H. Rothstein: La Convention Fiscale Franco-Britannique du 14 déc. 1950. — $ 3.50

PUBLICATION No. 9: Supplement to No. 3, containing Regulations etc. the Anglo-Dutch Double Taxation Conventions — $ 1.35

PUBLICATIONS No. 10:
Dr. F.E. Koch and Richard Moss: Compilation of the legal provisions, regulations, circulars and forms relating to Double Taxation Relief in the United Kingdom of Great Britain and Northern Ireland, 1957 — $ 2.25

PUBLICATION No. 15 en 15A:
Doppelbesteuerungsabkommen zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande: deutscher und niederländischer Text, 1960 with supplements — $ 1.75

PUBLICATION No. 16:
Dr. E.W. Klimowsky and S.F.W. Bille: The Tax Convention between Israel and Sweden — $ 2.50

PUBLICATION No. 17:
Dr. F.E. Koch and Victor Uckmar: The Convention between the United Kingdom and the Italian Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. — $ 2.85

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Alan R. Rado: United States taxation of foreign investment—the new approach — $ 5.75

PUBLICATION No. 19:
Swiss Measures against Abuse of Tax Conventions — $ 3.50

Studies on Taxation and Economic Development:

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Georges Constantinou et Pelopidas A. Katopodis: Fiscalité et Développement Economique en Grèce, 1961 — $ 2.85

VOLUME II:
Z.M. Kubinski: Public Finance for Stability and Growth in an Underdeveloped Export Economy (A case Study of the Republic of the Sudan), 1961 — $ 2.85

Special Publications:

—Dr. Albert J. Rädler: Die direkten Steuern der Kapitalgesellschaften und die Probleme der Steueranpassung in den sechs Staaten der Europäischen Wirtschaftsgemeinschaft, 1960 — $ 8.50

—E.E.C. Reports on Tax Harmonization (English Translation) — $11.50

Guides to European Taxation:

VOLUME I:
Taxation of Patent Royalties, Dividends and Interest in Europe

including binder	$30
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VOLUME II:
Corporate Taxation in the Common Market

including binder	$25
monthly supplement Service by airmail for 1965	$15

Dr. Carl Ganser †

A few days before the beginning of this year's international tax congress, on September 4, 1965, Dr. Carl Ganser, member of the Board of Trustees of the International Bureau of Fiscal Documentation, died suddenly.

Carl Ganser was born on September 27, 1900. After his graduation from law school he started his activities in German industry: in succession he was employed by the Employer's Association Remscheid, as office manager of the Industrial Association Düsseldorf, manager of the legal and tax department of various organisations in the steel industry and, since 1951, as general tax manager of the Federation of German Industries.

His knowledge and experience as one of Germany's leading practical tax experts were not confined to his professional activities. Ganser was the secretary general of the German Association of International Tax Law (the German Branch of the International Fiscal Association). As such, he was a member of the Council of I.F.A., in which capacity he made many valuable contributions to the association's work.

Similarly, as one of the Bureau's trustees, Ganser contributed greatly to the Bureau's expansion from an organisational, financial and academic point of view. His numerous contacts with colleagues in other countries led him to believe that Bureau activities and publications were deserving of a larger and broader financial basis, to which end he most generously dedicated himself in his own country and elsewhere.

The Board of Trustees, the Director and Staff of the Bureau are grateful for Ganser's active part in the Bureau's development.

J. VAN HOORN JR.

CONTENTS

I

CANADIAN TAXATION OF BRANCHES AND SUBSIDIARIES OF FOREIGN ENTERPRISES

by

EDWIN C. HARRIS*

The subject of "Taxation in Canada" has been treated in a general way in an article appearing in XVIII *Bulletin* 89 (March 1964). It is not proposed here to duplicate that article, which included a summary of taxes at the federal, provincial, and municipal levels. Rather, this article is intended to concentrate on some tax implications and the applicability of incentive legislation where a foreign enterprise does business in Canada through a branch or subsidiary. It will not deal with the Canadian tax position of foreign personnel.

Liability for Tax in Canada

There are three possible bases for imposing Canadian income tax on a foreign business enterprise—(1) residence in Canada; (2) carrying on business in Canada; (3) receiving property income from Canadian sources. The extent of each of these bases of tax jurisdiction must be considered from the point of view of (a) the Anglo-Canadian case law interpreting such terms as "resident" and "carrying on business"; (b) the specific provisions of the Canadian Income Tax Act; (c) the provisions of any applicable tax convention or treaty to which Canada is a party. These three sources of law have been listed in ascending order of authority—*i.e.*, the Income Tax Act overrides the case law, and an applicable tax treaty overrides both the case law and the Income Tax Act. Very often elements of all three apply to the same situation.

Under the case law, a corporation is resident in Canada, regardless of where it is incorporated, if and only if its central management and control are to be found in Canada. This is considered to be a question of where the directors and top management meet and perform their functions. A corporation may be found to be a Canadian resident even though it carries on no business in Canada. In recent years, this case-law definition of corporate residence has been drastically expanded by amendments to the Income Tax Act. The present rule is that, even if a corporation would not be resident in Canada under the case law, it will be deemed to be resident in Canada for purposes of the Income Tax Act if (1) it has been incorporated in Canada after April 26, 1965 or (2) it was incorporated in Canada before April 27, 1965 and in any taxation year ending after April 26, 1965 it was resident or carried on business in Canada.

Thus, Canadian-incorporated subsidiaries of foreign enterprises will be resident in Canada if incorporated after April 26, 1965 or if they carry on business in Canada in any taxation year ending after that date—even though their central management and control

* Faculty of Law, Dalhousie University, and of the firm of Daley, Black, Moreira & Piercey, Halifax, Canada.

may be elsewhere. The chief consequence of finding that a corporation is resident in Canada is that it is subject to Canadian income tax on its income from all sources for each taxation year in which it is resident at any time in the year. However, if the resident corporation receives dividends from a nonresident corporation of which it owns more than 25% of the issued voting shares, these dividends are exempt from Canadian income tax. Furthermore, any foreign tax paid on nonexempt income from foreign sources, up to a maximum of the amount of Canadian tax applicable to the foreignsource income, may be credited against the Canadian income tax otherwise payable.

Notwithstanding the residence provisions of Canadian income-tax law, an enterprise of another state with which Canada has a tax treaty will not be subject to Canadian tax with respect to its industrial and commercial profits except to the extent that these profits can be allocated to a permanent establishment of that enterprise in Canada. Thus these treaties, where they apply, serve to limit the extent to which Canada may tax corporations that are deemed to be resident in Canada. This limitation might apply to a branch of a foreign enterprise but would not normally affect a Canadian subsidiary, which would be deemed to be a Canadian enterprise under the tax treaties.

If a corporation is not resident in Canada, it may still be carrying on business in Canada. If business contracts are concluded in Canada or substantial profit-making activity occurs in Canada, the foreign corporation may be found, under the case law, to be doing business in Canada. The Income Tax Act has expanded considerably this basis of tax jurisdiction, by providing that a nonresident corporation is deemed to have carried on business in Canada in any year in which it produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved, or constructed anything in Canada or solicited orders or offered anything for sale in Canada through an agent or servant—regardless of where title to the goods passed.

Thus, a foreign enterprise operating a branch in Canada will almost certainly be deemed to be carrying on business in Canada. While a *resident* corporation is subject to Canadian tax on its income from all sources, both inside and outside of Canada, a *nonresident* corporation that carries on business in Canada at any time in a taxation year is subject to Canadian tax on its *business* income only to the extent that this income was earned in Canada. This income is subject to normal rates of corporate tax; in addition, the Canadian branch of a nonresident corporation is taxed by a further 15% on the amount by which its net business income earned in Canada for any taxation year, after deducting federal and provincial income taxes, exceeds the net increase in its capital investment in Canada, as defined in the Income Tax Regulations. Certain nonresident corporations, such as banks, insurance corporations, transportation and communication corporations, and iron-ore mining corporations, are exempt from this additional 15% tax. This tax is designed to equate the position of the Canadian branch of a foreign enterprise and that of the Canadian subsidiary, which must pay both corporate tax on its income and withholding tax—as will be referred to presently—on distributions of its income to the foreign parent in the form of dividends, interest, royalties, etc.

Here again, the provisions of Canadian income-tax law relating to branches of foreign enterprises doing business in Canada are subject to any applicable tax treaty, which will require that there be a permanent establishment of the foreign enterprise in Canada

before its industrial and commercial profits will be subject to Canadian taxation.

Finally, a nonresident corporation will be subject to a flat-rate Canadian tax, withheld at source, on various kinds of income—mostly income from property—paid or credited to it by a person resident in Canada. This is an entirely separate tax, and the income subject to it will not affect the tax, if any, payable by the nonresident corporation on its business profits earned in Canada. A Canadian resident must withhold 15% tax from amounts he pays or credits to a nonresident for interest (with certain limited exceptions), estate or trust income, rents and royalties (there is an option for the nonresident to treat rents and timber royalties from Canadian sources in very much the same way as business income), certain patronage dividends, and certain management fees. The withholding tax on management fees is designed to prevent avoidance of the withholding tax on dividends or interest to a foreign parent through labeling the payments as management or administration fees or charges. The withholding tax will not apply if the management fee is reasonable in amount and is paid in an arm's length transaction to a firm of professional management consultants or is made as a specific reimbursement of expenses incurred by a nonresident person (such as a foreign parent corporation) for services that were of benefit to the payer (the Canadian subsidiary).

The rules respecting the withholding of tax from dividends paid to nonresidents have become very complex as a result of recent legislation designed to encourage a greater degree of Canadian participation in the equity shares of corporations that are resident in Canada. Accordingly a distinction is made between Canadian resident corporations that do and those that do not have "a degree of Canadian ownership". If a Canadian resident corporation qualifies as having a degree of Canadian ownership, any dividends that it pays to a nonresident shareholder (such as a foreign parent corporation) are subject to a Canadian withholding tax of only 10%; otherwise the withholding tax is 15%. A refund of the extra 5% withheld (with respect to dividends paid or credited after June 13, 1963 and before January 1, 1967) may be claimed by the nonresident shareholder of a Canadian resident corporation that does not now have a degree of Canadian ownership but that qualifies by its first taxation year commencing after 1966.

To simplify the complex and very technical definition in the Income Tax Act, a resident Canadian corporation has a degree of Canadian ownership if throughout any 60-day period included in the period commencing 60 days before the beginning of the taxation year in question and ending 60 days after the beginning of that year,

1 *(a)* at least 25% of the issued fully voting shares and at least 25% of the paid-up capital represented by issued equity shares were beneficially owned by individuals resident in Canada or corporations controlled in Canada; or
(b) at least 50% of the paid-up capital represented by issued equity shares was listed on a Canadian stock exchange, and no single nonresident shareholder, either alone or together with other related persons, owned more than 75% of either the issued fully voting shares or the paid-up capital represented by issued equity shares; and
2 at least 25% of the directors of the corporation were resident in Canada.

The term "equity share" is defined at length and refers, in essence, to a share representing

a residual interest in the surplus of the corporation after the claims of nonparticipating preferred shareholders have been satisfied.

Efforts have been made to bring tax treaties to which Canada is a party into line with the provisions of the Income Tax Act that impose a withholding tax on property income paid to nonresidents.

Tax and Related Incentives

The Income Tax Act and Regulations and related legislation contain several provisions recently enacted to encourage capital investment in Canada in general and, in particular, capital investment and the formation of new manufacturing and processing businesses in areas of Canada suffering from unemployment or slow economic growth —referred to as "designated areas".

New machinery and equipment acquired by a corporation for use anywhere in Canada between June 13, 1965 and January 1, 1967 is eligible for accelerated depreciation for tax purposes at a straight-line rate of up to 50% per annum if (a) the corporation has a degree of Canadian ownership, as previously explained; and (b) at least 2/3 of its net sales is from the sale of goods manufactured or processed in Canada, but not including the natural-resource or construction industries. If the corporation does not have a degree of Canadian ownership, its new machinery and equipment would be eligible only for normal depreciation at 20% per year on a diminishing-balance basis, unless acquired, as will be explained presently, for a new manufacturing or processing business in a designated area.

With respect to investment in certain assets and the operation of manufacturing and processing businesses in designated areas, there is no discrimination between corporations having and not having a degree of Canadian ownership. Foreign corporations and wholly owned Canadian subsidiaries of foreign corporations are eligible on the same basis as other corporations, though it is usually necessary to form a new corporation to take advantage of the "tax-holiday" provisions about to be referred to.

A new manufacturing or processing business in a designated area may qualify for exemption from income tax on its income earned during the 36-month period after it commences manufacturing or processing in reasonable commercial quantities, if this event occurs after December 4, 1963 and before April 1, 1967. The government has indicated that the expiry date of this incentive will not be extended and that after that date sole reliance will be placed on the development grants to be referred to presently. The program is administered by the federal Department of Industry, which must certify that the business is eligible for the tax holiday. Among a number of technical requirements, 95% of the net sales of the business must be from the sale of goods manufactured or processed by it in Canada; the mere packaging of goods will not qualify, nor will the naturalresource or construction industries; 95% in value of the buildings, machinery, and equipment (other than delivery equipment) owned or leased by the business must be situated in a designated area, and 95% in value of all machinery and equipment (but not buildings) acquired for the business must be new; if a business receives a development grant, it ceases to qualify for the tax holiday. The designated areas have been determined under the Department of Industry Act, having regard to such factors as

high unemployment and low average income levels. While most provinces have agreed to abate their own corporation tax pro rata where a corporation qualifies for the federal tax holiday, Ontario and Quebec have not, so that in these provinces the provincial corporate income tax will continue to be payable even though the corporation is exempt from federal income tax.

Accelerated depreciation is also available on certain depreciable assets acquired for use in a designated area. Since the taxpayer has a choice when to commence claiming depreciation, if the business claims and qualifies for the tax holiday it would normally not claim any depreciation until after the tax holiday has ended, when accelerated depreciation may be commenced on the eligible assets. Whether or not the owner is a corporation having a degree of Canadian ownership, new machinery and equipment acquired for use in a business certified by the Minister of Industry, for purposes of the tax-holiday provision, to be a new manufacturing or processing business in a designated area may be depreciated at up to 50% per annum on the straght-line basis. To qualify, the machinery and equipment must be acquired before April 1, 1967. A new building or a new and substantial extension to a building, if certified by the Minister of Industry to be situated in a designated area, may be depreciated at up to 20% per annum on the straight line basis; again, a corporation need not have a degree of Canadian ownership to qualify. Here, however, there is no requirement that the business be of a manufacturing or processing nature, but the building or extension must be acquired before April 1, 1967. Application for certification of a building or extension to a building is to be made on Department of Industry form ADA 3.

The newest addition to the armory of incentive legislation is the Area Development Incentives Act (1965) and the Regulations under that Act, which are administered by the Area Development Agency of the federal Department of Industry. Under this Act development grants may be authorized toward the approved capital costs (including structures, machinery, and equipment, but not land) of a new facility or of the expansion of an existing facility constituting part of a manufacturing or processing operation in a designated area. Strictly speaking, this is not tax legislation but a kind of subsidy; nevertheless it is integrated, to a substantial degree, with the income-tax incentive rules and does have tax implications. Thus, unlike other governmental subsidies, the development grants do not reduce the depreciation base for tax purposes of any depreciable assets to which they apply.

The development grants are computed on a sliding scale related to the approved capital costs of the new facility or of the expansion of the existing facility (but these latter capital costs must be reduced by 10% of the value of the existing facility)—1/3 of the first $250,000, 1/4 of the next $750,000 and 1/5 of the remainder; but the total grant may not exceed $5,000,000. Normally 60% of the grant will be paid at the time that commercial production commences, a further 20% a year after that date, and the final 20% two years after that date.

In many cases the specific application of the new Act and Regulations has not yet been clarified; no explanatory pronouncements or rulings have yet been issued, and much of the legislative language is vague and general. The intention is clearly to leave a considerable measure of discretion with the Area Development Agency in interpreting and

applying these provisions to concrete cases. At the moment the grants are stated to be available for projects commencing on or after July 1, 1965 and brought into commercial production by March 31, 1971.

The Regulations exclude natural-resource industries and construction from eligibility and require that 95% in value of the machinery and equipment used in the operation be new and that 95% of all fixed assets used in the operation be located in the designated area. Provision is made for grants to multiphase projects, which may be brought into operation in stages extending over a period not exceeding three years from the date that the first stage commences commercial production. It is not necessary to form a new corporation to qualify for the development grants, nor need the applicant be a resident corporation of one having a degree of Canadian ownership. Other federal grants and subsidies must be deducted from the development grant otherwise payable. Normally the owners' equity investment in the business must be at least equal to the amount of the development grant.

Applications for development grants and applications to qualify for the tax holiday must both be made on form ADA 7, recently issued by the Department of Industry.

Restrictions on Non-Canadian Newspapers and Periodicals

Federal legislation passed in 1965 has placed severe restrictions on newspapers or periodicals controlled, directly or indirectly, by persons who are not citizens of Canada to the Canadian market. Advertising expenditures in such publications are not deductible for Canadian income-tax purposes: and, under the Customs Tariff, the importation of certain foreign periodicals with advertising directed to the Canadian market is prohibited. See XIX Bulletin 321-22 (Aug. 1965).

Branch or Subsidiary?

Assuming that profitable operations in Canada are anticipated, it is often preferable for a foreign enterprise to conduct its Canadian operations through a Canadian subsidiary corporation rather than through a Canadian branch. If the Canadian subsidiary has a degree of Canadian ownership, the withholding tax on remittances of profits to the parent corporation is 10%, as against the 15% tax on nonreinvested earnings of a Canadian branch of a nonresident corporation. Even if the subsidiary corporation does not have a degree of Canadian ownership, so that the 15% withholding rate applies to dividends paid by it to nonresident shareholders, the tax is only exigible when dividends are paid and so can be readily postponed. Unlike in the case of the 15% tax on branches, the retained earnings need not be reinvested in fixed assets to avoid the tax; they may even be invested by the Canadian subsidiary in foreign corporations.

Several provisions of the Income Tax Act are designed to ensure that a reasonable allocation of revenues and expenses is made in transactions between a Canadian branch or subsidiary and its foreign parent or affiliate. These provisions are reinforced and expanded in the tax treaties, where applicable.

In deciding whether or not to operate in Canada through a branch or a subsidiary, the foreign enterprise, of course, will also have regard to the domestic tax laws to which it is subject and the basis, if any, upon which a foreign tax credit may be claimed for Cana-

dian corporate income tax and for Canadian tax withheld from property income passing to the foreign enterprise.

Bibliography

MACDONALD, *Taxation of Non-residents*, in Law Society of Upper Canada, Special Lectures in Taxation 69 (1964)
WILLIAMSON, *Taxation of U.S. Private Investment in Canada* 75-92 (Can. Tax Foundation, Tax Paper No. 36, 1963)
THOM, *Permanent Establishment under the Tax Convention*, 5 Can. Tax J. 344 (1957)
SHORT, *"Know-how" and Withholding*, 12 Can. Tax J. 354 (1964)
SCACE, *The Degree of Canadian Ownership*, 3 Osgoode Hall L.J. 295 (1965)
STITT & CONNOR, *International Inter-Company Pricing*, 10 Can. Tax J. 85 (1962)
SHORT, *International Inter-company Payments for Services*, 13 Can. Tax J. 113 (1965)
ARTHUR ANDERSEN & CO., *Tax and Trade Guide—Canada* (1963, with 1964 Supplement)
LA BRIE, *The Principles of Canadian Income Taxation*, c. 14 (1965)

L'EVOLUTION RECENTE DE LA FISCALITE FRANÇAISE

by

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Ci-après nous publions le texte d'un article que M. Max Eugène LAXAN, Directeur-Général des Impôts en France, a bien voulu écrire pour notre revue «European Taxation» et qui est publié, en traduction anglaise, dans le numéro de novembre de cette revue.

Dans son article, l'auteur donne un exposé des préoccupations qui ont mené le Gouvernement Français à projeter et proposer une réforme fiscale de grande envergure sur le plan de la fiscalité des entreprises. Le lecteur qui a suivi de près les développements fiscaux dans les pays du Marché Commun, et notamment les recommandations du Comité Fiscal et Financier, au sujet du régime fiscal des sociétés mères et de la double taxation des bénéfices distribués, notera que la loi française du 12 juillet 1965 ne se conforme pas à quelques-unes de ces recommandations. En introduisant le système de l'avoir fiscal – système qu'on trouve dans le nouveau Code belge des impôts sur les revenus et que le Gouvernement néerlandais vient de proposer de façon analogue – le législateur fiscal français veut néanmoins poursuivre des buts économiques similaires à ceux qui préoccupent les autres pays de la C.E.E.

Il nous semble que l'exposé suivant intéressera les fiscalistes dans le monde entier et nous sommes reconnaissants à son auteur d'avoir contribué à la diffusion des idées sur les conceptions qui sont à la base d'une politique fiscale moderne.

L'actuelle législature et celle qui l'a immédiatement précédée ont été marquées par un travail de rénovation en profondeur du système fiscal français.

Le loi du 28 Décembre 1959 a établi l'unité de l'impôt sur le revenu des personnes physiques et supprimé les mécanismes qui permettaient aux entreprises de pallier les inconvénients de la dépréciation monétaire. La loi du 15 Mars 1963 a réformé les droits d'enregistrement et modifié les règles de la fiscalité immobilière. La loi du 27 Décembre 1963 enfin, a réalisé l'harmonisation des procédures contentieuses intéressant les diverses catégories d'impôts.

Quelle que soit leur importance, ces diverses dispositions le cèdent, dans leur portée et leur signification économique, aux deux projets de loi adoptés par le Gouvernement et soumis à l'approbation législative au cours de la présente année.

Le premier de ces textes, définitivement adopté par le Parlement lors de sa session de printemps, est devenu la loi du 12 Juillet 1965 «modifiant l'imposition des entreprises et des revenus de capitaux mobiliers».

Le second projet de loi, qui a pour objet la généralisation de la taxe sur la valeur ajoutée et qui transforme en outre profondément un des éléments essentiels de la fiscalité locale, a été adopté en première lecture par l'Assemblée Nationale et doit être soumis au Sénat à la session d'automne.

Quoique de nature et d'objet très différents, ces deux réformes s'inspirent de la préoccupation commune d'assurer une meilleure neutralité de l'impôt à l'égard des différentes structures économiques: moyens de financement des investissements, modes de regroupement des biens de production et des capitaux, localisation des activités, circuits de production et de commercialisation. Cette recherche de la neutralité, que tempère parfois le souci de mettre fin à certains abus ou d'encourager des orientations jugées particulièrement souhaitables – un meilleur aménagement du territoire ou le développement des équipements urbains par exemple – répond au souci fondamental du Gouvernement d'éliminer tout ce qui peut freiner l'adaptation de l'économie française à une compétition internationale que l'ouverture des frontières rend de plus en plus sévère.

Décrire les principes et les modalités essentielles des deux réformes mises en oeuvre, c'est préciser les constatations auxquelles a donné lieu et les conclusions qu'a permis de dégager cet «examen de conscience» de la fiscalité française.

1. – *La réforme de l'imposition des entreprises et des revenus de capitaux mobiliers. (Loi du 12 Juillet 1965)*

Les objectifs de cette réforme étaient triples. Il s'agissait:

1 – de faciliter le recours des entreprises au marché financier en portant remède à la double imposition qui frappait les revenus des actionnaires;

2 – d'assurer une plus grande fluidité des moyens de production et de favoriser le regroupement nécessaire des entreprises en modifiant le système d'imposition des plus-values en capital, le régime fiscal de fusions et celui des groupes d'entreprises;

3 – d'améliorer l'assiette de l'impôt en précisant le régime des amortissements et en donnant à l'administration fiscale les moyens de réprimer certains abus commis en matière de frais généraux.

1. Les travaux préparatoires du V° Plan français, qui couvrira la période 1966-1970, ont mis en lumière à quel point la compétitivité des entreprises dans un climat concurrentiel accentué, dépendait d'une vigoureuse impulsion des investissements productifs. Il est donc nécessaire qu'en particulier aucune entrave de nature fiscale ne freine le recours des entreprises au marché financier sous forme d'émissions d'actions et d'obligations.

La loi de finances pour 1965 avait déjà été marquée par une première série d'allègements dans ce domaine. Elle supprimait la taxe complémentaire qui frappait jusqu'alors les revenus de l'épargne investie (au taux de 3% pour les revenus obligataires et de 6% pour les dividendes). Elle prévoyait en outre que, jusqu'à l'expiration du V° Plan, certains revenus obligataires pourraient, dans la limite de 500 Frs être exonérés de l'impôt sur le revenu des personnes physiques.

Mais elle laissait subsister la double imposition des dividendes qui, lors de leur distribution, se trouvaient frappés de l'impôt sur les sociétés au taux de droit commun (50%) avant d'être soumis à l'impôt personnel entre les mains de l'actionnaire. Ainsi, pour transférer à celui-ci un revenu de 100 Frs, une société française devait consacrer 200 Frs à la distribution, alors que 130 Frs 60 suffisaient à une société allemande et 117 Frs 60

à une société belge. Cette double imposition grevait donc lourdemant la rémunération du capital et contrariait les efforts des entreprises pour accroître leurs fonds propres en recourant au marché financier.

La loi du 12 Juillet 1965 remédie à cette situation en ramenant l'imposition des bénéfices distribués à un niveau comparable à celui de nombreux pays européens, et notamment de la République Fédérale Allemande. La technique utilisée est celle dite «de l'imputation». Tout dividende distribué par une société française ouvrira désormais droit à un avoir fiscal représenté par un crédit ouvert sur le Trésor, et égal à la moitié de ce dividende. Ce crédit sera reçu en paiement de l'impôt sur le revenu des personnes physiques ou de l'impôt sur les sociétés dû par le bénéficiaire, ou restitué s'il excède le montant de cet impôt. Ainsi, pour une somme de 100 consacrée à la distribution, le dividende versé à l'actionnaire s'élèvera – après impôt – à 50; il s'y ajoutera un «crédit d'impôt» égal à la moitié de son montant, soit 25. Le revenu total sera donc de 75 et le taux d'imposition réel sera ramené de 50 à 25%.

Cette technique a été préférée à celle consistant à appliquer un taux réduit sur les bénéfices distribués. Cette dernière méthode n'est en effet commodément applicable qu'aux répartitions provenant des bénéfices du dernier exercice; or, il a été jugé préférable de maintenir le bénéfice de l'allègement fiscal aux distributions que les entreprises soucieuses de régulairiser leurs dividendes prévèvent sur leurs réserves lorsque les résultats de l'exercice sont insuffisants.

Deux indications compléteront cette description sommaire du nouveau régime d'imposition des dividendes. D'une part, le bénéfice du crédit d'impôt sera réservé aux personnes ayant leur domicile ou leur siège social en France; à l'égard des non-résidents, le régime antérieurement en vigueur subsistera sans modification appréciable. D'autre part, lorsque les sommes distribuées proviendront de bénéfices qui n'on pas été frappés au taux de droit commun de l'impôt sur les sociétés (tel est par exemple le cas des revenus exonérés ou provenant d'exploitations sises à l'étranger), il sera perçu un précompte égal au montant du crédit attaché à ces distributions. Cette disposition permettra de faire bénéficier tous les dividendes, quelle qu'en soit l'origine, du crédit d'impôt et d'éviter les complications attachées à un système de doubles coupons.

2. Le souci de permettre aux entreprises de procéder à l'aliénation des éléments d'actif devenus inutiles à leur exploitation, et de favoriser les regroupements nécessaires au sein de l'industrie française, a conduit à une modification radicale des conditions d'imposition des plus-values en capital et à une unification du régime des fusions.

Le régime antérieur d'imposition des plus-values reposait sur la confusion des gains et pertes en capital avec les résultats d'exploitation proprement dits pour le calcul de l'imposition des entreprises. Les conséquences apparemment très rigoureuses de ce principe se trouvaient en fait largement atténuées par la possibilité donnée aux entreprises de différer l'imposition de leurs plus-values en s'engageant à remployer les sommes dégagées par la cession en nouveaux éléments d'actif. Procurant un simple avantage de tresorerie lorsqu'il était effectué en biens amortissables (dans ce cas, la plus-value à réinvestir venait en déduction des marges d'amortissement ouvertes à l'entreprise), le remploi aboutissait pratiquement à une exonération pure et simple lorsqu'il s'opérait en valeurs non amortissables telles que terrains et participations.

De ce fait, lorsqu'un transfert d'établissement permettait la réalisation d'éléments d'actif dégageant une plus-value importante, une inégalité apparaissait entre les entreprises de grandes dimensions et les autres. Les premières procédaient généralement à un remploi en biens non amortissables, le plus souvent sous forme de titres de participation. La création de filiales à des fins purement fiscales leur permettait ainsi d'éluder l'impôt sans réduire leurs marges d'amortissement. Mais ces pratiques dénaturaient la procédure du remploi, grevaient les opérations de cessions d'actif de coûts artificiels et conduisaient à des structures juridiques inutilement complexes. Quant aux entreprises de dimensions plus modestes, qui n'avaient pas les moyens de recourir à de tels procédés et dont les investissements en moyens de production étaient souvent trop faibles pour absorber les plus-values potentielles, elles renonçaient souvent aux cessions envisagées.

La loi du 12 Juillet 1965 supprime le régime du remploi sauf cas exceptionnels et introduit une distinction fondamentale entre plus-values à long terme et plus-values à court terme: les plus-values à long terme, qui correspondent en principe aux gains effectués lors de la cession d'éléments acquis ou créés par les entreprises depuis plus de deux ans, bénéficieront désormais d'un taux d'imposition réduit (10%); les plus-values à court terme se verront appliquer le taux de droit commun (50%), mais il sera possible d'étaler le paiement de l'impôt sur cinq ans.

Ainsi cessera l'effet de dissuasion qu'exerçait l'existence d'un prélèvement général de 50% qui aboutissait soit à susciter des structures artificielles, soit à geler des actifs – titres de placement, terrains en zone d'urbanisation – dont la cession aurait procuré aux entreprises d'importantes ressources d'auto-financement.

Simultanément, le régime fiscal applicable aux fusions est allégé et unifié. Les plus-values dégagées par ces opérations ne donneront lieu à aucune perception immédiate; l'imposition des gains constatés sur les biens amortissables sera étalée sur dix ans, et celle afférente aux autres biens sera différée jusqu'à leur aliénation éventuelle. Enfin, les droits d'enregistrement perçus à cette occasion sont ramenés à un niveau généralement symbolique. Ainsi disparaîtra l'alibi d'une fiscalité excessive, que beaucoup d'entreprises invoquaient pour différer des opérations de regroupement rendues pourtant indispensables par l'insuffisante concentration de l'industrie française.

Dans un domaine voisin, le régime des groupes de sociétés a été aménagé. Les conditions permettant de bénéficier du régime des sociétés mères ont été assouplies. D'autre part, les sociétés françaises auront désormais la possibilité d'opter, sous condition d'un agrément du Ministre des Finances, pour leur imposition d'après l'ensemble des résultats de leurs exploitations directes et indirectes, qu'elles soient situées en France ou à l'étranger. Ainsi se trouve introduit dans le droit fiscal français la notion de bénéfice mondial dont de nombreuses législations étrangères font déjà application.

3. Enfin, la Loi du 12 Juillet 1965 comporte un certain nombre de dispositions destinées à améliorer l'assiette de l'impôt, soit en précisant le régime des amortissements, soit en facilitant la répression de certains abus constatés en matière de frais généraux.

Dans le premier domaine, la mesure la plus importante consiste à rendre obligatoire la constatation de la fraction linéaire des amortissements, à l'image de ce que prévoient de nombreuses législations étrangères. Jusqu'alors les amortissements pouvaient toujours être différés du point de vue fiscal, ce qui nuisait à la sincérité des bilans et enlevait

toute signification réelle à la limitation dans le temps des reports déficitaires.

D'autre part, certaines dispositions destinées à donner à l'administration fiscale les moyens de mieux contrôler la croissance de certains frais généraux et des rémunérations directes ou indirectes versées aux dirigeants des entreprises ont été retenues. Trop de sociétés, notamment de moyenne importance, dont les dirigeants échappent pratiquement à tout contrôle interne, présentent des résultats artificiellement diminués.

II. – *La généralisation de la taxe sur la valeur ajoutée et la transformation des recettes fiscales des collectivités locales.*

Le projet de loi actuellement soumis au Sénat après son adoption par l'Assemblée Nationale concerne une pièce maîtresse du système fiscal français, puisque les taxes sur le chiffre d'affaires procurent à l'Etat plus du tiers (35%) de ses recettes fiscales, et aux collectivités locales 37% de leurs ressources ordinaires. Il a pour objet essentiel de compléter l'oeuvre entreprise en 1954 avec l'institution de la taxe sur la valeur ajoutée (T V A), en étendant, àpartir du 1er Janvier 1967, l'application de cette taxe à l'ensemble de la production, de la distribution et des services. La généralisation de la T V A conduirait parallèlement:

– à simplifier l'administration de cet impôt et limiter les charges qui en résulteraient pour les petits redevables;

– à mettre à la disposition des collectivités locales, privées d'une part importante de leurs recettes fiscales par la disparition de la taxe locale, une ressource de remplacement susceptible de leur assurer un rendement au moins équivalent.

1. La généralisation de la TVA, en mettant fin à la coexistence de cet impôt avec deux autres taxes générales sur le chiffre d'affaires (taxe sur les prestations de services et taxe locale) et de nombreuses taxes particulières, doit remédier aux distorsions économiques et aux incidences sociales fâcheuses qu'entraîne l'hétérogénéïté de la fiscalité indirecte. Aucune réforme ne porte donc davantage la marque des préoccupations de neutralité qui inspirent la politique fiscale française. Il s'y ajoute le souci de préparer la voie à une éventuelle harmonisation des fiscalités au sein de la Communauté Economique Européenne, qui emprunterait sans doute en premier lieu la forme de l'adoption d'une taxe sur la valeur ajoutée généralisée dans chacun des six Etats membres.

Les distorsions économiques qui découlent des limites apportées au champ d'application de la T V A affectent tant les activités de production: agriculture, industrie, services . . . que le secteur de la distribution commerciale.

Lorsque les taxes qui ont grevé les divers éléments du prix de revient d'un bien: matières premières, investissements, frais généraux . . . ne peuvent être déduites de l'impôt auquel ce bien est lui-même soumis, la superposition d'impôts qui en résulte fausse les calculs des entreprises et peut les inciter à adopter certaines solutions fiscalement avantageuses mais techniquement et économiquement peu recommandables. De telles superpositions apparaissent notamment lorsque ce bien est soumis à une taxe particulière dont la T V A perçue en amont n'est pas déductible (cas des prestations de services), ou encore lorsque les éléments du prix de revient sont eux-mêmes soumis à

un impôt particulier non deductible. L'exemple le plus frappant concerne le secteur des transports, qui est actuellement soumis à des taxes spécifiques: d'une part, les transporteurs ne peuvent déduire de ces taxes les impôts incorporés dans les prix de leurs investissements et les frais de réparation et d'entretien des véhicules; d'autre part, les utilisateurs de transports ne peuvent eux-mêmes déduire ces taxes de leurs propres prix de revient. Il en résulte une double surcharge fiscale qui a été évaluée à 8% environ des tarifs. Cette surcharge pénalise les entreprises éloignées de leurs sources d'approvisionnement et des grands centres de consommation, contrariant l'action que mène par ailleurs le Gouvernement pour assurer un meilleur aménagement du territoire par un développement des régions du Centre et de l'Ouest.

Enfin, sur le plan des échanges extérieurs, la diffusion dans le prix des produits de taxes spécifiques sous forme de «rémanences d'impôt» occultes ne permet pas d'assurer aux entreprises le remboursement de la totalité des charges fiscales indirectes ayant grevé leurs produits; corrélativement, les importations peuvent se trouver indûment favorisées.

Dans le secteur commercial, les distorsions tiennent à la coexistence de la T V A jusqu'au stade du dernier producteur et en principe du grossiste, et de la taxe locale – cumulative – aux stades ultérieurs. Compte tenu des règles très différentes applicables à ces deux impôts, certaines formes de distribution se trouvent pénalisées: producteurs vendant directement aux consommateurs, commerçant faisant assurer la fabrication de produits pour leur propre compte, entreprises à succursales multiples, etc. . . L'aménagement des structures de la distribution s'en trouve contrarié.

Du point de vue de l'équité, le système actuel va également à l'encontre d'une juste répartition des charges entre les différentes catégories sociales. Les services bénéficient d'une imposition à taux réduit (le taux de droit commun est de 8,50% contre 20% pour la T V A) alors qu'il est établi qu'ils absorbent une part d'autant plus importante des dépenses des contribuables que le revenu de ceux-ci est plus élevé. D'autre part, l'exonération dont les marges commerciales de détail jouissent au regard de la T V A avantage sensiblement les produits de luxe, vendus avec une marge élevée, par rapport aux produits de grande consommation. Enfin, les taxes spécifiques frappant des produits alimentaires essentiels comme la viande ou les boissons, qui ne tiennent aucun compte de différences de qualité, et donc des écarts de prix, aboutissent de la même manière à une progressivité fiscale à rebours.

L'extension de la T V A doit remédier à ces distorsions économiques et sociales. Cette extension entraîne la suppression des deux taxes cumulatives sur le chiffre d'affaires que comporte encore le système actuel: la taxe sur les prestations de services et la taxe locale sur le chiffre d'affaires, la suppression de taxes spécifiques frappant les boissons, les transports de marchandises, les cafés et les thés, ainsi que d'un certain nombre d'impôts à faible rendement.

En contrepartie, la T V A s'appliquera désormais à l'ensemble des affaires de production, de distribution et de services qui n'y sont pas actuellement soumises, en particulier aux artisans, aux produits alimentaires exonérés, aux prestations de services et à l'ensemble du commerce de gros comme de détail. Seuls demeureront en dehors de la nouvelle imposition les agriculteurs, auxquels une possibilité d'opter volontairement

pour l'assujettissement à la T V A sera toutefois offerte, la généralité des professions libérales, les spectacles, enfin les activités financières et bancaires qui, en raison de leur caractère spécifique, seront soit exonérées, soit soumises à une taxe spéciale non déductible de 12%.

Le généralisation de la T V A rendra possible un abaissement de son taux de droit commun qui passera de 20% à 16,66% taxe incluse (c'est-à-dire de 25% à 20% hors taxe); le taux majoré sera ramené de 25% à 20%; le taux réduit de 10% sera porté à 12%; le taux de 6%, applicable aux produits alimentaires de large consommation, restera inchangé. L'équilibre d'ensemble du projet a été calculé de façon à maintenir dans des limites raisonnables, compte tenu des mesures d'allègement en faveur des petits redevables qui vont être décrites, la perte de recettes consentie par l'Etat, et à n'exercer aucune action défavorable sur le niveau général des prix.

2. La simplification de l'administration de l'impôt et l'allègement de la charge fiscale des petits redevables constituent la seconde caractéristique de la réforme projetée.

La généralisation de la T V A fera disparaître la plupart des problèmes de frontières, nés de l'existence de nombreux secteurs exonérés de cet impôt, qui compliquaient la tâche des contribuables et de l'administration et donnaient lieu à un contentieux important: distinction entre actes de production et actes de commercialisation, entre commerce de gros et commerce de détail, définition de la qualité d'artisan, détermination – pour toute entreprise dont une partie de l'activité n'est pas soumise à la T V A – de la fraction de la taxe ayant grevé les équipements qui peut être déduite de la T V A dont elle est redevable, etc. . . .

Pour tenir compte du fait que l'assujettissement à la T V A du commerce de détail fera entrer dans le champ d'application de cet impôt une catégorie de redevables qui ne tiennent souvent qu'une comptabilité sommaire, le champ d'application du régime du forfait sera étendu: les limites de chiffres d'affaires au-dessous desquelles ce régime est applicable, sauf option contraire, seront portées à 500.000 (ventes) et 125.000 (services). En outre, les règles relatives à l'imposition des bénéfices et des chiffres d'affaires seront unifiées, ce qui permettra d'envisager à terme la fusion des déclarations et l'assiette de l'impôt par un agent unique. Enfin, contrairement à la pratique antérieure, les assujettis au régime du forfait seront désormais autorisés à facturer à leurs clients la T V A incluse dans leurs prix.

Le souci d'alléger les obligations des petits redevables et d'éviter à l'administration fiscale de consacrer un temps excessif à des forfaits d'un montant très faible a conduit d'autre part à prévoir que la taxe ne serait pas mise en recouvrement lorsque son montant serait inférieur à un minimum fixé par le projet à 800 Frs; cette disposition permettra d'exonérer en fait les redevables les plus modestes: artisans ruraux, par exemple. Afin d'éviter que le franchissement des limites d'exonération ne se traduise par un brusque changement de statut fiscal, un système de décote assurant la transition avec le régime normal a été prévu.

3. La suspression de la taxe locale et de quelques recettes fiscales annexes a enfin rendu nécessaire la mise à la disposition des collectivités locales d'une ressource de remplacement. Deux problèmes se posaient à cet égard: le choix de la nature de cette ressource d'une part, celui de ses modalités de répartition d'autre part.

Sur le premier point, le Gouvernement a décidé d'affecter aux collectivités une fraction du versement forfaitaire sur les traitements et salaires qui était jusqu'à présent encaissé par l'Etat. Cet impôt, institué en 1948, est à la charge des entreprises et est assis, au taux général de 5%, sur la masse des rémunérations qu'elles versent à leur personnel. La stabilité de sa réglementation et la régularité de son rendement en font une ressource bien adaptée aux nécessités des finances locales. La part du versement forfaitaire devant revenir aux collectivités locales, qui était fixée aux cinq sixièmes (83,33%) par le projet de loi, a été portée à 85% lors de la discussion devant l'Assemblée Nationale.

La répartition de cette ressource fera, dans les premières années d'application de la réforme, une part très large aux droits acquis des départements et des communes, afin d'éviter tout bouleversement de leurs budgets: des attributions de garantie, dont le montant sera fondé sur les recettes que ces collectivités tiraient de la taxe locale et des autres recettes qui cessent de leur être affectées, leur seront attribuées. Mais cette garantie jouera de façon dégressive et cèdera peu à peu la place à une répartition fondée sur l'effort fiscal que chaque collectivité demande à ses habitants. Les attributions seront à cet effet, dans une proportion croissante, calculées pour chaque collectivité en fonction du poids des impôts directs locaux qu'elle fait supporter à l'ensemble de sa population. Ce principe de répartition permettra de corriger progressivement les imperfections que comporte le système actuel de taxe locale. Ce dernier avantage de façon excessive les collectivités qui sont déjà le siège d'une activité commerciale ou industrielle importante, au détriment de celles qui ont à faire face à une urbanisation récente et aux lourdes charges d'équipement qu'elle entraîne. En particulier, les communes en expansion situées à la périphérie des grandes villes, où la fiscalité locale directe atteint souvent un niveau très élevé, pourront tirer du nouveau régime des ressources accrues.

Les effets conjugués des deux réformes devraient permettre, conformément aux directives du V° Plan, d'assainir les conditions de financement des investissements des entreprises et de ceux des collectivités. Sans doute, les nouvelles techniques mises en oeuvre conduiront à modifier très sensiblement les modalités d'imposition de la majorité des agents économiques et leur application exigera, tant des contribuables que de l'administration, un effort d'adaptation particulier.

Mais ces difficultés seront d'autant mieux surmontées que la conviction sera largement partagée que la transformation profonde du système fiscal que ces projets réalisent est de nature à asseoir le prélèvement fiscal sur des bases plus rationnelles et plus conformes aux exigences d'un développement économique durable.

IRAQ

TAX NEWS

INCOME TAX

On August 31, 1964, important tax laws and regulations were enacted. The statutes were put into force at the beginning of the financial year 1964-1965. These taxes were mainly the Income Tax Law and the Estate Tax Law.

Income tax

1—The Income Tax Law No. 95 of 1959 governs taxation of residents and non-residents in Iraq. The taxable income under such law is defined as follows:—

(1) Profits from commercial enterprises or from business of commercial nature, industries, professions including contracts and compensation for their non-fulfillment, if not for making good a loss sustained by the taxpayer materially or morally.

(2) Interest, commission, discount and profits arising from dealing in shares and bonds.

(3) Rents of agricultural land.

(4) Profits arising from the transfer of ownership or the use of real estate by whatever means affected, such as sale, barter, conciliation, grant, expropriation, removal of common ownership, liquidation of "waqf", long lease and use of utility.

(5) Salaries, pensions, rewards, wages for work at fixed rate for limited periods, allowances, sums deposited for employees, accounts in Provident Funds, and pensions of foreign officials whether deducted from their salaries or paid to their accounts by another party.

(6) Cash and estimated amounts, alloated to the taxpayer against his services such as for residence and food.

(7) Income from any other source not taxable in Iraq, provided that dividends shall not be a taxable income if a company has deducted or is authorised to deduct the tax from it.

(Income Tax Law No. 95 of 1959 Article 2)

2—Income tax rates, as applicable to residents, non residents, limited and unlimited liability companies according to the Income Tax Law of 1959, were ammended by Law No. 129 of 1964.

These rates are as follows:—

(1) *Resident persons (after granting the allowances)*

Income				*Tax rate*
up to ID.	500			3%
over ID.	500	up to ID.	1000	5%
over ID.	1000	up to ID.	2000	10%
over ID.	2000	up to ID.	3000	15%
over ID.	3000	up to ID.	4000	20%
over ID.	4000	up to ID.	5000	25%
over ID.	5000	up to ID.	6000	30%
over ID.	6000	up to ID.	7000	35%
over ID.	7000	up to ID.	8000	40%
over ID.	8000	up to ID.	9000	45%
over ID.	9000	up to ID.	10000	50%

over ID. 10000 up to ID. 11000	55%
over ID. 11000 up to ID. 12000	60%
over ID. 12000 up to ID. 13000	65%
over ID. 13000 up to ID. 14000	70%
over ID. 14000 up to ID. 15000	75%
over ID. 15000 up to ID. 20000	80%
over ID. 20000	90%

(2) Income of a non-resident individual is subject to the same rates and particulars stated in (1) above with the exception of income provided for in Article (19) of Law No. 95 of 1959 which indicates that "any person resident in Iraq shall pay the tax of 20% on amounts due to persons residing outside Iraq. Such due amounts shall be: Interest on bills, mortgages, loans, deposits and advances, annual allowances or pensions or other yearly payment.

(3) *Income of limited liability companies*

(a) *Industrial Companies:*

Income	*Tax rate*
Up to ID. 1000	10%
Over ID. 1000 up to ID. 3000	15%
Over ID. 3000 up to ID. 5000	20%
Over ID. 5000 up to ID. 7000	25%
Over ID. 7000 up to ID. 9000	30%
Over ID. 9000 up to ID. 11000	35%
Over ID. 11000 up to ID. 13000	40%
Over ID. 13000 up to ID. 15000	45%
Over ID. 15000	50%

(b) *Non-Industrial companies:*

Up to ID. 1000	10%
Over ID. 1000 up to ID. 2000	15%
Over ID. 2000 up to ID. 3000	20%
Over ID. 3000 up to ID. 4000	25%
Over ID. 4000 up to ID. 5000	30%
Over ID. 5000 up to ID. 6000	35%
Over ID. 6000 up to ID. 7000	40%
Over ID. 7000 up to ID. 8000	45%
Over ID. 8000 up to ID. 9000	50%
Over ID. 9000 up to ID. 10000	55%
Over ID. 10000	60%

(4) *Income of joint stock companies and other artificial entities*

(a) *Industrial Companies:*

Up to ID. 1000	10%
Over ID. 1000 up to ID. 3000	15%
Over ID. 3000 up to ID. 5000	20%
Over ID. 5000 up to ID. 7000	25%
Over ID. 7000 up to ID. 9000	30%
Over ID. 9000 up to ID. 11000	35%
Over ID. 11000 up to ID. 13000	40%
Over ID. 13000	45%

(b) *Non-Industrial Companies:*

Up to ID. 1000	10%
Over ID. 1000 up to ID. 2000	15%
Over ID. 2000 up to ID. 3000	20%
Over ID. 3000 up to ID. 4000	25%
Over ID. 4000 up to ID. 5000	30%
Over ID. 5000 up to ID. 6000	35%
Over ID. 6000 up to ID. 7000	40%
Over ID. 7000 up to ID. 8000	45%
Over ID. 8000	50%

(Law No. 129, 1964, Article (7).

3—A tax of 50 per cent is assessed on the chargeable income of a juristic person involved in any commercial transaction the profits of which are derived from the sale of petroleum or other hydrocarbons produced in and exported from Iraq or the sale of rights or interests pertaining to such petroleum or other hydrocarbons. However, if any share or its equivalent on petroleum or other hydrocarbons from which the said profits accrue has been given or paid to the Iraqi Government, the tax rate charged for the purpose of collection be reduced by an amount equal to the share of its equi-

valent amount paid to the government if the Minister of Finance is satisfied that such share or its equivalent has been paid provided that no reduction by an amount equal to that share or equivalent shall be allowed as a reduction more than once. (Law No. 95. 1959, Article 13 (5-a))

4—The main incomes exempted from the tax are as follows:

a) Agricultural income earned by cultivators from agricultural products.

b) Income of "Awquaf", legally acknowledged, religious institutions, charitable and educational establishments for public interest.

c) Income of savings, provident and insurance funds established by official and semi officials departments.

d) Income of municipalities earned from public utilities.

e) Income of cooperatives.

f) Salaries and allowances paid to Iraqi nationals residing outside Iraq if he is not exempted from the tax in the place of business.

i) Salaries and allowances paid by foreign legations.

(Law No. 95, 1959 Article 7 as amended by Law No. 129 of 1964 Article 4)

5—Personal allowance for a taxpayer is ID. 450, for a wife is ID. 150 and for each child under 18 is ID. 50. (Law No. 1959-Article 12-1)

6—Income tax is charged on the profit of the company (after granting allowances and deductions) before distribution to shareholders. The company provides the shareholders at the time of distribution of dividends with certificates of the amount of distributed dividends and the tax charged and deducted. (Law No. 95, 1959, Articles 14, 15 (3))

7—The income of a married couple is joined together and the tax is assessed in the name of the husband. Income of children under 18 years of age joined to the income of the father. On the fathers death, the tax is assessed on each child independently in the name of the mother. (Law No. 95, 1959, Article 6 (1)).

8—The finance authority examines all the returns filed by the persons subject to tax and be sure that the true income is accurately reported. The tax is assessed on the taxable income in the office of the official tax assessor in the district of residence or place of work of the taxpayer. (Law No. 95, 1959, Articles 30 & 31).

Reported by Siham Sharif

III

TREATIES

CONVENTION ENTRE LA FRANCE ET MADAGASCAR

TENDANT A ÉLIMINER LES DOUBLES IMPOSITIONS ET A ÉTABLIR DES RÈGLES D'ASSISTANCE MUTUELLE ADMINISTRATIVE EN MATIÈRE FISCALE

Le Gouvernement de la République française et le Gouvernement de la République malgache, désireux d'éviter dans la mesure du possible les doubles impositions et d'établir des règles d'assistance réciproque en matière d'impôts sur le revenu, d'impôts sur les successions, de droits d'enregistrement et de droits de timbre, sont convenus, à cet effet, des dispositions suivantes:

TITRE IER

Dispositions générales.

ARTICLE 1er

Pour l'application de la présente convention:

1 Le terme «personne» désigne:

a) Toute personne physique;

b) Toute personne morale;

c) Tout groupement de personnes physiques qui n'a pas la personnalité morale.

2 Le terme «France» désigne la France métropolitaine et les départements d'outre-mer (Guadeloupe, Guyane, Martinique et Réunion).

Le terme «Madagascar» désigne les territoires de la République malgache.

ARTICLE 2

1 Une personne physique est domiciliée, au sens de la présente convention, au lieu où elle a son «foyer permanent d'habitation», cette expression désignant le centre des intérêts vitaux, c'est-à-dire le lieu avec lequel les relations personnelles sont les plus étroites.

Lorsqu'il n'est pas possible de déterminer le domicile d'après l'alinéa qui précède, la personne physique est réputée posséder son domicile dans celui des Etats contractants où elle séjourne le plus longtemps. En cas de séjour d'égale durée dans les deux Etats, elle est réputée avoir son domicile dans celui dont elle est ressortissante. Si elle n'est ressortissante d'aucun d'eux, les autorités administratives supérieures des Etats trancheront la difficulté d'un commun accord.

2 Pour l'application de la présente convention, le domicile des personnes morales est au lieu du siège social statutaire; celui des groupements de personnes physiques n'ayant pas la personnalité morale au lieu du siège de leur direction effective.

ARTICLE 3

Le terme «établissement stable» désigne une installation fixe d'affaires où une entreprise exerce tout ou partie de son activité.

a) Constituent notamment des établissements stables:

(aa) Un siège de direction;

(bb) Une succursale;

(cc) Un bureau;
(dd) Une usine;
(ee) Un atelier;
(ff) Une mine, carrière ou autre lieu d'extraction de ressources naturelles;
(gg) Un chantier de construction.

b) On ne considère pas qu'il y a établissement stable si:
(aa) Il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
(bb) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
(cc) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
(dd) Une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises;
(ee) Une installation fixe d'affaires est utilisée aux seules fins de publicité, de fourniture d'informations, de recherche scientifique ou d'activités analogues qui ont pour l'entreprise un caractère préparatoire ou auxiliaire.

c) Une personne agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant — autre qu'un agent jouissant d'un statut indépendant, visé à l'alinéa *e* ci-après — est considérée comme «établissement stable» dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne soit limitée à l'achat de marchandises pour l'entreprise.

Est notamment considéré comme exerçant de tels pouvoirs l'agent qui dispose habituellement dans le premier Etat contractant d'un stock de produits ou marchandises appartenant à l'entreprise au moyen duquel il exécute régulièrement les commandes qu'il a reçues pour le compte de l'entreprise.

d) Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant que, par l'intermédiaire d'un représentant n'entrant pas dans la catégorie des personnes visées à l'alinéa *e* ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situés sur ce territoire.

e) On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y effectue des opérations commerciales par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité. Toutefois, si l'intermédiaire dont le concours est utilisé dispose d'un stock de marchandises en consignation à partir duquel sont effectuées les ventes et les livraisons, il est admis que ce stock est caractéristique de l'existence d'un établissement stable de l'entreprise.

f) Le fait qu'une société domiciliée dans un Etat contractant contrôle ou est contrôlée par une société qui est domiciliée dans l'autre Etat contractant ou qui y effectue des opérations commerciales (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces deux sociétés un établissement stable de l'autre.

ARTICLE 4

Sont considérés comme biens immobiliers pour l'application de la présente convention les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière ainsi que les droits d'usufruit sur les biens immobiliers, à l'exception des créances de toute nature garanties par gage immobilier.

La question de savoir si un bien ou un droit a le caractère immobilier ou peut être considéré comme l'accessoire d'un immeuble sera résolue d'après la législation de l'Etat sur le territoire duquel est situé le bien considéré ou le bien sur lequel porte le droit envisagé.

ARTICLE 5

1 Les ressortissants, les sociétés et autres groupements d'un Etat contractant ne seront pas soumis dans l'autre Etat à des impôts autres ou plus élevés que ceux frappant les ressortissants, les sociétés et autres groupements de ce dernier Etat se trouvant placés dans la même situation.

2 En particulier, les ressortissants d'un Etat contractant qui sont imposables sur le territoire de l'autre Etat contractant bénéficient, dans les mêmes conditions que les ressortissants de ce dernier Etat, des exceptions, abattements à la base, déductions et réductions d'impôts ou taxes quelconques accordés pour charges de famille.

ARTICLE 6

Pour l'application des dispositions contenues dans la présente convention, l'expression «autorités compétentes» désigne:

Dans le cas de la France, le ministre des finances et des affaires économiques;

Dans le cas de Madagascar, le ministre des finances ou leurs représentants dûment autorisés.

ARTICLE 7

Pour l'application de la présente convention par l'un des Etats contractants, tout terme non défini dans cette convention recevra, à moins que le contexte ne l'exige autrement, la signification que lui donnent les lois en vigueur dans l'Etat considéré, en ce qui concerne les impôts visés dans cette convention.

TITRE II

Doubles impositions

CHAPITRE Ier

Impôts sur les revenus

ARTICLE 8

1 Le présent chapitre est applicable aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants, de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.

Sont considérés comme impôts sur les revenus les impôts sur le revenu total ou sur les éléments du revenu (y compris les plusvalues).

2. Les dispositions du présent chapitre ont pour objet d'éviter les doubles impositions qui pourraient résulter, pour les personnes (entendues au sens de l'article 1er) dont le domicile fiscal, déterminé conformément à l'article 2, est situé dans l'un des Etats contractants, de la perception simultanée ou successive dans cet Etat et dans l'autre Etat contractant des impôts visés au paragraphe 1 ci-dessus.

3 Les impôts actuels auxquels s'applique le présent chapitre sont:

En ce qui concerne la République française:

a) L'impôt sur le revenu des personnes physiques;

b) La taxe complémentaire;

c) L'impôt sur les bénéfices des sociétés et autres personnes morales.

En ce qui concerne la République malgache:

a) L'impôt cédulaire sur les bénéfices divers;

b) L'impôt sur le revenu des capitaux mobiliers;

c) L'impôt général sur le revenu.

4 La convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, dès leur promulgation, les modifications apportées à leur législation fiscale.

5 Il est entendu que dans le cas où la législation fiscale de l'un des Etats contractants ferait l'objet de modifications affectant sensiblement la nature ou le caractère des impôts visés au paragraphe 3 du présent article, les autorités compétentes des deux Etats se concerteraient pour déterminer les aménagements qu'il serait éventuellement nécessaire d'apporter à la présente convention.

ARTICLE 9

Les revenus des biens immobiliers, y compris les bénéfices des exploitations agricoles et forestières, ne sont imposables que dans l'Etat où ces biens sont situés.

ARTICLE 10

1 Les revenus des entreprises industrielles, minières, commerciales ou financières ne sont imposables que dans l'Etat sur le territoire duquel se trouve un établissement stable.

2 Lorsqu'une entreprise possède des établissements stables dans les deux Etats contractants, chacun d'eux ne peut imposer que le revenu provenant de l'activité des établissements stables situés sur son territoire.

3 Le bénéfice imposable ne peut excéder le montant des bénéfices industriels, miniers, commerciaux ou financiers réalisés par l'établissement stable, y compris s'il y a lieu les bénéfices ou avantages retirés indirectement de cet établissement ou qui auraient été attribués ou accordés à des tiers soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen. Une quote-part des frais généraux du siège de l'entreprise est imputée aux résultats des différents établissements stables au prorata du chiffre d'affaires réalisé dans chacun d'eux.

4 Lorsque les contribuables dont l'activité s'étend sur les territoires des deux Etats contractants ne tiennent pas une comptabilité régulière faisant ressortir distinctement et exactement les bénéfices afférents aux établissements stables situés dans l'un et l'autre Etats, le bénéfice respectivement imposable par ces Etats peut être déterminé en répartissant les résultats globaux au prorata du chiffre d'affaires réalisé dans chacun d'eux.

ARTICLE 11

1 Lorsqu'une entreprise de l'un des Etats contractants, du fait de sa participation à la gestion ou au capital d'une entreprise de l'autre Etat contractant, fait ou impose à cette dernière, dans leurs relations commerciales ou financières, des conditions différentes de celles qui seraient

faites à une tierce entreprise, tous bénéfices qui auraient dû normalement apparaître dans les comptes de l'une des entreprises, mais qui ont été de la sorte transférés à l'autre entreprise, peuvent être incorporés aux bénéfices imposables de la première entreprise.

2 Une entreprise est considérée comme participant à la gestion ou au capital d'une autre entreprise notamment lorsque les mêmes personnes participent directement ou indirectement à la gestion ou au capital de chacune de ces deux entreprises.

ARTICLE 12

Les revenus provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant ou se trouve le domicile fiscal de l'entreprise.

ARTICLE 13

Sous réserve des dispositions des articles 15 à 17 ci-après, les revenus des valeurs mobilières et les revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêt et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) payés par des sociétés ou des collectivités publiques ou privées ayant leur domicile fiscal sur le territoire de l'un des Etats contractants sont imposables dans cet Etat.

ARTICLE 14

Une société d'un Etat contractant ne peut être assujettie sur le territoire de l'autre Etat contractant au paiement d'un impôt sur les distributions de revenus de valeurs mobilières et de revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêt et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) qu'elle effectue, du seul fait de sa participation dans la gestion ou dans le capital de sociétés domiciliées dans cet autre Etat ou à cause de tout autre rapport avec ces sociétés; mais les produits distribués par ces dernières sociétés et passibles de l'impôt sont, le cas échéant, augmentés de tous les bénéfices ou avantages que la société du premier Etat aurait indirectement retirés desdites sociétés, soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen.

ARTICLE 15

1 Lorsqu'une société ayant son domicile fiscal dans l'un des Etats contractants s'y trouve soumise au paiement d'un impôt frappant les distributions de revenus de valeurs mobilières et de revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêt et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) et qu'elle possède un ou plusieurs établissements stables sur le territoire de l'autre Etat contractant à raison desquels elle est également soumise dans ce dernier Etat au paiement d'un même impôt, il est procédé à une répartition, entre les deux Etats, des revenus donnant ouverture audit impôt, afin d'éviter une double imposition.

2 La répartition prévue au paragraphe qui précède s'établit, pour chaque exercice, sur la base du rapport:

$\frac{A}{B}$ pour l'Etat dans lequel la société n'a pas son domicile fiscal;

$\frac{B-A}{B}$ pour l'Etat dans lequel la société a son domicile fiscal.

La lettre A désignant le montant des bénéfices comptables provenant à la

société de l'ensemble des établissements stables qu'elle possède dans l'Etat ou elle n'a pas son domicile fiscal, toutes compensations étant faites entre les résultats bénéficiaires et les résultats déficitaires de ces établissements. Ces bénéfices comptables s'entendent de ceux qui sont réputés réalisés dans lesdits établissements, au regard des dispositions des articles 10 et 11 de la présente convention;

La lettre B le bénéfice comptable total de la société tel qu'il résulte de son bilan général.

Pour la détermination du bénéfice comptable total, il est fait abstraction des résultats déficitaires constatés pour l'ensemble des établissements stables de la société dans un Etat quelconque, toutes compensations étant faites entre les résultats bénéficiaires et les résultats déficitaires de ces établissements.

Dans le cas où le bénéfice comptable total d'un exercice est nul ou négatif, la répartition s'effectue sur les bases antérieurement dégagées.

En l'absence de bases antérieurement dégagées, la répartition s'effectue selon une quotité fixée par commune entente entre les autorités compétentes des Etats contractants intéressés.

3 Lorsque les bénéfices distribués comprennent des produits de participation détenus par la société dans le capital d'autres sociétés et que ces participations remplissent, pour bénéficier des régimes spéciaux auxquels sont soumises les sociétés affiliées, les conditions exigées en vertu de la législation interne soit de l'Etat du domicile fiscal de la société, soit de l'autre Etat, selon qu'elles figurent à l'actif du bilan concernant l'établissement stable situé dans le premier ou dans le second Etat, chacun desdits Etats applique à ces bénéfices distribués, dans la mesure où ils proviennent du produit des participations régies par sa législation interne, les dispositions de cette législation, en même temps qu'il taxe la partie desdits bénéfices qui ne provient pas du produit de participation, dans la mesure où l'imposition lui en est attribuée suivant les modalités prévues au paragraphe 3 ci-dessus.

ARTICLE 16

1 Quand, à la suite de contrôles exercés par les administrations fiscales compétentes, il est effectué, sur le montant des bénéfices réalisés au cours d'un exercice, des redressements ayant pour résultat de modifier la proportion définie au paragraphe 2 de l'article 15, il est tenu compte de ces redressements pour la répartition, entre les deux Etats contractants, des bases d'imposition afférentes à l'exercice au cours duquel les redressements interviennent.

2 Les redressements portant sur le montant des revenus à répartir, mais n'affectant pas la proportion des bénéfices réalisés dont il a été tenu compte pour la répartition des revenus faisant l'objet desdits redressements, donnent lieu, selon les règles applicables dans chaque Etat, à une imposition supplémentaire répartie suivant la même proportion que l'imposition initiale.

ARTICLE 17

1 La répartition des bases d'imposition visées à l'article 15 est opérée par la société et notifiée par elle à chacune des administrations fiscales compétentes, dans le délai qui lui est imparti par la législation de chaque Etat pour déclarer les distributions de produits imposables auxquelles elle procède.

A l'appui de cette répartition, la société

fournit à chacune desdites administrations, en outre des documents qu'elle est tenue de produire ou de déposer en vertu de la législation interne, une copie de ceux produits ou déposés auprès de l'administration de l'autre Etat.

2 Les difficultés ou contestations qui peuvent surgir au sujet de la répartition des bases d'imposition sont réglées d'une commune entente entre les administrations fiscales compétentes.

A défaut d'accord, le différend est tranché par la commission mixte à l'article 41.

ARTICLE 18

Les tantièmes, jetons de présence et autres rémunérations attribués aux membres des conseils d'administration ou de surveillance de sociétés anonymes, sociétés en commandite par actions ou sociétés coopératives, en leur dite qualité, sont imposables dans l'Etat contractant où la société a son domicile fiscal, sous réserve de l'application des articles 22 et 23 ci-après en ce qui concerne les rémunérations perçues par les intéressés en leurs autres qualités effectives.

Si la société possède un ou plusieurs établissements stables sur le territoire de l'autre Etat contractant, les tantièmes, jetons de présence et autres rémunérations visés ci-dessus sont imposés dans les conditions fixées aux articles 15 à 17.

ARTICLE 19

1 L'impôt sur le revenu des prêts, dépôts, comptes de dépôts, bons de caisse et de toutes autres créances non représentées par des titres négociables est perçu dans l'Etat du domicile fiscal du créancier.

2 Toutefois, chaque Etat contractant conserve le droit d'imposer par voie de retenue à la source, si sa législation interne le prévoit, les revenus visés au paragraphe 1 ci-dessus.

3 Les dispositions des paragraphes 1 et 2 ci-dessus ne s'appliquent pas lorsque le bénéficiaire des intérêts, domicilié dans un Etat contractant, possède dans l'autre Etat contractant d'où proviennent les intérêts un établissement stable auquel se rattache effectivement la créance qui les produit. Dans ce cas, l'article 10 concernant l'imputation des bénéfices aux établissements stables est applicable.

ARTICLE 20

1 Les redevances (royalties) versées pour la jouissance de biens immobiliers ou l'exploitation de mines, carrières ou autres ressources naturelles ne sont imposables que dans celui des Etats contractants où sont situés ces biens, mines, carrières ou autres ressources naturelles.

2 Les droits d'auteur ainsi que les produits ou redevances (royalties) provenant de la vente ou de la concession de licences d'exploitation de brevets, marques de fabrique, procédés et formules, secrets qui sont payés dans l'un des Etats contractants à une personne ayant son domicile fiscal dans l'autre Etat contractant ne sont imposables que dans ce dernier Etat.

3 Sont traitées comme les redevances visées au paragraphe 2 les sommes payées pour la location ou le droit d'utilisation des films cinématographiques, les droits de location et rémunérations analogues pour l'usage ou le droit à usage d'équipements industriels, commerciaux ou scientifiques et pour la fourniture d'informations concernant des expériences d'ordre industriel, commercial ou scientifique.

4 Si une redevance (royalty) est supérieure à la valeur intrinsèque et normale des droits pour lesquels elle est payée, l'exemption prévue aux paragraphes 2 et 3 ne peut être appliquée qu'à la partie de cette redevance qui correspond à cette valeur intrinsèque et normale.

5 Les dispositions des paragraphes 2 et 3 ne s'appliquent pas lorsque le bénéficiaire des redevances ou autres rémunérations entretient dans l'Etat contractant d'où proviennent ces revenus un établissement stable ou une installation fixe d'affaires servant à l'exercice d'une profession libérale ou d'une autre activité indépendante et que ces redevances ou autres rémunérations sont à attribuer à cet établissement stable ou à cette installation fixe d'affaires. Dans ce cas, ledit Etat a le droit d'imposer ces revenus conformément à sa législation.

ARTICLE 21

Les pensions et les rentes viagères ne sont imposables que dans l'Etat contractant où le bénéficiaire a son domicile fiscal.

ARTICLE 22

1 Sauf accords particuliers prévoyant des régimes spéciaux en cette matière, les salaires, traitements et autres rémunératons similaires qu'une personne domiciliée dans l'un des deux Etats contractants reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi est exercé dans l'autre Etat contractant, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.

2 Nonobstant les dispositions du paragraphe 1 ci-dessus, les rémunérations qu'une personne domiciliée dans un Etat contractant reçoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:

a) Le bénéficiaire séjourne dans l'autre Etat pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée;

b) Les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas domicilié dans l'autre Etat;

c) Les rémunérations ne sont pas déduites des bénéfices d'un établissement stable ou d'une base fixe que l'employeur a dans l'autre Etat.

3 Nonobstant les dispositions précédentes du présent article, les rémunérations afférentes à une activité exercée à bord d'un navire ou d'un aéronef en trafic international ne sont imposables que dans l'Etat contractant où l'entreprise a son domicile.

ARTICLE 23

1 Les revenus qu'une personne domiciliée dans un Etat contractant retire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que cette personne ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités. Si elle dispose d'une telle base, la partie des revenus qui peut être attribuée à cette base est imposable dans cet autre Etat.

2 Sont considérés comme professions libérales, au sens du présent article, notamment l'activité scientifique, artistique, littéraire, enseignante ou pédagogique ainsi que celle des médecins, avocats, architectes ou ingénieurs.

ARTICLE 24

Les sommes qu'un étudiant ou un stagiaire de l'un des deux Etats contractants, séjournant dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

ARTICLE 25

Les revenus non mentionnés aux articles précédents ne sont imposables que dans l'Etat contractant du domicile fiscal du bénéficiaire à moins que ces revenus ne se rattachent à l'activité d'un établissement stable que ce bénéficiaire posséderait dans l'autre Etat contractant.

ARTICLE 26

Il est entendu que la double imposition est évitée de la manière suivante.

1 Un Etat contractant ne peut pas comprendre dans les bases des impôts sur le revenu visés à l'article 8 les revenus qui sont exclusivement imposables dans l'autre Etat contractant en vertu de la présente convention; mais chaque Etat conserve le droit de calculer l'impôt au taux correspondant à l'ensemble des revenus imposables d'après sa législation.

2 Les revenus visés aux articles 13, 15, 18 et 19 ayant leur source à Madagascar et perçus par des personnes domiciliées en France ne peuvent être imposés à Madagascar qu'à l'impôt sur le revenu des capitaux mobiliers.

Réciproquement les revenus de même nature ayant leur source en France et perçus par des personnes domiciliées à Madagascar ne peuvent être imposés en France qu'à la retenue à la source sur le revenu des capitaux mobiliers.

3 Les revenus de capitaux mobiliers et les intérêts de source malgache visés aux articles 13, 15, 18 et 19 et perçus par des personnes physiques, sociétés ou autres collectivités domiciliées en France sont compris dans cet Etat dans les bases des impôts visés au paragraphe 3 de l'article 8 pour leur montant brut sous réserve des dispositions ci-après:

a) Les revenus mobiliers de source malgache visés aux articles 13, 15 et 18 et soumis à l'impôt malgache sur le revenu des capitaux mobiliers par l'application desdits articles sont exonérés en France de la retenue à la source sur le revenu des capitaux mobiliers. Cette retenue est néanmoins considérée pour le calcul soit de l'impôt sur le revenu des personnes physiques, soit des autres impôts dans les bases desquels ces revenus se trouvent compris comme ayant été effectivement acquittés au taux normal applicable aux revenus de même nature ayant leur source en France;

b) Les intérêts visés à l'article 19 provenant de sources malgaches et qui ont été soumis à l'impôt sur le revenu des capitaux mobiliers à Madagascar donnent droit en France à un crédit d'impôt de 12 p. 100 au profit du bénéficiaire de ces intérêts domicilié en France. Ce crédit s'impute soit sur la taxe complémentaire et, le cas échéant, sur l'impôt sur le revenu des personnes physiques, soit sur l'impôt sur les sociétés.

4 Les revenus de capitaux mobiliers et les intérêts de sources françaises visés aux articles 13, 15, 18 et 19 et perçus par des personnes domiciliées à Madagascar ne peuvent être assujettis dans cet Etat qu'à l'impôt général sur le revenu.

CHAPITRE II

Impôts sur les successions.

ARTICLE 27

1 Le présent chapitre est applicable aux impôts sur les successions perçus pour le compte de chacun des Etats contractants.

Sont considérés comme impôts sur les successions: les impôts perçus par suite de décès sous forme d'impôts sur la masse successorale, d'impôts sur les parts héréditaires, de droits de mutation ou d'impôts sur les donations pour cause de mort.

2 Les impôts actuels auxquels s'applique le présent chapitre sont:

En ce qui concerne la République française: l'impôt sur les successions;

En ce qui concerne la République malgache: l'impôt sur les successions.

ARTICLE 28

Les biens immobiliers (y compris les accessoires) ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où ils sont situés; le cheptel mort ou vif servant à une exploitation agricole ou forestière n'est imposable que dans l'Etat contractant où l'exploitation est située.

ARTICLE 29

Les biens meubles corporels ou incorporels laissés par un défunt ayant eu au moment de son décès son domicile dans l'un des Etats contractants et investis dans une entreprise commerciale, industrielle ou artisanale de tout genre sont soumis à l'impôt sur les successions suivant la règle ci-après:

a) Si l'entreprise ne possède un établissement stable que dans l'un des deux Etats contractants, les biens ne sont soumis à l'impôt que dans cet Etat; il en est ainsi même lorsque l'entreprise étend son activité sur le territoire de l'autre Etat contractant sans y avoir un établissement stable;

b) Si l'entreprise a un établissement stable dans les deux Etats contractants, les biens sont soumis à l'impôt dans chaque Etat dans la mesure où ils sont affectés à un établissement stable situé sur le territoire de cet Etat.

Toutefois, les dispositions du présent article ne sont pas applicables aux investissements effectués par le défunt dans les sociétés à base de capitaux (sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés coopératives, sociétés civiles soumises au régime fiscal des sociétés de capitaux) ou sous forme de commandite dans les sociétés en commandite simple.

ARTICLE 30

Les biens meubles corporels ou incorporels rattachés à des installations permanentes et affectés à l'exercice d'une profession libérale dans l'un des Etats contractants ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où se trouvent ces installations.

ARTICLE 31

Les biens meubles corporels, y compris les meubles meublants, le linge et les objets ménagers ainsi que les objets et collections d'art autres que les meubles visés aux articles 29 et 30 ne sont soumis à l'impôt sur les successions que dans celui des Etats contractants où ils se trouvent effectivement à la date du décès.

Toutefois, les bateaux et les aéronefs ne sont imposables que dans l'Etat contractant où ils ont été immatriculés.

ARTICLE 32

Les biens de la succession auxquels les articles 28 à 31 ne sont pas applicables ne sont soumis aux impôts sur les successions que dans l'Etat contractant où le défunt avait son domicile au moment de son décès.

ARTICLE 33

1 Les dettes afférentes aux entreprises visées aux articles 29 et 30 sont imputables sur les biens affectés à ces entreprises. Si l'entreprise possède, selon le cas, un établissement stable ou une installation permanente dans les deux Etats contractants, les dettes sont imputables sur les biens affectés à l'établissement ou à l'installation dont elles dépendent.

2 Les dettes garanties soit par des immeubles ou des droits immobiliers, soit par des bateaux ou aéronefs visés à l'article 31, soit par des biens affectés à l'exercice d'une profession libérale dans les conditions prévues à l'article 30, soit par des biens affectés à une entreprise de la nature visée à l'article 29, sont imputables sur ces biens. Si la même dette est garantie à la fois par des biens situés dans les deux Etats, l'imputation se fait sur les biens situés dans chacun d'eux proportionnellement à la valeur taxable de ces biens.

Cette disposition n'est applicable aux dettes visées au paragraphe 1 que dans la mesure où ces dettes ne sont pas couvertes par l'imputation prévue à ce paragraphe.

3 Les dettes non visées aux paragraphes 1 et 2 sont imputées sur les biens auxquels sont applicables les dispositions de l'article 32.

4 Si l'imputation prévue aux trois paragraphes qui précèdent laisse subsister dans un Etat contractant un solde non couvert, ce solde est déduit des autres biens soumis à l'impôt des successions dans ce même Etat. S'il ne reste pas dans cet Etat d'autres biens soumis à l'impôt ou si la déduction laisse encore un solde non couvert, ce solde est imputé sur les biens soumis à l'impôt dans l'autre Etat contractant.

ARTICLE 34

Nonobstant les dispositions des articles 28 à 33, chaque Etat contractant conserve le droit de calculer l'impôt sur les biens héréditaires qui sont réservés à son imposition exclusive, d'après le taux moyen qui serait applicable s'il était tenu compte de l'ensemble des biens qui seraient imposables d'après sa législation interne.

CHAPITRE III

Droits d'enregistrement autres que les droits de succession. Droits de timbre.

ARTICLE 35

Lorsqu'un acte ou un jugement établi dans l'un des Etats contractants est présenté à l'enregistrement dans l'autre Etat contractant, les droits applicables dans ce dernier Etat sont déterminés suivant les règles prévues par sa législation interne, sauf imputation, le cas échéant, des droits d'enregistrement qui ont été perçus dans le premier Etat, sur les sommes ou valeurs donnant ouverture aux droits dans cet autre Etat.

Toutefois, les actes ou jugements portant mutation de propriété, d'usufruit d'immeubles ou de fonds de commerce, ceux portant mutation de jouissance d'immeubles et les actes ou jugements constatant une cession de droit à un bail ou au bénefice d'une promesse de bail portant sur tout partie d'un immeuble ne

peuvent être assujettis à un droit de mutation que dans celui des Etats contractants sur le territoire duquel ces immeubles ou ces fonds de commerce sont situés.

Les dispositions du premier alinéa du présent article ne sont pas applicables aux actes constitutifs de société ou modificatifs du pacte social. Ces actes ne donnent lieu à la perception du droit proportionnel d'apport que dans l'Etat où est situé le siège statutaire de la société. S'il s'agit de fusion ou d'opération assimilée, la perception est effectuée dans l'Etat où est situé le siège de la société absorbante ou nouvelle.

ARTICLE 36

Les actes ou effets créés dans l'un des Etats contractants ne sont pas soumis au timbre dans l'autre Etat contractant lorsqu'ils ont effectivement supporté cet impôt au tarif applicable dans le premier Etat, ou lorsqu'ils en sont légalement exonérés dans ledit Etat.

TITRE III

Assistance administrative

ARTICLE 37

1 Les autorités fiscales de chacun des Etats contractants transmettent aux autorités fiscales de l'autre Etat contractant les renseignements d'ordre fiscal qu'elles ont à leur disposition et qui sont utiles à ces dernières autorités pour assurer l'établissement et le recouvrement réguliers des impôts visés par la présente convention ainsi que l'application, en ce qui concerne ces impôts, des dispositions légales relatives à la répression de la fraude fiscale.

2 Les renseignements ainsi échangés qui conservent un caractère secret ne sont pas communiqués à des personnes autres que celles qui sont chargées de l'assiette et du recouvrement des impôts visés par la présente convention. Aucun renseignement n'est échangé qui révélerait un secret commercial, industriel ou professionnel. L'assistance peut ne pas être donnée lorsque l'Etat requis estime qu'elle est de nature à mettre en danger sa souveraineté ou sa sécurité ou à porter atteinte à ses intérêts généraux.

3 L'échange des renseignements a lieu soit d'office, soit sur demande visant des cas concrets. Les autorités compétentes des Etats contractants s'entendent pour déterminer la liste des informations qui sont fournies d'office.

ARTICLE 38

1 Les Etats contractants conviennent de se prêter mutuellement assistance et appui en vue de recouvrer, suivant les règles propres à leur législation ou réglementation respectives, les impôts visés par la présente convention ainsi que la majoration de droits, droits en sus, indemnités de retard, intérêts et frais afférents à ces impôts, lorsque ces sommes sont définitivement dues en application des lois ou règlements de l'Etat demandeur.

2 La demande formulée à cette fin doit être accompagnée des documents exigés par les lois ou règlements de l'Etat requérant pour établir que les sommes à recouvrer sont définitivement dues.

3 Au vu de ces documents, les significations et mesures de recouvrement et de perception ont lieu dans l'Etat requis conformément aux lois ou règlements applicables pour le recouvrement et la perception de ses propres impôts.

4 Les créances fiscales à recouvrer bénéficient des même sûretés et privilèges que

les créances fiscales de même nature dans l'Etat de recouvrement.

ARTICLE 39

En ce qui concerne les créances fiscales qui sont encore susceptibles de recours, les autorités fiscales de l'Etat créancier, pour la sauvegarde de ses droits, peuvent demander aux autorités fiscales compétentes de l'autre Etat contractant de prendre les mesures conservatoires que la législation ou la réglementation de celui-ci autorise.

ARTICLE 40

Les mesures d'assistance définies aux articles 38 et 39 s'appliquent également au recouvrement de tous impôts et taxes autres que ceux visés par la présente convention, ainsi que, d'une manière générale, aux créances de toute nature des Etats contractants.

TITRE IV

Dispositions diverses

ARTICLE 41

1 Tout contribuable qui prouve que les mesures prises par les autorités fiscales des Etats contractants ont entraîné pour lui une double imposition en ce qui concerne les impôts visés par la présente convention peut adresser une demande soit aux autorités compétentes de l'Etat sur le territoire duquel il a son domicile fiscal, soit à celles de l'autre Etat. Si le bien-fondé de cette demande est reconnu, les autorités compétentes des deux Etats s'entendent pour éviter de façon équitable la double imposition.

2 Les autorités compétentes des Etats contractants peuvent également s'entendre pour supprimer la double imposition dans les cas non réglés par la présente convention, ainsi que dans les cas où l'interprétation ou l'application de la présente convention donnerait lieu à des difficultés ou à des doutes.

3 S'il apparaît que, pour parvenir à une entente, des pourparlers soient opportuns, l'affaire est déférée à une commission mixte composée de représentants en nombre égal des Etats contractants, désignés par les ministres des finances. La présidence de la commission est exercée alternativement par un membre de chaque délégation.

ARTICLE 42

Les autorités compétentes des deux Etats contractants se concerteront pour déterminer, d'une commune entente et dans la mesure utile, les modalités d'application de la présente convention.

ARTICLE 43

1 La présente convention sera sujette à ratification ou approbation et entrera en vigueur dès que les instruments de ratification ou d'approbation des Etats signataires auront été échangés, étant entendu qu'elle produira ses effets pour la première fois:

En ce qui concerne les impôts sur les revenus, pour l'imposition des revenus afférents à l'année civile 1961 ou aux exercices clos au cours de cette année. Toutefois, pour ce qui est des revenus dont l'imposition est réglée par les articles 15 à 18, la convention s'appliquera aux distributions qui auront lieu postérieurement à l'entrée en vigueur de la convention;

En ce qui concerne les impôts sur les successions, pour les successions de per-

sonnes dont le décès se produira depuis et y compris le jour de l'entrée en vigueur de la convention;

En ce qui concerne les autres droits d'enregistrement et les droits de timbre, pour les actes et les jugements postérieurs à l'entrée en vigueur de la convention.

2 Les dispositions de la convention conclue les 30 avril et 8 juin 1959 entre le Gouvernement français et le Gouvernement malgache en vue d'éliminer les doubles impositions et d'établir des règles d'assistance mutuelle administrative pour l'imposition des revenus de capitaux mobiliers sont abrogées à compter de l'entrée en vigueur de la présente convention.

ARTICLE 44

La convention restera en vigueur pendant une durée indéfinie.

Toutefois, à partir du 1er janvier 1965, chacun des gouvernements contractants peut notifier à l'autre son intention de mettre fin à la présente convention, cette notification devant intervenir avant le 30 juin de chaque année. En ce cas, la convention cessera de s'appliquer à partir du 1er janvier de l'année suivant la date de la notification, étant entendu que les effets en seront limités:

En ce qui concerne l'imposition des revenus, aux revenus acquis ou mis en paiement dans l'année au cours de laquelle la notification sera intervenue;

En ce qui concerne l'imposition des successions, aux successions ouvertes au plus tard le 31 décembre de ladite année;

En ce qui concerne les autres droits d'enregistrement et les droits de timbre, aux actes et aux jugements intervenus au plus tard le 31 décembre de ladite année.

En foi de quoi les soussignés, dûment autorisés à cet effet, ont signé la présente convention, établie en deux exemplaires originaux.

Fait à Tananarive, le 29 septembre 1962.

Pour le Gouvernement de la République française:

MARCEL GEY

Pour le Gouvernement de la République malgache:

PAUL LONGUET

PROTOCOLE

Au moment de procéder à la signature de la convention entre le Gouvernement français et le Gouvernement malgache tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative en matière fiscale, les plénipotentiaires soussignés sont convenus de la déclaration suivante:

I. — L'expression «montant brut» figurant à l'article 26 de la convention doit s'entendre du montant des revenus imposables avant déduction de l'impôt auquel ils ont été soumis dans l'Etat de la source.

II. — Pour l'application de l'article 40 de la convention, sont considérées comme accord réalisé au sens de l'article 42 les dispositions de la convention du 2 juin 1960 relative aux relations entre le Trésor français et le Trésor malgache qui concernent le recouvrement des créances des Etats contractants.

MARCEL GEY
PAUL LONGUET

AMBASSADE DE FRANCE
A MADAGASCAR

Tananarive, le 14 mai 1965

A Son Excellence Monsieur le ministre des affaires étrangères de la République malgache.

Monsieur le ministre,

La convention fiscale entre la France et Madagascar signée à Tananarive le 29 septembre 1962 institue, comme vous le savez, dans ses articles 38 à 40 des mesures d'assistance réciproque en vue du recouvrement des impôts visés par la convention, ainsi que de tous autres impôts et taxes et, d'une manière générale, des créances de toute nature des Etats contractants.

En vue d'éviter que l'application de cette disposition entraîne, dans certains cas, des difficultés de procédure et afin de maintenir le climat de confiance qui règne entre les gouvernements de nos deux pays, j'ai l'honneur de proposer à Votre Excellence d'admettre que lorsqu'un contribuable fera l'objet dans un de nos deux Etats de poursuites en application des dispositions des articles 38 à 40 susvisés en vue du recouvrement d'impositions ou de créances dues dans l'autre Etat, il pourra demander aux autorités compétentes du premier Etat de suspendre ces poursuites s'il est en mesure de faire valoir des titres de propriété concernant des biens situés dans l'Etat où ont été établies les impositions ou une créance sur une collectivité publique ou para-publique dudit Etat.

Si cette demande, qui devra être appuyée des justifications nécessaires, apparaît fondée, il sera sursis à l'application des dispositions de l'article 38. Les autorités compétentes de l'Etat requérant seront averties de cette décision et la demande sera soumise — dans un délai de trois mois — à l'examen de la commission mixte visée à l'article 41. Cette commission décidera si, et dans quelle mesure, le recouvrement forcé devra être poursuivi.

D'une manière plus générale, les contestations en matière de recouvrement seront considérées comme des difficultés d'application au sens de l'article 41 de la convention.

Je vous serais très obligé de vouloir bien me faire savoir si cette proposition rencontre l'agrément de votre gouvernement.

Veuillez agréer, Monsieur le ministre, les assurances de ma très haute considération.

L'ambassadeur de France,
MARCEL GEY

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES

Tananarive, le 14 mai 1965

A Son Excellence Monsieur Marcel Gey, ambassadeur de France à Madagascar.

Monsieur l'ambassadeur,

Par lettre en date de ce jour, vous avez bien voulu me faire savoir ce qui suit:

. . . . . .

J'ai l'honneur de vous faire part de l'accord de mon gouvernement sur la proposition qui précède.

Veuillez agréer, Monsieur l'ambassadeur, les assurances de ma haute considération.

CALVIN TSIEBO.

ENGLISH SUMMARY OF THE MOST IMPORTANT ARTICLES

TITLE I

Article 1 Persons are defined to include all natural and legal persons and associations of natural persons not having legal personality.

France is defined to include metropolitan France and the overseas departments of Guadaloupe, Guiana, Martinique and Réunion.

Madagascar is defined to include the territories of the Malagasy Republic.

Article 2 The fiscal domicile of natural persons is determined by the place of permanent habitation (meaning the center of vital interests) or, if there is no place of permanent habitation, by rules set out in Article 2 (1).

The fiscal domicile of legal persons is the place of their statutory legal seat; that of associations of persons not having legal personality is the place of effective management.

Article 3 The definition of "permanent establishment" is substantially equivalent to that of Article 4 OECD draft. However, the receipt of insurance premiums or the insurance of risks on the territory of a contracting state constitutes a permanent establishment therein. (Art. 3 (d)).

Also constituting a permanent establishment is a construction project, even if for a duration of less than one year. (Art. 3(a) (gg)). Moreover, a fixed place of business solely for the purpose of collecting information is not specifically included in the exclusionary language of Article 3(b) (dd). Finally, a dependent agent may constitute a permanent establishment even if he does not have the authority to conclude contracts in the name of his principal.

Article 4 Immovable property includes private law and usufruct rights pertaining thereto, excepting loans guaranteed by a mortgage on immovable property.

For treaty purposes, property is immovable property if and only if the property is deemed immovable property by the law of the contracting state in which it is located.

Article 5 Non-discrimination is treated in a manner substantially equivalent to that of Article 24 OECD draft.

Article 6 Competent authorities are defined for France and Madagascar respectively as the Minister of Finance and Economic Affairs and the Minister of Finance, and their authorized representatives.

Article 7 Terms which the treaty does not define are defined in a manner substantially equivalent to that of Article 3(2) OECD draft.

TITLE II

CHAPTER I

Article 8 Article 8(1), dealing with the scope of taxes covered by the treaty, is substantially equivalent to Article 2(1), (2) OECD draft, except insofar as reference is made in the latter to taxes on capital, i.e., net worth taxes, which exist in neither of the treaty countries.

Article 8(2) states the purposes of Articles 8-26, i.e., to eliminate double taxation.

Article 8(3) lists the actual taxes to which this chapter applies:
in the case of France
a L'impôt sur le revenu des personnes physiques;
b La taxe complémentaire;
c L'impôt sur les bénéfices des sociétés et autres personnes morales;
in the case of Madagascar
a L'impôt cédulaire sur les bénéfices divers;
b L'impôt sur le revenu des capitaux mobiliers;
c L'impôt général sur le revenu.

Article 8(4) Future taxes analogous to taxes covered by the treaty are to be treated in a manner substantially identical to that of Article 2(4) OECD draft.

Article 8(5) In the event that fiscal legislation of one of the contracting states substantially affects the nature or character of the above stated taxes, the competent authorities will undertake to determine necessary adjustments to be incorporated in the present treaty.

Article 9 Income from immovable property is treated in a manner substantially equivalent to that of Article 6(1) OECD draft.

Article 10 Article 10(1), (2), (3) Business income is treated in a manner substantially equivalent to that of Article 8(1), (2), (3) OECD draft.

Article 10(4) When it is otherwise impossible to allocate the income of an enterprise, such an allocation may be hand on the basis of the world-wide turnover relative to that effected in the respective contracting states.

Article 11 Associated enterprises are treated in a manner substantiallly equivalent to that of Article 9 OECD draft.

Article 12 Profits from the operation of ships or aircraft in international traffic are taxable only in the contracting state in which the fiscal domicile of the enterprise is located.

Article 13 Except as otherwise provided by Articles 15-17, dividends interest and similar payments by a corporation or other public or private association of persons are taxable in the state in which the payor has its fiscal domicile.

Article 14-17 Contain special and elaborate rules designed to avoid evasion of tax between related enterprises and to avoid double taxation where a dividend tax or other similar tax (e.g. French quotité imposable) to which article 13 applies is imposed.

Article 18 Directors' fees and similar payments are taxable in the contracting state in which the enterprise's fiscal domicile is located except as otherwise directed by Articles 22 and 23 (insofar as they concern payments received in a capacity other than that contemplated by the present article.)

If the enterprise of one contracting state has one or more permanent establishments in the other contracting state, the director's fees are to be taxed in the manner specified by Articles 15-17.

Article 19 Interest and similar payments are taxable in the state in which the fiscal domicile of the lender is located, each contracting state nevertheless reserving the right to subject such payments to withholding tax at source if its national law so provides.

If a domiciliary of one contracting state has one or more permanent establishments in

the other contracting state then interest income relating thereto is to be taxed in the manner specified by Article 10.

Article 20 Mining royalties and similar payments are taxable only in the contracting state in which the mines, etc. are located.

Copyright, patent, trademark, know-how and similar royalties, film rentals, and rentals of commercial, industrial or scientific equipment (to the extent they do not exceed the intrinsic value of the rights to which they relate) are taxable only in the contracting state in which the person receiving the royalties has his fiscal domicile.

However, all royalties attributable to a permanent establishment or fixed place of business for the practice of a liberal profession or other independent activity are taxable in the contracting state in which the permanent establishment or fixed place of business is located.

Article 21 Pensions and annuities may be taxed only in the contracting state in which fiscal domicile of the beneficiary is located.

Article 22 Except where otherwise provided in other articles of the present treaty salaries, wages and other employment income is treated in a manner substantially equivalent to that of Article 15 OECD draft.

Article 23 Income from the exercise of a liberal profession or similar independent activities is treated in a manner substantially equivalent to that of Article 14 OECD draft.

Article 24 Payments to a student or apprentice solely for the purpose of his education or training are treated in a manner substantially equivalent to that of Article 20 OECD draft.

Article 25 Income other than that specified in the treaty (unless attributable to a permanent establishment in the other contracting state) is taxable only in the contracting state in which the fiscal domicile of the recipient is located.

Article 26 Double taxation is to be eliminated in the following manner:

Neither contracting state may impose tax on income which is taxable exclusively in the other contracting state, each state reserving the right to include such income in the computation of tax rates according to national law, thus preserving progressive rate structures.

On income referred to in Articles 13, 15, 18 and 19, received by a French domiciliary and having its source in Madagascar, Madagascar may impose only the tax on income from movable capital. In the reciprocal situation France may impose only the withholding tax on income from movable capital.

Interest and income from movable capital to which Articles 13, 15, 18 and 19 apply, received by a French domiciliary and having its source in Madagascar, must be included in its gross amount in the tax base of the French taxes included in Article 8(3) except where the following dispositions otherwise provide:

The usual French withholding tax on income from foreign movable property will not be levied on Madagascar source income to which Articles 13, 15 and 18 apply and on which the Madagascar tax on movable capital has been levied. Nevertheless, a credit against French tax imposed on such income shall be granted as if the usual withholding tax had been imposed.

Madagascar source interest to which Article 19 applies and on which the Madagascar

tax on movable capital has been levied, is taxable in France. However, a credit of 12 percent of such income must be allowed against the tax imposed.

Interest and income from movable capital to which Articles 13, 15, 18 and 19 apply, received by a domiciliary of Madagascar and having its source in France, may be subjected by Madagascar only to the general income tax.

CHAPTER II

Articles 27-34 include provisions concerning succession duties and similar taxes.

CHAPTER III

Articles 35-36 include provisions concerning registration fees and stamp duties.

TITLE III

Article 37 The provision dealing with the exchange of information is substantially equivalent to that of Article 26 OECD draft.

Articles 38-40 provide for mutual assistance in the collection process.

TITLE IV

Articles 41-42 dealing with a mutual agreement procedure are substantially equivalent to Article 25 OECD draft.

Articles 43-44 concern respectively the entry into force and termination of the treaty.

IV

BIBLIOGRAPHY

1. BOOKS

AUSTRIA

VERGÜTUNGSGRUPPENVERZEICHNIS FÜR DIE UMSATZSTEUERAUSFUHRVERGÜTUNG, by *Waba,* J. Wien. Wirtschaftsverlag Dr. Anton Orac, 1965. Looseleaf edition. S. 187.—.

This catalogue lists the various Austrian customs tariff schedules and refund rates for exporters. The catalogue includes a survey on those provisions of the turnover tax law dealing with export refunds.

BUNDESABGABENORDNUNG, Manzsche Gesetzausgaben, Sonderausgaben Nr. 1, Wien. Manzsche Verlags- und Universitätsbuchhandlung, 1962. pp. 224. S. 88.—.

Text of the Fiscal Code of June 28, 1961, and the report of the Financial Committee and the official explanation to the bill, with references to the former Code provisions.

KOMMENTAR ZUM ERBSCHAFTS- UND SCHENKUNGSSTEUERGESETZ, Manzsche Handkommentare zum oesterreichischen Recht, Band 10, by *Dorazil, W.* Wien. Manzsche Verlags- und Universitätsbuchhandlung, 1961, pp. 216. S. 114.—.

Guide to the Inheritance tax and the Inheritance equalization tax law, explaining the provisions of the acts and the case law.

DAS GEWERBESTEUERGESETZ, Manzsche's Grosze Gesetzausgabe Band 41, by *Jiresch, R.* and *J. Zapletal,* 1964, fourth edition. pp. 346. S 118.—. Wien, Manzsche Verlags- und Universitätsbuchhandlung.

A much needed analysis of and commentary to the Business Tax Act, its regulations and case law. Since the business tax is a municipal levy, since it is levied on a base that includes both profits and networth and since it is a real rather than a personal tax the following relevant subjects are included within the scope of the book: the relevant relationships between state and municipality, between business tax and income and networth tax, and between tax paying subject and taxed object. This useful commentary is structured on a section by section analysis of the law.

TEXTAUSGABE ÖSTERREICHISCHER GESETZE UND VERORDNUNGEN, ABGABENGESETZE,

Band I (2) : Bewertungsgesetz (pp. 79; S. 40.—.)
Band II (2) m: Beförderungssteuergesetz (pp. 110; S. 60.—.)
Band II (3a): Körperschaftsteuergesetz (pp. 18: S. 30.—.)
Band II (6) : Grundsteuerrecht (pp. 40; S. 30.—)
Band III : Gebührengesetz (pp. 39; S. 30). Eisenstadt, Prugg Verlag.

Up to date text of acts, decrees and regulations (with reference to court decisions) in the field of valuation, transportation tax, corporate income tax, real estate tax and stamp duties.

AUSTRALIA

MANUAL OF THE LAW OF INCOME TAX IN AUSTRALIA, by *Ryan, K.W.* Brisbane, 30 Adelaide Street, The Law Book Company Ltd, 1965. pp. 251.

This book is designed to provide an introductory survey of the Australian income tax legislation and of the extensive body of case law which has been built up around that legislation. It is intended to be of use both for those who have made no formal study of income tax law, and for those whose study of it has been confined to the text of the relevant Acts. The law is stated as at the end of 1964. Accordingly the text includes an analysis of the important amendments enacted late in the year.

COMMON MARKET

VERMÖGENSSTEUERN UND GEWERBEABGABEN IN DEN MITGLIEDSTAATEN DER EWG, Schriftenreihe des Instituts „Finanzen und Steuern", Heft 82, Bonn. Institut „Finanzen und Steuern", 1965. pp. 64.

A comparison of net worth, net wealth and business taxes (including business tax on profits) levied in each of the Common Market countries. It is intended that this study serve both tax harmonization within the Common Market and tax reforms in the separate countties.

FRANCE

L'ASSIETTE RÉELLE DE LA TAXE SUR LA VALEUR AJOUTÉE, by *Muller A.* Librairie Dalloz, 11 Rue Soufflot (Ve), Paris, 1965. Frs. 42. pp. 322.

This commentary on the Tax on Value Added, pays special attention to allowable deductions, case law and examples illuminating the discussion. The book is useful to both businessmen and economists and sheds substantial light on the subject of turnover tax reform in France and problems in the European Common Market.

GERMANY

INSOLVENZEN UND STEUERN, Konkurs, Vergleich, Sanierung im Steuerrecht, by *Geist, G.* Herne/Berlin, Verlag Neue Wirtschaftsbriefe, 1965. pp. 147. DM 14,80.

This brochure analyzes the relationship between taxation provisions and civil law provisions in the field of bankrupty, settlement, priorities, corporate reorganization, etc.

FUNDSTELLENREGISTER ZUR UMSATZSTEUER 1957-1962; Minden (Westfalen), Blumenstrasse 14, Postfach 770, Wiadok, pp. 296.

This bibliographical tool guides the user to articles, rulings, court decisions, etc. in the field of turnover taxation. Easy to use and well indexed, it provides alternative avenues to the information sought: subject matter index with key "catchwords" and chronological cross-reference.

VERWALTUNGSVORSCHRIFTEN UND STEUERPROZESS, by *Kampe, G.* Stuttgart. Fachverlag für Wirtschafts- und Steuerrecht, Schäfer & Co., GmbH. 1965, pp. 234 DM 25.—.

A study of the nature of administrative provisions (rulings, regulations, etc.) and the protection afforded the taxpayer against abusive administrative practice. Attention is paid to the historical development of administration, to the case law and to theoretical principles of administrative tax law.

DER RÄUMLICHE ANWENDUNGSBEREICH DER VERWALTUNGSRECHTSNORM, by *Vogel, K.* Abhandlungen der Forschungsstelle für Völkerrecht und ausländisches öffentliches Recht der Universität Hamburg, Band 12. Frankfurt/Berlin. Alfred Metzner Verlag, 1965. pp. 480.

A thorough study of the principles of international administrative and tax law with emphasis on the proper limits of administrative authority. First dealt with is the decline of the concept of territoriality. Next the extra-territorial theories are examined and finally the so-called "field theory" based on present German law.

MOBILIARKREDIT IM STEUERRECHT, by *Bülow, B. von.* Spezialfragen im Steuerrecht, Stuttgart. Fachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co., GmbH. 1965. pp. 106.

A study of several aspects of beneficial ownership; retention of title and distraint in various German tax laws.

DIE FEHLERHAFTE HAUSHALTSSATZUNG, by *Pagenkopf H.* Schriftenreihe des Instituts „Finanzen und Steuern", Heft 79, Bonn. Institut „Finanzen und Steuern", 1965. pp. 55.

A study exploring the limits of the authority of municipalities to impose tax according to present public law and, in addition, a guide for taxpayers concerning remedies in the case of the municipalities' exceeding their authority.

TREUHAND UND TREUHÄNDER IM STEUERRECHT; Steuerliche Treuhand, Treuhänderschaft und Organschaft, by *Kirsten, W.* Herne/Berlin, Verlag Neue Wirtschaftsbriefe. 1965. pp. 142 DM. 14,40.

A comprehensive study of the position of trusts and trustees in German tax law. Since there is little literature available on this subject, this booklet will serve as a valuable guide to any person who deals with trusts or trustees in Germany.

TESTAMENT UND ERBE, Praktische Fragen des Erbrechts und der Erbschaftsteuer by *Schäfer, A., G. Schmidt-Weyland,* Bonn. Titz Verlag, 1965. 10th edition pp. 107.

Guide to civil and tax law in the field of inheritance. Attention is paid to its practical application.

DIE AUFNAHME VON KINDERN IN DAS FAMILIEUNTERNEHMEN, by *Böttcher, C.* and *J. Beinert*; Steuerrecht im Rechtsstaat, Heft 3, München/Berlin. C.H. Beck'sche Verlagsbuchhandlung, 1965. pp. 111. DM 13.80.

Study of the tax consequences of a child's occupying a legal position in a family enterprise. The discussion deals interalia with the child's position as an employee, as a lender of money (creditor), as a limited of general partner, as an associate and as a shareholder in a limited company (GmbH).

LIQUIDATION UND STEUERLICHE PFLICHTEN; by *Liftin, P.* Spezialfragen im Steuerrecht, Stuttgart. Fachverlag für Wirtschafts- und Steuerrecht, Schäfer & Co. GmbH., 1964. pp. 89.

Study of the administrative duties imposed by various tax laws on persons involved in the liquidation of business enterprises.

ITALY

LA PRATICA DELLE DOCUMENTAZIONI FISCALI NELLE SOCIETÀ AZIONARIE CON PARTICIPAZIONI STATUNITENSI AL CAPITALE; La documentazione fiscale del "Tax credit" da produrre in U.S.A. per il ricupero delle imposte pagate in Italia sugli utile assegnati ai soci statunitensi, by *Dr. Walther Alvisi.*

Published by Edizioni del Centro Italiano per lo Studio del Diritto Tributario Comparato, Milano, October 1965. 126 pp.

Treatise on the taxation of U.S. corporate shareholders of an Italian corporation and the formalities necessary for the application of the tax treaty provisions with respect to the reduction of the Italian withholding tax. The first part of this book discusses the American tax credit; the second part considers the Italian taxation of dividends paid by an Italian corporation to U.S. shareholders, according to the tax treaty provisions; and the third part mentions the formalities to be compiled with in the U.S. to enjoy the tax credit.

The articles of the U.S. Revenue Code on tax credit, the articles in the Italian Testo Unico on unilateral measures to avoid double taxation, the tax treaty Italy-U.S.A. and the Italian Ruling on taxation of dividends paid to U.S. shareholders are reproduced in an appendix.

LUXEMBOURG

CODE FISCAL LUXEMBOURGEOIS, les volumes 5 et 5a; Impôts indirects de l'état perçus par l'administration de l'enregistrement, by *Sinner, J.* Luxembourg. Editions Armand Peiffer, 1965. Loose-leaf edition.

By the publication of the fifth volume (in two parts due to its size), the series' fiscal code of Luxembourg, is rendered completed. This unique handbook on Luxembourg taxation reproduces the text of the respective tax acts, the decrees and the regulations thereto. In addition it contains alphabetical indices on the subjects dealt with and systematical indices on the outline of the law under discussion. Volume 5 contains the taxes on the transfer of goods i.e. the registration duties, the estate duties, the stamp duties, the duties on mortgage contracts and the taxation on holding companies. Volume 5a surveys the turnover tax; turnover tax on imports; tax refunds on export; tax on transportation; and tax on insurance contracts.

NETHERLANDS

MODELLEN VOOR DE RECHTSPRAKTIJK, by *Melis, Slagter, Van Rossum du Chattel, Van Soest, Scholten, Luyten.* Deventer, N.V. Uitgeversmij. Kluwer, 1960. Loose-leaf in two volumes.

Standard forms of applications, deeds, summons contracts and other important documents in the field of civil law, procedure, commercial law and tax law. These two loose-leaf volumes are essential for persons engaged in the practice of Dutch law.

NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1964-65, by *Staples, C.A.* Wellington, 54 The Terrace, Sweet & Maxwell (N.Z.) Ltd. 1965. pp. 489.

This is a comprehensive guide to New Zealand income tax law, organized by key-words that are sufficiently obvious to enable even a relative

novice to find his way. Those readers who may have difficulty with the organization can adequately find their way by means of the comprehensive index.

SOUTH AFRICA

A GUIDE TO BUSINESS EXPANSION IN SOUTH AFRICA. London, the Standard Bank Ltd, 1965. pp. 62. Loose-leaf.

The editors have prepared this handbook in the hope that its information will be of assistance to those wishing to extend their business activities to the Republic of South Africa. Although all the various aspects of doing business within the Republic could not be exhaustively treated, the subject matter relating to the formation of companies, taxation, license fees, and duties has been covered in some detail.

SWITZERLAND

DER GENUSSSCHEIN UND SEINE BESTEUERUNG — DIE ABGABEPFLICHT NACH SCHWEIZERISCHEN WEHRSTEUERRECHT. *Dr Michel Louis Catalan.* Verlag Paul Haupt, Bern. 1964. 268 pp.

A scientific and practical study of the legal and tax problems relating to "jouissance" rights and an illustration of how "jouissance" rights can be used for financing and reorganizing an enterprise. An extensive bibliography is included.

U.S.A.

LA PRATICA DELLE DOCUMENTAZIONI FISCALI NELLE SOCIETÀ AZIONARIE CON PARTICIPAZIONI STATUNITENSI AL CAPITALE, by *Dr. Walther Alvisi.* For review, see under Italy, page 481.

2. LOOSE-LEAF SERVICES

Releases received between August 1st 1965 and September 15, 1965

BELGIUM

Handleiding der Inkomstenbelastingen;
release no 9: Excelsior – Brussels.

Documentatie Vandewinckele;
releases nos 261-262: Vandewinckele – Brugge.

Guide Fiscal Permanent;
releases nos 264-265: Ed. Vioburo – Bruxelles.

CANADA

Canada Tax Service Releases:
release no 180: R. de Boo – Toronto.

FRANCE

Bulletin de Documentation Pratique des Impôts Directs et des Droits d'Enregistrement;
release no 7: Lefebvre – Paris.

Dictionnaire Fiscal Permanent Feuillets;
release no 66: Ed Législatives et Administratives – Paris.

Fiscalité de l'Afrique Noire;
releases nos 18-20: Ed. S.O.M. – Paris.

Impôts et Sociétés;
release no juin 1965: Seteca – Paris.

GERMANY

Handbuch Einfuhrnebenabgaben;
release no 6: Linnepe – Hagen.

Kommentar Gewerbesteuergesetz;
release no 16: O. Schmidt – Köln/Mariënburg.

NETHERLANDS

Belastingwetgevingserie;
Bieraccijns, release no 1: Noorduyn & Zn. – Gorinchem.

Belastingbeschouwingen;
release no 13: Samsom – Alphen a/d Rijn.

Fed losbladig fiscaal weekblad;
releases nos 1004-1010: FED-Amsterdam.

Fed's losbladige fiscale wetten;
releases no 927: FED – Amsterdam.

Fed's fiscaal register;
release no 3: FED – Amsterdam.

Fed's fiscaal repertorium;
releases nos 3-4: FED – Amsterdam.

De Gemeentelijke Belastingen;
releases nos 62-64: Vuga Boekerij – Arnhem.

Handboek voor de EEG: Verdragsteksten en aanverwante stukken;
release no 14: Kluwer – Deventer.

Handboek voor de EEG: Tarieflijsten voor de EEG;
releases nos 39-41: Kluwer/Deventer – Samsom/Alphen a/d Rijn.

Handboek In- en Uitvoer: Belastingheffing bij invoer
releases nos 51-52: Kluwer – Deventer.

Kluwer's Tarievenboek;
release no 46: Kluwer – Deventer.

Teruggaaf van Omzetbelasting bij Uitvoer;
releases nos 160-161: Samsom – Alphen a/d Rijn.

Vademecum voor In- en Uitvoer;
releases nos 314-316: Kluwer – Deventer/Samsom – Alphen a/d Rijn.

De Vakstudie – Inkomstenbelasting;
release no 80 Kluwer – Deventer.

De Vakstudie – Motorrijtuigen Belastingwet;
release no 19: Kluwer – Deventer.

De Vakstudie – Omzetbelasting;
releases nos 44-45: Kluwer – Deventer.

De Vakstudie – Wet op de Inkomstenbelasting;
release no 7: Kluwer – Deventer.

De Vakstudie – Wet op de Loonbelasting;
releases nos 4-6: Kluwer – Deventer.

TURKEY

Türk Argüs Ajansi;
releases nos 3432-3469: La Législation Turque – Istanbul.

U.S.A.

Federal Taxes Report Bulletin;
releases nos 29-34: Prentice Hall – Englewood Cliffs.

Federal Taxes Report Bulletin Treaties;
releases nos 7-8: Prentice Hall – Englewood Cliffs.

Federal Tax Guide Reports;
releases nos 42-49: Commerce Clearing House – New York.

CUMULATIVE INDEX 1965

No. 1–10

Dr. Carl Ganser †

A few days before the beginning of this year's international tax congress, on September 4, 1965, Dr. Carl Ganser, member of the Board of Trustees of the International Bureau of Fiscal Documentation, died suddenly.

Carl Ganser was born on September 27, 1900. After his graduation from law school he started his activities in German industry: in succession he was employed by the Employer's Association Remscheid, as office manager of the Industrial Association Düsseldorf, manager of the legal and tax department of various organisations in the steel industry and, since 1951, as general tax manager of the Federation of German Industries.

His knowledge and experience as one of Germany's leading practical tax experts were not confined to his professional activities. Ganser was the secretary general of the German Association of International Tax Law (the German Branch of the International Fiscal Association). As such, he was a member of the Council of I.F.A., in which capacity he made many valuable contributions to the association's work.

Similarly, as one of the Bureau's trustees, Ganser contributed greatly to the Bureau's expansion from an organisational, financial and academic point of view. His numerous contacts with colleagues in other countries led him to believe that Bureau activities and publications were deserving of a larger and broader financial basis, to which end he most generously dedicated himself in his own country and elsewhere.

The Board of Trustees, the Director and Staff of the Bureau are grateful for Ganser's active part in the Bureau's development.

J. VAN HOORN JR.

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I

CANADIAN TAXATION OF BRANCHES AND SUBSIDIARIES OF FOREIGN ENTERPRISES

by

EDWIN C. HARRIS*

The subject of "Taxation in Canada" has been treated in a general way in an article appearing in XVIII *Bulletin* 89 (March 1964). It is not proposed here to duplicate that article, which included a summary of taxes at the federal, provincial, and municipal levels. Rather, this article is intended to concentrate on some tax implications and the applicability of incentive legislation where a foreign enterprise does business in Canada through a branch or subsidiary. It will not deal with the Canadian tax position of foreign personnel.

Liability for Tax in Canada

There are three possible bases for imposing Canadian income tax on a foreign business enterprise—(1) residence in Canada; (2) carrying on business in Canada; (3) receiving property income from Canadian sources. The extent of each of these bases of tax jurisdiction must be considered from the point of view of (a) the Anglo-Canadian case law interpreting such terms as "resident" and "carrying on business"; (b) the specific provisions of the Canadian Income Tax Act; (c) the provisions of any applicable tax convention or treaty to which Canada is a party. These three sources of law have been listed in ascending order of authority—*i.e.*, the Income Tax Act overrides the case law, and an applicable tax treaty overrides both the case law and the Income Tax Act. Very often elements of all three apply to the same situation.

Under the case law, a corporation is resident in Canada, regardless of where it is incorporated, if and only if its central management and control are to be found in Canada. This is considered to be a question of where the directors and top management meet and perform their functions. A corporation may be found to be a Canadian resident even though it carries on no business in Canada. In recent years, this case-law definition of corporate residence has been drastically expanded by amendments to the Income Tax Act. The present rule is that, even if a corporation would not be resident in Canada under the case law, it will be deemed to be resident in Canada for purposes of the Income Tax Act if (1) it has been incorporated in Canada after April 26, 1965 or (2) it was incorporated in Canada before April 27, 1965 and in any taxation year ending after April 26, 1965 it was resident or carried on business in Canada.

Thus, Canadian-incorporated subsidiaries of foreign enterprises will be resident in Canada if incorporated after April 26, 1965 or if they carry on business in Canada in any taxation year ending after that date—even though their central management and control

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may be elsewhere. The chief consequence of finding that a corporation is resident in Canada is that it is subject to Canadian income tax on its income from all sources for each taxation year in which it is resident at any time in the year. However, if the resident corporation receives dividends from a nonresident corporation of which it owns more than 25% of the issued voting shares, these dividends are exempt from Canadian income tax. Furthermore, any foreign tax paid on nonexempt income from foreign sources, up to a maximum of the amount of Canadian tax applicable to the foreignsource income, may be credited against the Canadian income tax otherwise payable.

Notwithstanding the residence provisions of Canadian income-tax law, an enterprise of another state with which Canada has a tax treaty will not be subject to Canadian tax with respect to its industrial and commercial profits except to the extent that these profits can be allocated to a permanent establishment of that enterprise in Canada. Thus these treaties, where they apply, serve to limit the extent to which Canada may tax corporations that are deemed to be resident in Canada. This limitation might apply to a branch of a foreign enterprise but would not normally affect a Canadian subsidiary, which would be deemed to be a Canadian enterprise under the tax treaties.

If a corporation is not resident in Canada, it may still be carrying on business in Canada. If business contracts are concluded in Canada or substantial profit-making activity occurs in Canada, the foreign corporation may be found, under the case law, to be doing business in Canada. The Income Tax Act has expanded considerably this basis of tax jurisdiction, by providing that a nonresident corporation is deemed to have carried on business in Canada in any year in which it produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved, or constructed anything in Canada or solicited orders or offered anything for sale in Canada through an agent or servant—regardless of where title to the goods passed.

Thus, a foreign enterprise operating a branch in Canada will almost certainly be deemed to be carrying on business in Canada. While a *resident* corporation is subject to Canadian tax on its income from all sources, both inside and outside of Canada, a *nonresident* corporation that carries on business in Canada at any time in a taxation year is subject to Canadian tax on its *business* income only to the extent that this income was earned in Canada. This income is subject to normal rates of corporate tax; in addition, the Canadian branch of a nonresident corporation is taxed by a further 15% on the amount by which its net business income earned in Canada for any taxation year, after deducting federal and provincial income taxes, exceeds the net increase in its capital investment in Canada, as defined in the Income Tax Regulations. Certain nonresident corporations, such as banks, insurance corporations, transportation and communication corporations, and iron-ore mining corporations, are exempt from this additional 15% tax. This tax is designed to equate the position of the Canadian branch of a foreign enterprise and that of the Canadian subsidiary, which must pay both corporate tax on its income and withholding tax—as will be referred to presently—on distributions of its income to the foreign parent in the form of dividends, interest, royalties, etc.

Here again, the provisions of Canadian income-tax law relating to branches of foreign enterprises doing business in Canada are subject to any applicable tax treaty, which will require that there be a permanent establishment of the foreign enterprise in Canada

before its industrial and commercial profits will be subject to Canadian taxation.

Finally, a nonresident corporation will be subject to a flat-rate Canadian tax, withheld at source, on various kinds of income—mostly income from property—paid or credited to it by a person resident in Canada. This is an entirely separate tax, and the income subject to it will not affect the tax, if any, payable by the nonresident corporation on its business profits earned in Canada. A Canadian resident must withhold 15% tax from amounts he pays or credits to a nonresident for interest (with certain limited exceptions), estate or trust income, rents and royalties (there is an option for the nonresident to treat rents and timber royalties from Canadian sources in very much the same way as business income), certain patronage dividends, and certain management fees. The withholding tax on management fees is designed to prevent avoidance of the withholding tax on dividends or interest to a foreign parent through labeling the payments as management or administration fees or charges. The withholding tax will not apply if the management fee is reasonable in amount and is paid in an arm's length transaction to a firm of professional management consultants or is made as a specific reimbursement of expenses incurred by a nonresident person (such as a foreign parent corporation) for services that were of benefit to the payer (the Canadian subsidiary).

The rules respecting the withholding of tax from dividends paid to nonresidents have become very complex as a result of recent legislation designed to encourage a greater degree of Canadian participation in the equity shares of corporations that are resident in Canada. Accordingly a distinction is made between Canadian resident corporations that do and those that do not have "a degree of Canadian ownership". If a Canadian resident corporation qualifies as having a degree of Canadian ownership, any dividends that it pays to a nonresident shareholder (such as a foreign parent corporation) are subject to a Canadian withholding tax of only 10%; otherwise the withholding tax is 15%. A refund of the extra 5% withheld (with respect to dividends paid or credited after June 13, 1963 and before January 1, 1967) may be claimed by the nonresident shareholder of a Canadian resident corporation that does not now have a degree of Canadian ownership but that qualifies by its first taxation year commencing after 1966.

To simplify the complex and very technical definition in the Income Tax Act, a resident Canadian corporation has a degree of Canadian ownership if throughout any 60-day period included in the period commencing 60 days before the beginning of the taxation year in question and ending 60 days after the beginning of that year,

1 *(a)* at least 25% of the issued fully voting shares and at least 25% of the paid-up capital represented by issued equity shares were beneficially owned by individuals resident in Canada or corporations controlled in Canada; or
(b) at least 50% of the paid-up capital represented by issued equity shares was listed on a Canadian stock exchange, and no single nonresident shareholder, either alone or together with other related persons, owned more than 75% of either the issued fully voting shares or the paid-up capital represented by issued equity shares; and
2 at least 25% of the directors of the corporation were resident in Canada.

The term "equity share" is defined at length and refers, in essence, to a share representing

a residual interest in the surplus of the corporation after the claims of nonparticipating preferred shareholders have been satisfied.

Efforts have been made to bring tax treaties to which Canada is a party into line with the provisions of the Income Tax Act that impose a withholding tax on property income paid to nonresidents.

Tax and Related Incentives

The Income Tax Act and Regulations and related legislation contain several provisions recently enacted to encourage capital investment in Canada in general and, in particular, capital investment and the formation of new manufacturing and processing businesses in areas of Canada suffering from unemployment or slow economic growth —referred to as "designated areas".

New machinery and equipment acquired by a corporation for use anywhere in Canada between June 13, 1965 and January 1, 1967 is eligible for accelerated depreciation for tax purposes at a straight-line rate of up to 50% per annum if (a) the corporation has a degree of Canadian ownership, as previously explained; and (b) at least 2/3 of its net sales is from the sale of goods manufactured or processed in Canada, but not including the natural-resource or construction industries. If the corporation does not have a degree of Canadian ownership, its new machinery and equipment would be eligible only for normal depreciation at 20% per year on a diminishing-balance basis, unless acquired, as will be explained presently, for a new manufacturing or processing business in a designated area.

With respect to investment in certain assets and the operation of manufacturing and processing businesses in designated areas, there is no discrimination between corporations having and not having a degree of Canadian ownership. Foreign corporations and wholly owned Canadian subsidiaries of foreign corporations are eligible on the same basis as other corporations, though it is usually necessary to form a new corporation to take advantage of the "tax-holiday" provisions about to be referred to.

A new manufacturing or processing business in a designated area may qualify for exemption from income tax on its income earned during the 36-month period after it commences manufacturing or processing in reasonable commercial quantities, if this event occurs after December 4, 1963 and before April 1, 1967. The government has indicated that the expiry date of this incentive will not be extended and that after that date sole reliance will be placed on the development grants to be referred to presently. The program is administered by the federal Department of Industry, which must certify that the business is eligible for the tax holiday. Among a number of technical requirements, 95% of the net sales of the business must be from the sale of goods manufactured or processed by it in Canada; the mere packaging of goods will not qualify, nor will the naturalresource or construction industries; 95% in value of the buildings, machinery, and equipment (other than delivery equipment) owned or leased by the business must be situated in a designated area, and 95% in value of all machinery and equipment (but not buildings) acquired for the business must be new; if a business receives a development grant, it ceases to qualify for the tax holiday. The designated areas have been determined under the Department of Industry Act, having regard to such factors as

high unemployment and low average income levels. While most provinces have agreed to abate their own corporation tax pro rata where a corporation qualifies for the federal tax holiday, Ontario and Quebec have not, so that in these provinces the provincial corporate income tax will continue to be payable even though the corporation is exempt from federal income tax.

Accelerated depreciation is also available on certain depreciable assets acquired for use in a designated area. Since the taxpayer has a choice when to commence claiming depreciation, if the business claims and qualifies for the tax holiday it would normally not claim any depreciation until after the tax holiday has ended, when accelerated depreciation may be commenced on the eligible assets. Whether or not the owner is a corporation having a degree of Canadian ownership, new machinery and equipment acquired for use in a business certified by the Minister of Industry, for purposes of the tax-holiday provision, to be a new manufacturing or processing business in a designated area may be depreciated at up to 50% per annum on the straght-line basis. To qualify, the machinery and equipment must be acquired before April 1, 1967. A new building or a new and substantial extension to a building, if certified by the Minister of Industry to be situated in a designated area, may be depreciated at up to 20% per annum on the straight line basis; again, a corporation need not have a degree of Canadian ownership to qualify. Here, however, there is no requirement that the business be of a manufacturing or processing nature, but the building or extension must be acquired before April 1, 1967. Application for certification of a building or extension to a building is to be made on Department of Industry form ADA 3.

The newest addition to the armory of incentive legislation is the Area Development Incentives Act (1965) and the Regulations under that Act, which are administered by the Area Development Agency of the federal Department of Industry. Under this Act development grants may be authorized toward the approved capital costs (including structures, machinery, and equipment, but not land) of a new facility or of the expansion of an existing facility constituting part of a manufacturing or processing operation in a designated area. Strictly speaking, this is not tax legislation but a kind of subsidy; nevertheless it is integrated, to a substantial degree, with the income-tax incentive rules and does have tax implications. Thus, unlike other governmental subsidies, the development grants do not reduce the depreciation base for tax purposes of any depreciable assets to which they apply.

The development grants are computed on a sliding scale related to the approved capital costs of the new facility or of the expansion of the existing facility (but these latter capital costs must be reduced by 10% of the value of the existing facility)—1/3 of the first $250,000, 1/4 of the next $750,000 and 1/5 of the remainder; but the total grant may not exceed $5,000,000. Normally 60% of the grant will be paid at the time that commercial production commences, a further 20% a year after that date, and the final 20% two years after that date.

In many cases the specific application of the new Act and Regulations has not yet been clarified; no explanatory pronouncements or rulings have yet been issued, and much of the legislative language is vague and general. The intention is clearly to leave a considerable measure of discretion with the Area Development Agency in interpreting and

applying these provisions to concrete cases. At the moment the grants are stated to be available for projects commencing on or after July 1, 1965 and brought into commercial production by March 31, 1971.

The Regulations exclude natural-resource industries and construction from eligibility and require that 95% in value of the machinery and equipment used in the operation be new and that 95% of all fixed assets used in the operation be located in the designated area. Provision is made for grants to multiphase projects, which may be brought into operation in stages extending over a period not exceeding three years from the date that the first stage commences commercial production. It is not necessary to form a new corporation to qualify for the development grants, nor need the applicant be a resident corporation of one having a degree of Canadian ownership. Other federal grants and subsidies must be deducted from the development grant otherwise payable. Normally the owners' equity investment in the business must be at least equal to the amount of the development grant.

Applications for development grants and applications to qualify for the tax holiday must both be made on form ADA 7, recently issued by the Department of Industry.

Restrictions on Non-Canadian Newspapers and Periodicals

Federal legislation passed in 1965 has placed severe restrictions on newspapers or periodicals controlled, directly or indirectly, by persons who are not citizens of Canada to the Canadian market. Advertising expenditures in such publications are not deductible for Canadian income-tax purposes: and, under the Customs Tariff, the importation of certain foreign periodicals with advertising directed to the Canadian market is prohibited. See XIX Bulletin 321-22 (Aug. 1965).

Branch or Subsidiary?

Assuming that profitable operations in Canada are anticipated, it is often preferable for a foreign enterprise to conduct its Canadian operations through a Canadian subsidiary corporation rather than through a Canadian branch. If the Canadian subsidiary has a degree of Canadian ownership, the withholding tax on remittances of profits to the parent corporation is 10%, as against the 15% tax on nonreinvested earnings of a Canadian branch of a nonresident corporation. Even if the subsidiary corporation does not have a degree of Canadian ownership, so that the 15% withholding rate applies to dividends paid by it to nonresident shareholders, the tax is only exigible when dividends are paid and so can be readily postponed. Unlike in the case of the 15% tax on branches, the retained earnings need not be reinvested in fixed assets to avoid the tax; they may even be invested by the Canadian subsidiary in foreign corporations.

Several provisions of the Income Tax Act are designed to ensure that a reasonable allocation of revenues and expenses is made in transactions between a Canadian branch or subsidiary and its foreign parent or affiliate. These provisions are reinforced and expanded in the tax treaties, where applicable.

In deciding whether or not to operate in Canada through a branch or a subsidiary, the foreign enterprise, of course, will also have regard to the domestic tax laws to which it is subject and the basis, if any, upon which a foreign tax credit may be claimed for Cana-

dian corporate income tax and for Canadian tax withheld from property income passing to the foreign enterprise.

Bibliography

MACDONALD, *Taxation of Non-residents,* in Law Society of Upper Canada, Special Lectures in Taxation 69 (1964)
WILLIAMSON, *Taxation of U.S. Private Investment in Canada* 75-92 (Can. Tax Foundation, Tax Paper No. 36, 1963)
THOM, *Permanent Establishment under the Tax Convention,* 5 Can. Tax J. 344 (1957)
SHORT, *"Know-how" and Withholding,* 12 Can. Tax J. 354 (1964)
SCACE, *The Degree of Canadian Ownership,* 3 Osgoode Hall L.J. 295 (1965)
STITT & CONNOR, *International Inter-Company Pricing,* 10 Can. Tax J. 85 (1962)
SHORT, *International Inter-company Payments for Services,* 13 Can. Tax J. 113 (1965)
ARTHUR ANDERSEN & CO., *Tax and Trade Guide—Canada* (1963, with 1964 Supplement)
LA BRIE, *The Principles of Canadian Income Taxation,* c. 14 (1965)

L'EVOLUTION RECENTE DE LA FISCALITE FRANÇAISE

by

M.E. LAXAN

Ci-après nous publions le texte d'un article que M. Max Eugène LAXAN, Directeur-Général des Impôts en France, a bien voulu écrire pour notre revue «European Taxation» et qui est publié, en traduction anglaise, dans le numéro de novembre de cette revue.

Dans son article, l'auteur donne un exposé des préoccupations qui ont mené le Gouvernement Français à projeter et proposer une réforme fiscale de grande envergure sur le plan de la fiscalité des entreprises. Le lecteur qui a suivi de près les développements fiscaux dans les pays du Marché Commun, et notamment les recommandations du Comité Fiscal et Financier, au sujet du régime fiscal des sociétés mères et de la double taxation des bénéfices distribués, notera que la loi française du 12 juillet 1965 ne se conforme pas à quelques-unes de ces recommandations. En introduisant le système de l'avoir fiscal – système qu'on trouve dans le nouveau Code belge des impôts sur les revenus et que le Gouvernement néerlandais vient de proposer de façon analogue – le législateur fiscal français veut néanmoins poursuivre des buts économiques similaires à ceux qui préoccupent les autres pays de la C.E.E.

Il nous semble que l'exposé suivant intéressera les fiscalistes dans le monde entier et nous sommes reconnaissants à son auteur d'avoir contribué à la diffusion des idées sur les conceptions qui sont à la base d'une politique fiscale moderne.

L'actuelle législature et celle qui l'a immédiatement précédée ont été marquées par un travail de rénovation en profondeur du système fiscal français.

Le loi du 28 Décembre 1959 a établi l'unité de l'impôt sur le revenu des personnes physiques et supprimé les mécanismes qui permettaient aux entreprises de pallier les inconvénients de la dépréciation monétaire. La loi du 15 Mars 1963 a réformé les droits d'enregistrement et modifié les règles de la fiscalité immobilière. La loi du 27 Décembre 1963 enfin, a réalisé l'harmonisation des procédures contentieuses intéressant les diverses catégories d'impôts.

Quelle que soit leur importance, ces diverses dispositions le cèdent, dans leur portée et leur signification économique, aux deux projets de loi adoptés par le Gouvernement et soumis à l'approbation législative au cours de la présente année.

Le premier de ces textes, définitivement adopté par le Parlement lors de sa session de printemps, est devenu la loi du 12 Juillet 1965 «modifiant l'imposition des entreprises et des revenus de capitaux mobiliers».

Le second projet de loi, qui a pour objet la généralisation de la taxe sur la valeur ajoutée et qui transforme en outre profondément un des éléments essentiels de la fiscalité locale, a été adopté en première lecture par l'Assemblée Nationale et doit être soumis au Sénat à la session d'automne.

Quoique de nature et d'objet très différents, ces deux réformes s'inspirent de la préoccupation commune d'assurer une meilleure neutralité de l'impôt à l'égard des différentes structures économiques: moyens de financement des investissements, modes de regroupement des biens de production et des capitaux, localisation des activités, circuits de production et de commercialisation. Cette recherche de la neutralité, que tempère parfois le souci de mettre fin à certains abus ou d'encourager des orientations jugées particulièrement souhaitables – un meilleur aménagement du territoire ou le développement des équipements urbains par exemple – répond au souci fondamental du Gouvernement d'éliminer tout ce qui peut freiner l'adaptation de l'économie française à une compétition internationale que l'ouverture des frontières rend de plus en plus sévère.

Décrire les principes et les modalités essentielles des deux réformes mises en oeuvre, c'est préciser les constatations auxquelles a donné lieu et les conclusions qu'a permis de dégager cet «examen de conscience» de la fiscalité française.

1. – *La réforme de l'imposition des entreprises et des revenus de capitaux mobiliers. (Loi du 12 Juillet 1965)*

Les objectifs de cette réforme étaient triples. Il s'agissait:

1 – de faciliter le recours des entreprises au marché financier en portant remède à la double imposition qui frappait les revenus des actionnaires;

2 – d'assurer une plus grande fluidité des moyens de production et de favoriser le regroupement nécessaire des entreprises en modifiant le système d'imposition des plus-values en capital, le régime fiscal de fusions et celui des groupes d'entreprises;

3 – d'améliorer l'assiette de l'impôt en précisant le régime des amortissements et en donnant à l'administration fiscale les moyens de réprimer certains abus commis en matière de frais généraux.

1. Les travaux préparatoires du V° Plan français, qui couvrira la période 1966-1970, ont mis en lumière à quel point la compétitivité des entreprises dans un climat concurrentiel accentué, dépendait d'une vigoureuse impulsion des investissements productifs. Il est donc nécessaire qu'en particulier aucune entrave de nature fiscale ne freine le recours des entreprises au marché financier sous forme d'émissions d'actions et d'obligations.

La loi de finances pour 1965 avait déjà été marquée par une première série d'allègements dans ce domaine. Elle supprimait la taxe complémentaire qui frappait jusqu'alors les revenus de l'épargne investie (au taux de 3% pour les revenus obligataires et de 6% pour les dividendes). Elle prévoyait en outre que, jusqu'à l'expiration du V° Plan, certains revenus obligataires pourraient, dans la limite de 500 Frs être exonérés de l'impôt sur le revenu des personnes physiques.

Mais elle laissait subsister la double imposition des dividendes qui, lors de leur distribution, se trouvaient frappés de l'impôt sur les sociétés au taux de droit commun (50%) avant d'être soumis à l'impôt personnel entre les mains de l'actionnaire. Ainsi, pour transférer à celui-ci un revenu de 100 Frs, une société française devait consacrer 200 Frs à la distribution, alors que 130 Frs 60 suffisaient à une société allemande et 117 Frs 60

à une société belge. Cette double imposition grevait donc lourdemant la rémunération du capital et contrariait les efforts des entreprises pour accroître leurs fonds propres en recourant au marché financier.

La loi du 12 Juillet 1965 remédie à cette situation en ramenant l'imposition des bénéfices distribués à un niveau comparable à celui de nombreux pays européens, et notamment de la République Fédérale Allemande. La technique utilisée est celle dite «de l'imputation». Tout dividende distribué par une société française ouvrira désormais droit à un avoir fiscal représenté par un crédit ouvert sur le Trésor, et égal à la moitié de ce dividende. Ce crédit sera reçu en paiement de l'impôt sur le revenu des personnes physiques ou de l'impôt sur les sociétés dû par le bénéficiaire, ou restitué s'il excède le montant de cet impôt. Ainsi, pour une somme de 100 consacrée à la distribution, le dividende versé à l'actionnaire s'élèvera – après impôt – à 50; il s'y ajoutera un «crédit d'impôt» égal à la moitié de son montant, soit 25. Le revenu total sera donc de 75 et le taux d'imposition réel sera ramené de 50 à 25%.

Cette technique a été préférée à celle consistant à appliquer un taux réduit sur les bénéfices distribués. Cette dernière méthode n'est en effet commodément applicable qu'aux répartitions provenant des bénéfices du dernier exercice; or, il a été jugé préférable de maintenir le bénéfice de l'allègement fiscal aux distributions que les entreprises soucieuses de régulairiser leurs dividendes prévèvent sur leurs réserves lorsque les résultats de l'exercice sont insuffisants.

Deux indications complèteront cette description sommaire du nouveau régime d'imposition des dividendes. D'une part, le bénéfice du crédit d'impôt sera réservé aux personnes ayant leur domicile ou leur siège social en France; à l'égard des non-résidents, le régime antérieurement en vigueur subsistera sans modification appréciable. D'autre part, lorsque les sommes distribuées proviendront de bénéfices qui n'on pas été frappés au taux de droit commun de l'impôt sur les sociétés (tel est par exemple le cas des revenus exonérés ou provenant d'exploitations sises à l'étranger), il sera perçu un précompte égal au montant du crédit attaché à ces distributions. Cette disposition permettra de faire bénéficier tous les dividendes, quelle qu'en soit l'origine, du crédit d'impôt et d'éviter les complications attachées à un système de doubles coupons.

2. Le souci de permettre aux entreprises de procéder à l'aliénation des éléments d'actif devenus inutiles à leur exploitation, et de favoriser les regroupements nécessaires au sein de l'industrie française, a conduit à une modification radicale des conditions d'imposition des plus-values en capital et à une unification du régime des fusions.

Le régime antérieur d'imposition des plus-values reposait sur la confusion des gains et pertes en capital avec les résultats d'exploitation proprement dits pour le calcul de l'imposition des entreprises. Les conséquences apparemment très rigoureuses de ce principe se trouvaient en fait largement atténuées par la possibilité donnée aux entreprises de différer l'imposition de leurs plus-values en s'engageant à remployer les sommes dégagées par la cession en nouveaux éléments d'actif. Procurant un simple avantage de tresorerie lorsqu'il était effectué en biens amortissables (dans ce cas, la plus-value à réinvestir venait en déduction des marges d'amortissement ouvertes à l'entreprise), le remploi aboutissait pratiquement à une exonération pure et simple lorsqu'il s'opérait en valeurs non amortissables telles que terrains et participations.

De ce fait, lorsqu'un transfert d'établissement permettait la réalisation d'éléments d'actif dégageant une plus-value importante, une inégalité apparaissait entre les entreprises de grandes dimensions et les autres. Les premières procédaient généralement à un remploi en biens non amortissables, le plus souvent sous forme de titres de participation. La création de filiales à des fins purement fiscales leur permettait ainsi d'éluder l'impôt sans réduire leurs marges d'amortissement. Mais ces pratiques dénaturaient la procédure du remploi, grevaient les opérations de cessions d'actif de coûts artificiels et conduisaient à des structures juridiques inutilement complexes. Quant aux entreprises de dimensions plus modestes, qui n'avaient pas les moyens de recourir à de tels procédés et dont les investissements en moyens de production étaient souvent trop faibles pour absorber les plus-values potentielles, elles renonçaient souvent aux cessions envisagées.

La loi du 12 Juillet 1965 supprime le régime du remploi sauf cas exceptionnels et introduit une distinction fondamentale entre plus-values à long terme et plus-values à court terme: les plus-values à long terme, qui correspondent en principe aux gains effectués lors de la cession d'éléments acquis ou créés par les entreprises depuis plus de deux ans, bénéficieront désormais d'un taux d'imposition réduit (10%); les plus-values à court terme se verront appliquer le taux de droit commun (50%), mais il sera possible d'étaler le paiement de l'impôt sur cinq ans.

Ainsi cessera l'effet de dissuasion qu'exerçait l'existence d'un prélèvement général de 50% qui aboutissait soit à susciter des structures artificielles, soit à geler des actifs – titres de placement, terrains en zone d'urbanisation – dont la cession aurait procuré aux entreprises d'importantes ressources d'auto-financement.

Simultanément, le régime fiscal applicable aux fusions est allégé et unifié. Les plus-values dégagées par ces opérations ne donneront lieu à aucune perception immédiate; l'imposition des gains constatés sur les biens amortissables sera étalée sur dix ans, et celle afférente aux autres biens sera différée jusqu'à leur aliénation éventuelle. Enfin, les droits d'enregistrement perçus à cette occasion sont ramenés à un niveau généralement symbolique. Ainsi disparaîtra l'alibi d'une fiscalité excessive, que beaucoup d'entreprises invoquaient pour différer des opérations de regroupement rendues pourtant indispensables par l'insuffisante concentration de l'industrie française.

Dans un domaine voisin, le régime des groupes de sociétés a été aménagé. Les conditions permettant de bénéficier du régime des sociétés mères ont été assouplies. D'autre part, les sociétés françaises auront désormais la possibilité d'opter, sous condition d'un agrément du Ministre des Finances, pour leur imposition d'après l'ensemble des résultats de leurs exploitations directes et indirectes, qu'elles soient situées en France ou à l'étranger. Ainsi se trouve introduit dans le droit fiscal français la notion de bénéfice mondial dont de nombreuses législations étrangères font déjà application.

3. Enfin, la Loi du 12 Juillet 1965 comporte un certain nombre de dispositions destinées à améliorer l'assiette de l'impôt, soit en précisant le régime des amortissements, soit en facilitant la répression de certains abus constatés en matière de frais généraux.

Dans le premier domaine, la mesure la plus importante consiste à rendre obligatoire la constatation de la fraction linéaire des amortissements, à l'image de ce que prévoient de nombreuses législations étrangères. Jusqu'alors les amortissements pouvaient toujours être différés du point de vue fiscal, ce qui nuisait à la sincérité des bilans et enlevait

toute signification réelle à la limitation dans le temps des reports déficitaires.

D'autre part, certaines dispositions destinées à donner à l'administration fiscale les moyens de mieux contrôler la croissance de certains frais généraux et des rémunérations directes ou indirectes versées aux dirigeants des entreprises ont été retenues. Trop de sociétés, notamment de moyenne importance, dont les dirigeants échappent pratiquement à tout contrôle interne, présentent des résultats artificiellement diminués.

II. – *La généralisation de la taxe sur la valeur ajoutée et la transformation des recettes fiscales des collectivités locales.*

Le projet de loi actuellement soumis au Sénat après son adoption par l'Assemblée Nationale concerne une pièce maîtresse du système fiscal français, puisque les taxes sur le chiffre d'affaires procurent à l'Etat plus du tiers (35%) de ses recettes fiscales, et aux collectivités locales 37% de leurs ressources ordinaires. Il a pour objet essentiel de compléter l'oeuvre entreprise en 1954 avec l'institution de la taxe sur la valeur ajoutée (T V A), en étendant, àpartir du 1er Janvier 1967, l'application de cette taxe à l'ensemble de la production, de la distribution et des services. La généralisation de la T V A conduirait parallèlement:

– à simplifier l'administration de cet impôt et limiter les charges qui en résulteraient pour les petits redevables;

– à mettre à la disposition des collectivités locales, privées d'une part importante de leurs recettes fiscales par la disparition de la taxe locale, une ressource de remplacement susceptible de leur assurer un rendement au moins équivalent.

1. La généralisation de la TVA, en mettant fin à la coexistence de cet impôt avec deux autres taxes générales sur le chiffre d'affaires (taxe sur les prestations de services et taxe locale) et de nombreuses taxes particulières, doit remédier aux distorsions économiques et aux incidences sociales fâcheuses qu'entraîne l'hétérogénéité de la fiscalité indirecte. Aucune réforme ne porte donc davantage la marque des préoccupations de neutralité qui inspirent la politique fiscale française. Il s'y ajoute le souci de préparer la voie à une éventuelle harmonisation des fiscalités au sein de la Communauté Economique Européenne, qui emprunterait sans doute en premier lieu la forme de l'adoption d'une taxe sur la valeur ajoutée généralisée dans chacun des six Etats membres.

Les distorsions économiques qui découlent des limites apportées au champ d'application de la T V A affectent tant les activités de production: agriculture, industrie, services . . . que le secteur de la distribution commerciale.

Lorsque les taxes qui ont grevé les divers éléments du prix de revient d'un bien: matières premières, investissements, frais généraux . . . ne peuvent être déduites de l'impôt auquel ce bien est lui-même soumis, la superposition d'impôts qui en résulte fausse les calculs des entreprises et peut les inciter à adopter certaines solutions fiscalement avantageuses mais techniquement et économiquement peu recommandables. De telles superpositions apparaissent notamment lorsque ce bien est soumis à une taxe particulière dont la T V A perçue en amont n'est pas déductible (cas des prestations de services), ou encore lorsque les éléments du prix de revient sont eux-mêmes soumis à

un impôt particulier non deductible. L'exemple le plus frappant concerne le secteur des transports, qui est actuellement soumis à des taxes spécifiques: d'une part, les transporteurs ne peuvent déduire de ces taxes les impôts incorporés dans les prix de leurs investissements et les frais de réparation et d'entretien des véhicules; d'autre part, les utilisateurs de transports ne peuvent eux-mêmes déduire ces taxes de leurs propres prix de revient. Il en résulte une double surcharge fiscale qui a été évaluée à 8% environ des tarifs. Cette surcharge pénalise les entreprises éloignées de leurs sources d'approvisionnement et des grands centres de consommation, contrariant l'action que mène par ailleurs le Gouvernement pour assurer un meilleur aménagement du territoire par un développement des régions du Centre et de l'Ouest.

Enfin, sur le plan des échanges extérieurs, la diffusion dans le prix des produits de taxes spécifiques sous forme de «rémanences d'impôt» occultes ne permet pas d'assurer aux entreprises le remboursement de la totalité des charges fiscales indirectes ayant grevé leurs produits; corrélativement, les importations peuvent se trouver indûment favorisées.

Dans le secteur commercial, les distorsions tiennent à la coexistence de la T V A jusqu'au stade du dernier producteur et en principe du grossiste, et de la taxe locale – cumulative – aux stades ultérieurs. Compte tenu des règles très différentes applicables à ces deux impôts, certaines formes de distribution se trouvent pénalisées: producteurs vendant directement aux consommateurs, commerçant faisant assurer la fabrication de produits pour leur propre compte, entreprises à succursales multiples, etc. . . L'aménagement des structures de la distribution s'en trouve contrarié.

Du point de vue de l'équité, le système actuel va également à l'encontre d'une juste répartition des charges entre les différentes catégories sociales. Les services bénéficient d'une imposition à taux réduit (le taux de droit commun est de 8,50% contre 20% pour la T V A) alors qu'il est établi qu'ils absorbent une part d'autant plus importante des dépenses des contribuables que le revenu de ceux-ci est plus élevé. D'autre part, l'exonération dont les marges commerciales de détail jouissent au regard de la T V A avantage sensiblement les produits de luxe, vendus avec une marge élevée, par rapport aux produits de grande consommation. Enfin, les taxes spécifiques frappant des produits alimentaires essentiels comme la viande ou les boissons, qui ne tiennent aucun compte de différences de qualité, et donc des écarts de prix, aboutissent de la même manière à une progressivité fiscale à rebours.

L'extension de la T V A doit remédier à ces distorsions économiques et sociales. Cette extension entraîne la suppression des deux taxes cumulatives sur le chiffre d'affaires que comporte encore le système actuel: la taxe sur les prestations de services et la taxe locale sur le chiffre d'affaires, la suppression de taxes spécifiques frappant les boissons, les transports de marchandises, les cafés et les thés, ainsi que d'un certain nombre d'impôts à faible rendement.

En contrepartie, la T V A s'appliquera désormais à l'ensemble des affaires de production, de distribution et de services qui n'y sont pas actuellement soumises, en particulier aux artisans, aux produits alimentaires exonérés, aux prestations de services et à l'ensemble du commerce de gros comme de détail. Seuls demeureront en dehors de la nouvelle imposition les agriculteurs, auxquels une possibilité d'opter volontairement

pour l'assujettissement à la T V A sera toutefois offerte, la généralité des professions libérales, les spectacles, enfin les activités financières et bancaires qui, en raison de leur caractère spécifique, seront soit exonérées, soit soumises à une taxe spéciale non déductible de 12%.

Le généralisation de la T V A rendra possible un abaissement de son taux de droit commun qui passera de 20% à 16,66% taxe incluse (c'est-à-dire de 25% à 20% hors taxe); le taux majoré sera ramené de 25% à 20%; le taux réduit de 10% sera porté à 12%; le taux de 6%, applicable aux produits alimentaires de large consommation, restera inchangé. L'équilibre d'ensemble du projet a été calculé de façon à maintenir dans des limites raisonnables, compte tenu des mesures d'allègement en faveur des petits redevables qui vont être décrites, la perte de recettes consentie par l'Etat, et à n'exercer aucune action défavorable sur le niveau général des prix.

2. La simplification de l'administration de l'impôt et l'allègement de la charge fiscale des petits redevables constituent la seconde caractéristique de la réforme projetée.

La généralisation de la T V A fera disparaître la plupart des problèmes de frontières, nés de l'existence de nombreux secteurs exonérés de cet impôt, qui compliquaient la tâche des contribuables et de l'administration et donnaient lieu à un contentieux important: distinction entre actes de production et actes de commercialisation, entre commerce de gros et commerce de détail, définition de la qualité d'artisan, détermination – pour toute entreprise dont une partie de l'activité n'est pas soumise à la T V A – de la fraction de la taxe ayant grevé les équipements qui peut être déduite de la T V A dont elle est redevable, etc. . . .

Pour tenir compte du fait que l'assujettissement à la T V A du commerce de détail fera entrer dans le champ d'application de cet impôt une catégorie de redevables qui ne tiennent souvent qu'une comptabilité sommaire, le champ d'application du régime du forfait sera étendu: les limites de chiffres d'affaires au-dessous desquelles ce régime est applicable, sauf option contraire, seront portées à 500.000 (ventes) et 125.000 (services). En outre, les règles relatives à l'imposition des bénéfices et des chiffres d'affaires seront unifiées, ce qui permettra d'envisager à terme la fusion des déclarations et l'assiette de l'impôt par un agent unique. Enfin, contrairement à la pratique antérieure, les assujettis au régime du forfait seront désormais autorisés à facturer à leurs clients la T V A incluse dans leurs prix.

Le souci d'alléger les obligations des petits redevables et d'éviter à l'administration fiscale de consacrer un temps excessif à des forfaits d'un montant très faible a conduit d'autre part à prévoir que la taxe ne serait pas mise en recouvrement lorsque son montant serait inférieur à un minimum fixé par le projet à 800 Frs; cette disposition permettra d'exonérer en fait les redevables les plus modestes: artisans ruraux, par exemple. Afin d'éviter que le franchissement des limites d'exonération ne se traduise par un brusque changement de statut fiscal, un système de décote assurant la transition avec le régime normal a été prévu.

3. La suspression de la taxe locale et de quelques recettes fiscales annexes a enfin rendu nécessaire la mise à la disposition des collectivités locales d'une ressource de remplacement. Deux problèmes se posaient à cet égard: le choix de la nature de cette ressource d'une part, celui de ses modalités de répartition d'autre part.

Sur le premier point, le Gouvernement a décidé d'affecter aux collectivités une fraction du versement forfaitaire sur les traitements et salaires qui était jusqu'à présent encaissé par l'Etat. Cet impôt, institué en 1948, est à la charge des entreprises et est assis, au taux général de 5%, sur la masse des rémunérations qu'elles versent à leur personnel. La stabilité de sa réglementation et la régularité de son rendement en font une ressource bien adaptée aux nécessités des finances locales. La part du versement forfaitaire devant revenir aux collectivités locales, qui était fixée aux cinq sixièmes (83,33%) par le projet de loi, a été portée à 85% lors de la discussion devant l'Assemblée Nationale.

La répartition de cette ressource fera, dans les premières années d'application de la réforme, une part très large aux droits acquis des départements et des communes, afin d'éviter tout bouleversement de leurs budgets: des attributions de garantie, dont le montant sera fondé sur les recettes que ces collectivités tiraient de la taxe locale et des autres recettes qui cessent de leur être affectées, leur seront attribuées. Mais cette garantie jouera de façon dégressive et cèdera peu à peu la place à une répartition fondée sur l'effort fiscal que chaque collectivité demande à ses habitants. Les attributions seront à cet effet, dans une proportion croissante, calculées pour chaque collectivité en fonction du poids des impôts directs locaux qu'elle fait supporter à l'ensemble de sa population. Ce principe de répartition permettra de corriger progressivement les imperfections que comporte le système actuel de taxe locale. Ce dernier avantage de façon excessive les collectivités qui sont déjà le siège d'une activité commerciale ou industrielle importante, au détriment de celles qui ont à faire face à une urbanisation récente et aux lourdes charges d'équipement qu'elle entraîne. En particulier, les communes en expansion situées à la périphérie des grandes villes, où la fiscalité locale directe atteint souvent un niveau très élevé, pourront tirer du nouveau régime des ressources accrues.

Les effets conjugués des deux réformes devraient permettre, conformément aux directives du V° Plan, d'assainir les conditions de financement des investissements des entreprises et de ceux des collectivités. Sans doute, les nouvelles techniques mises en oeuvre conduiront à modifier très sensiblement les modalités d'imposition de la majorité des agents économiques et leur application exigera, tant des contribuables que de l'administration, un effort d'adaptation particulier.

Mais ces difficultés seront d'autant mieux surmontées que la conviction sera largement partagée que la transformation profonde du système fiscal que ces projets réalisent est de nature à asseoir le prélèvement fiscal sur des bases plus rationnelles et plus conformes aux exigences d'un développement économique durable.

IRAQ

TAX NEWS

INCOME TAX

On August 31, 1964, important tax laws and regulations were enacted. The statutes were put into force at the beginning of the financial year 1964-1965. These taxes were mainly the Income Tax Law and the Estate Tax Law.

Income tax

1—The Income Tax Law No. 95 of 1959 governs taxation of residents and non-residents in Iraq. The taxable income under such law is defined as follows:—

(1) Profits from commercial enterprises or from business of commercial nature, industries, professions including contracts and compensation for their non-fulfillment, if not for making good a loss sustained by the taxpayer materially or morally.

(2) Interest, commission, discount and profits arising from dealing in shares and bonds.

(3) Rents of agricultural land.

(4) Profits arising from the transfer of ownership or the use of real estate by whatever means affected, such as sale, barter, conciliation, grant, expropriation, removal of common ownership, liquidation of "waqf", long lease and use of utility.

(5) Salaries, pensions, rewards, wages for work at fixed rate for limited periods, allowances, sums deposited for employees, accounts in Provident Funds, and pensions of foreign officials whether deducted from their salaries or paid to their accounts by another party.

(6) Cash and estimated amounts, alloated to the taxpayer against his services such as for residence and food.

(7) Income from any other source not taxable in Iraq, provided that dividends shall not be a taxable income if a company has deducted or is authorised to deduct the tax from it.

(Income Tax Law No. 95 of 1959 Article 2)

2—Income tax rates, as applicable to residents, non residents, limited and unlimited liability companies according to the Income Tax Law of 1959, were ammended by Law No. 129 of 1964.

These rates are as follows:—

(1) *Resident persons (after granting the allowances)*

Income				*Tax rate*
up to ID.	500			3%
over ID.	500	up to ID.	1000	5%
over ID.	1000	up to ID.	2000	10%
over ID.	2000	up to ID.	3000	15%
over ID.	3000	up to ID.	4000	20%
over ID.	4000	up to ID.	5000	25%
over ID.	5000	up to ID.	6000	30%
over ID.	6000	up to ID.	7000	35%
over ID.	7000	up to ID.	8000	40%
over ID.	8000	up to ID.	9000	45%
over ID.	9000	up to ID.	10000	50%

over ID. 10000 up to ID. 11000	55%
over ID. 11000 up to ID. 12000	60%
over ID. 12000 up to ID. 13000	65%
over ID. 13000 up to ID. 14000	70%
over ID. 14000 up to ID. 15000	75%
over ID. 15000 up to ID. 20000	80%
over ID. 20000	90%

(2) Income of a non-resident individual is subject to the same rates and particulars stated in (1) above with the exception of income provided for in Article (19) of Law No. 95 of 1959 which indicates that "any person resident in Iraq shall pay the tax of 20% on amounts due to persons residing outside Iraq. Such due amounts shall be: Interest on bills, mortgages, loans, deposits and advances, annual allowances or pensions or other yearly payment.

(3) *Income of limited liability companies*

(a) *Industrial Companies:*

Income	*Tax rate*
Up to ID. 1000	10%
Over ID. 1000 up to ID. 3000	15%
Over ID. 3000 up to ID. 5000	20%
Over ID. 5000 up to ID. 7000	25%
Over ID. 7000 up to ID. 9000	30%
Over ID. 9000 up to ID. 11000	35%
Over ID. 11000 up to ID. 13000	40%
Over ID. 13000 up to ID. 15000	45%
Over ID. 15000	50%

(b) *Non-Industrial companies:*

Up to ID. 1000	10%
Over ID. 1000 up to ID. 2000	15%
Over ID. 2000 up to ID. 3000	20%
Over ID. 3000 up to ID. 4000	25%
Over ID. 4000 up to ID. 5000	30%
Over ID. 5000 up to ID. 6000	35%
Over ID. 6000 up to ID. 7000	40%
Over ID. 7000 up to ID. 8000	45%
Over ID. 8000 up to ID. 9000	50%
Over ID. 9000 up to ID. 10000	55%
Over ID. 10000	60%

(4) *Income of joint stock companies and other artificial entities*

(a) *Industrial Companies:*

Up to ID. 1000	10%
Over ID. 1000 up to ID. 3000	15%
Over ID. 3000 up to ID. 5000	20%
Over ID. 5000 up to ID. 7000	25%
Over ID. 7000 up to ID. 9000	30%
Over ID. 9000 up to ID. 11000	35%
Over ID. 11000 up to ID. 13000	40%
Over ID. 13000	45%

(b) *Non-Industrial Companies:*

Up to ID. 1000	10%
Over ID. 1000 up to ID. 2000	15%
Over ID. 2000 up to ID. 3000	20%
Over ID. 3000 up to ID. 4000	25%
Over ID. 4000 up to ID. 5000	30%
Over ID. 5000 up to ID. 6000	35%
Over ID. 6000 up to ID. 7000	40%
Over ID. 7000 up to ID. 8000	45%
Over ID. 8000	50%

(Law No. 129, 1964, Article (7).

3—A tax of 50 per cent is assessed on the chargeable income of a juristic person involved in any commercial transaction the profits of which are derived from the sale of petroleum or other hydrocarbons produced in and exported from Iraq or the sale of rights or interests pertaining to such petroleum or other hydrocarbons. However, if any share or its equivalent on petroleum or other hydrocarbons from which the said profits accrue has been given or paid to the Iraqi Government, the tax rate charged for the purpose of collection be reduced by an amount equal to the share of its equi-

valent amount paid to the government if the Minister of Finance is satisfied that such share or its equivalent has been paid provided that no reduction by an amount equal to that share or equivalent shall be allowed as a reduction more than once. (Law No. 95. 1959, Article 13 (5-a))

4—The main incomes exempted from the tax are as follows:

a) Agricultural income earned by cultivators from agricultural products.

b) Income of "Awquaf", legally acknowledged, religious institutions, charitable and educational establishments for public interest.

c) Income of savings, provident and insurance funds established by official and semi officials departments.

d) Income of municipalities earned from public utilities.

e) Income of cooperatives.

f) Salaries and allowances paid to Iraqi nationals residing outside Iraq if he is not exempted from the tax in the place of business.

i) Salaries and allowances paid by foreign legations.

(Law No. 95, 1959 Article 7 as amended by Law No. 129 of 1964 Article 4)

5—Personal allowance for a taxpayer is ID. 450, for a wife is ID. 150 and for each child under 18 is ID. 50. (Law No. 1959-Article 12-1)

6—Income tax is charged on the profit of the company (after granting allowances and deductions) before distribution to shareholders. The company provides the shareholders at the time of distribution of dividends with certificates of the amount of distributed dividends and the tax charged and deducted. (Law No. 95, 1959, Articles 14, 15 (3))

7—The income of a married couple is joined together and the tax is assessed in the name of the husband. Income of children under 18 years of age joined to the income of the father. On the fathers death, the tax is assessed on each child independently in the name of the mother. (Law No. 95, 1959, Article 6 (1)).

8—The finance authority examines all the returns filed by the persons subject to tax and be sure that the true income is accurately reported. The tax is assessed on the taxable income in the office of the official tax assessor in the district of residence or place of work of the taxpayer. (Law No. 95, 1959, Articles 30 & 31).

Reported by Siham Sharif

III

TREATIES

CONVENTION ENTRE LA FRANCE ET MADAGASCAR

TENDANT A ÉLIMINER LES DOUBLES IMPOSITIONS ET A ÉTABLIR DES RÈGLES D'ASSISTANCE MUTUELLE ADMINISTRATIVE EN MATIÈRE FISCALE

Le Gouvernement de la République française et le Gouvernement de la République malgache, désireux d'éviter dans la mesure du possible les doubles impositions et d'établir des règles d'assistance réciproque en matière d'impôts sur le revenu, d'impôts sur les successions, de droits d'enregistrement et de droits de timbre, sont convenus, à cet effet, des dispositions suivantes:

TITRE Ier

Dispositions générales.

ARTICLE 1er

Pour l'application de la présente convention:

1 Le terme «personne» désigne:

a) Toute personne physique;

b) Toute personne morale;

c) Tout groupement de personnes physiques qui n'a pas la personnalité morale.

2 Le terme «France» désigne la France métropolitaine et les départements d'outre-mer (Guadeloupe, Guyane, Martinique et Réunion).

Le terme «Madagascar» désigne les territoires de la République malgache.

ARTICLE 2

1 Une personne physique est domiciliée, au sens de la présente convention, au lieu où elle a son «foyer permanent d'habitation», cette expression désignant le centre des intérêts vitaux, c'est-à-dire le lieu avec lequel les relations personnelles sont les plus étroites.

Lorsqu'il n'est pas possible de déterminer le domicile d'après l'alinéa qui précède, la personne physique est réputée posséder son domicile dans celui des Etats contractants où elle séjourne le plus longtemps. En cas de séjour d'égale durée dans les deux Etats, elle est réputée avoir son domicile dans celui dont elle est ressortissante. Si elle n'est ressortissante d'aucun d'eux, les autorités administratives supérieures des Etats trancheront la difficulté d'un commun accord.

2 Pour l'application de la présente convention, le domicile des personnes morales est au lieu du siège social statutaire; celui des groupements de personnes physiques n'ayant pas la personnalité morale au lieu du siège de leur direction effective.

ARTICLE 3

Le terme «établissement stable» désigne une installation fixe d'affaires où une entreprise exerce tout ou partie de son activité.

a) Constituent notamment des établissements stables:

(aa) Un siège de direction;

(bb) Une succursale;

(cc) Un bureau;
(dd) Une usine;
(ee) Un atelier;
(ff) Une mine, carrière ou autre lieu d'extraction de ressources naturelles;
(gg) Un chantier de construction.

b) On ne considère pas qu'il y a établissement stable si:
(aa) Il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
(bb) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
(cc) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
(dd) Une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises;
(ee) Une installation fixe d'affaires est utilisée aux seules fins de publicité, de fourniture d'informations, de recherche scientifique ou d'activités analogues qui ont pour l'entreprise un caractère préparatoire ou auxiliaire.

c) Une personne agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant — autre qu'un agent jouissant d'un statut indépendant, visé à l'alinéa *e* ci-après — est considérée comme «établissement stable» dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne soit limitée à l'achat de marchandises pour l'entreprise.

Est notamment considéré comme exerçant de tels pouvoirs l'agent qui dispose habituellement dans le premier Etat contractant d'un stock de produits ou marchandises appartenant à l'entreprise au moyen duquel il exécute régulièrement les commandes qu'il a reçues pour le compte de l'entreprise.

d) Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant que, par l'intermédiaire d'un représentant n'entrant pas dans la catégorie des personnes visées à l'alinéa *e* ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situés sur ce territoire.

e) On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y effectue des opérations commerciales par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité. Toutefois, si l'intermédiaire dont le concours est utilisé dispose d'un stock de marchandises en consignation à partir duquel sont effectuées les ventes et les livraisons, il est admis que ce stock est caractéristique de l'existence d'un établissement stable de l'entreprise.

f) Le fait qu'une société domiciliée dans un Etat contractant contrôle ou est contrôlée par une société qui est domiciliée dans l'autre Etat contractant ou qui y effectue des opérations commerciales (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces deux sociétés un établissement stable de l'autre.

ARTICLE 4

Sont considérés comme biens immobiliers pour l'application de la présente convention les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière ainsi que les droits d'usufruit sur les biens immobiliers, à l'exception des créances de toute nature garanties par gage immobilier.

La question de savoir si un bien ou un droit a le caractère immobilier ou peut être considéré comme l'accessoire d'un immeuble sera résolue d'après la législation de l'Etat sur le territoire duquel est situé le bien considéré ou le bien sur lequel porte le droit envisagé.

ARTICLE 5

1 Les ressortissants, les sociétés et autres groupements d'un Etat contractant ne seront pas soumis dans l'autre Etat à des impôts autres ou plus élevés que ceux frappant les ressortissants, les sociétés et autres groupements de ce dernier Etat se trouvant placés dans la même situation.

2 En particulier, les ressortissants d'un Etat contractant qui sont imposables sur le territoire de l'autre Etat contractant bénéficient, dans les mêmes conditions que les ressortissants de ce dernier Etat, des exceptions, abattements à la base, déductions et réductions d'impôts ou taxes quelconques accordés pour charges de famille.

ARTICLE 6

Pour l'application des dispositions contenues dans la présente convention, l'expression «autorités compétentes» désigne:

Dans le cas de la France, le ministre des finances et des affaires économiques;

Dans le cas de Madagascar, le ministre des finances ou leurs représentants dûment autorisés.

ARTICLE 7

Pour l'application de la présente convention par l'un des Etats contractants, tout terme non défini dans cette convention recevra, à moins que le contexte ne l'exige autrement, la signification que lui donnent les lois en vigueur dans l'Etat considéré, en ce qui concerne les impôts visés dans cette convention.

TITRE II

Doubles impositions

CHAPITRE Ier

Impôts sur les revenus

ARTICLE 8

1 Le présent chapitre est applicable aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants, de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.

Sont considérés comme impôts sur les revenus les impôts sur le revenu total ou sur les éléments du revenu (y compris les plusvalues).

2. Les dispositions du présent chapitre ont pour objet d'éviter les doubles impositions qui pourraient résulter, pour les personnes (entendues au sens de l'article 1er) dont le domicile fiscal, déterminé conformément à l'article 2, est situé dans l'un des Etats contractants, de la perception simultanée ou successive dans cet Etat et dans l'autre Etat contractant des impôts visés au paragraphe 1 ci-dessus.

3 Les impôts actuels auxquels s'applique le présent chapitre sont:

En ce qui concerne la République française:

a) L'impôt sur le revenu des personnes physiques;

b) La taxe complémentaire;

c) L'impôt sur les bénéfices des sociétés et autres personnes morales.

En ce qui concerne la République malgache:

a) L'impôt cédulaire sur les bénéfices divers;

b) L'impôt sur le revenu des capitaux mobiliers;

c) L'impôt général sur le revenu.

4 La convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, dès leur promulgation, les modifications apportées à leur législation fiscale.

5 Il est entendu que dans le cas où la législation fiscale de l'un des Etats contractants ferait l'objet de modifications affectant sensiblement la nature ou le caractère des impôts visés au paragraphe 3 du présent article, les autorités compétentes des deux Etats se concerteraient pour déterminer les aménagements qu'il serait éventuellement nécessaire d'apporter à la présente convention.

ARTICLE 9

Les revenus des biens immobiliers, y compris les bénéfices des exploitations agricoles et forestières, ne sont imposables que dans l'Etat où ces biens sont situés.

ARTICLE 10

1 Les revenus des entreprises industrielles, minières, commerciales ou financières ne sont imposables que dans l'Etat sur le territoire duquel se trouve un établissement stable.

2 Lorsqu'une entreprise possède des établissements stables dans les deux Etats contractants, chacun d'eux ne peut imposer que le revenu provenant de l'activité des établissements stables situés sur son territoire.

3 Le bénéfice imposable ne peut excéder le montant des bénéfices industriels, miniers, commerciaux ou financiers réalisés par l'établissement stable, y compris s'il y a lieu les bénéfices ou avantages retirés indirectement de cet établissement ou qui auraient été attribués ou accordés à des tiers soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen. Une quote-part des frais généraux du siège de l'entreprise est imputée aux résultats des différents établissements stables au prorata du chiffre d'affaires réalisé dans chacun d'eux.

4 Lorsque les contribuables dont l'activité s'étend sur les territoires des deux Etats contractants ne tiennent pas une comptabilité régulière faisant ressortir distinctement et exactement les bénéfices afférents aux établissements stables situés dans l'un et l'autre Etats, le bénéfice respectivement imposable par ces Etats peut être déterminé en répartissant les résultats globaux au prorata du chiffre d'affaires réalisé dans chacun d'eux.

ARTICLE 11

1 Lorsqu'une entreprise de l'un des Etats contractants, du fait de sa participation à la gestion ou au capital d'une entreprise de l'autre Etat contractant, fait ou impose à cette dernière, dans leurs relations commerciales ou financières, des conditions différentes de celles qui seraient

faites à une tierce entreprise, tous bénéfices qui auraient dû normalement apparaître dans les comptes de l'une des entreprises, mais qui ont été de la sorte transférés à l'autre entreprise, peuvent être incorporés aux bénéfices imposables de la première entreprise.

2 Une entreprise est considérée comme participant à la gestion ou au capital d'une autre entreprise notamment lorsque les mêmes personnes participent directement ou indirectement à la gestion ou au capital de chacune de ces deux entreprises.

ARTICLE 12

Les revenus provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant ou se trouve le domicile fiscal de l'entreprise.

ARTICLE 13

Sous réserve des dispositions des articles 15 à 17 ci-après, les revenus des valeurs mobilières et les revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêt et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) payés par des sociétés ou des collectivités publiques ou privées ayant leur domicile fiscal sur le territoire de l'un des Etats contractants sont imposables dans cet Etat.

ARTICLE 14

Une société d'un Etat contractant ne peut être assujettie sur le territoire de l'autre Etat contractant au paiement d'un impôt sur les distributions de revenus de valeurs mobilières et de revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêt et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) qu'elle effectue, du seul fait de sa participation dans la gestion ou dans le capital de sociétés domiciliées dans cet autre Etat ou à cause de tout autre rapport avec ces sociétés; mais les produits distribués par ces dernières sociétés et passibles de l'impôt sont, le cas échéant, augmentés de tous les bénéfices ou avantages que la société du premier Etat aurait indirectement retirés desdites sociétés, soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen.

ARTICLE 15

1 Lorsqu'une société ayant son domicile fiscal dans l'un des Etats contractants s'y trouve soumise au paiement d'un impôt frappant les distributions de revenus de valeurs mobilières et de revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêt et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) et qu'elle possède un ou plusieurs établissements stables sur le territoire de l'autre Etat contractant à raison desquels elle est également soumise dans ce dernier Etat au paiement d'un même impôt, il est procédé à une répartition, entre les deux Etats, des revenus donnant ouverture audit impôt, afin d'éviter une double imposition.

2 La répartition prévue au paragraphe qui précède s'établit, pour chaque exercice, sur la base du rapport:

$\frac{A}{B}$ pour l'Etat dans lequel la société n'a pas son domicile fiscal;

$\frac{B-A}{B}$ pour l'Etat dans lequel la société a son domicile fiscal.

La lettre A désignant le montant des bénéfices comptables provenant à la

société de l'ensemble des établissements stables qu'elle possède dans l'Etat ou elle n'a pas son domicile fiscal, toutes compensations étant faites entre les résultats bénéficiaires et les résultats déficitaires de ces établissements. Ces bénéfices comptables s'entendent de ceux qui sont réputés réalisés dans lesdits établissements, au regard des dispositions des articles 10 et 11 de la présente convention;

La lettre B le bénéfice comptable total de la société tel qu'il résulte de son bilan général.

Pour la détermination du bénéfice comptable total, il est fait abstraction des résultats déficitaires constatés pour l'ensemble des établissements stables de la société dans un Etat quelconque, toutes compensations étant faites entre les résultats bénéficiaires et les résultats déficitaires de ces établissements.

Dans le cas où le bénéfice comptable total d'un exercice est nul ou négatif, la répartition s'effectue sur les bases antérieurement dégagées.

En l'absence de bases antérieurement dégagées, la répartition s'effectue selon une quotité fixée par commune entente entre les autorités compétentes des Etats contractants intéressés.

3 Lorsque les bénéfices distribués comprennent des produits de participation détenus par la société dans le capital d'autres sociétés et que ces participations remplissent, pour bénéficier des régimes spéciaux auxquels sont soumises les sociétés affiliées, les conditions exigées en vertu de la législation interne soit de l'Etat du domicile fiscal de la société, soit de l'autre Etat, selon qu'elles figurent à l'actif du bilan concernant l'établissement stable situé dans le premier ou dans le second Etat, chacun desdits Etats applique à ces bénéfices distribués, dans la mesure où ils proviennent du produit des participations régies par sa législation interne, les dispositions de cette législation, en même temps qu'il taxe la partie desdits bénéfices qui ne provient pas du produit de participation, dans la mesure où l'imposition lui en est attribuée suivant les modalités prévues au paragraphe 3 ci-dessus.

ARTICLE 16

1 Quand, à la suite de contrôles exercés par les administrations fiscales compétentes, il est effectué, sur le montant des bénéfices réalisés au cours d'un exercice, des redressements ayant pour résultat de modifier la proportion définie au paragraphe 2 de l'article 15, il est tenu compte de ces redressements pour la répartition, entre les deux Etats contractants, des bases d'imposition afférentes à l'exercice au cours duquel les redressements interviennent.

2 Les redressements portant sur le montant des revenus à répartir, mais n'affectant pas la proportion des bénéfices réalisés dont il a été tenu compte pour la répartition des revenus faisant l'objet desdits redressements, donnent lieu, selon les règles applicables dans chaque Etat, à une imposition supplémentaire répartie suivant la même proportion que l'imposition initiale.

ARTICLE 17

1 La répartition des bases d'imposition visées à l'article 15 est opérée par la société et notifiée par elle à chacune des administrations fiscales compétentes, dans le délai qui lui est imparti par la législation de chaque Etat pour déclarer les distributions de produits imposables auxquelles elle procède.

A l'appui de cette répartition, la société

fournit à chacune desdites administrations, en outre des documents qu'elle est tenue de produire ou de déposer en vertu de la législation interne, une copie de ceux produits ou déposés auprès de l'administration de l'autre Etat.

2 Les difficultés ou contestations qui peuvent surgir au sujet de la répartition des bases d'imposition sont réglées d'une commune entente entre les administrations fiscales compétentes.

A défaut d'accord, le différend est tranché par la commission mixte à l'article 41.

ARTICLE 18

Les tantièmes, jetons de présence et autres rémunérations attribués aux membres des conseils d'administration ou de surveillance de sociétés anonymes, sociétés en commandite par actions ou sociétés coopératives, en leur dite qualité, sont imposables dans l'Etat contractant où la société a son domicile fiscal, sous réserve de l'application des articles 22 et 23 ci-après en ce qui concerne les rémunérations perçues par les intéressés en leurs autres qualités effectives.

Si la société possède un ou plusieurs établissements stables sur le territoire de l'autre Etat contractant, les tantièmes, jetons de présence et autres rémunérations visés ci-dessus sont imposés dans les conditions fixées aux articles 15 à 17.

ARTICLE 19

1 L'impôt sur le revenu des prêts, dépôts, comptes de dépôts, bons de caisse et de toutes autres créances non représentées par des titres négociables est perçu dans l'Etat du domicile fiscal du créancier.

2 Toutefois, chaque Etat contractant conserve le droit d'imposer par voie de retenue à la source, si sa législation interne le prévoit, les revenus visés au paragraphe 1 ci-dessus.

3 Les dispositions des paragraphes 1 et 2 ci-dessus ne s'appliquent pas lorsque le bénéficiaire des intérêts, domicilié dans un Etat contractant, possède dans l'autre Etat contractant d'où proviennent les intérêts un établissement stable auquel se rattache effectivement la créance qui les produit. Dans ce cas, l'article 10 concernant l'imputation des bénéfices aux établissements stables est applicable.

ARTICLE 20

1 Les redevances (royalties) versées pour la jouissance de biens immobiliers ou l'exploitation de mines, carrières ou autres ressources naturelles ne sont imposables que dans celui des Etats contractants où sont situés ces biens, mines, carrières ou autres ressources naturelles.

2 Les droits d'auteur ainsi que les produits ou redevances (royalties) provenant de la vente ou de la concession de licences d'exploitation de brevets, marques de fabrique, procédés et formules, secrets qui sont payés dans l'un des Etats contractants à une personne ayant son domicile fiscal dans l'autre Etat contractant ne sont imposables que dans ce dernier Etat.

3 Sont traitées comme les redevances visées au paragraphe 2 les sommes payées pour la location ou le droit d'utilisation des films cinématographiques, les droits de location et rémunérations analogues pour l'usage ou le droit à usage d'équipements industriels, commerciaux ou scientifiques et pour la fourniture d'informations concernant des expériences d'ordre industriel, commercial ou scientifique.

4 Si une redevance (royalty) est supérieure à la valeur intrinsèque et normale des droits pour lesquels elle est payée, l'exemption prévue aux paragraphes 2 et 3 ne peut être appliquée qu'à la partie de cette redevance qui correspond à cette valeur intrinsèque et normale.

5 Les dispositions des paragraphes 2 et 3 ne s'appliquent pas lorsque le bénéficiaire des redevances ou autres rémunérations entretient dans l'Etat contractant d'où proviennent ces revenus un établissement stable ou une installation fixe d'affaires servant à l'exercice d'une profession libérale ou d'une autre activité indépendante et que ces redevances ou autres rémunérations sont à attribuer à cet établissement stable ou à cette installation fixe d'affaires. Dans ce cas, ledit Etat a le droit d'imposer ces revenus conformément à sa législation.

ARTICLE 21

Les pensions et les rentes viagères ne sont imposables que dans l'Etat contractant où le bénéficiaire a son domicile fiscal.

ARTICLE 22

1 Sauf accords particuliers prévoyant des régimes spéciaux en cette matière, les salaires, traitements et autres rémunératons similaires qu'une personne domiciliée dans l'un des deux Etats contractants reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi est exercé dans l'autre Etat contractant, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.

2 Nonobstant les dispositions du paragraphe 1 ci-dessus, les rémunérations qu'une personne domiciliée dans un Etat contractant reçoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:

a) Le bénéficiaire séjourne dans l'autre Etat pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée;

b) Les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas domicilié dans l'autre Etat;

c) Les rémunérations ne sont pas déduites des bénéfices d'un établissement stable ou d'une base fixe que l'employeur a dans l'autre Etat.

3 Nonobstant les dispositions précédentes du présent article, les rémunérations afférentes à une activité exercée à bord d'un navire ou d'un aéronef en trafic international ne sont imposables que dans l'Etat contractant où l'entreprise a son domicile.

ARTICLE 23

1 Les revenus qu'une personne domiciliée dans un Etat contractant retire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que cette personne ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités. Si elle dispose d'une telle base, la partie des revenus qui peut être attribuée à cette base est imposable dans cet autre Etat.

2 Sont considérés comme professions libérales, au sens du présent article, notamment l'activité scientifique, artistique, littéraire, enseignante ou pédagogique ainsi que celle des médecins, avocats, architectes ou ingénieurs.

ARTICLE 24

Les sommes qu'un étudiant ou un stagiaire de l'un des deux Etats contractants, séjournant dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

ARTICLE 25

Les revenus non mentionnés aux articles précédents ne sont imposables que dans l'Etat contractant du domicile fiscal du bénéficiaire à moins que ces revenus ne se rattachent à l'activité d'un établissement stable que ce bénéficiaire posséderait dans l'autre Etat contractant.

ARTICLE 26

Il est entendu que la double imposition est évitée de la manière suivante.

1 Un Etat contractant ne peut pas comprendre dans les bases des impôts sur le revenu visés à l'article 8 les revenus qui sont exclusivement imposables dans l'autre Etat contractant en vertu de la présente convention; mais chaque Etat conserve le droit de calculer l'impôt au taux correspondant à l'ensemble des revenus imposables d'après sa législation.

2 Les revenus visés aux articles 13, 15, 18 et 19 ayant leur source à Madagascar et perçus par des personnes domiciliées en France ne peuvent être imposés à Madagascar qu'à l'impôt sur le revenu des capitaux mobiliers.

Réciproquement les revenus de même nature ayant leur source en France et perçus par des personnes domiciliées à Madagascar ne peuvent être imposés en France qu'à la retenue à la source sur le revenu des capitaux mobiliers.

3 Les revenus de capitaux mobiliers et les intérêts de source malgache visés aux articles 13, 15, 18 et 19 et perçus par des personnes physiques, sociétés ou autres collectivités domiciliées en France sont compris dans cet Etat dans les bases des impôts visés au paragraphe 3 de l'article 8 pour leur montant brut sous réserve des dispositions ci-après:

a) Les revenus mobiliers de source malgache visés aux articles 13, 15 et 18 et soumis à l'impôt malgache sur le revenu des capitaux mobiliers par l'application desdits articles sont exonérés en France de la retenue à la source sur le revenu des capitaux mobiliers. Cette retenue est néanmoins considérée pour le calcul soit de l'impôt sur le revenu des personnes physiques, soit des autres impôts dans les bases desquels ces revenus se trouvent compris comme ayant été effectivement acquittés au taux normal applicable aux revenus de même nature ayant leur source en France;

b) Les intérêts visés à l'article 19 provenant de sources malgaches et qui ont été soumis à l'impôt sur le revenu des capitaux mobiliers à Madagascar donnent droit en France à un crédit d'impôt de 12 p. 100 au profit du bénéficiaire de ces intérêts domicilié en France. Ce crédit s'impute soit sur la taxe complémentaire et, le cas échéant, sur l'impôt sur le revenu des personnes physiques, soit sur l'impôt sur les sociétés.

4 Les revenus de capitaux mobiliers et les intérêts de sources françaises visés aux articles 13, 15, 18 et 19 et perçus par des personnes domiciliées à Madagascar ne peuvent être assujettis dans cet Etat qu'à l'impôt général sur le revenu.

CHAPITRE II

Impôts sur les successions.

ARTICLE 27

1 Le présent chapitre est applicable aux impôts sur les successions perçus pour le compte de chacun des Etats contractants.

Sont considérés comme impôts sur les successions: les impôts perçus par suite de décès sous forme d'impôts sur la masse successorale, d'impôts sur les parts héréditaires, de droits de mutation ou d'impôts sur les donations pour cause de mort.

2 Les impôts actuels auxquels s'applique le présent chapitre sont:

En ce qui concerne la République française: l'impôt sur les successions;

En ce qui concerne la République malgache: l'impôt sur les successions.

ARTICLE 28

Les biens immobiliers (y compris les accessoires) ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où ils sont situés; le cheptel mort ou vif servant à une exploitation agricole ou forestière n'est imposable que dans l'Etat contractant où l'exploitation est située.

ARTICLE 29

Les biens meubles corporels ou incorporels laissés par un défunt ayant eu au moment de son décès son domicile dans l'un des Etats contractants et investis dans une entreprise commerciale, industrielle ou artisanale de tout genre sont soumis à l'impôt sur les successions suivant la règle ci-après:

a) Si l'entreprise ne possède un établissement stable que dans l'un des deux Etats contractants, les biens ne sont soumis à l'impôt que dans cet Etat; il en est ainsi même lorsque l'entreprise étend son activité sur le territoire de l'autre Etat contractant sans y avoir un établissement stable;

b) Si l'entreprise a un établissement stable dans les deux Etats contractants, les biens sont soumis à l'impôt dans chaque Etat dans la mesure où ils sont affectés à un établissement stable situé sur le territoire de cet Etat.

Toutefois, les dispositions du présent article ne sont pas applicables aux investissements effectués par le défunt dans les sociétés à base de capitaux (sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés coopératives, sociétés civiles soumises au régime fiscal des sociétés de capitaux) ou sous forme de commandite dans les sociétés en commandite simple.

ARTICLE 30

Les biens meubles corporels ou incorporels rattachés à des installations permanentes et affectés à l'exercice d'une profession libérale dans l'un des Etats contractants ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où se trouvent ces installations.

ARTICLE 31

Les biens meubles corporels, y compris les meubles meublants, le linge et les objets ménagers ainsi que les objets et collections d'art autres que les meubles visés aux articles 29 et 30 ne sont soumis à l'impôt sur les successions que dans celui des Etats contractants où ils se trouvent effectivement à la date du décès.

Toutefois, les bateaux et les aéronefs ne sont imposables que dans l'Etat contractant où ils ont été immatriculés.

ARTICLE 32

Les biens de la succession auxquels les articles 28 à 31 ne sont pas applicables ne sont soumis aux impôts sur les successions que dans l'Etat contractant où le défunt avait son domicile au moment de son décès.

ARTICLE 33

1 Les dettes afférentes aux entreprises visées aux articles 29 et 30 sont imputables sur les biens affectés à ces entreprises. Si l'entreprise possède, selon le cas, un établissement stable ou une installation permanente dans les deux Etats contractants, les dettes sont imputables sur les biens affectés à l'établissement ou à l'installation dont elles dépendent.

2 Les dettes garanties soit par des immeubles ou des droits immobiliers, soit par des bateaux ou aéronefs visés à l'article 31, soit par des biens affectés à l'exercice d'une profession libérale dans les conditions prévues à l'article 30, soit par des biens affectés à une entreprise de la nature visée à l'article 29, sont imputables sur ces biens. Si la même dette est garantie à la fois par des biens situés dans les deux Etats, l'imputation se fait sur les biens situés dans chacun d'eux proportionnellement à la valeur taxable de ces biens.

Cette disposition n'est applicable aux dettes visées au paragraphe 1 que dans la mesure où ces dettes ne sont pas couvertes par l'imputation prévue à ce paragraphe.

3 Les dettes non visées aux paragraphes 1 et 2 sont imputées sur les biens auxquels sont applicables les dispositions de l'article 32.

4 Si l'imputation prévue aux trois paragraphes qui précèdent laisse subsister dans un Etat contractant un solde non couvert, ce solde est déduit des autres biens soumis à l'impôt des successions dans ce même Etat. S'il ne reste pas dans cet Etat d'autres biens soumis à l'impôt ou si la déduction laisse encore un solde non couvert, ce solde est imputé sur les biens soumis à l'impôt dans l'autre Etat contractant.

ARTICLE 34

Nonobstant les dispositions des articles 28 à 33, chaque Etat contractant conserve le droit de calculer l'impôt sur les biens héréditaires qui sont réservés à son imposition exclusive, d'après le taux moyen qui serait applicable s'il était tenu compte de l'ensemble des biens qui seraient imposables d'après sa législation interne.

CHAPITRE III

Droits d'enregistrement autres que les droits de succession. Droits de timbre.

ARTICLE 35

Lorsqu'un acte ou un jugement établi dans l'un des Etats contractants est présenté à l'enregistrement dans l'autre Etat contractant, les droits applicables dans ce dernier Etat sont déterminés suivant les règles prévues par sa législation interne, sauf imputation, le cas échéant, des droits d'enregistrement qui ont été perçus dans le premier Etat, sur les sommes ou valeurs donnant ouverture aux droits dans cet autre Etat.

Toutefois, les actes ou jugements portant mutation de propriété, d'usufruit d'immeubles ou de fonds de commerce, ceux portant mutation de jouissance d'immeubles et les actes ou jugements constatant une cession de droit à un bail ou au bénefice d'une promesse de bail portant sur tout partie d'un immeuble ne

peuvent être assujettis à un droit de mutation que dans celui des Etats contractants sur le territoire duquel ces immeubles ou ces fonds de commerce sont situés.

Les dispositions du premier alinéa du présent article ne sont pas applicables aux actes constitutifs de société ou modificatifs du pacte social. Ces actes ne donnent lieu à la perception du droit proportionnel d'apport que dans l'Etat où est situé le siège statutaire de la société. S'il s'agit de fusion ou d'opération assimilée, la perception est effectuée dans l'Etat où est situé le siège de la société absorbante ou nouvelle.

ARTICLE 36

Les actes ou effets créés dans l'un des Etats contractants ne sont pas soumis au timbre dans l'autre Etat contractant lorsqu'ils ont effectivement supporté cet impôt au tarif applicable dans le premier Etat, ou lorsqu'ils en sont légalement exonérés dans ledit Etat.

TITRE III

Assistance administrative

ARTICLE 37

1 Les autorités fiscales de chacun des Etats contractants transmettent aux autorités fiscales de l'autre Etat contractant les renseignements d'ordre fiscal qu'elles ont à leur disposition et qui sont utiles à ces dernières autorités pour assurer l'établissement et le recouvrement réguliers des impôts visés par la présente convention ainsi que l'application, en ce qui concerne ces impôts, des dispositions légales relatives à la répression de la fraude fiscale.

2 Les renseignements ainsi échangés qui conservent un caractère secret ne sont pas communiqués à des personnes autres que celles qui sont chargées de l'assiette et du recouvrement des impôts visés par la présente convention. Aucun renseignement n'est échangé qui révélerait un secret commercial, industriel ou professionnel. L'assistance peut ne pas être donnée lorsque l'Etat requis estime qu'elle est de nature à mettre en danger sa souveraineté ou sa sécurité ou à porter atteinte à ses intérêts généraux.

3 L'échange des renseignements a lieu soit d'office, soit sur demande visant des cas concrets. Les autorités compétentes des Etats contractants s'entendent pour déterminer la liste des informations qui sont fournies d'office.

ARTICLE 38

1 Les Etats contractants conviennent de se prêter mutuellement assistance et appui en vue de recouvrer, suivant les règles propres à leur législation ou réglementation respectives, les impôts visés par la présente convention ainsi que la majoration de droits, droits en sus, indemnités de retard, intérêts et frais afférents à ces impôts, lorsque ces sommes sont définitivement dues en application des lois ou règlements de l'Etat demandeur.

2 La demande formulée à cette fin doit être accompagnée des documents exigés par les lois ou règlements de l'Etat requérant pour établir que les sommes à recouvrer sont définitivement dues.

3 Au vu de ces documents, les significations et mesures de recouvrement et de perception ont lieu dans l'Etat requis conformément aux lois ou règlements applicables pour le recouvrement et la perception de ses propres impôts.

4 Les créances fiscales à recouvrer bénéficient des même sûretés et privilèges que

les créances fiscales de même nature dans l'Etat de recouvrement.

ARTICLE 39

En ce qui concerne les créances fiscales qui sont encore susceptibles de recours, les autorités fiscales de l'Etat créancier, pour la sauvegarde de ses droits, peuvent demander aux autorités fiscales compétentes de l'autre Etat contractant de prendre les mesures conservatoires que la législation ou la réglementation de celui-ci autorise.

ARTICLE 40

Les mesures d'assistance définies aux articles 38 et 39 s'appliquent également au recouvrement de tous impôts et taxes autres que ceux visés par la présente convention, ainsi que, d'une manière générale, aux créances de toute nature des Etats contractants.

TITRE IV

Dispositions diverses

ARTICLE 41

1 Tout contribuable qui prouve que les mesures prises par les autorités fiscales des Etats contractants ont entraîné pour lui une double imposition en ce qui concerne les impôts visés par la présente convention peut adresser une demande soit aux autorités compétentes de l'Etat sur le territoire duquel il a son domicile fiscal, soit à celles de l'autre Etat. Si le bien-fondé de cette demande est reconnu, les autorités compétentes des deux Etats s'entendent pour éviter de façon équitable la double imposition.

2 Les autorités compétentes des Etats contractants peuvent également s'entendre pour supprimer la double imposition dans les cas non réglés par la présente convention, ainsi que dans les cas où l'interprétation ou l'application de la présente convention donnerait lieu à des difficultés ou à des doutes.

3 S'il apparaît que, pour parvenir à une entente, des pourparlers soient opportuns, l'affaire est déférée à une commission mixte composée de représentants en nombre égal des Etats contractants, désignés par les ministres des finances. La présidence de la commission est exercée alternativement par un membre de chaque délégation.

ARTICLE 42

Les autorités compétentes des deux Etats contractants se concerteront pour déterminer, d'une commune entente et dans la mesure utile, les modalités d'application de la présente convention.

ARTICLE 43

1 La présente convention sera sujette à ratification ou approbation et entrera en vigueur dès que les instruments de ratification ou d'approbation des Etats signataires auront été échangés, étant entendu qu'elle produira ses effets pour la première fois:

En ce qui concerne les impôts sur les revenus, pour l'imposition des revenus afférents à l'année civile 1961 ou aux exercices clos au cours de cette année. Toutefois, pour ce qui est des revenus dont l'imposition est réglée par les articles 15 à 18, la convention s'appliquera aux distributions qui auront lieu postérieurement à l'entrée en vigueur de la convention;

En ce qui concerne les impôts sur les successions, pour les successions de per-

sonnes dont le décès se produira depuis et y compris le jour de l'entrée en vigueur de la convention;

En ce qui concerne les autres droits d'enregistrement et les droits de timbre, pour les actes et les jugements postérieurs à l'entrée en vigueur de la convention.

2 Les dispositions de la convention conclue les 30 avril et 8 juin 1959 entre le Gouvernement français et le Gouvernement malgache en vue d'éliminer les doubles impositions et d'établir des règles d'assistance mutuelle administrative pour l'imposition des revenus de capitaux mobiliers sont abrogées à compter de l'entrée en vigueur de la présente convention.

ARTICLE 44

La convention restera en vigueur pendant une durée indéfinie.

Toutefois, à partir du 1er janvier 1965, chacun des gouvernements contractants peut notifier à l'autre son intention de mettre fin à la présente convention, cette notification devant intervenir avant le 30 juin de chaque année. En ce cas, la convention cessera de s'appliquer à partir du 1er janvier de l'année suivant la date de la notification, étant entendu que les effets en seront limités:

En ce qui concerne l'imposition des revenus, aux revenus acquis ou mis en paiement dans l'année au cours de laquelle la notification sera intervenue;

En ce qui concerne l'imposition des successions, aux successions ouvertes au plus tard le 31 décembre de ladite année;

En ce qui concerne les autres droits d'enregistrement et les droits de timbre, aux actes et aux jugements intervenus au plus tard le 31 décembre de ladite année.

En foi de quoi les soussignés, dûment autorisés à cet effet, ont signé la présente convention, établie en deux exemplaires originaux.

Fait à Tananarive, le 29 septembre 1962.

Pour le Gouvernement de la République française:

MARCEL GEY

Pour le Gouvernement de la République malgache:

PAUL LONGUET

PROTOCOLE

Au moment de procéder à la signature de la convention entre le Gouvernement français et le Gouvernement malgache tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative en matière fiscale, les plénipotentiaires soussignés sont convenus de la déclaration suivante:

I. — L'expression «montant brut» figurant à l'article 26 de la convention doit s'entendre du montant des revenus imposables avant déduction de l'impôt auquel ils ont été soumis dans l'Etat de la source.

II. — Pour l'application de l'article 40 de la convention, sont considérées comme accord réalisé au sens de l'article 42 les dispositions de la convention du 2 juin 1960 relative aux relations entre le Trésor français et le Trésor malgache qui concernent le recouvrement des créances des Etats contractants.

MARCEL GEY
PAUL LONGUET

AMBASSADE DE FRANCE
A MADAGASCAR

Tananarive, le 14 mai 1965

A Son Excellence Monsieur le ministre des affaires étrangères de la République malgache.

Monsieur le ministre,

La convention fiscale entre la France et Madagascar signée à Tananarive le 29 septembre 1962 institue, comme vous le savez, dans ses articles 38 à 40 des mesures d'assistance réciproque en vue du recouvrement des impôts visés par la convention, ainsi que de tous autres impôts et taxes et, d'une manière générale, des créances de toute nature des Etats contractants.

En vue d'éviter que l'application de cette disposition entraîne, dans certains cas, des difficultés de procédure et afin de maintenir le climat de confiance qui règne entre les gouvernements de nos deux pays, j'ai l'honneur de proposer à Votre Excellence d'admettre que lorsqu'un contribuable fera l'objet dans un de nos deux Etats de poursuites en application des dispositions des articles 38 à 40 susvisés en vue du recouvrement d'impositions ou de créances dues dans l'autre Etat, il pourra demander aux autorités compétentes du premier Etat de suspendre ces poursuites s'il est en mesure de faire valoir des titres de propriété concernant des biens situés dans l'Etat où ont été établies les impositions ou une créance sur une collectivité publique ou para-publique dudit Etat.

Si cette demande, qui devra être appuyée des justifications nécessaires, apparaît fondée, il sera sursis à l'application des dispositions de l'article 38. Les autorités compétentes de l'Etat requérant seront averties de cette décision et la demande sera soumise — dans un délai de trois mois — à l'examen de la commission mixte visée à l'article 41. Cette commission décidera si, et dans quelle mesure, le recouvrement forcé devra être poursuivi.

D'une manière plus générale, les contestations en matière de recouvrement seront considérées comme des difficultés d'application au sens de l'article 41 de la convention.

Je vous serais très obligé de vouloir bien me faire savoir si cette proposition rencontre l'agrément de votre gouvernement.

Veuillez agréer, Monsieur le ministre, les assurances de ma très haute considération.

L'ambassadeur de France,
MARCEL GEY

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES

Tananarive, le 14 mai 1965

A Son Excellence Monsieur Marcel Gey, ambassadeur de France à Madagascar.

Monsieur l'ambassadeur,

Par lettre en date de ce jour, vous avez bien voulu me faire savoir ce qui suit:

. . . . . .

J'ai l'honneur de vous faire part de l'accord de mon gouvernement sur la proposition qui précède.

Veuillez agréer, Monsieur l'ambassadeur, les assurances de ma haute considération.

CALVIN TSIEBO.

ENGLISH SUMMARY OF THE MOST IMPORTANT ARTICLES

TITLE I

Article 1 Persons are defined to include all natural and legal persons and associations of natural persons not having legal personality.

France is defined to include metropolitan France and the overseas departments of Guadaloupe, Guiana, Martinique and Réunion.

Madagascar is defined to include the territories of the Malagasy Republic.

Article 2 The fiscal domicile of natural persons is determined by the place of permanent habitation (meaning the center of vital interests) or, if there is no place of permanent habitation, by rules set out in Article 2 (1).

The fiscal domicile of legal persons is the place of their statutory legal seat; that of associations of persons not having legal personality is the place of effective management.

Article 3 The definition of "permanent establishment" is substantially equivalent to that of Article 4 OECD draft. However, the receipt of insurance premiums or the insurance of risks on the territory of a contracting state constitutes a permanent establishment therein. (Art. 3 (d)).

Also constituting a permanent establishment is a construction project, even if for a duration of less than one year. (Art. 3(a) (gg)). Moreover, a fixed place of business solely for the purpose of collecting information is not specifically included in the exclusionary language of Article 3(b) (dd). Finally, a dependent agent may constitute a permanent establishment even if he does not have the authority to conclude contracts in the name of his principal.

Article 4 Immovable property includes private law and usufruct rights pertaining thereto, excepting loans guaranteed by a mortgage on immovable property.

For treaty purposes, property is immovable property if and only if the property is deemed immovable property by the law of the contracting state in which it is located.

Article 5 Non-discrimination is treated in a manner substantially equivalent to that of Article 24 OECD draft.

Article 6 Competent authorities are defined for France and Madagascar respectively as the Minister of Finance and Economic Affairs and the Minister of Finance, and their authorized representatives.

Article 7 Terms which the treaty does not define are defined in a manner substantially equivalent to that of Article 3(2) OECD draft.

TITLE II

CHAPTER I

Article 8 Article 8(1), dealing with the scope of taxes covered by the treaty, is substantially equivalent to Article 2(1), (2) OECD draft, except insofar as reference is made in the latter to taxes on capital, i.e., net worth taxes, which exist in neither of the treaty countries.

Article 8(2) states the purposes of Articles 8-26, i.e., to eliminate double taxation.

Article 8(3) lists the actual taxes to which this chapter applies:
in the case of France

a L'impôt sur le revenu des personnes physiques;
b La taxe complémentaire;
c L'impôt sur les bénéfices des sociétés et autres personnes morales;

in the case of Madagascar

a L'impôt cédulaire sur les bénéfices divers;
b L'impôt sur le revenu des capitaux mobiliers;
c L'impôt général sur le revenu.

Article 8(4) Future taxes analogous to taxes covered by the treaty are to be treated in a manner substantially identical to that of Article 2(4) OECD draft.

Article 8(5) In the event that fiscal legislation of one of the contracting states substantially affects the nature or character of the above stated taxes, the competent authorities will undertake to determine necessary adjustments to be incorporated in the present treaty.

Article 9 Income from immovable property is treated in a manner substantially equivalent to that of Article 6(1) OECD draft.

Article 10 Article 10(1), (2), (3) Business income is treated in a manner substantially equivalent to that of Article 8(1), (2), (3) OECD draft.

Article 10(4) When it is otherwise impossible to allocate the income of an enterprise, such an allocation may be hand on the basis of the world-wide turnover relative to that effected in the respective contracting states.

Article 11 Associated enterprises are treated in a manner substantiallly equivalent to that of Article 9 OECD draft.

Article 12 Profits from the operation of ships or aircraft in international traffic are taxable only in the contracting state in which the fiscal domicile of the enterprise is located.

Article 13 Except as otherwise provided by Articles 15-17, dividends interest and similar payments by a corporation or other public or private association of persons are taxable in the state in which the payor has its fiscal domicile.

Article 14-17 Contain special and elaborate rules designed to avoid evasion of tax between related enterprises and to avoid double taxation where a dividend tax or other similar tax (e.g. French quotité imposable) to which article 13 applies is imposed.

Article 18 Directors' fees and similar payments are taxable in the contracting state in which the enterprise's fiscal domicile is located except as otherwise directed by Articles 22 and 23 (insofar as they concern payments received in a capacity other than that contemplated by the present article.)

If the enterprise of one contracting state has one or more permanent establishments in the other contracting state, the director's fees are to be taxed in the manner specified by Articles 15-17.

Article 19 Interest and similar payments are taxable in the state in which the fiscal domicile of the lender is located, each contracting state nevertheless reserving the right to subject such payments to withholding tax at source if its national law so provides.

If a domiciliary of one contracting state has one or more permanent establishments in

the other contracting state then interest income relating thereto is to be taxed in the manner specified by Article 10.

Article 20 Mining royalties and similar payments are taxable only in the contracting state in which the mines, etc. are located.

Copyright, patent, trademark, know-how and similar royalties, film rentals, and rentals of commercial, industrial or scientific equipment (to the extent they do not exceed the intrinsic value of the rights to which they relate) are taxable only in the contracting state in which the person receiving the royalties has his fiscal domicile.

However, all royalties attributable to a permanent establishment or fixed place of business for the practice of a liberal profession or other independent activity are taxable in the contracting state in which the permanent establishment or fixed place of business is located.

Article 21 Pensions and annuities may be taxed only in the contracting state in which fiscal domicile of the beneficiary is located.

Article 22 Except where otherwise provided in other articles of the present treaty salaries, wages and other employment income is treated in a manner substantially equivalent to that of Article 15 OECD draft.

Article 23 Income from the exercise of a liberal profession or similar independent activities is treated in a manner substantially equivalent to that of Article 14 OECD draft.

Article 24 Payments to a student or apprentice solely for the purpose of his education or training are treated in a manner substantially equivalent to that of Article 20 OECD draft.

Article 25 Income other than that specified in the treaty (unless attributable to a permanent establishment in the other contracting state) is taxable only in the contracting state in which the fiscal domicile of the recipient is located.

Article 26 Double taxation is to be eliminated in the following manner:

Neither contracting state may impose tax on income which is taxable exclusively in the other contracting state, each state reserving the right to include such income in the computation of tax rates according to national law, thus preserving progressive rate structures.

On income referred to in Articles 13, 15, 18 and 19, received by a French domiciliary and having its source in Madagascar, Madagascar may impose only the tax on income from movable capital. In the reciprocal situation France may impose only the withholding tax on income from movable capital.

Interest and income from movable capital to which Articles 13, 15, 18 and 19 apply, received by a French domiciliary and having its source in Madagascar, must be included in its gross amount in the tax base of the French taxes included in Article 8(3) except where the following dispositions otherwise provide:

The usual French withholding tax on income from foreign movable property will not be levied on Madagascar source income to which Articles 13, 15 and 18 apply and on which the Madagascar tax on movable capital has been levied. Nevertheless, a credit against French tax imposed on such income shall be granted as if the usual withholding tax had been imposed.

Madagascar source interest to which Article 19 applies and on which the Madagascar

tax on movable capital has been levied, is taxable in France. However, a credit of 12 percent of such income must be allowed against the tax imposed.

Interest and income from movable capital to which Articles 13, 15, 18 and 19 apply, received by a domiciliary of Madagascar and having its source in France, may be subjected by Madagascar only to the general income tax.

CHAPTER II

Articles 27-34 include provisions concerning succession duties and similar taxes.

CHAPTER III

Articles 35-36 include provisions concerning registration fees and stamp duties.

TITLE III

Article 37 The provision dealing with the exchange of information is substantially equivalent to that of Article 26 OECD draft.

Articles 38-40 provide for mutual assistance in the collection process.

TITLE IV

Articles 41-42 dealing with a mutual agreement procedure are substantially equivalent to Article 25 OECD draft.

Articles 43-44 concern respectively the entry into force and termination of the treaty.

IV

BIBLIOGRAPHY

1. BOOKS

AUSTRIA

VERGÜTUNGSGRUPPENVERZEICHNIS FÜR DIE UMSATZSTEUERAUSFUHRVERGÜTUNG, by *Waba,* J. Wien. Wirtschaftsverlag Dr. Anton Orac, 1965. Looseleaf edition. S. 187.—.

This catalogue lists the various Austrian customs tariff schedules and refund rates for exporters. The catalogue includes a survey on those provisions of the turnover tax law dealing with export refunds.

BUNDESABGABENORDNUNG, Manzsche Gesetzausgaben, Sonderausgaben Nr. 1, Wien. Manzsche Verlags- und Universitätsbuchhandlung, 1962. pp. 224. S. 88.—.

Text of the Fiscal Code of June 28, 1961, and the report of the Financial Committee and the official explanation to the bill, with references to the former Code provisions.

KOMMENTAR ZUM ERBSCHAFTS- UND SCHENKUNGSSTEUERGESETZ, Manzsche Handkommentare zum oesterreichischen Recht, Band 10, by *Dorazil, W.* Wien. Manzsche Verlags- und Universitätsbuchhandlung, 1961, pp. 216. S. 114.—.

Guide to the Inheritance tax and the Inheritance equalization tax law, explaining the provisions of the acts and the case law.

DAS GEWERBESTEUERGESETZ, Manzsche's Grosze Gesetzausgabe Band 41, by *Jiresch, R.* and *J. Zapletal,* 1964, fourth edition. pp. 346. S 118.—. Wien, Manzsche Verlags- und Universitätsbuchhandlung.

A much needed analysis of and commentary to the Business Tax Act, its regulations and case law.

Since the business tax is a municipal levy, since it is levied on a base that includes both profits and networth and since it is a real rather than a personal tax the following relevant subjects are included within the scope of the book: the relevant relationships between state and municipality, between business tax and income and networth tax, and between tax paying subject and taxed object. This useful commentary is structured on a section by section analysis of the law.

TEXTAUSGABE ÖSTERREICHISCHER GESETZE UND VERORDNUNGEN, ABGABENGESETZE,

Band I (2) : Bewertungsgesetz (pp. 79; S. 40.—.)
Band II (2) m: Beförderungssteuergesetz (pp. 110; S. 60.—.)
Band II (3a): Körperschaftsteuergesetz (pp. 18: S. 30.—.)
Band II (6) : Grundsteuerrecht (pp. 40; S. 30.—)
Band III : Gebührengesetz (pp. 39; S. 30).
Eisenstadt, Prugg Verlag.

Up to date text of acts, decrees and regulations (with reference to court decisions) in the field of valuation, transportation tax, corporate income tax, real estate tax and stamp duties.

AUSTRALIA

MANUAL OF THE LAW OF INCOME TAX IN AUSTRALIA, by *Ryan, K.W.* Brisbane, 30 Adelaide Street, The Law Book Company Ltd, 1965. pp. 251.

This book is designed to provide an introductory survey of the Australian income tax legislation and of the extensive body of case law which has been built up around that legislation. It is intended to be of use both for those who have made no formal study of income tax law, and for those whose study of it has been confined to the text of the relevant Acts. The law is stated as at the end of 1964. Accordingly the text includes an analysis of the important amendments enacted late in the year.

COMMON MARKET

VERMÖGENSSTEUERN UND GEWERBEABGABEN IN DEN MITGLIEDSTAATEN DER EWG, Schriftenreihe des Instituts „Finanzen und Steuern", Heft 82, Bonn. Institut „Finanzen und Steuern", 1965. pp. 64.

A comparison of net worth, net wealth and business taxes (including business tax on profits) levied in each of the Common Market countries. It is intended that this study serve both tax harmonization within the Common Market and tax reforms in the separate countries.

FRANCE

L'ASSIETTE RÉELLE DE LA TAXE SUR LA VALEUR AJOUTÉE, by *Muller A.* Librairie Dalloz, 11 Rue Soufflot (Ve), Paris, 1965. Frs. 42. pp. 322.

This commentary on the Tax on Value Added, pays special attention to allowable deductions, case law and examples illuminating the discussion. The book is useful to both businessmen and economists and sheds substantial light on the subject of turnover tax reform in France and problems in the European Common Market.

GERMANY

INSOLVENZEN UND STEUERN, Konkurs, Vergleich, Sanierung im Steuerrecht, by *Geist, G.* Herne/Berlin, Verlag Neue Wirtschaftsbriefe, 1965. pp. 147. DM 14,80.

This brochure analyzes the relationship between taxation provisions and civil law provisions in the field of bankrupty, settlement, priorities, corporate reorganization, etc.

FUNDSTELLENREGISTER ZUR UMSATZSTEUER 1957-1962; Minden (Westfalen), Blumenstrasse 14, Postfach 770, Wiadok, pp. 296.

This bibliographical tool guides the user to articles, rulings, court decisions, etc. in the field of turnover taxation. Easy to use and well indexed, it provides alternative avenues to the information sought: subject matter index with key "catchwords" and chronological cross-reference.

VERWALTUNGSVORSCHRIFTEN UND STEUERPROZESS, by *Kampe, G.* Stuttgart. Fachverlag für Wirtschafts- und Steuerrecht, Schäfer & Co., GmbH. 1965, pp. 234 DM 25.—.

A study of the nature of administrative provisions (rulings, regulations, etc.) and the protection afforded the taxpayer against abusive administrative practice. Attention is paid to the historical development of administration, to the case law and to theoretical principles of administrative tax law.

DER RÄUMLICHE ANWENDUNGSBEREICH DER VERWALTUNGSRECHTSNORM, by *Vogel, K.* Abhandlungen der Forschungsstelle für Völkerrecht und ausländisches öffentliches Recht der Universität Hamburg, Band 12. Frankfurt/Berlin. Alfred Metzner Verlag, 1965. pp. 480.

A thorough study of the principles of international administrative and tax law with emphasis on the proper limits of administrative authority. First dealt with is the decline of the concept of territoriality. Next the extra-territorial theories are examined and finally the so-called "field theory" based on present German law.

MOBILIARKREDIT IM STEUERRECHT, by *Bülow, B. von.* Spezialfragen im Steuerrecht, Stuttgart. Fachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co., GmbH. 1965. pp. 106.

A study of several aspects of beneficial ownership; retention of title and distraint in various German tax laws.

DIE FEHLERHAFTE HAUSHALTSSATZUNG, by *Pagenkopf H.* Schriftenreihe des Instituts „Finanzen und Steuern", Heft 79, Bonn. Institut „Finanzen und Steuern", 1965. pp. 55.

A study exploring the limits of the authority of municipalities to impose tax according to present public law and, in addition, a guide for taxpayers concerning remedies in the case of the municipalities' exceeding their authority.

TREUHAND UND TREUHÄNDER IM STEUERRECHT; Steuerliche Treuhand, Treuhänderschaft und Organschaft, by *Kirsten, W.* Herne/Berlin, Verlag Neue Wirtschaftsbriefe. 1965. pp. 142 DM. 14,40.

A comprehensive study of the position of trusts and trustees in German tax law. Since there is little literature available on this subject, this booklet will serve as a valuable guide to any person who deals with trusts or trustees in Germany.

TESTAMENT UND ERBE, Praktische Fragen des Erbrechts und der Erbschaftsteuer by *Schäfer, A., G. Schmidt-Weyland,* Bonn. Titz Verlag, 1965. 10th edition pp. 107.

Guide to civil and tax law in the field of inheritance. Attention is paid to its practical application.

DIE AUFNAHME VON KINDERN IN DAS FAMILIEUNTERNEHMEN, by *Böttcher, C.* and *J. Beinert*; Steuerrecht im Rechtsstaat, Heft 3, München/Berlin. C.H. Beck'sche Verlagsbuchhandlung, 1965. pp. 111. DM 13.80.

Study of the tax consequences of a child's occupying a legal position in a family enterprise. The discussion deals interalia with the child's position as an employee, as a lender of money (creditor), as a limited of general partner, as an associate and as a shareholder in a limited company (GmbH).

LIQUIDATION UND STEUERLICHE PFLICHTEN; by *Liftin, P.* Spezialfragen im Steuerrecht, Stuttgart. Fachverlag für Wirtschafts- und Steuerrecht, Schäfer & Co. GmbH., 1964. pp. 89.

Study of the administrative duties imposed by various tax laws on persons involved in the liquidation of business enterprises.

ITALY

LA PRATICA DELLE DOCUMENTAZIONI FISCALI NELLE SOCIETÀ AZIONARIE CON PARTICIPAZIONI STATUNITENSI AL CAPITALE; La documentazione fiscale del "Tax credit" da produrre in U.S.A. per il ricupero delle imposte pagate in Italia sugli utile assegnati ai soci statunitensi, by *Dr. Walther Alvisi.*

Published by Edizioni del Centro Italiano per lo Studio del Diritto Tributario Comparato, Milano, October 1965. 126 pp.

Treatise on the taxation of U.S. corporate shareholders of an Italian corporation and the formalities necessary for the application of the tax treaty provisions with respect to the reduction of the Italian withholding tax. The first part of this book discusses the American tax credit; the second part considers the Italian taxation of dividends paid by an Italian corporation to U.S. shareholders, according to the tax treaty provisions; and the third part mentions the formalities to be compiled with in the U.S. to enjoy the tax credit.

The articles of the U.S. Revenue Code on tax credit, the articles in the Italian Testo Unico on unilateral measures to avoid double taxation, the tax treaty Italy-U.S.A. and the Italian Ruling on taxation of dividends paid to U.S. shareholders are reproduced in an appendix.

LUXEMBOURG

CODE FISCAL LUXEMBOURGEOIS, les volumes 5 et 5a; Impôts indirects de l'état perçus par l'administration de l'enregistrement, by *Sinner, J.* Luxembourg. Editions Armand Peiffer, 1965. Loose-leaf edition.

By the publication of the fifth volume (in two parts due to its size), the series' fiscal code of Luxembourg, is rendered completed. This unique handbook on Luxembourg taxation reproduces the text of the respective tax acts, the decrees and the regulations thereto. In addition it contains alphabetical indices on the subjects dealt with and systematical indices on the outline of the law under discussion. Volume 5 contains the taxes on the transfer of goods i.e. the registration duties, the estate duties, the stamp duties, the duties on mortgage contracts and the taxation on holding companies. Volume 5a surveys the turnover tax; turnover tax on imports; tax refunds on export; tax on transportation; and tax on insurance contracts.

NETHERLANDS

MODELLEN VOOR DE RECHTSPRAKTIJK, by *Melis, Slagter, Van Rossum du Chattel, Van Soest, Scholten, Luyten.* Deventer, N.V. Uitgeversmij. Kluwer, 1960. Loose-leaf in two volumes.

Standard forms of applications, deeds, summons contracts and other important documents in the field of civil law, procedure, commercial law and tax law. These two loose-leaf volumes are essential for persons engaged in the practice of Dutch law.

NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1964-65, by *Staples, C.A.* Wellington, 54 The Terrace, Sweet & Maxwell (N.Z.) Ltd. 1965. pp. 489.

This is a comprehensive guide to New Zealand income tax law, organized by key-words that are sufficiently obvious to enable even a relative

novice to find his way. Those readers who may have difficulty with the organization can adequately find their way by means of the comprehensive index.

SOUTH AFRICA

A GUIDE TO BUSINESS EXPANSION IN SOUTH AFRICA. London, the Standard Bank Ltd, 1965. pp. 62. Loose-leaf.

The editors have prepared this handbook in the hope that its information will be of assistance to those wishing to extend their business activities to the Republic of South Africa. Although all the various aspects of doing business within the Republic could not be exhaustively treated, the subject matter relating to the formation of companies, taxation, license fees, and duties has been covered in some detail.

SWITZERLAND

DER GENUSSSCHEIN UND SEINE BESTEUERUNG — DIE ABGABEPFLICHT NACH SCHWEIZERISCHEN WEHRSTEUERRECHT. *Dr Michel Louis Catalan.* Verlag Paul Haupt, Bern. 1964. 268 pp.

A scientific and practical study of the legal and tax problems relating to "jouissance" rights and an illustration of how "jouissance" rights can be used for financing and reorganizing an enterprise. An extensive bibliography is included.

U.S.A.

LA PRATICA DELLE DOCUMENTAZIONI FISCALI NELLE SOCIETÀ AZIONARIE CON PARTICIPAZIONI STATUNITENSI AL CAPITALE, by *Dr. Walther Alvisi.* For review, see under Italy, page 481.

2. LOOSE-LEAF SERVICES

Releases received between August 1st 1965 and September 15, 1965

BELGIUM

Handleiding der Inkomstenbelastingen;
release no 9: Excelsior – Brussels.

Documentatie Vandewinckele;
releases nos 261-262: Vandewinckele – Brugge.

Guide Fiscal Permanent;
releases nos 264-265: Ed. Vioburo – Bruxelles.

CANADA

Canada Tax Service Releases:
release no 180: R. de Boo – Toronto.

FRANCE

Bulletin de Documentation Pratique des Impôts Directs et des Droits d'Enregistrement;
release no 7: Lefebvre – Paris.

Dictionnaire Fiscal Permanent Feuillets;
release no 66: Ed Législatives et Administratives – Paris.

Fiscalité de l'Afrique Noire;
releases nos 18-20: Ed. S.O.M. – Paris.

Impôts et Sociétés;
release no juin 1965: Seteca – Paris.

GERMANY

Handbuch Einfuhrnebenabgaben;
release no 6: Linnepe – Hagen.

Kommentar Gewerbesteuergesetz;
release no 16: O. Schmidt – Köln/Mariënburg.

NETHERLANDS

Belastingwetgevingserie;
Bieraccijns, release no 1: Noorduyn & Zn. – Gorinchem.

Belastingbeschouwingen;
release no 13: Samsom – Alphen a/d Rijn.

Fed losbladig fiscaal weekblad;
releases nos 1004-1010: FED-Amsterdam.

Fed's losbladige fiscale wetten;
releases no 927: FED – Amsterdam.

Fed's fiscaal register;
release no 3: FED – Amsterdam.

Fed's fiscaal repertorium;
releases nos 3-4: FED – Amsterdam.

De Gemeentelijke Belastingen;
releases nos 62-64: Vuga Boekerij – Arnhem.

Handboek voor de EEG: Verdragsteksten en aanverwante stukken;
release no 14: Kluwer – Deventer.

Handboek voor de EEG: Tarieflijsten voor de EEG;
releases nos 39-41: Kluwer/Deventer – Samsom/Alphen a/d Rijn.

Handboek In- en Uitvoer: Belastingheffing bij invoer
releases nos 51-52: Kluwer – Deventer.

Kluwer's Tarievenboek;
release no 46: Kluwer – Deventer.

Teruggaaf van Omzetbelasting bij Uitvoer;
releases nos 160-161: Samsom – Alphen a/d Rijn.

Vademecum voor In- en Uitvoer;
releases nos 314-316: Kluwer – Deventer/Samsom – Alphen a/d Rijn.

De Vakstudie – Inkomstenbelasting;
release no 80 Kluwer – Deventer.

De Vakstudie – Motorrijtuigen Belastingwet;
release no 19: Kluwer – Deventer.

De Vakstudie – Omzetbelasting;
releases nos 44-45: Kluwer – Deventer.

De Vakstudie – Wet op de Inkomstenbelasting;
release no 7: Kluwer – Deventer.

De Vakstudie – Wet op de Loonbelasting;
releases nos 4-6: Kluwer – Deventer.

TURKEY

Türk Argüs Ajansi;
releases nos 3432-3469: La Législation Turque – Istanbul.

U.S.A.

Federal Taxes Report Bulletin;
releases nos 29-34: Prentice Hall – Englewood Cliffs.

Federal Taxes Report Bulletin Treaties;
releases nos 7-8: Prentice Hall – Englewood Cliffs.

Federal Tax Guide Reports;
releases nos 42-49: Commerce Clearing House – New York.

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IV — BIBLIOGRAPHY

RESUME DES PRINCIPALES CHARGES DOUANIERES FISCALES, PARAFISCALES ET SOCIALES EXISTANT EN REPUBLIQUE DU SENEGAL AU 1.10.1965

by

C. BARDIN*

A) DROITS DE DOUANE PROPREMENT DITS

Une convention d'Union Douanière entre la Côte d'Ivoire, le Dahomey, la Haute-Volta, la Mauritanie, le Niger, le Sénégal et le Mali est en vigueur entre ces états depuis le 9 Juin 1959; aucun droit fiscal ou douanier ne doit être établi sur les échanges entre ces états. Cette Convention est cependant peu à peu vidée de son contenu par les décisions unilatérales des pays membres, mais il convient de souligner que la République du Sénégal est le pays qui applique le plus scrupuleusement les décisions de l'Union Douanière.

Ils sont applicables seulement aux marchandises d'origine étrangères. Les taux des droits varient suivant les pays:

- tarif général (triple du tarif minimum) applicable aux marchandises originaires d'un certain nombre de pays (Argentine, Bulgarie, Bolivie, Maroc, Portugal . . .)
- tarif minimum (entre 0 et 25%) applicable aux marchandises originaires de pays ayant passé des conventions avec la France (Brésil, U.S.A., Danemark, U.R.S.S., Grande
- Bretagne).
- tarif minimum réduit de 40% pour les marchandises originaires des pays du Marché Commun et des pays non européens tels que le Congo.
- exonération: certaines marchandises, notamment celles originaires de la zone franc et transportées en droiture, ainsi que celles originaires de la C.E.E.

Ces droits ressortent des tarifs publiés par l'Administration des Douanes dont la dernière édition a été effectuée en 1962. Ces tarifs reçoivent au fur et à mesure les modifications rendues applicables au Sénégal, résultant des diverses décisions de l'U.D.A.O.

B) DROIT FISCAL D'ENTREE & DE SORTIE

D'un taux variant entre 0 et 30% il est calculé sur la valeur mercuriale ou sur la valeur d'achat augmenté des frais nécessaires à l'importation. Ce droit est fixé par le «tarif» ci-dessus mentionné.

C) T.F.R.T.T.

La taxe forfaitaire représentative de la taxe sur les transactions dont les taux d'usage varient de 2 à 30% selon la nature des produits et qui est calculée sur la valeur mercuriale

*) Fiduciaire France - Afrique - Sénégal, Dakar

ou la valeur retenue pour la perception du droit fiscal majorée du montant des droits, de la taxe de statistique et de la TFRTT elle-même.

D) TAXE DE STATISTIQUE

Elle est de 2% de la valeur des produits ou marchandises, certains produits bénéficiant de l'exonération.

Sont notamment exonérés de la taxe de statistique:

- les bagages des voyageurs,
  les marchandises reconnues impropres à la consommation,
- le poisson frais et salé débarqué des bateaux immatriculés en Afrique Noire d'expression française.

Les droits et taxes énumérés en A, B, C et D sont perçus par le Service des Douanes

E) IMPOT MINIMUM FORFAITAIRE SUR LES SOCIETES

De création récente (Loi n° 60-050 du 31 Décembre 1960) modifié à trois reprises (décrêts 61-104 du 8 Mars 1961 et 61-417 du 2 Novembre 1961 et Loi 62-06 du 27 Janvier 1963) cet impôt couramment appelé I.M.F. est en réalité un acompte sur l'impôt B.I.C. des sociétés.

Cet I.M.F. d'un montant de 300.000 Francs CFA par an doit être acquitté spontanément avant le 15 Mars de chaque année à la caisse du Payeur Principal ou Percepteur compétent par toute société passible des B.I.C., à l'exception notamment:

- des sociétés immobilières dont l'actif immobilier est composé *uniquement de logements loués nus*,
- des sociétés dissoutes et ayant cessé toute activité antérieurement au 1er Janvier de l'année d'imposition,
- des sociétés ou personnes morales non soumises aux B.I.C.

Le montant est doublé lorsque la société n'a pas acquitté spontanément l'impôt avant le 15 Mars.

Cet I.M.F. de 300.000 Francs CFA est imputé sur l'impôt B.I.C. dû au titre de la même année, mais lorsque le montant de cet impôt B.I.C. est inférieur à l'I.M.F., ce dernier demeure acquis au Trésor. Cependant, lorsque la moyenne des impôts B.I.C. pour l'année courante et l'année précédente est supérieure à l'I.M.F. de l'année courante, la différence est imputée sur l'I.M.F. de l'année suivante.

Ainsi peut-on conclure que l'I.M.F. ne constitue une charge véritable que dans la mesure où l'impôt B.I.C. est inférieur à 300.000 Francs CFA.

F) IMPOT SUR LES B.I.C.

Il s'agit d'un impôt annuel sur les bénéfices des professions industrielles, commerciales et artisanales, réalisés au Sénégal par des personnes physiques ou morales et notamment:

- par toutes les sociétés à responsabilité limitée,
- par toutes les sociétés dont le capital est divisé en actions (sociétés anonymes),
- par les personnes physiques ou sociétés qui donnent en location un établissement industriel ou commercial muni du mobilier ou du matériel nécessaire à son exploitation,

que la location comprenne ou non, tout ou partie des éléments incorporels du fonds de commerce ou d'industrie.

«L'impôt est établi chaque année sur les bénéfices obtenus pendant l'année précédente ou dans la période de douze mois dont les résultats ont servi à l'établissement du dernier bilan lorsque cette période ne coïncide pas avec l'année civile» (article 5 du Code des Impôts Directs).

Ainsi, soit une entreprise ayant un bilan dressé le 31 Décembre de chaque année, l'impôt B.I.C. sera calculé sur le bénéfice obtenu l'année, précédente, soit une entreprise ayant un bilan dressé le 31 Janvier de chaque année, l'impôt B.I.C. 1966 sera calculé sur les bénéfices obtenus au bilan dressé le 31 Janvier 1965, l'impôt B.I.C. 1967 sera calculé sur le bilan dressé le 31 Janvier 1966, etc . . .

Le bénéfice imposable est le bénéfice net «lequel est constitué par la différence entre les valeurs de l'actif net à la clôture et à l'ouverture de la période dont les résultats doivent servir de base à l'impôt diminuée des suppléments d'apport et augmentée des prélèvements effectués au cours de cette période par l'exploitant (personne physique) ou par les associés (personne morale). L'actif net s'entend de l'excédent des valeurs d'actif sur le total formé au passif par les créances des tiers, les amortissements et les provisions justifiés» (article 6 du Code des Impôts Directs).

Il apparait immédiatement que la notion fiscale de bénéfice net est étroitement liée à des notions comptables et sans entrer dans le détail, il nous semble opportun de donner quelques précisions terminologiques: Actif: ce qu'a l'entreprise — biens mobiliers ou immobiliers, disponibilités, créances sur les clients, etc . . . Passif: ce que doit l'entreprise — dettes aux fournisseurs et aux prêteurs, capital appartenant aux associés.

Le bénéfice net est établi sous déduction de toutes charges admises par le fisc et qui comprennent notamment:

a) Les frais généraux de toute nature, les dépenses de personnel, de main d'oeuvre, le loyer des immeubles et des fonds de commerce dont l'entreprise est locataire, les charges financières (intérêts des emprunts, des découverts bancaires, etc . . .). Cependant, en ce qui concerne ces charges financières, les intérêts des sommes versées par les associés dans la caisse de leur société ne seront considérés comme des charges que dans la mesure où leur taux ne sera pas supérieur de plus de 2% à celui pratiqué par la Banque Centrale des Etats de l'Ouest Africain; en outre, si les associés sont des sociétés, les intérêts des sommes versées seront des charges dans la mesure où ces sommes ne dépasseront pas le capital de chaque société intéressée.

b) Les amortissements réellement effectués par l'entreprise dans la limite de ceux admis pour chaque nature d'exploitation. Les taux d'amortissements usuels sont compris entre 5% (immeubles) et 25% (véhicules). Il y a lieu de noter:

- que certains éléments d'actif ne sont pas susceptibles d'amortissements: terrains et éléments incorporels de fonds de commerce, notamment;
- que si un exercice est déficitaire, les amortissements afférents à cet exercice peuvent être différés, mais doivent être alors effectués lors du premier exercice bénéficiaire qui suit.

c) Les impôts à la charge de l'entreprise mis en recouvrement au cours de l'exercice, à

l'exception de l'impôt B.I.C. et de la contribution foncière des propriétés bâties afférente aux immeubles lui appartenant.

d) Les provisions constituées en vue de faire face à des pertes ou charges nettement précisées et que les évènements en cours rendent probables.

Des provisions pour le renouvellement du matériel peuvent également être constituées; elles ont pour but d'éviter les conséquences de la hausse des prix du matériel, et les modalités de calcul de ces provisions sont complexes et nous n'entrerons pas dans le détail de ce calcul.

Le bénéfice imposable est obtenu en déduisant du bénéfice net total:

a) le revenu d'après lequel les immeubles dont l'entreprise est propriétaire et qui font partie de son actif sont soumis à la contribution foncière des propriétés, *lorsque ces constructions bénéficient d'une exemption de contribution foncière le revenu net à déduire est évalué suivant les règles applicables en la matière* (cf plus loin Contribution Foncière)

b) le revenu net des valeurs et titres (actions, parts) figurant à l'actif de l'entreprise ayant déjà supporté l'impôt de distribution (I.R.V.M.) en France et dans les territoires de l'ex-Union Française ou exonérés de cet impôt dans la limite de 70% ou 90% de ce revenu net, selon que l'entreprise a plus ou moins de la moitié de son capital constitué par des valeurs ou titres. Ainsi, soit une société «A» dont le capital est de 1.000.000 de francs CFA, cette société «A» possède 300.000 francs CFA d'actions d'une entreprise «B», la société «A» a encaissé 100.000 francs CFA de dividendes net qui a supporté l'impôt en France ou au Sénégal, ou bien en a été exonéré: la société «A» ne sera taxable aux B.I.C. que sur 10.000 francs CFA (10% du revenu net).

Il convient de noter que ne sont pas déductibles du bénéfice taxable:

a) les amendes et pénalités fiscales et celles se rapportant à des infractions à la législation des prix, des changes des douanes.

b) le salaire et les indemnités versées aux Administrateurs d'une société, dans la mesure où ils ne correspondent pas à un travail effectif et où ils sont exagérés, ne sont pas admis comme des charges et réintégrés au bénéfice taxable. S'agissant d'un problème de pur fait, il est malaisé de donner des critères valables et chaque cas particulier mérite examen en fonction de ses conditions particulières.

Nous avons estimé utile de vous signaler rapidement le régime d'imposition B.I.C. des plus-values.

Il faut entendre par plus-value la différence entre la valeur de vente d'un bien et la valeur pour laquelle il figure au bilan de la société. Le régime d'imposition est le suivant:

a) la plus-value de vente est taxée,

b) la plus-value n'est pas taxée si l'entreprise prend l'engagement de la réinvestir au Sénégal en immobilisations dans un délai de 3 ans de la clôture de l'exercice au cours duquel la plus value a été constatée. Le réinvestissement doit être égal à: plus-value + prix de revient de l'élément cédé.

c) la plus-value a été réalisée à l'occasion d'une cession partielle ou totale de l'entreprise ou à l'occasion de la cessation de l'entreprise:

- la plus-value est taxable pour moitié seulement de son montant lorsque la cession est réalisée 5 années au plus après le début de l'exploitation,

- la plus-value est taxable au tiers seulement de son montant lorsque la cession est réalisée plus de 5 années après la création de l'exploitation.

d) la plus-value si elle dépasse 100.000 Francs CFA et provient de la vente par un associé de ses droits sociaux (actions, parts ...) est taxée au tiers de son montant à l'impôt B.I.C. *exclusivement* lorsque l'associé a exercé au cours des cinq dernières années des fonctions d'Administrateur et lorsque ses droits aux bénéfices ont dépassé 25% de ces bénéfices au cours de la même période (cf article 8 et 53 bis du Code des Impôts Directs).

L'impôt B.I.C. est établi suivant le système du forfait ou celui du bénéfice réel.

Le système du forfait est réservé aux personnes physiques dont le chiffre d'affaires annuel n'excède pas 20.000.000 de francs CFA.

Le système du bénéfice réel est obligatoire pour les sociétés.

Dans ce système, et avant le 1er Avril de chaque année, la société doit déposer à l'Inspecteur des Contributions dont elle dépend, les pièces suivantes:

- le bilan de l'exercice clos au cours de l'année civile précédente,
- les résumés de ses comptes d'exploitation et compte de pertes et profits,
- la liste détaillée des frais généraux par catégorie,
- un tableau des amortissements effectués sur les divers éléments d'actif,
- le relevé détaillé des provisions,
- une déclaration faisant ressortir le bénéfice taxable et divers autres renseignements, souscrite sur un imprimé fourni par l'Administration.

L'Inspecteur vérifie les déclarations, entend les intéressés lorsqu'il l'estime utile et calcule l'impôt suivant des taux variables suivant qu'il s'agit d'une exploitation individuelle (personne physique): de 10 à 20% selon les tranches de bénéfice, ou d'une société: taux unique de 25%.

La loi fiscale prévoit diverses modalités de contrôle dans le détail desquelles il n'est pas de notre propos d'entrer.

Signalons qu'en cas de cession ou de cessation d'activité, l'impôt B.I.C. dû à raison des bénéfices qui n'ont pas encore été taxés, est immédiatement établi.

Il y a lieu également de noter que des dispositions fiscales favorables sont prévues pour les sociétés qui investissent leurs bénéfices au Sénégal, dans les conditions schématisées suivantes:

- le programme d'investissement doit avoir été admis par l'Administration fiscale,
- il pourra être déduit du bénéfice taxable au plus 50% des dépenses d'investissement, dans la mesure où il n'est pas déduit plus de 50% du bénéfice (cf article 54 à 58 du Code des Impôts Directs).

Lorsque l'Inspecteur a dressé les rôles d'imposition, il les transmet au Percepteur compétent qui adresse aux contribuables un «avertissement» fixant la somme due qui doit être versée avant l'expiration d'un délai de trois mois à compter de la mise en recouvrement; faute de quoi, des majorations sont dues.

Enfin, il faut noter que l'Administration dispose d'un délai équivalent à quatre ans pour reprendre les erreurs ou omissions.

G) CONTRIBUTION FONCIERE DES PROPRIETES BATIES (C.F.P.B.)

La contribution foncière des propriétés bâties (C.F.P.B.) est due par les propriétaires, au

1er Janvier de l'année d'imposition, de tous immeubles construits et fixés au sol à demeure, ainsi que des terrains employés à usage commercial ou industriel.

La C.F.P.B. est réglée au taux de 20% sur le revenu net.

Le revenu net est fixé à 60% de la valeur locative pour les maisons et à 50% de la même valeur pour les usines et locaux professionnels.

La valeur locative annuelle est déterminée de la manière suivante:

- au vu du ou des contrats de location afférents aux immeubles imposés;
- à défaut par comparaison,
- à défaut par voie d'appréciation directe: pour les bâtiments à usage professionnel il est retenu 10% à 50% du prix de revient; pour les bâtiments à usage d'habitation il est retenu 8% à 60% du prix de revient.

Enfin, il faut signaler l'existence de remises et modérations de la C.F.P.B. pour pertes de revenus prévues à l'article 13 du Code relatif à cette contribution; par perte de revenu, le Code envisage la vacance ou le chômage totaux ou partiels indépendants de la volonté du propriétaire et d'une durée de six mois consécutifs au moins.

H) CONTRIBUTION FONCIERE DES PROPRIETES NON BATIES (C.F.P.N.B.)

La contribution foncière des propriétés non bâties (C.F.P.N.B.) est due par les propriétaires, au 1er Janvier de l'année d'imposition, de terrains nus.

Elle est d'un taux de 3% calculé sur la valeur vénale du terrain.

En sont exemptés les terrains nus utilisés par les commerçants pour l'exploitation normale et rationnelle de leur commerce, ainsi que les terrains formant dépendances immédiates des immeubles construits et destinés à l'habitation.

I) TAXE DE MAINMORTE

Elle est due par les personnes morales et elle est égale à la moitié des C.F.P.B. et C.F.P.N.B. supportées par la personne morale; perçue en même temps que ces contributions, elle suit leur sort.

J) CONTRIBUTION DES PATENTES

Toute personne physique ou morale qui exerce d'une façon habituelle au Sénégal un commerce, une industrie ou une profession non exemptée, est assujettie à la contribution des patentes.

La contribution des patentes se compose d'un droit fixe et d'un droit proportionnel:

a) Droit fixe

Il est variable suivant la nature du commerce, de l'industrie ou de la profession. Les tableaux énumérant ces droits fixes sont trop importants pour être détaillés ici.

Il y a lieu de noter que le patentable qui dans le même établissement exerce plusieurs commerces, industries ou professions, ne peut être soumis qu'à un seul droit fixe: le plus élevé. Par contre, si les commerces sont exercés dans des établissements distincts, les droits fixes se cumulent; la notion d'établissement distinct est malaisé à définir parfaitement.

b) Droit proportionnel

Il varie de 5% pour les 6° et 5° classes à 7,50% pour la 4° classe et à 10% pour les 2° et 1° classes du Tableau «A».

Il est établi sur la valeur locative (des locaux professionnels) établie comme en matière de contribution foncière.

Le patentable qui exerce dans un même local ou dans des locaux non distincts plusieurs commerces ou professions passibles de droits proportionnels différents, paie celui qui a le taux le plus élevé; lorsque les locaux sont distincts, il est dû pour chaque local le droit proportionnel afférent à la profession ou au commerce exercé dans ce local.

La patente est exigible à compter du premier jour du mois où le commerce a débuté.

En cas de cession ou de cessation d'exploitation, la patente n'est due que pour le passé et le mois courant dans la mesure où un dégrèvement est demandé à l'Administration des Impôts dans le délai d'un mois de la cession ou cessation.

K) CONTRIBUTION DES LICENCES

Toute personne morale ou physique se livrant à la vente au détail de boissons alcooliques à consommer sur place ou à emporter, est assujettie au droit de licence.

L) CONTRIBUTION MOBILIERE

Due par toute personne disposant au 1er Janvier de l'année d'imposition d'une habitation meublée. Son taux est de 10%; elle est calculée sur la valeur locative. Le fisc sénégalais retient d'ailleurs 50% seulement de cette valeur.

M) CENTIMES ADDITIONNELS DES COMMUNES

Ils sont afférents aux deux contributions foncières, à celles des patentes, des licences et mobilière et leur montant, pour DAKAR, est égal à la moitié du principal de ces contributions dont ils suivent le sort.

N) TAXES COMMUNALES DIVERSES

- Sur les cheveaux: 100 Fr CFA par animal;
- Sur les licences: 1/4 de la licence;
- Sur les cercles, sociétés et lieux de réunion: les taux sont de 5% sur le montant des cotisations (y compris les recettes des jeux) n'excédant pas 100.000 francs CFA, 10% sur le montant compris entre 100.000 et 200.000 francs CFA, 20% sur le montant excédant 200.000 francs CFA et 5% sur la portion de valeur locative n'excédant pas 50.000 francs CFA, 10% sur la portion comprise entre 50.000 et 100.000 francs CFA, 20% sur la portion excédant 200.000 francs CFA.
- Sur le revenu net des propriétés non bâties: 0,25% sur le revenu net passible de la C.F.P.N.B.
- Sur le revenu net des propriétés bâties: 5% du revenu net passible de la C.F.P.B.
- Sur la valeur locative des locaux d'habitation: 2,5% de la valeur locative servant de base à la contribution mobilière.
- Sur l'enlèvement des ordures ménagères: 5% du revenu net imposable à la C.F.P.B.

– Sur la valeur locative des locaux professionnels: 6% de la valeur locative servant de base au droit proportionnel de patente.

O) LES TAXES SUR LE CHIFFRE D'AFFAIRES

L'article 3 du Code des Taxes sur le Chiffre d'Affaires stipule: «Sont imposables aux taxes sur le chiffre d'affaires les personnes physiques ou morales qui, habituellement ou occasionnellement, achètent pour revendre ou accomplissent des actes relevant d'une activité industrielle ou commerciale».

Les affaires imposables sont soit des importations au Sénégal, soit des ventes au Sénégal de produits ou marchandises qui y sont fabriqués, soit des prestations de service utilisés au Sénégal.

Il importe de noter que les affaires ne sont soumises qu'une seule fois au paiement de la taxe.

Les taux sont les suivants:

	Taux hors taxe	Taux d'usage
1°) *Importations*		
a) taux normal	12%	12%
b) taux majoré (produits visés à l'annexe II de la loi 61-27)	25%	25%
2°) *Ventes*		
a) de produits ou marchandises originaires du Sénégal:		
– taux normal	12%	13,64%
– taux réduit (sucre notamment)	4%	4,167%
b) de produits ou marchandises en provenance et non originaires de l'Union Douanière:		
– taux normal	7,20%	—
– taux majoré (annexe 2 précitée)	12%	13,64%
c) de produits ou marchandises en provenance et originaires de l'U.D.	12%	13,64%
3°) *Prestations de Service*	8,50%	9,29%

Rappelons que le fait générateur de la taxe est:

– pour les importations: la mise à la consommation au sens douanier du terme;
– pour les ventes: par la livraison des produits ou marchandises;
– pour les prestations de service: par l'accomplissement des services rendus.

Observons que le régime de la taxe sur le chiffre d'affaires des fabricants installés au Sénégal est bien particulier et a essentiellement pour but de protéger les industriels en leur permettant:

– l'importation et l'achat local hors taxe de tous produits et matières nécessaires à leur fabrication;
– la déduction du montant du chiffre d'affaires imposable des matières premières entrant dans la composition du produit fini.

Ajoutons que les exportations sont exonérées de taxe.

EDITORIAL

Readers of Bureau publications have directed to the Bureau a steady stream of inquiries concerning the comparative burdens of taxation in the member states of the E.E.C., inquiries that have been often characterized by their preoccupation with statistical data. Our experience has been that tables and charts of statistical data are inherently dangerous insofar as they mask the inevitable assumptions below the surface. People who note with care both the explicit and implicit qualifications that underly all textual statements sometimes pay no heed to the qualifications underlying statistical data.

That said, we note the content of article 4 of the modified proposal contained in the E.E.C. Directive of June 14, 1964 (Doc. Com. (64) 190 def) regarding harmonisation of the turnover tax legislation of the member states:

> "The Commission shall submit to the Council before the end of 1968 proposals which shall specify by what means and within what period of time the harmonization of turnover taxes should attain its final object, namely the abolition of compensatory levies on imports and of refunds on exports in trade between Member States and the neutral effect of these taxes with respect to the origin of the goods and services being safeguarded.
>
> To this end, account shall be taken of the different proportions between direct and indirect taxes in the Member States, of the consequences of a modification of the tax systems for the fiscal and budgetary policies of the Member States, and of the influence of the tax systems on conditions of competition and of the social welfare within the Community."*)

A table reflecting the 1963 tax revenues of the six E.E.C. countries, was published as a special statistical note in the General Statistical Bulletin of the Statistical Office of the European Communities—188a, Avenue de Tervueren, Brussels 15, Belgium.

Tax Revenues (in per cent).

	Belgium	*France*	*German Federal Republic*	*Italy*	*Luxem-bourg*	*Nether-lands*
taxes on income	42	36	48	24	54	55
taxes on net wealth or net worth	5	5	8	10	9	5
taxes on consumption	53	59	44	66	37	40

The "French" versement forfaitaire sur les salaires, is included under taxes on income; the percentages for Italy are based on the accounting year 1962/63, and for the Netherlands as of 1961.

For those of our readers who are interested we note that the above E.E.C. publication contains a wealth of additional data.

J. C. L. HUISKAMP

*) An unofficial translation by the International Bureau of Fiscal Documentation based on the official texts of the Directive was published in Supplementary Service to European Taxation, Section D, E.E.C. Directive – 7.

CONTENTS

La taxe est acquittée spontanément par les redevables sur déclaration déposée avant le 25 de chaque mois, pour les opérations du mois précédent.

Il y a lieu de noter que la taxe est due sur la note ou la facture, même si le paiement de cette note ou facture est différé.

Cependant, lorsque le contribuable peut justifier qu'il n'a pas encaissé le prix et que sa créance est devenue irrécouvrable, il est admis à déduire le montant de la taxe sur son versement du mois suivant.

Les taxes sur le chiffre d'affaires représentent une des parties les plus délicates à établir dans le système sénégalais.

P) TAXE SUR L'ALCOOL ET LES LIQUIDES ALCOOLIQUES

Cette taxe spécifique est acquittée lors de l'importation ou de la première vente (en cas de fabrication sur place) aux tarifs suivants:

- Bière: 27% sur le prix de vente brut, toutes taxes comprises,
- Vin ordinaire: 50 Fr CFA par litre ou bouteille,
- Vin d'appellation contrôlée, vin mousseux ou de champagne: 100 Fr CFA par litre ou bouteille,
- Boissons alcooliques de moins de 12 degrès: 50 Fr CFA par litre ou bouteille,
- Boissons alcooliques de 12 à 20 degrès: 120 Fr CFA par litre ou bouteille,
- Boissons alcooliques de plus de 20 degrès: 200 Fr CFA par litre ou bouteille.

Ces tarifs sont réduits de moitié pour les bouteilles contenant moins de 50 et plus de 25 centilitres, et de trois quarts pour celles contenant moins de 25 centilitres.

Q) TAXE SPECIALE SUR LES TABACS

Il s'agit d'une taxe acquittée soit par l'importateur soit par le fabricant lorsque les produits sont fabriqués au Sénégal.

Elle est fixée comme suit:

- Cigarillos: 5 Fr CFA par unité,
- Cigares: 25 Fr CFA par unité,
- Cigarettes de luxe: 38 Fr CFA par paquet de 20,
- Cigarettes supérieures: 22 Fr CFA par paquet de 20,
- Cigarettes autres: 16,50 Fr CFA par paquet de 20.

R) TAXE SUR LA CONSOMMATION DU COURANT ELECTRIQUE

Acquittée par les compagnies distributrices d'électricité, elle est de 1 francs CFA par kilowatt heure et entre dans le prix de l'électricité payé par l'utilisateur du courant.

S) TAXE SUR LES SPECTACLES, JEUX & DIVERTISSEMENTS

La loi 64-04 du 24 Janvier 1964 publiée au Journal Officiel du 19 Mars 1964 vient de créer cette taxe qui est communale et facultative et doit être créée par délibération du Conseil Municipal, approuvé par le Ministère de l'Intérieur.

Les taux maxima prévus sont:

- Cinéma, théâtre, concerts, variétés: 15%
- Appareils automatiques électriques, par an et par appareils: 2.000 Fr CFA

- Bar, dancing sans attraction, restant ouvert au delà de l'heure de fermeture des bars ordinaires: 5% de la recette brute,
- Etablissements identiques avec attractions: 8% de la recette brute.

Les déclarations et paiements sont hebdomadaires, mensuels ou annuels, selon la nature du spectacle. Des pénalités allant de 15% à 25% de la recette brute sont prévues.

T) TAXE SPECIALE SUR LES PROJECTIONS CINEMATOGRAPHIQUES

Instituée par la loi 64-58 du 25 Juillet 1964, elles est perçue au taux de 1,50% sur les recettes réalisées par les entreprises de distribution et provenant du prix des places des cinémas qu'elles exploitent ou de la location des films qu'elles consentent.

U) IMPOT SUR LE REVENU DES CAPITAUX MOBILIERS

Cet impôt est codifié au Sénégal par la délibération 57-087 de l'Assemblée Territoriale du 27 Décembre 1957, rendue exécutoire par arrêté du 27 Février 1958 n° 1.532 (J.O. du 22 Avril 1958), modifiée par la loi 62-30 du 16 Mars 1962 (J.O. du 26 Mars 1962).

Il s'agit d'un impôt qui atteint les revenus mobiliers et qui se subdivise en:

- Impôts sur le revenu des créances (I.R.C.) qui s'applique au revenu des prêts, dépôts et cautionnements;
- Impôts sur le revenu des valeurs mobilières (I.R.V.M.) frappant les revenus distribués par les sociétés.

1°) *I.R.C.*

Cet impôt s'applique aux intérêts, arrérages et autres produits des créances, prêts, dépôts, cautionnements et comptes-courants.

L'impôt est dû au taux de 16% sur le montant brut des intérêts, arrérages du seul fait du paiement de ces intérêts et arrérages dès lors que celui qui les reçoit (créancier) a son domicile ou sa résidence au Sénégal et qu'il y possède un établissement industriel ou commercial.

Seul celui qui encaisse les intérêts supporte l'impôt, mais le débiteur et le créancier sont responsables solidairement du versement de l'impôt.

L'impôt est payé soit en numéraire sur déclaration, soit par apposition de timbres fiscaux sur les comptes ou reçus.

Il convient de noter que les intérêts de comptes-courants commerciaux sont exemptés de l'I.R.C. aux conditions suivantes: il faut que les parties au compte-courant aient la qualité de commerçants et que les opérations inscrites en compte-courant se rattachent exclusivement au commerce des deux parties.

2°) *I.R.V.M.*

Actuellement sont imposables à l'I.R.V.M. au Sénégal:

- les sociétés qui y ont leur siège social,
- les sociétés qui ayant une activité au Sénégal ont leur siège social en France ou dans un pays ayant signé avec le Sénégal une convention fiscale.

L.'I.R.V.M. est un impôt complexe et qui mériterait de longs développements; dans le cadre de cette étude nous réduirons l'exposé aux notions de base.

Il s'agit d'un impôt frappant *les bénéfices distribués* par les sociétés.

On entend par distribution tout évènement qui fait passer des valeurs (quelle que soit leur nature) du patrimoine de la société dans celui de l'actionnaire, du porteur de parts ou de l'obligataire.

Ainsi, doit-on distinguer:

- les produits de capitaux sociaux (actions, parts),
- les produits de capitaux d'emprunts (obligations).

a) *Imposition des produits de capitaux sociaux*

L'I.R.V.M. s'applique aux dividendes, intérêts, arrérages, revenus et tous autres produits des actions et parts de sociétés.

L'I.R.V.M. s'applique au taux de 16% sur toutes les distributions brutes faites par les sociétés imposables à leurs associés, sauf:

- les distributions opérant remboursement des apports effectués lors de la constitution de la société,

les distributions faites aux associés pour d'autres raisons que celles découlant de leur qualité d'associé.

On distingue les distributions en cours de société et en fin de société.

En cours de société, sont imposables toutes sommes prélevées sur un poste quelconque de bénéfices et de réserves et distribuées aux associés. Ainsi peut-on en déduire que le salaire versé à un associé pour rémunérer ses fonctions ne supporte pas l'I.R.V.M. dans la mesure cependant, où le salaire correspond à un travail effectif et n'est pas exagéré. Il importe de noter que les sommes mises à la disposition des associés à titre d'avances, de prêts ou d'acomptes, bien que non prélevées sur des bénéfices ou des réserves, sont taxables; lorsque ces sommes sont remboursées à la société, elles viennent en déduction des revenus imposables pour la période d'imposition au cours de laquelle le remboursement est intervenu; cette présomption de distribution est applicable aux avances en comptes-courants consenties par une société filiale à une société mère.

Distribution en fin de société: l'I.R.V.M. est dû sur le boni de liquidation, c'est-à-dire sur l'excédent de liquidation par rapport au capital social. Exemple: soit une société en liquidation qui après avoir vendu tous ses biens et payé ses créanciers possède une somme de 1.000.000 de francs, son capital social s'élevant à 600.000 francs, les associés supporteront l'I.R.V.M. sur le boni de liquidation, soit sur 400.000 francs.

b) *Imposition des produits d'emprunts*

L'I.R.V.M. s'applique aux intérêts, arrérages et tous autres produits des obligations et titres d'emprunt négociables émis par toutes sociétés et collectivité.

Le taux est de 16% pour tous les produits autres que les lots qui sont taxés à 25%.

Nous allons examiner maintenant les problèmes particuliers afférents à l'I.R.V.M. applicables aux rémunérations des dirigeants de société anonyme, aux sociétés mères et filiales et aux transformations de sociétés.

Rémunération de dirigeants de société anonyme

Parmi les associés, certains sont investis de fonction de direction, gérance ou admini-

stration. Les dirigeants peuvent percevoir de la société de laquelle ils sont membres et qu'ils administrent ou gèrent, trois sortes de rémunérations ayant un caractère fiscal particulier:

- rémunération normale d'un travail effectif au titre des fonctions: le salaire de deux Administrateurs nommément désignés ou du Président du Conseil et de l'Administrateur adjoint au Président ne sont pas taxables non plus que les indemnités accessoires du salaire et les remboursements forfaitaires de frais, dans la mesure où ces rémunérations ne sont pas exagérées; l'appréciation du caractère exagéré de ces rémunérations est une question de fait; ainsi et dans la mesure où elles sont comparables à celles versées par d'autres sociétés sénégalaises ayant la même activité, les rémunérations versées à deux Administrateurs sont exemptées de l'I.R.V.M. et considérées fiscalement comme des salaires.
- rémunération prouvée excessive: elle est taxable à l'IRVM et supportera également l'impôt B.I.C.
- rémunération de la participation financière de l'Administrateur dans la société: jetons de présence, tantièmes, etc . . . sont considérés comme des bénéfices distribués et taxés à l'I.R.V.M. au taux de 16%.

Sociétés mère et filiales

L'application stricte du Code de l'I.R.V.M. conduit à décider qu'une société qui a encaissé des bénéfices en sa qualité de membre d'une autre société, doit acquitter l'IRVM sur ces mêmes bénéfices lorsqu'elle les répartit entre ses propres associés. Pour éviter qu'un même bénéfice soit taxé deux fois, l'article 73 du Code de l'I.R.V.M. prévoit:

«Lorsqu'une société . . . ayant son siège dans le territoire, possède des actions ou parts . . . d'une société française . . . les dividendes distribués par la première société sont pour chaque exercice, exonérés de l'I.R.V.M. dans la mesure du montant net . . . des produits des actions ou parts de la seconde société, touchés par elle au cours de l'exercice, à condition:

- que les actions ou parts possédées par la première société représentent au moins 20% du capital de la deuxième société;
- que ces actions ou parts appartiennent depuis l'origine ou depuis deux ans au moins à la première société».

Il convient de noter que le bénéfice de l'article 73 du Code de l'I.R.V.M. ne s'applique qu'aux sociétés anonymes ou à responsabilité limitée et aux dividendes et jetons de présence (sont donc exclus notamment, les intérêts des obligations et les tantièmes).

Transformation, modifications de sociétés

Il est des cas où une société est amenée à changer de forme; si ce changement est prévu par les lois et par les statuts on considère que la même société continue, mais si ce changement entraine la création d'un «être moral nouveau», c'est-à-dire d'une société dont la plupart des éléments (durée, objet, capital social . . .) sont modifiés, l'Administration des Impôts considère qu'il y a dissolution de l'ancienne société suivie de constitution d'une deuxième société et taxe en conséquence, tant en ce qui concerne les droits d'enregistrement (cf chapitre suivant) que l'I.R.V.M. (sur le boni de liquidation).

Des régimes favorables spéciaux sont prévus par le Code de l'I.R.V.M. pour les opérations de fusion (réunion en une seule de plusieurs sociétés) scission (éclatement d'une société en plusieurs sociétés) de même que pour les apports partiels d'actif effectués par une société au profit d'une ou plusieurs sociétés nouvelles ou préexistantes (ayant leur siège au Sénégal). Les régimes favorables sont subordonnés à des conditions diverses et méritent une étude particulière détaillée.

Paiement de l'I.R.V.M.

L'impôt est dû dans le mois de la mise en paiement effectif des dividendes et intérêts et dans les 20 premiers jours du trimestre civil suivant celui de la mise en paiement effectif des tantièmes, jetons de présence et rémunérations diverses des dirigeants de sociétés.

Il est versé au Bureau de l'Enregistrement par la société qui a effectué la distribution et qui, par conséquent, fait l'avance de cet I.R.V.M. qu'elle retient aux actionnaires lors de la mise en paiement de la distribution.

L'impôt est calculé sur la distribution brute: si la société prend à sa charge l'I.R.V.M. on considère que cette prise en charge constitue un supplément de distribution et l'I.R.V.M. est calculé au taux de 16/84 au lieu de 16. Un système d'acomptes trimestriels calculés sur la précédente distribution est en vigueur, ces acomptes sont régularisés lors de la distribution suivante.

V) TAXE DE PLUS-VALUE SUR LES TERRAINS

D'un taux de 15%, établie par Délibération 56-046 du 29 Décembre 1956 (J.O. du 19 Juillet 1957 p. 689) cette taxe s'applique lors de la vente, de la donation ou de l'apport en société d'un terrain, sur la différence entre la valeur pour laquelle le terrain est vendu ou apporté en société et sa valeur d'acquisition primitive augmentée des dépenses effectuées et affectée d'un coefficient de réevaluation, variable suivant l'année d'acquisition (de 1 en 1954 à 114,5 en 1914).

W) TAXE ANNUELLE SUR LES VEHICULES A MOTEUR

Assimilée aux droits de timbre quant à son recouvrement et son contentieux, cette taxe annuelle est due sur tous les véhicules à moteur existants et utilisables au 1er Janvier de l'année d'imposition ou importés au Sénégal au cours de l'année d'imposition. La taxe est due pour l'année entière sans réduction, même en cas de perte ou de destruction en cours d'année.

Elle doit être acquittée spontanément avant le 1er Avril de chaque année; la vente ou l'exportation entre le 1er Janvier et le 31 Mars la rendent immédiatement exigible.

Elle est due par le propriétaire du véhicule; les taux sont les suivants pour les véhicules de moins de dix ans:

- jusqu'à 10 CV, exclusivement ..... 6.000 Fr CFA
- de 10 à 15 CV, exclusivement ..... 9.000 Fr CFA
- de 15 à 20 CV, exclusivement ..... 15.000 Fr CFA
- à partir de 20 CV, exclusivement ..... 24.000 Fr CFA
- engins à 2 ou 3 roues, de 1.500 à 4.500 Fr CFA (selon la cylindrée du moteur).

Tous les véhicules de plus de dix ans d'âge (au cours de l'année d'imposition) paient la taxe au taux unique de 1.500 francs CFA.

Sont exemptés, certains véhicules et notamment ceux des administrations et ceux des mutilés et infirmes.

Le non paiement entraine des pénalités (du double ou du triple) et le cas échéant, la saisie du véhicule.

X) DROITS DE TIMBRE D'ENREGISTREMENT & DE CONSERVATION FONCIERE

1°) *Droit de Timbre*

Les droits de timbre au Sénégal comprennent le droit de timbre de dimension et le droit de timbre de quittance.

a) *Le timbre de dimension*: Tous actes et écrits destinés aux actes civils et judiciaires et aux écritures qui peuvent être produites en justice et y faire foi sont soumis au timbre de dimension, dont le tarif varie avec les dimensions du papier utilisé:

- papier 0,42×0,54 cm : 1.500 Fr CFA par feuille
- papier 0,27×0,42 cm : 750 Fr CFA par feuille
- papier 0,27×0,21 cm : 375 Fr CFA par feuille

Le ou les timbres apposés doivent être annulés par la signature du contribuable et la date de l'oblitération.

Divers actes sont exemptés en raison de la personne qui en est partie (Administration) ou de la nature de l'acte (relatif à l'Assistance Publique notamment).

b) *Timbre de quittance:* Il est dû sur les écrits ou non qui emportent libération ou qui constatent des paiements ou des versements de sommes. Le droit est fixé à:

- 5 Fr CFA pour les quittances de sommes comprises entre 100 et 1.000 Fr CFA
- 15 Fr CFA pour les quittances de sommes comprises entre 1.001 et 10.000 Fr CFA
- 30 Fr CFA pour les quittances de sommes comprises entre 10.001 et 50.000 Fr CFA
- au-delà, 20 Fr CFA par fraction de 50.000 Fr CFA.

Les timbres sont apposés sur la quittance ou le reçu et oblitérés comme il est dit ci-dessus pour le timbre de dimension.

Le droit de timbre de quittance est à la charge de celui qui doit la somme, mais le créancier qui a donné quittance ou reçu est tenu personnellement du paiement du droit et des frais et amendes.

Lorsque le paiement est effectué par *chèque ou par virement* (bancaire ou postal) l'exemption du timbre de quittance est accordée si la quittance mentionne la date et le numéro du chèque ainsi que le nom du Tiré ou du Bureau de Chèques Postaux.

Toute contravention à la législation du timbre est punie d'une amende qui est au minimum de 500 Fr CFS par infraction.

2°) *Droits d'Enregistrement*

Les droits d'enregistrement sont perçus à l'occasion d'actes ou de mutations.

Les droits d'enregistrement sont classés en droits fixes, proportionnels ou progressifs.

- Les droits fixes sont perçus sur les actes qui ne constatent ni transmission de propriété, d'usufruit ou de jouissance de biens meubles ou immeubles, ni marchés, ni partage, ni

apport en société. Exemple: le procès-verbal de l'Assemblée Générale des actionnaires d'une société anonyme décidant la dissolution de la société est enregistré au droit fixe de 1.000 Fr CFA.

- les droits proportionnels ou progressifs établis pour les transmissions de propriété, d'usufruit ou de jouissance de biens meubles ou immeubles, soit entre vifs, soit par décès, ainsi que les actes constatant un apport en société, un partage de biens meubles ou immeubles, un marché.

Afin d'éviter une énumération fastidieuse, nous diviserons l'étude des droits d'enregistrement en:

- Droits applicables aux actes de la vie des sociétés,
- Droits applicables aux actes et mutations courantes.

Actes Sociaux; une société est une personne morale qui, comme une personne physique, naît, vit, se transforme et meurt.

A l'occasion de ces évènements, le Service de l'Enregistrement perçoit des droits.

Constitution de société

Le capital social est constitué par des apports de biens effectués par les assoécis. Les apports peuvent être purs et simples, à titre onéreux ou mixtes:

- l'apport pur et simple est l'apport qui a pour contre partie des actions ou parts de la société. L'apport pur et simple est taxé sur la valeur de l'apport de la manière suivante: 1% de 0 à 2,5 milliards (de francs CFA), 0,50% de 2,5 à 5 milliards et 0,10% au dessus de 5 milliards; par ailleurs et dans la mesure où l'apport comprend des biens immobiliers, il est prélevé un supplément de 4% sur la valeur de ces biens immobiliers.
- l'apport à titre onéreux est l'apport qui n'est pas rémunéré par des actions et qui supporte donc le droit de vente au taux afférent à la nature des biens apportés (15% pour les immeubles et fonds de commerce, etc . . .)
- l'apport mixte est un composé des deux précédents. Exemple: une personne apporte à une société anonyme des marchandises neuves dépendant d'un fonds de commerce pour une valeur de 1.000.000 de francs CFA; la société donne à cette personne 200.000 francs CFA en actions et paie pour elle 800.000 Francs CFA à un créancier de l'apporteur; les droits sont les suivants:

- sur l'apport pur et simple à 1% sur 200.000:	2.000
- sur l'apport à titre onéreux à 2% sur 800.000:	16.000
Total des droits:	18.000

Vie de la Société

Au cours de son existence, une société est parfois amenée à augmenter son capital, elle le fait soit par voie d'apports nouveaux, soit en incorporant à son capital les bénéfices qu'elle a mis en réserve:

- s'il s'agit d'apports nouveaux, les droits sont perçus de la même manière et même taux que lors de la constitution,
- s'il s'agit d'incorporation de réserves au capital, le droit est au taux de 5% sur l'augmentation de capital. Il y a lieu de noter que l'augmentation de capital par incorpora-

tion de réserves se traduit en fait par une distribution de bénéfices aux actionnaires sous forme d'actions ou d'augmentation de la valeur nominale de leurs actions; cependant, cette distribution n'est pas taxée à l'I.R.V.M. au taux de 16% dans la mesure où dans le délai de dix ans suivant l'augmentation le capital n'est pas réduit pour des motifs autres que des pertes.

De même qu'elle peut augmenter son capital, une société peut être amenée à le réduire. Si cette réduction entraine partage, il est perçu 0,50%; au cas contraire, seul le droit fixe des actes innomés (500 Fr CFA) est exigible.

Transformation de la Société

Si cette transformation n'entraine pas création d'un être moral nouveau, seul le droit fixe de 500 Fr CFA est perçu; s'il y a création d'un être moral nouveau, il est considéré qu'il y a deux opérations taxables: la dissolution de l'ancienne société et la constitution d'une nouvelle et chaque opération est taxée. Nous avons examiné plus haut brièvement les critères de la création d'un être moral nouveau.

Il faut noter qu'un régime spécial est prévu pour les scissions, fusions de sociétés et pour les apports partiels d'actifs par les articles 289 à 292 du Code de l'Enregistrement, sous certaines conditions de siège de la (ou des) société nouvelle (Sénégal et Zone Franc) et d'agrément du Ministre des Finances (pour les apports partiels d'actif). Le régime spécial, quand il est obtenu, entraine la taxation suivante:

- prise en charge du passif au droit fixe,
- droit réduit de 0,50% sur la partie de l'actif apporté n'excédant pas le capital appelé et non remboursé de la société apporteuse,
- droit majoré de 5% sur le surplus de l'actif apporté.

Mort de la Société

La dissolution de la société entraine la perception de droit fixe de 1.000 Fr CFA. Lorsqu'après la dissolution il est procédé au partage ou liquidation de la société, les sommes remboursées aux associés sont ainsi taxées:

- lorsqu'il est partagé du numéraire ou lorsque chaque associé reçoit des biens acquis au cours de la vie sociale, ou les biens mêmes qu'il avait apporté, le droit perçu est celui de partage au taux de 0,50%.
- lorsqu'il est attribué aux associés des biens autres que ceux ci-dessus et apportés par d'autres, on considère qu'il y a vente et les droits de vente sont perçus au taux correspondant à la nature des biens vendus.

Autres actes et mutations

Les droits varient avec la nature des actes et mutations:

- *Bail ou location verbale de durée limitée:* lorsqu'une personne physique ou morale loue à une autre personne pour une durée limitée des biens meubles ou immeubles, le locataire doit le droit au taux de 2% sur le loyer convenu avec le propriétaire.
- *Vente d'immeubles:* elles sont soumises au droit de 15%.
- *Echange d'immeubles:* le droit est de 5% sur l'échange, s'il y a soulte ou plus-value le droit de vente est perçu sur cette soulte ou plus-value.

- *Cession de droit au bail:* le droit est de 15%.
- *Vente de meubles:* le droit est de 10%, mais en fait ce taux s'applique rarement puisque la plupart des ventes de meubles ont un caractère commercial et ne sont pas constatées par un acte.
- *Cession de fonds de commerce:* le droit est de 15% sur les éléments incorporels (clientèle, dénomination commerciale, droit au bail) et sur le matériel et mobilier commercial; il est de 2% sur les marchandises neuves vendues avec le fonds à condition que ces marchandises soient détaillées et estimées article par article.
- *Marchés:* les marchés passés entre particuliers et réputés actes de commerce ne sont pas soumis à l'enregistrement dans un délai; les marchés passés avec l'Etat, les communes et les établissements publics supportent le droit de 1% sur le montant du marché (exemption pour ceux passés par les services nationaux ou communaux d'assistance et de bienfaisance).
- *Cession de créances:* le droit est de 1% sur le capital de la créance cédée exprimé dans l'acte.
- *Partage:* le droit est de 0,50% sur l'actif net partagé. S'il y a soulte ou plus-value, le droit de vente est perçu sur les soulte ou plus-value.
- *Donation, succession:* des droits progressifs élevés dont le taux varie avec le degré de parenté des intéressés sont perçus.
- *Cession d'actions:* il importe de distinguer la cession d'apports en nature et la cession des actions non représentatives d'apports en nature.
- Actions d'apports en nature: elles ne sont négociables qu'après le délai de deux ans de la date de l'apport. Leur cession avant l'expiration de ce délai doit se faire par les voies civiles et être constatée par un acte; cet acte soumis à l'enregistrement supporte le droit suivant la nature des biens qui sont représentés par les actions vendues (15% pour les immeubles et fonds de commerce, 2% pour les marchandises neuves, etc . . .). Par contre, après le délai de deux ans les actions d'apport deviennent négociables et peuvent être cédées par voie de transfert (actions nominatives) ou de tradition (actions au porteur) sans qu'aucun droit ne soit perçu.
- Actions autres que d'apport: elles sont immédiatement négociables et leur transfert ou tradition n'entraine pas de droit d'enregistrement.

Il importe de noter que la cession d'actions négociables opérée par un acte signé des deux parties ou par un échange d'écrit formant titre est soumise au droit de 3%. Il convient donc lors de la cession d'actions négociables d'opérer par voie de transfert ou de tradition.

- *Cession de parts de société à responsabilité limitée:* les parts d'une société à responsabilité limitée ne peuvent être négociées; elles doivent être cédées par les voies civiles et supportent le droit d'enregistrement:
- au taux de 3% si elles sont cessibles,
- au taux de vente des biens représentés par les parts lorsqu'il s'agit de parts représentatives d'apports en nature cédées avant l'expiration d'un délai de trois ans de l'apport.

Tous les droits d'enregistrement que nous avons étudiés ci-dessus sont, à l'exception des droits de mutation par décès, exigible dans le mois de l'évènement ou de l'acte qui les motive. Les actes passés à l'étranger bénéficient d'un délai plus long, qui est de trois mois.

Les droits sont établis sur le «prix» (exprimé dans l'acte) ou sur la valeur si elle est plus élevée que le prix.

Des pénalités allant du minimum de 500 Fr CFA au triple du droit sont prévues pour l'enregistrement hors délai, l'omission, l'insuffisance de valeur déclarée ou la dissimulation.

3°) *Droits de Conservation Foncière*

– *Immatriculations*

1,50% jusqu'à 1.000.000 de francs CFA

0,90% de 1.000.000 à 5.000.000 de francs CFA

0,60% au dessus de 5.000.000 de francs CFA.

Le droit est calculé sur la valeur vénale attribuée aux immeubles dans les réquisitions d'immatriculation.

– *Inscriptions:* 0,60%

Le droit est calculé sur le montant des sommes énoncées.

Il convient d'insister sur le fait que ces droits ne sont dus qu'à l'occasion d'actes afférents à des immeubles bâtis ou non bâtis, c'est-à-dire des actes de vente, plus généralement des actes constitutifs, translatifs ou extinctifs de droits réels immobiliers.

Y) CHARGES SOCIALES

1°) *Prélèvement de solidarité sur les salaires*

Effectué en vue d'améliorer l'habitat et de favoriser l'accession des travailleurs à la propriété.

Il frappe tous les traitements, indemnités, émoluments et salaires, lorsque le bénéficiaire est domicilié au Sénégal, alors même que l'activité rémunérée s'exercerait hors dudit Etat ou que l'employeur serait domicilié ou établi hors de celui-ci et lorsque le bénéficiaire est domicilié hors du Sénégal à la double condition que l'activité rémunérée s'exerce au Sénégal et que l'employeur y soit domicilié ou établi.

Les bases du prélèvement sont constituées par le montant total des traitements et salaires y compris les sommes payées à titre d'indemnité de congés payés, de gratifications, primes, indemnités de toute nature (à l'exclusion de celles représentant des remboursement de frais et de prestations familiales) ainsi que tous les avantages en argent ou en nature dont a bénéficié le travailleur et qui ont été supportés par l'employeur.

Peuvent être déduites de la base du prélèvement les retenues effectuées par l'employeur en vue de la constitution de pension ou de retraite dans la limite des 6% des appointements fixés.

En fait, seuls les salaires versés en espèces entrent en ligne de compte pour le calcul de la base du prélèvement.

Le taux du prélèvement est de 2% calculé sur le salaire brut total pour le personnel local ou engagé sur place et calculé sur le salaire brut après abattement de 17% (cet abattement est plafonné à 400.000 Fr par an ou à 33.333 Fr par mois) pour les expatriés, titulaires d'un contrat d'expatrié (les européens engagés sur place ne peuvent bénéficier de l'abattement de 17%).

Ce prélèvement est à la charge du salarié; il est retenu par l'employeur sur chaque

feuille de paye et versé par ce dernier dans les 15 premiers jours du mois ou du trimestre, suivant que le nombre de salariés de l'entreprise est supérieur ou inférieur à 20, à la Caisse de Compensation des Prestations Familiales. Pour chaque mois de retard dans le versement il est perçu une amende égale à 10% du montant dont le versement a été différé.

2°) *Cotisation de solidarité*

Cette cotisation, calculée au taux de 2% sur le salaire plafonné à 45.000 francs par mois, est à la charge de l'employeur; elle est versée à la Caisse de Compensation des Prestations Familiales dans les mêmes conditions que celles concernant le prélèvement précédent.

3°) *Prestations Familiales*

L'employeur a également à sa charge une cotisation Allocations Familiales de 5,20% calculée sur le salaire plafonné à 45.000 francs par mois. Cette cotisation est à verser à la Caisse de Compensation suivant les conditions analysées plus haut.

4°) *Accidents du Travail*

Le taux est, suivant la profession, de 1 à 5% sur les salaires plafonnés à 45.000 francs par mois; cotisation à verser également à la Caisse de Compensation.

5°) *Retraite I.P.R.A.O.*

Les employeurs y sont assujettis soit volontairement, soit par obligation faite par les conventions collectives auxquelles leur activité les soumet.

Taux de 3% sur les salaires plafonnés à 50.000 francs par mois (1,20% à la charge de l'employé et 1,80% à la charge de l'employeur.

Les versements se font à la Caisse de l'I.P.R.A.O. suivant la même périodicité que celle des cotisations Allocations Familiales et Accidents du Travail.

D'autres régimes de retraite (complémentaires) volontaires peuvent faire également l'objet de retenues et cotisations.

6°) *Taxe de Développement*

Cette taxe frappe les revenus professionnels des personnes physiques et notamment les salaires, traitements, indemnités et émoluments des bénéficiaires domiciliés au Sénégal alors même que l'activité rémunérée s'exercerait hors du territoire ou que l'employeur serait domicilié ou établi hors de celui-ci.

La taxe frappe également les salaires et traitements des bénéficiaires domiciliés hors du Sénégal à la double condition que l'activité rétribuée s'exerce au Sénégal et que l'employeur y soit domicilié ou établi.

La taxe est due par le bénéficiaire des revenus taxables. La base est le montant total des salaires à l'exclusion des retenues effectuées par l'employeur en vue de la constitution de pension ou de retraite dans la limite de 6% des appointements fixés, des allocations et des indemnités spéciales destinées à assurer le remboursement des frais et des allocations familiales ou indemnités accordées en considération de charge de famille.

A partie du 1er Juillet 1965 la taxe ne porte que sur la partie des revenus annuels excé-

dant 240.000 francs pour les traitements et salaires. Le calcul de la retenue s'effectue en déduisant de la somme à taxer:

- 666 Fr pour les paiements journaliers,
- 4.660 Fr pour les paiements hebdomadaires,
- 10.000 Fr pour les paiements de quinzaine,
- 20.000 Fr pour les paiements mensuels.

Le taux est de 3% sur la fraction excédant ces déductions; il est de 5% pour la partie excédant 30.000 Fr par mois.

Lorsque l'employeur est domicilié au Sénégal, la taxe est perçue par voie de retenue opérée au moment de chaque paiement effectué. Lorsque l'employeur est domicilié hors du Sénégal il appartient au salarié lui-même de calculer et de verser la taxe dont il est redevable.

Les revenus devront être apprécié annuellement, il importe d'opérer une déduction annuelle totale de 240.000 francs et éventuellement, une régularisation en fin d'année.

L'employeur domicilié au Sénégal est tenu d'opérer les retenues sur les fiches de paye de ses salariés assujettis, pour le compte du Trésor et verser la taxe dans les 15 jours du mois suivant les retenues afférentes aux paiements effectués pendant le mois écoulé, à la Caisse du Payeur ou de l'Agent Spécial du lieu de son domicile.

Lorsque le montant des retenues n'excède pas 10.000 francs, le versement peut être effectué que dans les 15 jours des mois de Janvier, Avril, Juillet et Octobre, pour le trimestre écoulé.

Des pénalités sont prévues:

- amende d'un montant égal à la taxe due pour omission des retenues, ou retenues insuffisantes;
- 10% du montant des sommes dont le versement a été différé par mois de retard pour paiement tardif de la taxe (cette pénalité ne peut être inférieure à 5.000 francs et fait l'objet de majoration suivant l'importance du retard).

Z) AUTRES IMPOTS

1°) Impôt général sur le revenu des personnes physiques: nous sommes à votre disposition pour l'étude de cet impôt qui ne frappe pas les sociétés.

2°) Taxe spécifique sur les produits pétroliers: son tarif varie de 13,4 frs CFA à 17,8 frs CFA suivant la nature des produits.

3°) Taxe de raffinage des produits pétroliers: son taux varie de 6 à 23%.

4°) Taxe intérieure sur les huiles alimentaires de 1%.

5°) Prélèvement exceptionnel de 5% sur les réserves des sociétés: il s'agit d'un prélèvement qui a été exigible en 1965 et ne devrait pas se renouveler.

6°) Taxes sur l'exploitation minière: elles comprennent des droits fixes pour délivrances et renouvellement de permis (de 5.000 à 50.000 Fr CFA) et des redevances proportionnelles (de 1 à 12,5%).

ALGERIA

TAX NEWS

NOUVELLES MESURES FISCALES *)

I. ENREGISTREMENT

MUTATIONS D'IMMEUBLES ET DE FONDS DE COMMERCE

Pour tout acte de vente, il y a lieu de déposer une demande dite «de vacance ou de non vacance» concernant l'immeuble ou le fonds de commerce, objet de la mutation:

a) auprès de l'Enregistrement (direction)

b) auprès de la Préfecture, qui, dans un délai d'un mois, notifiera si le bien est «vacant» ou non.

Le paiement de toute vente, s'il n'y a pas établissement d'un acte notarié, se fait entre les mains de l'Inspecteur de l'Enregistrement. Et les fonds ne pourront être remis qu'une fois tous les impôts réglés.

DROIT DE PREEMPTION

a) Le délai pendant lequel l'Enregistrement peut éxercer son droit de préemption est porté de six mois à un an.

b) L'Enregistrement, par ailleurs, a la possibilité de relever toute insuffisance de prix, pendant un délai de cinq ans, avec effet rétroactif au premier Juillet 1962.

II. IMPOTS DIRECTS

Le taux des impots est fixé comme suit:

Contribution foncière des propriétés non baties: 18 pour cent

Contribution foncière des propriétés baties: 18 pour cent

Impôt sur les bénéfices industriels et commerciaux:

a) particuliers et stés de personnes: 18 pour cent

b) artisans et assimilés: 11 pour cent

c) sociétés de capitaux:

- taux normal: 50 pour cent
- taux réduit: 30 pour cent

Impôt sur les bénéfices de l'exploit. agricole: 18 pour cent

Impôt sur les bénéfices des prof. non commerciales 24 pour cent

Versement forfaitaire à la charge des employeurs: 6 pour cent

OBSERVATIONS: Sont supprimés:

- la majoration exceptionnelle de 10 pour cent
- le prélèvement exceptionnel temporaire de 20 pour cent

Les traitements et salaires ne sont pas compris dans le revenu soumis à l'I.C.R., en raison de leur régime mensuel d'imposition (voir ci après).

*) Compare Bulletin 1964, page 265.

III. TRAITEMENTS ET SALAIRES

A partir du premier mai 1965, l'impôt sur les traitements et salaires est retenu mensuellement par l'employeur. Cette retenue s'opère mois par mois: elle est définitive.

IV. DIVERS

A. ARTISANS: ils ne peuvent utiliser que le concours de leur femme, de deux enfants, ou d'un compagnon et un apprenti.

B. DECLARATIONS FISCALES: le délai de déclarations est fixé au 31 mars sans distinction entre le régime d'imposition forfaitaire ou celui des bénéfices réels.

C. DOMICILIATION: toute délivrance de certificat de non imposition est subordonnée à la production par le demandeur d'une attestation de domiciliation délivrée par le Contrôle des Impôts Directs de la résidence.

D. OPPOSITIONS: Les oppositions à tiers détendeur s'appli queront non seulement aux sommes détenues à la date de l'opposition, mais également à tous les fonds qui parviendraient au tiers détendeur pendant le délai d'un an.

La cession de salaire est inopposable au Trésor. La quotité disponible lui est attribuée en totalité.

E. HYPOTHEQUE LEGALE DU TRESOR

Pour le recouvrement des amendes dont la perception est du ressort des Contributions Diverses, le Trésor a une hypothèque légale dispensée d'inscription sur tous les biens des redevables.

Cette hypothèque prend rang à la date d'envoi du titre de perception.

V. TAXES SUR LE CHIFFRE D'AFFAIRES

Pour les ventes au détail, la réfaction de trente pour cent est ramenée à 15 pour cent.

Pour les produits dont le prix de vente est fixé, la taxe à la production est assise sur ce prix diminué de 15 pour cent, sans que l'abattement puisse faire descendre la base d'imposition au dessous du prix de revient, taxe comprise, de la marchandise.

NOTA:

a) Sont exonérées les affaires faites par les personnes dont le chiffre d'affaires global annuel, est inférieur à 6.000 dinars algériens.

b) Sont redevables, les personnes qui vendent annuellement pour plus de 6.000 dinars algériens achetés par elles, à des personnes qui, fabriquant, élevant, façonnant ou transformant ces produits, ne sont pas redevables de la taxe à la production.

c) Les emballages de produits exonérés et ceux des produits soumis aux droits fusionnés, ne peuvent donner lieu à remboursement de la taxe les ayant grevés, que si leur valeur, taxe comprise, est au moins égale à 20 pour cent (vingt pour cent) de la valeur du produit, autrement dit après conditionnement et taxe comprise.

VI. PRESCRIPTION

Le délai par lequel se prescrit l'action de l'Administration est fixé à six ans.

LE TRANSFERT EN FRANCE DES PROCEDURES JUDICIAIRES ENGAGEES EN ALGERIE

Le ministère de la Justice rappelle que le décret du 11 août dernier, paru au J.O. des 16 et 17 août, a publié les nouveaux accords judiciaires franco-algériens. Ces accords permettent dans certains cas, notamment lorsque toutes les parties à l'instance sont françaises et domiciliées hors d'Algérie, de transférer en France les procédures engagées en Algérie antérieurement au 1er juillet 1962, à condition qu'avant le 17 février 1966 une demande soit présentée à cette fin par déclaration orale ou par lettre recommandée, avec accusé de réception au greffe de la juridiction algérienne déjà saisie. En cas de transfert, les parties peuvent donc poursuivre en France la procédure engagée en Algérie.

«En outre, ces mêmes accords donnent compétence dans certains cas à la Cour de Cassation pour connaître des pourvois formés contre les décisions d'Algérie avant le 28 août 1962, à condition qu'avant le 17 décembre une demande soit formulée par lettre recommandée avec accusé de reception au greffe de la cour suprême d'Algérie».

DROITS ET AVANTAGES SOCIAUX DES FRANÇAIS RAPATRIES D'ALGERIE

Les décrets du 2 septembre 1965 parus au JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE du 4 SEPTEMBRE 1965 portent la prise en charge et la revalorisation des avantages sociaux accordés aux rapatriés d'Algérie, qui doivent se mettre en rapport avec les caisses de retraites dont dépend leur fonction.

Ces mesures permettent:

1° aux travailleurs des professions salariées et non salariées ayant résidé en Algérie, de valider gratuitement dans le régime d'assurance vieillesse dont relève leur profession, les périodes pour lesquelles ils ont OBLIGATOIREMENT cotisé en Algérie.

2° Aux rapatriés, anciens salariés ou non salariés de bénéficier d'un nouvel avantage de vieillesse calculé dans les mêmes conditions que si l'activité professionnelle du bénéficiaire s'était déroulée en France et comportant notamment les revalorisations intervenues depuis 1963.

Ces textes visent donc:

A. les CAVICS pour les commercants
B. la CRPL, pour les professions libérales

En ce qui concerne les Avocats, le décret numéro 65.747 du 2 septembre 1965 a été spécialement pris en leur faveur.

LE DROIT A INDEMNISATION

L'article 4 de la loi du 26 décembre 1961 avait posé le principe du droit à l'indemnisation, en cas de spoliation et de perte de biens, pour les Français d'Outre-Mer, rapatriés massivement en France.

Le Gouvernement français vient juste-

ment de déposer devant les deux assemblées, un rapport sur l'application de cette loi, afférente à la réinstallation des Français rapatriés.

Les 246 pages de ce rapport précisent les mesures prises jusqu'à ce jour à cet effet (secours d'arrivée, allocations de subsistance, reclassement de salariés et de non-salariés, attribution de logements, indemnités particulières, prêts réinstallation professionnelle) en vue d'aider les 1.350.000 rapatriés, et de permettre leur intégration dans l'économie nationale.

Mesures certes d'importance, puisque les dépenses ont atteint 10.358 millions de francs, soit 1.035 milliards d'anciens francs.

Le Gouvernement précise notamment que, ayant eu le choix entre la voie «de l'indemnisation» des biens abandonnés Outre-Mer, et «le reclassement» des rapatriés en France, il a choisi cette seconde voie, qui, à ses yeux, «correspont mieux aux besoins réels de ceux-ci, en même temps qu'à l'intérêt national».

Le Gouvernement s'en tient donc à la poursuite de la politique d'aide à la réinstallation professionnelle.

L'annonce de ces nouvelles mesures avant soulevé une très grande et légitime émotion, la première séance de travail de l'Assemblée nationale, le 5 octobre 1965, a commencé par un vote des parlementaires au sujet du problème majeur de l'indemnisation des rapatriés pour leurs biens spoliés.

Ce vote est particulièrement significatif, puisque par 237 voix contre 225, il a été décidé de désigner une commission spéciale, laquelle sera chargée d'examiner la proposition de loi Baudis, afin que l'Agence des biens et Intérêts des rapatriés procède à l'évaluation des biens perdus et délivre aux intéressés, des certificats qui reproduisent cette évaluation, en fonction de laquelle sera calculé le montant de l'indemnisation qui leur sera accordée.

Le problème soulevé est d'importance: l'indemnisation future par l'Etat français, des biens perdus aussi bien en Algérie, Tunisie, Maroc, mais aussi en Egypte, Indochine ou Guinée. Ce patrimoine abandonné est considérale.

L'indemnisation ne visera pas seulement le «dédommagement» des Français nés dans ces pays-là, mais également le «dédommagement» des personnes physiques ou morales métropolitaines qui y avaient fait de multiples investissements. Nous citerions, pour seul exemple, qu'à la suite du Plan de Constantine, de nombreuses entreprises françaises s'étaient installées en Algérie, où, du fait des événements, elles ont dû abandonner toutes leurs installations.

En droit privé comme en droit public, le principe de l'indemnisation est ici pleinement justifié et à la base, se place «le droit de propriété».

L'exclusivité du droit de propriété signifie que le propriétaire bénéficie seul de toutes les prérogatives attachées à son droit: aucune autre personne ne pouvant prétendre à un droit quelconque sur son bien.

Ce «droit de propriété» est perpétuel, en ce sens qu'il est appelé à durer un temps illimité entre les mains du propriétaire actuels et de ses ayants cause à l'infini.

Le droit dure autant que son objet.

Les atteintes au droit de propriété ayant été commises Outre-Mer, les spoliés, ont, dès lors, un droit indiscutable à être indemnisés.

Les dommages certains causés aux rapatriés pour les biens immobiliers abandonnés ou perdus, du fait de l'instauration d'une politique nouvelle appliquée

par les nouveaux Etats, doivent ouvrir droit à réparation, donc à indemnisation.

L'article premier de la loi No 61.1439 du 26 décembre 1961 stipule justement que «Les Français, ayant dû ou estimé devoir quitter, par suite d'événements politiques, un territoire où ils étaient établis, et qui était antérieurement placé sous la souveraineté, le protectorat ou la tuelle de France, pourront bénéficier du concours de l'Etat, en vertu de la solidarité nationale affirmée par le préambule de la Constitution».

Et c'est bien au nom de cette solidarité nationale, qu'une loi devra établir le montant et les modalités d'une indemnisation, en cas de spoliation et de perte des biens appartenant aux personnes visées audit article premier sus-énoncé.

Ce sera juste réparation.

Et de telles mesures seront bénéfiques pour l'Etat, puisque les sommes allouées à ce titre, seront distribuées en France, et de ce fait, aussitôt remises en circulation.

Reported by: Me. Max. Hubert Brochier

III

TAX TREATIES

NEW GERMAN – U.S.A. (INCOME) TAX TREATY

A protocol was signed on September 17, 1965, revising the U.S.-German tax treaty of July 22, 1954, and was approved by the U.S. Senate on October 22, 1965.

The protocol will come into force upon the exchange of the instruments of ratification and will be retroactive to January 1, 1963, for know-how royalties and to January 1, 1965, for dividends received by U.S. parent corporations from German industries. The other provisions will be effective as of January 1 of the year following the calendar year in which the instruments of ratification are exchanged.

We publish the German text of the treaty in which we have integrated the provisions of the protocol.

The new provisions are printed in cursive. The English text has been published in the November issue of Supplementary Service to European Taxation. Some details of the new protocol were published in Tax News Service, Part II, Non Europe, 44.

Abkommen Zwischen der Bundesrepublik Deutschland und den Vereinigte Staaten von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen

ARTIKEL 1

(1) Die Steuern, auf die sich dieses Abkommen bezieht, sind:

a) *auf seiten der Vereinigten Staaten von Amerika:*
die Bundeseinkommensteuern einschließlich der Zuschlagsteuern (surtaxes)
(im folgenden als „Steuer der Vereinigten Staaten" bezeichnet);

b) *auf seiten der Bundesrepublik Deutschland:*
die Einkommensteuer,
die Körperschaftsteuer,
die Gewerbesteuer und
die Vermögensteuer
(im folgenden als „Steuer der Bundesrepublik" bezeichnet).

(2) *Das vorliegende Abkommen ist auch auf jede andere ihrem Wesen nach ähnliche Steuer anzuwenden, die nach seiner Unterzeichnung von einem der Vertragstaaten erhoben wird.*

(3) *Die in diesem Abkommen enthaltenen Bestimmungen über die Besteuerung des Gewinns gelten auch für die in der Bundesrepublik erhobene, nicht nach dem Gewerbeertrag oder Gewerbekapital bemessene Gewerbesteuer."*

ARTIKEL 2

(1) In diesem Abkommen bedeuten:

a) der Begriff „Vereinigte Staaten" die Vereinigten Staaten von Amerika; in geographischem Sinne verwendet umfaßt er ihre Staaten, die Territorien Alaska und Hawaii sowie den District of Columbia;

b) der Begriff „Bundesrepublik" die Bundesrepublik Deutschland; in geographischem Sinne verwendet umfaßt er das Gebiet des Geltungsbereichs des Grund-

gesetzes für die Bundesrepublik Deutschland;

c) *(aa) der Begriff „Betriebstätte" eine feste Geschäftseinrichtung, in der die Tätigkeit eines Unternehmens eines der Vertragstaaten ganz oder teilweise ausgeübt wird;*

(bb) der Begriff „Betriebstätte" umfaßt insbesondere:

einen Ort der Leitung,
eine Zweigniederlassung,
eine Geschäftsstelle,
ein Ladengeschäft oder eine andere Verkaufseinrichtung,
eine Fabrikationsstätte,
eine Werkstätte,
ein Bergwerk, einen Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
eine Bauausführung oder Montage, deren Dauer zwölf Monate überschreitet.

(cc) Ungeachtet des Buchstabens c (aa) begründen eine oder mehrere der folgenden Tätigkeiten keine Betriebstätte:

das Benutzen von Einrichtungen zur Lagerung, Ausstellung oder Auslieferung von Gütern oder Waren des Unternehmens;
das Unterhalten von Beständen von Gütern oder Waren des Unternehmens zur Lagerung, Ausstellung oder Auslieferung;
das Unterhalten von Beständen von Gütern oder Waren des Unternehmens zu dem Zweck, sie durch ein anderes Unternehmen bearbeiten oder verarbeiten zu lassen;
das Unterhalten einer festen Geschäftseinrichtung zu dem Zweck, für das Unternehmen Güter oder Waren einzukaufen oder Informationen zu beschaffen;
das Unterhalten einer festen Geschäftseinrichtung zu dem Zweck, für das Unternehmen zu werben, Informationen zu erteilen, wissenschaftliche Forschung zu betreiben oder ähnliche Tätigkeiten auszuüben, die vorbereitender Art sind oder eine Hilfstätigkeit darstellen.

(dd) Hat ein Unternehmen eines der Vertragstaaten in dem anderen Staat keine Betriebstätte im Sinne des Buchstabens c (aa) bis (cc), so wird es dennoch so behandelt, als habe es in dem letztgenannten Staat eine Betriebstätte, wenn es in diesem Staat durch einen Vertreter gewerblich tätig ist, der eine Vollmacht besitzt, im Namen des Unternehmens Verträge abzuschließen, und diese Vollmacht in diesem Staat regelmäßig ausübt, es sei denn, daß sich die Ausübung der Vollmacht auf den Einkauf von Gütern oder Waren für das Unternehmen beschränkt.

(ee) Ein Unternehmen eines der Vertragstaaten wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Staat, weil es dort seine gewerbliche Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Person im Rahmen ihrer ordentlichen Geschäftstätigkeit handelt.

(ff) Der Umstand, daß eine Person mit Wohnsitz in einem der Vertragstaaten oder eine Körperschaft eines der Vertragstaaten (i) eine Körperschaft des anderen Staates beherrscht, von ihr beherrscht wird oder mit ihr zusammen von einem Dritten beherrscht wird oder (ii) eine Körperschaft beherrscht, von ihr beherrscht wird oder mit ihr zusammen von einem Dritten beherrscht wird, die in dem anderen Staat (entweder durch eine Betriebstätte oder in anderer Weise) gewerblich tätig ist, wird bei der Feststellung, ob diese Person oder Körperschaft eine Betriebstätte in dem anderen Staat hat, nicht berücksichtigt."

d) der Begriff „Unternehmen eines der Vertragstaaten" je nach dem Zusammenhang ein amerikanisches oder deutsches Unternehmen;

e) der Begriff „amerikanisches Unternehmen" eine gewerbliche Unternehmung, die in den Vereinigten Staaten von einer natürlichen Person (als solcher oder als

Gesellschafter einer Personengesellschaft) mit Wohnsitz in den Vereinigten Staaten oder von einem fiduciary der Vereinigten Staaten oder von einer amerikanischen Körperschaft oder einem anderen amerikanischen Rechtsträger betrieben wird; der Begriff „amerikanische Körperschaft oder anderer amerikanischer Rechtsträger" die nach dem Recht der Vereinigten Staaten, ihrer Staaten oder Territorien errichteten oder organisierten Körperschaften oder anderen Rechtsträger;

f) der Begriff „deutsches Unternehmen" eine gewerbliche Unternehmung, die in der Bundesrepublik von einer natürlichen Person (als solcher oder als Gesellschafter einer Personengesellschaft) mit Wohnsitz in der Bundesrepublik oder von einer deutschen Gesellschaft betrieben wird; der Begriff „deutsche Gesellschaft" juristische Personen sowie solche Rechtsträger, die nach den Gesetzen der Bundesrepublik steuerlich wie juristische Personen behandelt werden, wenn die Gesellschaft ihre Geschäftsleitung oder ihren Sitz in der Bundesrepublik hat; und

g) der Begriff „zuständige Behörde" auf seiten der Vereinigten Staaten den Commissioner of Internal Revenue im Rahmen der ihm vom Sekretär des Schatzamtes erteilten Vollmachten und auf seiten der Bundesrepublik den Bundesminister der Finanzen.

(2) Bei Anwendung der Vorschriften dieses Abkommens wird jeder Vertragstaat, sofern sich aus dem Zusammenhang nicht etwas anderes ergibt, jedem nicht anders bestimmten Begriff den Sinn beilegen, der ihm nach den eigenen maßgebenden Gesetzen zukommt. Im Sinne dieses Abkommens umfaßt der Begriff „Wohnsitz" in der Bundesrepublik auch den gewöhnlichen Aufenthalt.

ARTIKEL 3

(1) *Gewerbliche Gewinne eines Unternehmens eines der Vertragstaaten sind in dem anderen Staat steuerbefreit, es sei denn, daß das Unternehmen in dem anderen Staat durch eine dort gelegene Betriebstätte gewerblich tätig ist. Ist das Unternehmen auf diese Weise tätig, so kann der andere Staat die gewerblichen Gewinne des Unternehmens besteuern, jedoch nur insoweit, als sie der Betriebstätte zugerechnet werden können oder als sie aus Quellen innerhalb dieses anderen Staates durch den Verkauf von Gütern oder Waren der gleichen Art wie die von der Betriebstätte verkauften Güter oder Waren oder durch andere Geschäfte erzielt werden, die von gleicher Art wie die von der Betriebstätte getätigten Geschäfte.*

(2) *Ist ein Unternehmen eines der Vertragstaaten in dem anderen Staat durch eine dort gelegene Betriebstätte gewerblich tätig, so sind dieser Betriebstätte diejenigen Gewinne aus gewerblicher Tätigkeit zuzurechnen, die sie als selbständiges Unternehmen aus gleicher oder ähnlicher Tätigkeit unter denselben oder ähnlichen Bedingungen und unabhängig von dem Unternehmen, dessen Betriebstätte sie ist, hätte erzielen können. Erzielt das Unternehmen neben den durch die Betriebstätte erzielten Gewinnen andere Gewinne der in Absatz 1 bezeichneten Art, so werden diese anderen Gewinne so behandelt, als seien sie durch die Betriebstätte erzielt worden.*

(3) *Bei der Ermittlung der gewerblichen Gewinne eines Unternehmens eines der Vertragstaaten, die in dem anderen Staat nach den Absätzen 1 und 2 besteuert werden können, sind alle Aufwendungen einschließlich der Geschäftsführungs- und allgemeinen Verwaltungskosten zum Abzug zuzulassen, soweit sie in angemessener Weise mit den so zu besteuernden Gewinnen zusammenhängen, und zwar ohne Rücksicht darauf, wo diese Aufwendungen entstanden sind.*

(4) *Gewinne gelten nicht schon deshalb als*

aus Quellen innerhalb eines der Vertragstaaten von einem Unternehmen des anderen Staates erzielt, weil eine Betriebstätte des Unternehmens oder das Unternehmen selbst Güter oder Waren für Rechnung des Unternehmens einkauft.

(5) *Der Begriff „gewerbliche Gewinne" bedeutet Einkünfte eines Unternehmens aus der aktiven Ausübung einer gewerblichen Tätigkeit und umfaßt auch die Einkünfte, die ein Unternehmen erzielt, indem es Dienstleistungen durch seine Angestellten oder andere Kräfte erbringen läßt; er umfaßt aber nicht die Einkünfte, die in Artikel 6 Absätze 1 bis 6 (Dividenden), Artikel 7 Absätze 1 und 2 (Zinsen), Artikel 8 Absätze 1 bis 3 (Lizenzgebühren), Artikel 9 (Einkünfte aus unbeweglichem Vermögen und Bodenschätzen), Artikel 9a Absätze 1, 2 und 4 (Veräußerungsgewinne) und Artikel 10 (Arbeit oder persönliche Dienste) behandelt sind.*"

ARTIKEL 4

Wenn ein Unternehmen des einen Vertragstaates vermöge seiner Beteiligung an der Geschäftsführung oder am finanziellen Aufbau eines Unternehmens des anderen Vertragstaates mit diesem Unternehmen wirtschaftliche oder finanzielle Bedingungen vereinbart oder ihm solche auferlegt, die von denjenigen, die mit einem unabhängigen Unternehmen vereinbart würden, abweichen, so dürfen Gewinne, die eines der beiden Unternehmen üblicherweise erzielt hätte, aber wegen dieser Bedingungen nicht erzielt hat, den Gewinnen dieses Unternehmens zugerechnet und entsprechend besteuert werden.

ARTIKEL 5

Gewinne, die aus einem Unternehmen eines der Vertragstaaten durch den Betrieb von Schiffen oder Luftfahrzeugen erzielt werden, sind in dem anderen Staat steuerbefreit.

ARTIKEL 6

(1) *Die Steuer der Vereinigten Staaten von Dividenden, die eine natürliche Person mit Wohnsitz in der Bundesrepublik oder eine deutsche Gesellschaft von einer amerikanischen Körperschaft bezieht, darf, soweit dieser Artikel nichts anderes bestimmt, 15 vom Hundert des Bruttobetrags der Dividenden nicht übersteigen.*

(2) *Die Steuer der Bundesrepublik von Dividenden, die eine Person mit Wohnsitz in den Vereinigten Staaten, eine amerikanische Körperschaft oder ein anderer amerikanischer Rechtsträger von einer deutschen Gesellschaft bezieht, darf, soweit dieser Artikel nichts anderes bestimmt, 15 vom Hundert des Bruttobetrags der Dividenden nicht übersteigen.*

(3) *Ungeachtet des Absatzes 2 darf bei Dividenden, die eine amerikanische Körperschaft oder ein anderer amerikanischer Rechtsträger von einer deutschen Gesellschaft bezieht, deren stimmberechtigte Anteile der erstgenannten Körperschaft oder dem erstgenannten Rechtsträger zu mindestens 10 vom Hundert unmittelbar gehören, die Steuer der Bundesrepublik 15 vom Hundert, jedoch nicht 25 vom Hundert des Teiles der Dividenden übersteigen, der nach Absatz 5 als reinvestiert gilt. Der vorhergehende Satz ist nur anwendbar, wenn die Bundesrepublik im Zeitpunkt der Dividendenausschüttung eine Körperschaftsteuer von den ausgeschütteten Gewinnen der deutschen Gesellschaft zu einem Vomhundertsatz erhebt, der mindestens 20 Punkte niedriger ist als der Satz der Körperschaftsteuer für nichtausgeschüttete Gewinne.*

(4) *Absatz 3 gilt sinngemäß für die Steuer der Vereinigten Staaten von Dividenden, die eine deutsche Gesellschaft von einer amerikanischen Körperschaft bezieht.*

(5) *Führt die amerikanische Körperschaft der deutschen Gesellschaft unmittelbar oder mittelbar Geld oder andere Vermögenswerte als Darlehen oder zur Erhöhung des Gesellschafts-*

kapitals oder in einer anderen Anlageform zu und übersteigt der auf diese Weise zugeführte Betrag 7,5 vom Hundert der Dividenden, die die amerikanische Körperschaft von der deutschen Gesellschaft in dem Kalenderjahr bezieht, in dem die Zuführung stattfindet, so gilt bis zur Höhe der Dividenden der gesamte zugeführte Betrag als im Sinne des Absatzes 3 aus den Dividenden reinvestiert, die die amerikanische Körperschaft von der deutschen Gesellschaft.

a) *in dem der Zuführung vorausgehenden Kalenderjahr,*

b) *in dem Kalenderjahr, in dem die Zuführung stattfindet, und*

c) *im folgenden Kalenderjahr, und zwar in dieser Reihenfolge, bezieht. Bei den in einem bestimmten Jahr gezahlten Dividenden sind zuerst die in dem vorangehenden Jahr zugeführten Beträge zu berücksichtigen, jedoch nur insoweit, als sie als reinvestiert gelten und als sie nicht schon bei früher ausgeschütteten Dividenden zu einer Besteuerung nach Absatz 3 geführt haben.*

(6) *Ermäßigungen oder Erstattungen der im Abzugswege erhobenen Steuer von Dividenden, auf die Absatz 3 oder Absatz 4 Anwendung findet, unterliegen dem Vorbehalt, daß die nachgelassene oder erstattete Steuer nachzuzahlen ist, sofern sie auf Grund einer Zuführung, die als Reinvestition im Sinne des Absatzes 5 gilt, geschuldet wird; die die Dividenden beziehende Körperschaft und die ausschüttende gesellschaft haften für die nachzuzahlende Steuer gesamtschuldnerisch.*

(7) *Die vorstehenden Bestimmungen sind nicht anzuwenden, wenn der Empfänger der Dividenden im Falle der Absätze 1 und 4 in den Vereinigten Staaten und im Falle der Absätze 2 und 3 in der Bundesrepublik eine Betriebstätte hat und die Beteiligung, für welche die Dividenden gezahlt werden, zu dieser Betriebstätte tatsächlich gehört.*

(8) *Der Begriff „Dividenden" umfaßt auf seiten der Bundesrepublik neben den Ausschüttungen einer Aktiengesellschaft auch Ausschüttungen auf Anteile an einer Gesellschaft mit beschränkter Haftung, an einer Kapitalanlagegesellschaft oder an einer Kommanditgesellschaft auf Aktien sowie Einkünfte aus Kuxen oder Genußscheinen oder Einkünfte eines stillen Gesellschafters aus seiner Beteiligung als stiller Gesellschafter."*

ARTIKEL 7

(1) *Zinsen aus Obligationen, Kassenscheinen, Schuldverschreibungen, Wertpapieren oder anderen Schuldverpflichtungen (einschließlich der durch Hypotheken oder andere Grundpfandrechte gesicherten Schulden), die eine natürliche Person mit Wohnsitz in der Bundesrepublik oder eine deutsche Gesellschaft bezieht, sind in den Vereinigten Staaten steuerbefreit.*

(2) *Zinsen aus Obligationen, Kassenscheinen, Schuldverschreibungen, Wertpapieren oder anderen Schuldverpflichtungen (einschließlich der durch Hypotheken oder andere Grundpfandrechte gesicherten Schulden), die eine Person mit Wohnsitz in den Vereinigten Staaten, eine amerikanische Körperschaft oder ein anderer amerikanischer Rechtsträger bezieht, sind in der Bundesrepublik steuerbefreit.*

(3) *Die Absätze 1 und 2 sind nicht anzuwenden, wenn der Empfänger der Zinsen im Falle des Absatzes 1 in den Vereinigten Staaten und im Falle des Absatzes 2 in der Bundesrepublik eine Betriebstätte hat und die Forderung, für welche die Zinsen gezahlt werden, zu dieser Betriebstätte tatsächlich gehört.*

(4) *Bestehen zwischen Schuldner und Empfänger oder zwischen ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Zinsen, gemessen an der zugrunde liegenden Forderung, den Betrag, den Schuldner und Empfänger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichti-*

gung der anderen Bestimmungen dieses Abkommens besteuert werden."

ARTIKEL 8

(1) *Lizenzgebühren, die eine natürliche Person mit Wohnsitz in der Bundesrepublik oder eine deutsche Gesellschaft bezieht, sind in den Vereinigten Staaten steuerbefreit.*

(2) *Lizenzgebühren, die eine Person mit Wohnsitz in den Vereinigten Staaten, eine amerikanische Körperschaft oder ein anderer amerikanischer Rechtsträger bezieht, sind in der Bundesrepublik steuerbefreit.*

(3) *Der in diesem Artikel verwendete Begriff „Lizenzgebühren"*

a) *bedeutet Lizenzgebühren, Mieten oder andere Beträge, die als Vergütung für die Benutzung oder das Recht auf Benutzung von Urheberrechten, künstlerischen oder wissenschaftlichen Werken (einschließlich kinematographischer Filme sowie Filme und Bänder für Rundfunk- oder Fernsehsendungen), von Patenten, Mustern, Plänen, geheimen Verfahren und Formeln, Warenzeichen sowie ähnlichen Vermögenswerten oder Rechten oder für gewerbliche und wissenschaftliche Ausrüstungen oder für Kenntnisse, Erfahrungen und Fertigkeiten (knowhow) gezahlt werden, und*

b) *umfaßt auch Gewinne aus der Veräußerung von Rechten oder Vermögenswerten, für die derartige Lizenzgebühren gezahlt werden.*

(4) *Die Absätze 1 und 2 sind nicht anzuwenden, wenn der Empfänger der Lizenzgebühren im Falle des Absatzes 1 in den Vereinigten Staaten und im Falle des Absatzes 2 in der Bundesrepublik eine Betriebstätte hat und die Rechte oder Vermögenswerte, für welche die Lizenzgebühren gezahlt werden, zu dieser Betriebstätte tatsächlich gehören.*

(5) *Bestehen zwischen Schuldner und Empfänger oder zwischen ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Lizenzgebühren, gemessen an der zugrunde liegenden Leistung, den Betrag, den Schuldner und Empfänger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden."*

ARTIKEL 9

(1) *Einkünfte aus unbeweglichem Vermögen, das in einem der Vertragstaaten liegt, sowie die Vergütungen für die Ausbeutung von Bergwerken, Steinbrüchen oder anderen Bodenschätzen, die in diesem Staat liegen, einschließlich der Gewinne aus der Veräußerung der vorstehend genannten Vermögenswerte, können in diesem Staat besteuert werden.*

(2) *Eine natürliche Person mit Wohnsitz in der Bundesrepublik oder eine deutsche Gesellschaft, die mit den in Absatz 1 genannten Einkünften in den Vereinigten Staaten steuerpflichtig sind, sowie eine Person mit Wohnsitz in den Vereinigten Staaten, eine amerikanische Körperschaft oder ein anderer amerikanischer Rechtsträger, die mit den in Absatz 1 genannten Einkünften in der Bundesrepublik steuerpflichtig sind, können für jedes Steuerjahr verlangen, daß die Steuer von diesen Einkünften nach dem Nettoergebnis berechnet wird, und zwar zu den Steuersätzen, die bei einer Person mit Wohnsitz in dem Vertragstaat, in dem das Vermögen gelegen ist, oder bei einer Gesellschaft dieses Vertragstaates anzuwenden wären."*

ARTIKEL 9a

(1) *Gewinne, die eine natürliche Person mit Wohnsitz in der Bundesrepublik oder eine deutsche Gesellschaft aus der Veräußerung von Vermögenswerten (mit Ausnahme der Gewinne aus der Veräußerung von Vermögen, das in Artikel 9 dieses Abkommens bezeichnet ist) bezieht, sind in den Vereinigten Staaten steuerbefreit.*

(2) *Gewinne, die eine in den Vereinigten Staaten ansässige Person, eine amerikanische Körperschaft oder ein anderer amerikanischer Rechtsträger aus der Veräußerung von Vermögenswerten (mit Ausnahme der Gewinne aus der Veräußerung von Vermögen, das in Artikel 9 dieses Abkommens bezeichnet ist) bezieht, sind in der Bundesrepublik steuerbefreit.*

(3) *Die Absätze 1 und 2 sind nicht anzuwenden, wenn die Person, die den Veräußerungsgewinn bezieht, im Falle des Absatzes 1 in den Vereinigten Staaten und im Falle des Absatzes 2 in der Bundesrepublik eine Betriebstätte hat und der Gewinn aus der Veräußerung eines Vermögenswertes bezogen wird, der zu dieser Betriebstätte tatsächlich gehört.*

(4) *Absatz 1 ist nicht anzuwenden, wenn*

a) *der Veräußerungsgewinn von einer natürlichen Person mit Wohnsitz in der Bundesrepublik bezogen wird, die sich in den Vereinigten Staaten insgesamt mindestens 183 Tage während des Steuerjahres aufhält, und*

b) *der veräußerte Vermögenswert nicht länger als sechs Monate im Eigentum dieser Person stand."*

ARTIKEL 10

(1) *Vergütungen für Arbeit oder persönliche Dienste (einschließlich) der Vergütungen für die Ausübung eines freien Berufes und der Tätigkeit als Aufsichtsratsmitglied), die eine natürliche Person mit Wohnsitz in der Bundesrepublik außerhalb der Vereinigten Staaten leistet, sind in den Vereinigten Staaten steuerbefreit.*

(2) *Vergütungen für Arbeit oder persönliche Dienste (einschließlich der Vergütungen für die Ausübung eines freien Berufes und der Tätigkeit als Aufsichtsratsmitglied), die eine natürliche Person mit Wohnsitz in der Bundesrepublik in den Vereinigten Staaten leistet, sind in den Vereinigten Staaten steuerbefreit, wenn*

a) *die Person sich in den Vereinigten Staaten insgesamt nicht länger als 183 Tage während eines Steuerjahres aufhält,*

b) *die Arbeit oder persönlichen Dienste auf Grund eines Arbeitsverhältnisses oder eines Vertrages mit einer natürlichen Person mit Wohnsitz in der Bundesrepublik oder mit einer deutschen Gesellschaft geleistet werden und die Vergütung von dieser Person oder Gesellschaft getragen wird und*

c) *die Vergütung nicht von einer Betriebstätte getragen wird, die diese Person oder Gesellschaft in den Vereinigten Staaten hat.*

(3) *Vergütungen für Arbeit oder persönliche Dienste (einschließlich der Vergütungen für die Ausübung eines freien Berufes und der Tätigkeit als Aufsichtsratsmitglied), die eine Person mit Wohnsitz in den Vereinigten Staaten außerhalb der Bundesrepublik leistet, sind in der Bundesrepublik steuerbefreit.*

(4) *Vergütungen für Arbeit oder persönliche Dienste (einschließlich der Vergütungen für die Ausübung eines freien Berufes und der Tätigkeit als Aufsichtsratsmitglied), die eine Person mit Wohnsitz in den Vereinigten Staaten in der Bundesrepublik leistet, sind in der Bundesrepublik steuerbefreit, wenn*

a) *die Person sich in der Bundesrepublik insgesamt nicht länger als 183 Tage während eines Steuerjahres aufhält,*

b) *die Arbeit oder persönlichen Dienste auf Grund eines Arbeitsverhältnisses oder eines Vertrages mit einer Person mit Wohnsitz in den Vereinigten Staaten oder mit einer amerikanischen Körperschaft oder einem anderen amerikanischen Rechtsträger geleistet werden und die Vergütung von dieser Person oder Körperschaft oder diesem anderen Rechtsträger getragen wird und*

c) *die Vergütung nicht von einer Betriebstätte getragen wird, die diese Person oder Körperschaft oder dieser andere Rechtsträger in der Bundesrepublik hat."*

ARTIKEL 11

(1) a) *Löhne, Gehälter und ähnliche Vergütungen sowie Ruhegehälter, die die Ver-*

einigten Staaten, ihre Staaten, Territorien oder Gebietskörperschaften an natürliche Personen außer deutschen Staatsangehörigen zahlen, sind in der Bundesrepublik steuerbefreit.

b) *Löhne, Gehälter und ähnliche Vergütungen sowie Ruhegehälter, die die Bundesrepublik, die Länder, Gemeinden oder eine ihrer öffentlichrechtlichen Rentenanstalten an natürliche Personen außer Staatsangehörigen der Vereinigten Staaten und außer natürlichen Personen, denen die Einreise in die Vereinigten Staaten zur Grundung eines ständigen Wohnsitzes gestattet worden ist, zahlen sind in den Vereinigten Staaten steuerbefreit.*

c) *Ruhegehälter, Renten und andere Beträge, die einer der Vertragstaaten onder eine juristische Person des öffentlichen Rechts dieses Staates als Vergütung für einen Schaden zahlt, der als Folge von Kriegshandlungen oder politischer Verfolgung entstanden ist, sind in dem anderen Staat steuerbefreit.*

d) *Im Sinne dieses Absatzes umfaßt der Begriff „Ruhegehälter" auch Renten, die an im Ruhestand befindliche zivile Angehörige des öffentlichen Dienstes gezahlt werden.*

(2) *Private Ruhegehälter und private Leibrenten, die eine natürliche Person mit Wohnsitz in einem der Vertragstaaten aus Quellen innerhalb des anderen Staates bezieht, sind in dem anderen Staat steuerbefreit.*

(3) *Unter dem in diesem Artikel verwendeten Begriff „Ruhegehälter" sind regelmäßig wiederkehrende Vergütungen zu verstehen, die im Hinblick auf geleistete Dienste oder zum Ausgleich erlittener Personenschäden gezahlt werden.*

(4) *Der in diesem Artikel verwendete Begriff „Leibrenten" bedeutet bestimmte Beträge, die regelmäßig an festen Terminen auf Lebenszeit oder während einer bestimmten Anzahl von Jahren auf Grund einer Verpflichtung zahlbar sind, die diese Zahlungen als Gegenleistung für eine in Geld oder Geldeswert erbrachte angemessene Leistung vorsieht.*"

ARTIKEL 12

Ein Hochschullehrer oder Lehrer mit Wohnsitz in einem der Vertragstaaten, der sich vorübergehend für höchstens zwei Jahre zu Unterrichtszwecken an einer Universität, einem College, einer Schule oder anderen Lehranstalt des anderen Staates aufhält, ist in dem anderen Staat von der Steuer auf die Einkünfte aus dieser Lehrtätigkeit während des genannten Zeitraums befreit.

ARTIKEL 13

(1) Eine Person mit Wohnsitz in einem der Vertragstaaten, die sich ausschließlich als Student an einer Universität, einem College, einer Schule oder anderen Lehranstalt in dem anderen Staat vorübergehend aufhält, ist von der Steuer des anderen Staates auf Überweisungen aus dem Ausland für Studienkosten und Unterhalt befreit.

(2) Ein Lehrling (in der Bundesrepublik einschließlich der Volontäre und Praktikanten) mit Wohnsitz in einem der Vertragstaaten, der sich vorübergehend in dem anderen Staat ausschließlich zum Erwerb geschäftlicher oder technischer Erfahrungen aufhält, ist von der Steuer des anderen Staates auf Überweisungen aus dem Ausland für Studienkosten und Unterhalt befreit.

(3) Eine Person mit Wohnsitz in einem der Vertragstaaten, die einen Zuschuß, Unterhaltsbetrag oder einen Preis von einer religiösen, mildtätigen, wissenschaftlichen, literarischen oder pädagogischen, nicht auf Gewinnerzielung gerichteten Organisation erhält, ist von der Steuer des

anderen Staates auf derartige Zahlungen dieser Organisationen (außer Vergütungen für persönliche Dienstleistungen) befreit.

(4) Eine Person mit Wohnsitz in einem der Vertragstaaten, die ein Angestellter eines Unternehmens dieses Staates oder einer der in Absatz 3 genannten Organisationen ist und die sich vorübergehend für einen Zeitraum von nicht mehr als einem Jahr in dem anderen Staat ausschließlich zu dem Zweck aufhält, technische, berufliche oder geschäftliche Erfahrungen von einer anderen Person als diesem Unternehmen oder dieser Organisation zu erwerben, ist in dem anderen Staat von der Steuer auf Vergütungen aus dem Ausland, die von dem erstgenannten Unternehmen oder der erstgenannten Organisation gezahlt werden, befreit, wenn ihre jährliche Vergütung für Dienstleistungen ohne Rücksicht darauf, wo sie geleistet werden, 10 000 Dollar nicht übersteigt.

ARTIKEL 14

(1) Dividenden und Zinsen, die eine deutsche Gesellschaft zahlt (außer wenn sie gleichzeitig eine amerikanische Körperschaft ist), sind in den Vereinigten Staaten steuerbefreit, wenn der Empfänger ein Ausländer ohne Wohnsitz in den Vereinigten Staaten oder eine ausländische Körperschaft ist.

(2) Dividenden und Zinsen, die eine amerikanische Körperschaft zahlt, sind in der Bundesrepublick steuerbefreit, wenn der Empfänger in der Bundesrepublik keinen Wohnsitz hat oder keine deutsche Gesellschaft ist.

ARTIKEL 14a

Für die Steuern vom Vermögen gilt folgendes:

(1) *Das in Artikel 9 genannte Vermögen kann in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.*

(2) *Vorbehaltlich des Absatzes 3 kann Vermögen, das zu einer Betriebstätte eines Unternehmens eines der Vertragstaaten tatsächlich gehört, mit Ausnahme des in Absatz 1 bezeichneten Vermögens, in dem Staat besteuert werden, in dem die Betriebstätte gelegen ist.*

(3) *Seeschiffe und Luftfahrzeuge eines Unternehmens eines der Vertragstaaten und das dem Betrieb dieser Seeschiffe oder Luftfahrzeuge dienende Vermögen, mit Ausnahme des in Absatz 1 bezeichneten Vermögens, sind in dem anderen Staat steuerbefreit.*

(4) a) *Alle anderen Vermögensteile einer natürlichen Person mit Wohnsitz in der Bundesrepublik oder einer deutschen Gesellschaft sind in den Vereinigten Staaten steuerbefreit.* b) *Alle anderen Vermögensteile einer Person mit Wohnsitz in den Vereinigten Staaten, einer amerikanischen Körperschaft oder eines anderen amerikanischen Rechtsträgers sind in der Bundesrepublik steuerbefreit.*"

ARTIKEL 15

(1) Eine Doppelbesteuerung ist in der folgenden Weise zu vermeiden:

a) *Bei der Festsetzung der Steuer der Vereinigten Staaten dürfen die Vereinigten Staaten ungeachtet anderer Vorschriften dieses Abkommens bei ihren Staatsangehörigen, den Personen mit Wohnsitz in den Vereinigten Staaten und amerikanischen Körperschaften alle Einkommensteile, die nach den amerikanischen Steuergesetzen steuerpflichtig sind, so in die Bemessungsgrundlage dieser Steuer einbeziehen, als sei dieses Abkommen nicht anzuwenden. Die Vereinigten Staaten rechnen aber bei ihren Staatsangehörigen, Personen mit Wohnsitz in den Vereinigten Staaten und amerikanischen Körperschaften auf die Steuer der Vereinigten Staaten den Betrag der gezahlten Steuer der Bundesrepublik an, mit Ausnahme der Vermögensteuer und der nicht nach dem Gewerbeertrag bemessenen Gewerbesteuer. Der anzurechnende Betrag bemißt sich nach der Höhe der*

gezahlten Steuer der Bundesrepublik, darf aber den Teil der Steuer der Vereinigten Staaten nicht übersteigen, der dem Verhältnis der Einkünfte aus Quellen innerhalb der Bundesrepublik zu den gesamten Einkünften entspricht. Dabei besteht Einverständnis darüber, daß die Bundesrepublik auf Grund dieses Artikels in bezug auf die Steuer der Bundesrepublik die im Internal Revenue Code geforderte Voraussetzung der Gegenseitigkeit (similar credit requirement) erfüllt.

b) 1. *Bei einer natürlichen Person mit Wohnsitz in der Bundesrepublik und einer deutschen Gesellschaft wird die Steuer der Bundesrepublik wie folgt festgesetzt:*

(aa) *Von der Bemessungsgrundlage der Steuer der Bundesrepublik werden die Einkünfte aus Quellen innerhalb der Vereinigten Staaten und die innerhalb der Vereinigten Staaten gelegenen Vermögensteile ausgenommen, die nach diesem Abkommen in den Vereinigten Staaten nicht steuerbefreit sind, es sei denn, daß Buchstabe (bb) anzuwenden ist. Die Bundesrepublik behält aber das Recht, die auf diese Weise ausgenommenen Einkünfte und Vermögensteile bei der Festsetzung des Steuersatzes zu berücksichtigen. Bei Einkünften aus Dividenden ist Satz 1 jedoch nur auf die Dividenden anzuwenden, die nach dem Recht der Vereinigten Staaten steuerpflichtig sind und einer deutschen Kapitalgesellschaft von einer amerikanischen Körperschaft gezahlt werden, deren stimmberechtigte Anteile zu mindestens 25 vom Hundert der erstgenannten Gesellschaft unmittelbar gehören.*

Von der Bemessungsgrundlage der Steuer der Bundesrepublik werden ebenfalls Beteiligungen ausgenommen, deren Dividenden nach dem vorhergehenden Satz von der Steuerbemessungsgrundlage ausgenommen sind oder bei Zahlung auszunehmen wären.

(bb) *Die Steuer der Vereinigten Staaten, die nach den amerikanischen Gesetzen und in Übereinstimmung mit diesem Abkommen von den nachstehenden Einkünften zu entrichten ist, wird auf die Steuer der Bundesrepublik vom Einkommen angerechnet, die erhoben wird von*

i) *den nicht unter Buchstabe (aa) fallenden Dividenden;*

ii) *den Löhnen, Gehältern, Ruhegehältern und ähnlichen Vergütungen, die die Vereinigten Staaten, ihre Staaten, Territorien oder Gebietskörperschaften zahlen und die nach Artikel XI Absatz 1 Buchstabe a von der Steuer der Bundesrepublik nicht befreit sind.*

Der anzurechnende Betrag darf den Teil der Steuer der Bundesrepublik nicht übersteigen, der dem Verhältnis dieser Einkünfte zu dem Gesamtbetrag der Einkünfte entspricht.

2. *Ist eine natürliche Person in der Bundesrepublik unbeschränkt steuerpflichtig und hat sie zugleich nach dem Steuerrecht der Vereinigten Staaten einen Wohnsitz in den Vereinigten Staaten oder ist sie ein amerikanischer Staatsangehöriger, so ist Nummer 1 Buchstabe (aa) auf diejenigen Einkünfte aus Quellen innerhalb der Vereinigten Staaten und diejenigen in den Vereinigten Staaten gelegenen Vermögensteile anzuwenden, die nach Nummer 1 Buchstabe (aa) in der Bundesrepublik dann steuerbefreit sind, wenn die natürliche Person, der die Einkünfte zufließen oder der die Vermögensteile gehören, weder nach dem Steuerrecht der Vereinigten Staaten einen Wohnsitz in den Vereinigten Staaten hat noch amerikanischer Staatsangehöriger ist. Die anderen Einkünfte und Vermögensteile werden in die Bemessungsgrundlage der Steuer der Bundesrepublik einbezogen, als sei dieses Abkommen nicht anzuwenden. Die Steuer der Vereinigten Staaten von diesen anderen Einkünften aus Quellen innerhalb der Vereinigten Staaten wird aber nach § 34c des deutschen Einkommensteuergesetzes in seiner jeweils*

gültigen Fassung auf die Einkommensteuer der Bundesrepublik angerechnet."

(2) Die Vorschriften dieses Artikels berühren nicht die nach Artikel 11 Absatz 1 dieses Abkommens gewährleisteten Befreiungen von den Steuern der Vereinigten Staaten oder der Bundesrepublik.

ARTIKEL 15a

(1) *Eine deutsche Gesellschaft oder Organisation, die ausschließlich religiöse, mildtätige, wissenschaftliche, erzieherische oder öffentliche Zwecke verfolgt, ist in den Vereinigten Staaten steuerbefreit, wenn und soweit sie*

a) *in der Bundesrepublik steuerbefreit ist und*

b) *in den Vereinigten Staaten steuerbefreit wäre, sofern sie in den Vereinigten Staaten organisiert worden und ausschließlich dort tätig wäre:*

(2) *Eine amerikanische Körperschaft oder Organisation, die ausschließlich religiöse, mildtätige, wissenschaftliche, erzieherische oder öffentliche Zwecke verfolgt, ist in der Bundesrepublik steuerbefreit, wenn und soweit sie*

a) *in den Vereinigten Staaten steuerbefreit ist und*

b) *in der Bundesrepublik steuerbefreit wäre, sofern sie eine deutsche Gesellschaft oder Organisation wäre, die ausschließlich in der Bundesrepublik tätig ist."*

ARTIKEL 16

„(1) *Die zuständigen Behörden der Vertragstaaten werden die Auskünfte austauschen, die nach den Steuergesetzen der beiden Vertragstaaten bereitgestellt werden können und die notwendig sind für die Durchführung der Vorschriften dieses Abkommens oder für die Verhütung von Hinterziehungen und dergleichen bei den unter dieses Abkommen fallenden Steuern. Alle so ausgetauschten Auskünfte sind geheimzuhalten, dürfen aber den Personen (einschließlich Gerichten oder Verwaltungsbehörden) zugänglich gemacht werden, die sich mit der Veranlagung, Erhebung oder Einziehung der unter dieses Abkommen fallenden Steuern oder einer damit zusammenhängenden strafrechtlichen Verfolgung befassen. Auskünfte, die irgendein Handels-, Geschäfts-, gewerbliches oder Berufsgeheimnis oder ein Geschäftsverfahren offenbaren würden, dürfen nicht ausgetauscht werden."*

(2) Jeder der beiden Vertragstaaten darf Steuern des anderen Staates wie seine eigenen Steuern insoweit einziehen, als damit verhindert wird, daß etwaige Steuerbefreiungen oder Ermäßigungen des Steuersatzes, die der andere Staat nach diesem Abkommen gewährt, Personen zugute kommen, die auf diese Vergünstigungen keinen Anspruch haben.

(3) Die Vorschriften dieses Artikels dürfen nicht dahin ausgelegt werden, daß sie einem der Vertragstaaten die Verpflichtung auferlegen, Verwaltungsmaßnahmen durchzuführen, die von seinen Vorschriften oder von seiner Verwaltungspraxis abweichen, oder die seiner Souveränität, Sicherheit oder dem ordre public widersprechen, oder Angaben zu vermitteln, die weder auf Grund seiner eigenen noch auf Grund der Gesetzgebung des ersuchenden Staates beschafft werden können.

ARTIKEL 17

(1) *Weist ein Steuerpflichtiger nach, daß die Maßnahmen der Steuerbehörden der Vertragstaaten die Wirkung einer den Vorschriften dieses Abkommens widersprechenden Doppelbesteuerung haben oder haben werden, so kann er seinen Fall dem Staat, dem er angehört oder in dem er seinen Wohnsitz hat, oder, sofern es sich um eine Gesellschaft oder eine Körperschaft eines der Vertragstaaten handelt, diesem Staat unterbreiten. Werden die Einwendungen des Steuerpflichtigen als begründet erachtet, so wird die zuständige Be-*

hörde des angerufenen Staates anstreben, sich mit der zuständigen Behörde des anderen Staates über eine Vermeidung dieser Doppelbesteuerung zu verständigen.

(2) *Die zuständigen Behörden der Vertragstaaten können zur Durchführung dieses Abkommens unmittelbar miteinander verkehren. Treten Schwierigkeiten oder Zweifel bei der Auslegung oder Anwendung dieses Abkommens oder hinsichtlich seines Verhältnisses zu Abkommen zwischen einem der Vertragstaaten und anderen Staaten auf, so bemühen sich die zuständigen Behörden, die Frage möglichst schnell im Wege der Verständigung zu regeln.*

(3) *Insbesondere können die zuständigen Behörden der Vertragstaaten einander konsultieren, um durch Verständigung, wenn möglich, zu erreichen, daß*

a) *die gewerblichen Gewinne einem Unternehmen eines der Vertragstaaten und einer in dem anderen Staat gelegenen Betriebstätte übereinstimmend zugerechnet werden,*

b) *die Gewinne zwischen verbundenen Unternehmen nach Artikel 4 übereinstimmend aufgeteilt werden oder*

c) *die Quelle für bestimmte Einkünfte übereinstimmend festgelegt wird.*

Erzielen die zuständigen Behörden eine solche Verständigung, so werden die Vertragstaaten die Steuern von diesen Einkünften entsprechend der Verständigung erheben, erstatten oder anrechnen."

ARTIKEL 18

(1) Die Vorschriften dieses Abkommens berühren nicht das Recht auf andere oder zusätzliche Befreiungen, die den diplomatischen und konsularischen Beamten derzeit zustehen oder ihnen künftig eingeräumt werden könnten.

(2) Durch die Vorschriften dieses Abkommens werden die Ansprüche auf Befreiungen, Abzüge, Steuergutschriften oder andere Vergünstigungen, die derzeit oder künftig durch die Gesetze eines der Vertragstaaten oder durch ein anderes Abkommen zwischen den Vertragstaaten bei der Steuerfestsetzung eingeräumt werden, nicht beschränkt.

(3) Den Staatsangehörigen eines der Vertragstaaten, die in dem anderen Staat ihren Wohnsitz haben, dürfen dort nicht andere oder höhere Steuern auferlegt werden als den Staatsangehörigen dieses anderen Staates, die dort ihren Wohnsitz haben. Der in diesem Artikel verwendete Ausdruck „Staatsangehörige" umfaßt auch alle juristischen Personen, Personengesellschaften (partnerships) und Vereinigungen, die nach dem in dem einen oder anderen Vertragstaat geltenden Recht errichtet oder organisiert sind. In diesem Artikel werden unter dem Ausdruck „Steuern" Abgaben jeder Art oder Bezeichnung verstanden ohne Rücksicht darauf, ob sie Abgaben des Bundes, der Staaten, Länder oder Gemeinden sind.

ARTIKEL 19

(1) Die zuständigen Behörden der beiden Vertragstaaten können Richtlinien erlassen, die für die Anwendung dieses Abkommens im ihrem Staatsgebiet erforderlich sind.

(2) Zum Zwecke der Anwendung dieses Abkommens können die zuständigen Behörden der beiden Vertragstaaten unmittelbar miteinander verkehren.

ARTIKEL 20

(1) Dieses Abkommen gilt auch von dem in Artikel 21 Absatz 1 bezeichneten Zeitpunkt ab für das Land Berlin, welches für die Zwecke dieses Abkommens nur die Gebiete umfaßt, über welche der Senat von Berlin hoheitliche Befugnisse ausübt.

(2) Die Gültigkeit dieses Abkommens für das Land Berlin im Sinne von Absatz 1 hängt davon ab, daß die Regierung der

Bundesrepublik Deutschland vorher der Regierung der Vereinigten Staaten von Amerika eine schriftliche Erklärung abgibt daß alle für die Anwendung dieses Abkommens in Berlin erforderlichen rechtlichen Voraussetzungen erfüllt sind.

(3) Bei der Anwendung dieses Abkommens gemäß Absatz 1 und 2 dieses Artikels auf das Land Berlin gelten die Bezugnahmen in diesem Abkommen auf die Bundesrepublik auch als Bezugnahmen auf das Land Berlin.

ARTIKEL 21

(1) Dieses Abkommen ist sobald wie möglich zu ratifizieren und die Ratifikationsurkunden sind sobald wie möglich in Bonn auszutauschen. Das Abkommen ist auf die Steuerjahre anzuwenden, die am oder nach dem ersten Januar des Kalenderjahres beginnen, in dem der Austausch der Ratifikationsurkunden stattfindet.

(2) Dieses Abkommen bleibt für einen Zeitraum von fünf Jahren, beginnend mit dem Kalenderjahr, in dem der Austausch der Ratifikationsurkunden stattfindet, und nach Ablauf dieses Zeitraums auf unbestimmte Zeit in Kraft, kann aber am Ende des Fünfjahreszeitraums oder jederzeit danach von jedem der beiden Vertragstaaten unter Einhaltung einer Frist von mindestens sechs Monaten gekündigt werden. Im Fall einer Kündigung tritt das Abkommen für die Steuerjahre außer Kraft, die am oder nach dem ersten Januar beginnen, der auf den Ablauf der sechsmonatigen Kündigungsfrist folgt.

IV

BIBLIOGRAPHY

1. BOOKS

CANADA

CANADIAN BUSINESS GUIDE, Bank of Nova Scotia, Toronto 1, 44 King Street West, August 1965, pp. 78.

This booklet includes a general outline of taxation and other materials relevant to the establishment of a commercial enterprise or other investment in Canada. The respective chapters deal with: formation of enterprises; income taxes; incentive legislation; corporation law; special types of corporations; non resident corporations and individuals; tax agreements in general, and the Canada-US and Canada-Germany tax treaties in particular; provincial income taxes; other provincial taxes; gift tax; estate and succession duties; provincial succession duties; sundry federal taxes and duties; and some aspects of labour law.

GERMANY

HANDBUCH DER GmbH & Co., by *Hesselman, M.*, Köln, Verlag Dr. Otto Schmidt KG, 1965, June, 8th edition, pp. 252, DM 26.—.

A handbook to the GmbH and Co., a specific type of business organization presently popular in Germany. The GmbH and Co. includes a limited company, a type of close corporation under German law, but no certificates of shares are issued and in general its annual accounts need not be published. The limited company is a corporation for tax purposes and a legal entity for commercial law purposes, like the French S.à.R.L. The limited company acts as one of the partners of a general partnership or as the active partner of a limited (sleeping) partnership. A partnership (general or limited) is not a legal entity for commercial law purposes and is not a corporation for tax law purposes: only the partners are subject to income tax, thus the GmbH and Co achieves a partnership status for tax purposes, but may effectively maintain limited liability since only the limited company need be generally liable for the debts of the GmbH and Co. The handbook provides a guide to specific commercial and tax problems.

PASSIVIERUNGSPFLICHT ODER PASSIVIERUNGSWAHLRECHT bei Pensionsverpflichtungen? by *Ruthenbeck, I.*, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1965, pp. 193.

An analysis of the business and tax accounting of pension obligations which in addition includes a detailed bibliography on that subject.

DIE VERANLAGUNG ZU KORPERSCHAFTSTEUER FÜR 1964, pp. 262, DM 9.80;
DIE VERANLAGUNG ZUR GEWERBESTEUER FÜR 1964, pp. 170, DM 9.—;
DIE VERANLAGUNG ZUR UMSATZSTEUER FÜR 1964, 1965, pp. 344, DM 12.—
Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1965.

These annually published guides may be useful to persons filing corporate income tax, business tax, or turnover tax returns. The full texts of the present law, its decrees and regulations, and of related law are included, but without reference to court decisions and without textual commentary.

DIE STEUERRECHTLICHE BEHANDLUNG DES AUSSCHEIDENS eines lästigen Gesellschaften aus einer Personengesellschaft, by *Geizler, C.*
DIE STEUERRECHTLICHE BEHANDLUNG DER VERSICHERUNGSVERTRETER, by *Neugebauer, K.*
VERDECKTE GEWINNAUSSCHÜTTUNG AN NICHTGESELLSCHAFTEN, by *Hahnhäuser, C. D.*
Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 51, pp. 112, DM 22.—; Band 52, pp. 122, DM 17.—; Band 53, pp. 90, DM. 19.—. Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1965.

Each of the three above studies concerns a different and relatively narrow subject matter. The first deals with the complex commercial and tax problems that arise when a partner retires from a partnership other than for reasons of old-age or

disease and receives therefore compensation exceeding the market value of his share.

The second undertakes to define the border between the practice of a liberal profession and employment, especially with respect to the activities of insurance agents, the status of which may affect turnover tax, business tax and income tax.

The third deals with corporate distributions to persons others than shareholders which distributions are nonetheless considered to be distributions of profit for the purposes of corporate income tax law. The tax consequences for both the distributing corporation and the recipient are analyzed.

NIEDERLASSUNGEN, ZWEIGBETRIEBE UND BETEILIGUNGEN IM AUSLAND, by *Bartholdy, K., G. Seidler* and *H. Wilhelm*, München, Verlag Moderne Industrie, 1963. pp. 400, DM 36.—.

A guide to German foreign investment which includes materials on production and sales policy; corporate and partnership law in Western Europe, the United States and Canada; tax law in the above countries and the treatment of foreign source income in Germany.

AKTIENRECHTSREFORM 1965, by *Lehman, K. H.,* Mondorf, Titz Verlag GmbH, 1965. pp. 223.

About one-fourth of this booklet deals with the 1965 corporation law reform. The remainder consists of the full texts of 1) the act introducing the new commercial act pertaining to corporations and 2) the act itself, effective as of January 1, 1966.

DIE ZURÜCKNAHME, ÄNDERUNG UND ERSETZUNG VON VERFÜGUNGEN DER STEUERVERWALTUNGSBEHÖRDEN, by *Woerner, L.*, Stuttgart, Schäffer und Co., GmbH, 1965. 80 pp.

Guide to the practical application of statutory and case law on the problem of whether, to what extent, and within what period of time the decisions of tax officials may be revoked, modified amended or replaced.

ITALY

LE DOPPIE IMPOSIZIONI FISCALI INTERNAZIONALI, by *Luigi Paolo Spinosa;* published by L. di G. Pirola, Milano, 1963. 141 pp.

This book contains the texts of all treaties concluded by Italy as of 1963 with respect to the avoidance of double taxation of income and property, profits from shipping and air transport, and inheritances.

L'IMPOSTA CEDOLARE E LA NUOVA DISCIPLINA DELLA NOMINATIVITA DEI TITOLI AZIONARI, – manuale pratico – by *Prof. Rag. Francesco Martinenghi;* published by L. di G. Pirola, Milano, 1965. 3rd edition, 284 pp.

Handbook on the tax withheld at source from dividends distributed by Italian and foreign corporations on registered and bearer shares. Special attention is paid to the new regime for the registration and other administrative requirements for such shares. Appended are a table of due dates by which time corporations must comply with the requisite formalities, texts of the relevant laws, and an index.

IMPOSTA COMPLEMENTARE – Manuale pratico – con le più recenti disposizioni; by *Prof. Rag. Francesco Martinenghi;* published by L. di G. Pirola, Milano, 1965. 7th edition, 225 pp.

Handbook on the complementary income tax for individuals with recent regulations and case law. Appended are a bibliography and index.

L'IMPOSTA FABRICATI E LE ESENSIONI – manuale pratico – by *Prof. Rag. Francesco Martinenghi;* published by L. di G. Pirola, Milano, 1964. 6th edition, 214 pp.

Practical handbook on the taxation of income from buildings, including the computation of taxable income, the assessment, the taxation of income from buildings which are business assets, and the permanent and temporary exemptions from tax. Appended are a table listing the temporarely exemptions, a bibliography and an index.

L'IMPOSTA DI RICCHEZZA MOBILE – Manuale pratico aggiornata con le più recenti disposizioni legali e fiscali, by *Prof. Rag. Francesco Martinenghi;* published by L. do G. Pirola, Milano, 1965. 585 pp.

This practical handbook provides a guide to the schedular taxes, applicable to income from movable property, from business, and to earned income. Special attention is given to the computation of business profits; to corporate liquidations, mergers and reconstructions; to the taxation of foreign source income whether derived by Italian residents or others; and to withholding taxes imposed on foreigners, directors and accountants of corporations, and artists. Appended to this book are tax tables, a bibliography and index.

2. LOOSE-LEAF SERVICES

Releases received between August 1st and November 1st 1965

AUSTRALIA

Law Book Company's Taxation Service, release no vol. 13 part 4: Law Book Co. of Australasia – Sydney

AUSTRIA

Einkommensteuer Rechtsprechung, release no 2: A. Orac – Wien
Kommentar zum Bewertungsgesetz, release no 6: A. Orac – Wien
Neue Einkommensteuerrecht, release no 20: H. Schmerzeck – Bruck a.d. Mur
Österreichische Steuer- und Wirtschaftskartei, releases nos 12-20: P. Linde – Wien

BELGIUM

Documentatie Vandewinckele, releases nos 263-264: Vandewinckele – Brugge
Guide Fiscal Permanent, release no 266: Ed. Viobu-ro – Bruxelles

CANADA

Canada Tax Service, release nos 181-183: R. de Boo – Toronto
Canadian Income Tax, release no 30: Butterworth – Toronto
McDonald's Current Taxation, releases nos 35-44: Butterworth – Toronto
Provincial Taxation Service, releases nos 193-195: R. de Boo – Toronto

DENMARK

Skattebestemmelser i systematisk fremstilling, release no October: Skattekartoteket – Copenhagen

FRANCE

Code annoté des contributions directes, releases nos 32-33: Seteca – Paris
Dictionnaire Fiscal Permanent, releases nos 23-25: Ed. Législatives et Administratives – Paris
Documentation pratique de sécurité sociale et de législation du travail, releases nos 8-10: Lefebvre – Paris
Droit des Affaires, releases nos 7 bis-10: Ed. Législatives et Administratives – Paris
Feuillets de documentation pratique enregistrement, release no 2: Lefebvre – Paris
Feuillets de documentation pratique de sécurité sociale et de la législation du travail, release no F: Lefebvre – Paris
Fiscalité de l'Afrique Noire, releases nos 21-22: Ed. S.O.M. Paris
Juris Classeur Fiscal; Chiffre d'Affaires, releases nos 5141 + 6059: Ed. Techniques – Paris
Juris Classeur Fiscal; Impôts Directs, releases nos 1061, 141: Ed. Techniques – Paris
Memento Lamy, releases nos J-M Services: Lamy-Paris
Problèmes d'outre Mer, releases nos August-October: Centre d'étude des problèmes d'Outre Mer-Paris
Recueils pratique du droit des affaires dans les pays du marché commun, release no 31: Jupiter – Paris
Traité de la Patente, release no Juin: Seteca – Paris

GERMANY

ABC Führer Lohnsteuer, release no 53: Schäffer und Co. Stuttgart
AO - Kommentar, release no 43: O. Schmidt – Köln
Beck'sche Steuerkommentare, release September: C. H. Beck - München
Einkommensteuer, Lohnsteuer, Körperschaftsteuer, release no 65: O. Schmidt – Köln
Gewerbesteuergesetz, release no 16: O. Schmidt – Köln
Handbuch der Einfuhrnebenabgaben, release no 7: V. d. Linnepe – Hagen
Kommentar Bewertungsgesetz – Vermögensteuergesetz, release no 20: O. Schmidt – Köln
Schnellkartei des deutschen Rechts, release no 129: O. Schmidt – Köln
Steuererlasse in Karteiform, releases nos 47-49: O. Schmidt – Köln
Steuergesetze, release nos September-October: C. H. Beck – München
Steuerrechtsprechung in Karteiform, releases nos 164-166: O. Schmidt – Köln
Umsatzsteuergesetz, release no 33: O. Schmidt – Köln

NETHERLANDS

Belastingwetgevingserie - Inkomstenbelasting, release no 4: Noorduyn – Gorinchem
Belastingwetgevingserie - Personele Belasting, release no 7: Noorduyn – Gorinchem
Belastingwetgevingserie-Vennootschapsbelasting, release no 11: Noorduyn – Gorinchem

Belastingwetgevingserie-Vermogensbelasting, release no 9: Noorduyn – Gorinchem
Belastingberichten, release nos 11-17: N. Samsom N.V. – Alphen a/d Rijn
Belastingbeschouwingen, release no October: N. Samsom N.V. - Alphen a/d Rijn
Fed Losbladig Fiscaal Weekblad, releases nos 1011-1016: FED-Amsterdam
Fed's fiscaal register, releases nos 4-6: FED-Amsterdam
Handboek voor Europese Gemeenschappen - Verdragsteksten, releases nos 15-16: Kluwer – Deventer
Handboek In- en Uitvoer, releases nos 53-54: Kluwer – Deventer
Handboek In- en Uitvoer – Tarief van Invoerrechten, releases nos 39-41: Kluwer – Deventer
Leidraad Belastingstudie, releases nos 1-3: Gouda Quint – Arnhem
Nederlandse Belastingwetten, releases nos 11-16: N. Samsom N.V. – Alphen a/d Rijn
Nederlandse Wetboeken, releases nos 29-31: Kluwer – Deventer
Regelingen Euromarkt, release no 63: Vermande – Ymuiden
Teruggaaf Omzetbelasting bij Uitvoer, releases nos 160-161: Samsom – Alphen a/d Rijn
Vademecum In- en Uitvoer, releases nos 317-319: Kluwer – Deventer
Vakstudie – Alg. Wet Rijksbelastingen, release no 12: Kluwer – Deventer
Vakstudie – Vennootschapsbelasting, release no 12: Kluwer – Deventer
Vakstudie – Omzetbelasting, release no 46: Kluwer – Deventer
Vakstudie – Zegelwet, release no 28: Kluwer – Deventer
Vakstudie – Wet op de Inkomstenbelasting, releases nos 8-9: Kluwer – Deventer
Vakstudie Belastingwetgeving – Tabakswet, release no September: Kluwer – Deventer
Woordenboek Omzetbelastingtarieven, release no 36: Samsom – Alphen a/d Rijn

NEW ZEALAND
New Zealand Taxation – Board of Review Decisions, releases nos 42-52: Butterworth – Wellington

NORWAY
Skattelovsamlingen, release no 22: J. Jaroy-Skien – Norway

SOUTH AFRICA
Taxpayer's Permanent Volume, release no 5: The Taxpayer – Cape Town

SPAIN
Circulares, releases nos 77-78: Tale-Madrid

SWITZERLAND
Die Steuern der Schweiz, releases nos 30, 32, 34; Recht und Gesellschaft – Basel

TUNISIA
Fiscomptor, release no 508: La Fiduciaire – Tunis

UNITED KINGDOM
British Tax Encyclopedia, release no 11: Sweet and Maxwell – London
Income Taxes in the Commonwealth, release no 6: Her Majesty's Stationery Office – London
Income Taxes outside the Commonwealth, release no 8: Her Majesty's Stationery Office – London
Simon's Income Tax Service, release no 51: Butterworth – London

U.S.A.
Federal Tax Guide Reports, releases nos 50-52 and 1-3: Commerce Clearing House - New York
Federal Taxes Report Bulletin, releases nos 35-43: Prentice Hall – Englewood Cliffs
Federal Taxes Report Bulletin Treaties, releases nos 9-10: Prentice Hall – Englewood Cliffs
State Tax Guide, releases nos 330-336: Commerce Clearing House – Chicago
Tax Treaties, releases nos 161-163, Commerce Clearing House – Chicago

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