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International Bureau of Fiscal Documentation
Bureau Intern. de Documentation Fiscale

Muiderpoort, 124 Sarphatistraat
Amsterdam.

The International Bureau of Fiscal Documentation was founded in 1938. 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 cooperation with the I.F.A., and with the aid of expert correspondents throughout the world, the Bureau acquires as much information as possible in the field of international and comparative law. The Bureau is thus able to supply data (but not advice) on specific tax problems. A fee, necessary for the maintenance and extension of the Bureau, is charged on a time/cost basis. The Bureau has published two series of monographs: "Publications of the International Bureau of Fiscal Documentation" and "Studies on Taxation and Economic Development".

The Bureau also published *European Taxation,* now a monthly journal on the tax systems of Europe. *Tax News Service,* published twice per month, provides rapid information on worldwide tax developments. *Supplementary Service to European Taxation* is a loose-leaf reference work.

The loose-leaf series, *Guides to European Taxation* comprises "The Taxation of Patent Royalties, Dividends, Interest, in Europe", "The Taxation of Companies in Europe", "The Taxation of Private Investment Income" and "Value Added Taxation in Europe".

The loose-leaf series, *Tax Treaty Guides* comprises "Handbook on the U.S.-German Tax Convention" and "Handbook on the Dutch-German Tax Convention" (in German). The Bureau has also published two loose-leaf reference works, *Corporate Taxation in Latin America* and *African Tax Systems.*

Le Bureau International de Documentation Fiscale fut fondé en 1938. 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 et 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 fiscale d'ouvrages, revues et autres publications;
b. en fournissant des informations;
c. en procurant à tous ceux qui s'y intéressent l'occasion de consulter ces ouvrages;
d. en publiant un périodique;
e. en recourant à tout autre moyen adéquat.

Par une coopération étroite avec l'IFA et avec l'aide de correspondants à travers le monde, le Bureau rassemble toutes les données possibles en matière de droit international et comparé. De cette façon, le Bureau est à même de fournir des renseignements concernant des problèmes fiscaux spéciaux mais sans donner d'avis. Des honoraires, nécessaires pour le maintien et l'expansion du Bureau, sont demandés sur base du temps nécessaire et du coût. Le Bureau a publié deux séries de monographies: "Publications du Bureau International de Documentation Fiscale" et "Studies on Taxation and Economic Development".

Le Bureau publie aussi *European Taxation,* qui est devenu une revue mensuelle sur les systèmes fiscaux européens. *Tax News Service,* publié deux foix par mois, donne une information rapide, à l'échelle mondiale, de tout ce qui touche à la fiscalité. *Supplementary Service to European Taxation* est un ouvrage de référence présentée sous feuilles mobiles.

Guides to European Taxation, également une publication sous feuilles mobiles, comprend "L'imposition de Redevances, Dividendes et Intérêts en Europe", "L'imposition des Sociétés de capitaux en Europe", "L'imposition de revenu des investissements privés" et "La Taxe sur la Valeur Ajoutée en Europe".

Tax Treaty Guides, une autre publication sous feuilles mobiles, comprend le "Manuel relatif à la Convention fiscale Allemagne - Etats Unis" et le "Manuel relatif à la Convention fiscale Pays-Bas - Allemagne" (en langue allemande). Le Bureau a également publié, *Corporate Taxation in Latin America* et *African Tax Systems,* deux ouvrages d'information sous feuilles mobiles.

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Aim

(art. 2) The aim of the Association is the study and advancement of international and comparative law in regard to public finance and especially international and comparative fiscal law and the financial and economic aspects of taxation.

Plan of action

(art. 3) The Association shall endeavour by all legal means to realise this aim:

a) by scientific research;
b) by holding congresses and conferences;
c) by publications;
d) by co-operation with all data collecting organisations, especially the International Bureau of Fiscal Documentation in Amsterdam;
e) by all other appropriate methods.

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:

Objet

(art. 2) L'association a pour objet l'étude et la promotion du droit international et comparé en matière de finances publiques, et spécialement le droit fiscal international et comparé ainsi que les aspects financiers et économiques de la fiscalité.

Plan d'Action

(art. 3) L'association tendra par toutes voies légales à réaliser cet objet;

a) par la recherche scientifique;
b) par la tenue de congrès et de colloques;
c) par des publications;
d) par la collaboration au fonctionnement de tous organismes de documentation, notamment le Bureau International de Documentation Fiscale à Amsterdam;
e) par tout autre moyen approprié.

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* * * ARTICLES * * *

MAKOTO MIURA *:

THE TAX APPEALS SYSTEM IN JAPAN

The Method of Resolving Tax Disputes in Japan

I. INTRODUCTION

In Japan as in most other countries a taxpayer is entitled to appeal to the Court when he does not agree with the assessment which has been imposed upon him by the tax authorities. The Japanese Constitution provides that: "No person shall be denied the right to access to the court" (article 32). There is no special court for tax matters as is the case in, for instance, the United States and many other countries, since the Japanese Constitution provides that: "No extra-ordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power" (article 76). However, with the exception of a very few cases, a unique characteristic of tax disputes in Japan is that reconsideration of protested cases by the executive branch is a pre-requisite for taking the case to court. Such a system is rational for purposes of taxation, because of its technical character and because of the great number and recurrency of the tax assessments, so that tax disputes may be more efficiently and more quickly settled by the tax administration after reconsideration by the latter.

To explain the tax appeals system in Japan, it is necessary to give a brief outline of the Japanese tax system.

A. *Tax Payment System*

Japanese tax is, in principle, paid by a so-called "self-assessment system". As is the case in other countries, however, the income tax, if any, on wages, salaries, interest or dividends and certain items of business income is withheld at source.

The tax withheld is treated as an advance payment of tax due by the recipient of the income, with the exception of wages and salaries which do not exceed five million yen per year and interest and dividends which are taxed separately from other income by the Special Tax Measures Law.

Under the self-assessment system, each taxpayer must file his return, compute the tax due and pay the proper amount of tax at the same time. The General Law of National Tax provides that the taxpayer's duty to pay the tax is, in principle, determined and completed by the taxpayer's final return and payment.

B. *The Actions of the Tax Authorities*

Taxpayers do not always file accurate returns or they may interpret the law incorrectly, resulting in payments of an incorrect amount of tax. Therefore, the tax authorities undertake examinations of tax returns within the time limits for assessment as provided by the General Law of National Tax, i.e. normally within three years from the date of the return, except in cases involving fraud or neglect of filing of the returns, in which case a five year limitation is applicable.

If the facts and/or figures stated in the return differ from those found upon examination by the tax authorities, the latter will correct the tax amount and if neces-

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sary, other related items. In such a case, however, the authorities do not always make such corrections on their own initiative, but sometimes invite the taxpayer to file an amended return. However, if the latter agrees to do so, he will forfeit his right to make an appeal to the court.

When a taxpayer has neglected to file a return, the tax authorities will determine the amount of his taxable income and other related items. Also, in such a case they may invite the taxpayer to file a return, even if the time limit for doing so has expired. If the taxpayer complies with such a request, however, he will lose his right of appeal to the court.

C. *Blue Return System*

In Japan, there exists a unique system known as the "blue return system" which was introduced in the 1950 tax reform in accordance with the recommendations of the Shoup Mission.

This system is designed to improve the taxpayer's bookkeeping system and to encourage accurate self-assessments. A taxpayer who is eligible for the "blue return" is either an individual who derives income from business, real estate or forestry or a corporation. A taxpayer who wishes to use a "blue return" is required to obtain approval of the tax authorities. Individuals must request such approval before the end of the calendar year and corporations before the end of their accounting year.

Taxpayers filing a "blue return" are granted many privileges in return for accurate bookkeeping based on rules prescribed by the Minister of Finance.

The main privileges are as follows:

1) The creation of reserves and the deduction of special depreciation which are provided by the Special Tax Measures Law;
2) Losses may be carried forward to offset income of the five succeeding years and may be carried back to offset income of the preceding year;
3) The taxation authorities may correct the income of a taxpayer filing a "blue return" only when mistakes are found in his books and records in the calculation of taxable income. This means that the taxation authorities may not impose their own estimated tax amount or average rate on a taxpayer filing a "blue return"; and
4) A taxpayer filing a "blue return" may bring his objection directly to the "reconsideration" step in the appeals process, omitting the first step.

D. *The Organization of the Taxation Administration*

In Japan the taxation administration comes under the general jurisdiction of the Ministry of Finance. The organ responsible for the taxation administration is the National Tax Administration Agency, an external organ of the Ministry of Finance. The taxation administration for the national tax employs a centralized system.

Accordingly, the National Tax Administration Agency has eleven Regional Tax Administration Bureaus and 498 District Tax Offices as its local organs. The National Tax Tribunal, which was established in May 1970 as a special organ to settle cases for which a request for reconsideration of the assessment has been submitted, comes under the National Tax Administration Agency.

II. CORRECTION AND DETERMINATION BY THE TAXATION AUTHORITIES

Tax disputes exist when a taxpayer objects to a correction or determination made by

the taxation authorities. In recent years there have not been too many corrections and determinations. One reason for this is that the filed returns and payments of the taxpayers have become more accurate and in keeping with the law. However, another reason is that there are too few tax officers to investigate or verify many cases. In recent decades the number of taxpayers subject to income tax and corporation tax has approximately doubled, while the number of tax officers has increased by only two percent.

According to the statistics issued by the National Tax Administration Agency, the number of individual taxpayers who derived income from business in 1970 was 2,490,000 whereas the number of taxpayers investigated or verified by the taxation authorities in that year was 552,200. Moreover, among them the number of those who were given a close investigation was 141,000. In the same year, the number of corporate taxpayers was 1,082,000 of which only 153,000 were investigated or verified. According to the above statistics, in 1969 the number of corrections and determinations for individual taxpayers was 15,000 and the number filing amended returns was 146,000 of which the greater part consisted of recommendations by the taxation authorities. In the same year the number of corrections and determinations for corporations was 184,000 not including the spot check, only the desk check. In 1970 the number of reinvestigations (first step appeals), reconsiderations (second step appeals) and litigations (final step appeals) was as follows:

a. Reinvestigations

Income Tax	8,652
Corporation Tax	3,851
Total (inclusive of the others)	15,625

b. Reconsiderations

Income Tax	2,025
Corporation Tax	1,544
Total (inclusive of the others)	4,632

c. Litigations

Income Tax	223
Corporation Tax	115
Total (inclusieve of the others)	433

III. TAX APPEALS

A. *Summary*

In normal cases, when a taxpayer does not agree with the assessment or any other action taken by the taxation authorities, he may first request the Chief of the District Tax Office to reinvestigate the case. Following this if he objects to the decision made in the reinvestigation by the Chief of the District Tax Office, a taxpayer may request the Director of the National Tax Tribunal to consider the case. Finally, if he still objects to the Director's decision, he may take the case to court. Litigation is subject to the Japanese judicial system as provided by the Constitution, and proceeds from the District Court to the High Court and finally to the Supreme Court.

Only rarely do tax appeals reach the Supreme Court, nevertheless, they require a very long time. If a taxpayer does take his appeal to the Supreme Court, he might receive the final decision five or ten years after making his initial request. People making a special study of this problem discuss and advocate reform of the Japanese tax appeals system. One advocates the establishment of a special tax court, another advocates the abolition of the procedure making process in the taxation administration. However, a satisfactory solution to this problem is made very difficult because the former suggestion is restricted by the Constitution and the latter is limited

by the care which the taxation administration takes to retain the technical character of Japanese taxation.

B. *Tax Appeals in the Executive Branch*

(1) *Request for Reinvestigation*

A request for reinvestigation may be made directly to the Chief of the District Tax Office against an action taken by him or his staff acting on his behalf.

However, an objection against an action resulting from an investigation by the staffs of the Regional Tax Administration Bureau should be brought directly to the Director of the Bureau in charge.

Taxpayers filing a "blue return" may, if they wish, make their requests for reconsideration directly to the Director of the National Tax Tribunal, and thereby omit the reinvestigation step in the appeals process.

A request for reinvestigation should be made within two months from the time a taxpayer receives notice of the disputed action. In the case of reinvestigation, there is a problem in that the executive organ which makes an administrative action and which has to make a fair decision is the same one. Some people are critical that the organ has a dual personality like "Dr. Jekyll and Mr. Hyde". In actual reinvestigation cases the Chief of the District Tax Office often lets the case be handled by special staffs, in other words, an official making an action would not also be handling the reinvestigation case.

Moreover, another problem is whether the reinvestigation or reconsideration by the taxation administrations ought to be made on the tax amount as a whole or limited only to the disputed points. Taxation authorities usually favor the former, while the taxpayers requesting reinvestigation or reconsideration naturally wish the latter. If the tax disputes were not limited to the disputed points, the petitioner would be afraid that the taxation authorities may make a reprisal attack under the pretext of the reinvestigation or reconsideration.

When the 1970 reform of the tax appeals system was enacted, the Japanese Parliament made a resolution to the effect that the taxation authorities should respect the taxpayer's wishes. However, this resolution did not become law; it was an attendant resolution to the reformed law. Therefore, the taxation authorities are only restricted morally, but not legally. On the other hand, the taxpayers' anxiety has not yet disappeared. An appeal to the taxation authorities, including the National Tax Tribunal, does not suspend or postpone the collection of the assessed tax in dispute. However, the collection procedure may proceed no further than the seizure or attachment of property; property may not be sold as long as an appeal is pending.

In 1970, the number of cases which were approved in total or in part on reinvestigation was, in the case of Income Tax: 5,387, in the case of Corporation Tax: 1,853 and in total (inclusive of the others): 8,547.

(2) *Request for Reconsideration*

Reconsideration may be requested in the following cases:

a. A taxpayer may submit his request for reconsideration if he objects to a decision rendered by the Chief of the District Tax Office or by the Director of the Regional Tax Administration on a reinvestigation request.
b. A taxpayer filing a "blue return" may bring his objection directly to the National Tribunal if he prefers.
c. When the Chief of the District Tax Office or the Director of the Regional

Tax Administration Bureau considers it appropriate to treat a request for reinvestigation of a disputed case as a request for reconsideration, he may, with the agreement of the taxpayer concerned, transfer the dispute to the Director of the National Tax Tribunal.

d. If no decision is made on a request for reinvestigation within three months after the date of filing, the taxpayer may, if he wishes, bring his objection directly to the Director of the National Tax Tribunal.

Reconsideration should be requested (i) within two months from the date of receipt of a notice about an adverse decision when it is not preceded by a request for reinvestigation (i.e. in the case of a taxpayer filing a "blue return") or (ii) within a month from the date of receipt of a decision about a reinvestigation when it is preceded by such a request.

In the case of a request for reconsideration, a "judge" and at least two associate "judges" are selected to be in charge of the case. The National Tax Tribunal has Regional Offices in eleven major cities where the Regional Tax Administration Bureaus are located and Branch Offices in eight cities. The Tribunal is composed of the President, Vice-President, 138 "judges", 102 associate "judges", 140 examiners and an Administration Division.

In the case of reconsideration, the taxpayer's claim and the opinions of an agency which has dealt with the case are clarified by "a written request for a reconsideration", and by "rejoinder" respectively. When the Tribunal receives "rejoinder" from the agency, he has to send this copy to the claimant. The claimant may then file his counterargument along with the necessary proof to the Tribunal. The reconsideration is, in principle, based solely on the documents submitted. However, the "judge" in charge or his representative officials may also question, inspect and make necessary investigations. Thus, the "judge" in charge and the associate "judges" will make their decision after a thorough investigation.

In 1970, the number of cases wholly or partially approved on reconsideration was, in the case of Income Tax: 1,070, in the case of Corporation Tax: 1,002 and in total (inclusive of the others): 2,373.

As mentioned above, the National Tax Tribunal is a new organ which was established in 1970. Before the 1970 tax reform, in the case of a reconsideration request, appeal on national tax were reviewed by the "Conference Group" attached to the Regional Tax Administration. A decision was rendered by the Director of the Bureau on the basis of the findings of this Conference Group which was introduced in 1950 in accordance with the Recommendation of the Shoup Mission.

When the Shoup Mission recommended the tax reform in 1949, many taxpayers as well as various groups and associations requested the establishment of a special organ to be composed of a third party for reinvestigation and reconsideration. This was referred to as a "Citizen Committee". The Shoup Mission, however, rejected this request and instead recommended the introduction of a Conference Group within the taxation administration. According to this Recommendation, the Conference Group was to be composed of many citizens who would serve as officials. However, soon after appointment, these citizens retired in large numbers from the Conference Group. The Conference Group members were subordinated to the Director of the Regional Tax Administration Bureau, so that their actions would be restricted by the rulings

which the National Tax Administration Agency had established. The Conference Group did not, therefore, take its place as an independent organ.

Some taxpayers showered abuse upon the Conference Group calling it "an old fox in the same lair". [1] However, there was no doubt that the Conference Group contributed towards maintaining and defending the rights of the taxpayers.

The main reasons for the establishment of the National Tax Tribunal in place of the Conference Group as a special organ to review and decide tax appeals are as follows:

a. It was considered necessary to move to a new more advanced tax appeals system with a stronger character. An independent entity might better meet the recently increasing need for protection of the taxpayers.
b. Since the Conference Group was operating under the Director of the Regional Tax Administration Bureau and had no power of its own to decide on cases, it was extremely difficult, in spite of Conference Group efforts, to convince and satisfy the taxpayers who are naturally suspicious of taxation authorities.

   The establishment of the National Tax Tribunal answered this criticism. However, the National Tax Tribunal was not necessarily established on behalf of the taxpayers, but rather because the Ministry of Finance and the National Tax Administration Agency thought it necessary to construct a strong bulwark against the increasing wave of appeals by taxpayers.

The Director of the National Tax Tribunal, after obtaining the consent of a Commissioner, is authorized to settle cases in accordance with the various interpretations of rulings provided by the National Tax Administration Agency. In deciding whether he should give consent or not, a Commissioner must give due consideration to the opinion of the National Tax Reviewing Committee whose members have academic knowledge and sufficient background in such matters.

The Director of the National Tax Tribunal is appointed by the Commissioner of the National Tax Administration Agency with the approval of the Minister of Finance. The National Tax Tribunal is not an independent organ from the taxation administration.

C. *Tax Appeals in the Judicial Branch*

A taxpayer who objects to the National Tax Tribunal's decision with regard to his request for a reconsideration, may appeal to the court for redress within three months after receiving notice of the decision.

In the following cases, the litigation may be brought to the court even before the decision of reconsideration has been made:

a. No decision has been rendered within three months after filing the request for reconsideration.
b. Waiting for the decision by the executive branch might cause a taxpayer serious damage.
c. Any other justifiable reasons.

The litigation is handled according to the normal procedure used in ordinary civil trials, and the decision of the court is binding not only to the related parties, but also to the executive branch as a whole.

In 1970, the number of cases which were approved either in total or in part through litigation was, in the case of Income Tax: 62, in the case of Corporation Tax: 41

1. Old Japanese proverb meaning as sly as a fox.

and in total (inclusive of the others): 124. The litigation procedure for taxation appeals usually takes a long period of time. At the end of 1970, the number of cases which the courts carried over to the following year was 2,573, which was about six times the number of cases that had requested litigation in 1970.

The tax appeals system of Japan will require new reforms in the near future.

IV. REPRESENTATION OF THE TAXPAYER

Taxpayers when appealing to the tax administration are often represented by a "tax practitioner" (who has approximately the same status as a German "Steuerberater"). Where an appeal is lodged with a Court the taxpayer must be represented by a lawyer.

PROF. DR. KLAUS TIPKE *:

STEUERRECHT AN WESTDEUTSCHEN HOCHSCHULEN

I. DIE WISSENSCHAFTLICHE DISZIPLIN „STEUERRECHT"

Das Steuerrecht ist Teil des öffentlichen Rechts, es ist in seinem Schwerpunkt Verwaltungsrecht. Bis zum ersten Weltkrieg, aber auch noch nach dem ersten Weltkrieg wurde das Steuerrecht durchweg, und zwar kursorisch, als Teil des Verwaltungsrechts behandelt. Jedoch hat die Kodifizierung des allgemeinen Teils der Reichsabgabenordnung und die Einrichtung einer speziellen Steuergerichtsbarkeit (Finanzgerichte, Reichsfinanzhof) erheblich dazu beigetragen, dass das Steuerrecht als selbständige Rechtsdisziplin anerkannt wurde. Als Wissenschaftler haben sich zwischen den Weltkriegen vor allem die Hochschullehrer Albert Hensel und Ottmar Bühler verdient gemacht. Wissenschaftliche Verdienste haben aber insbesondere auch Enno Becker (als Schöpfer der Reichsabgabenordnung), Johannes Popitz (insbesondere auf dem Gebiet der Umsatzsteuer) und Albert Dorn (vor allem im Bereich des Doppelbesteuerungsrechts).

Obwohl das Steuerrecht ein Teil des öffentlichen Rechts ist, bestehen enge Beziehungen auch zum Privatrecht; dies insofern, als das Steuerrecht seine Rechtsfolgen in weitem Umfange an Rechtsverhältnisse und Rechtsgeschäfte des Privatrechts anknüpft und die Bausteine für sein Begriffsgebäude dementsprechend weithin dem Privatrecht entnimmt, dabei davon ausgehend, dass bestimmten zivilrechtlichen Gestaltungen bestimmte wirtschaftliche Vorgänge oder Zustände entsprechen, dass sich in ihnen wirtschaftlich bewertbare Potenzen oder Belastungen verkörpern.

Die Besteuerung ist ein zwangsweiser Wertetransfer; es werden Werte (hier als Teile des Wirtschaftsergebnisses zu verstehen) von den Privatwirtschaften auf die fisci der Gemeinwesen (Zentralstaat, Gliedstaaten, Kommunen) überführt.

Bisher hat sich in der Bundesrepublik Deutschland die Steuerrechtswissenschaft vornehmlich mit der Sicherung des Grundsatzes der Gesetzmässigkeit der Besteuerung befasst, ferner mit Fragen der sich aus dem Grundgesetz ergebenden Steuerverfassung, mit dem Steuerbegriff, mit den Grenzen der Wirtschaftslenkung durch Steuern, aber auch mit methodischen Fragen der Gesetzesanwendung. Auch einzelne Aspekte der Unternehmensbesteuerung sind immer wieder behandelt worden. Es fehlt bisher jedoch die systematische Durchforschung des gesamten besonderen Steuerrechts. Das erklärt sich daraus, dass die mit dem Steuerrecht befassten Hochschullehrer ganz überwiegend ihren Forschungsschwerpunkt im öffentlichen Recht oder im Privatrecht haben und das Steuerrecht nur als Nebenfach betreuen.

Grundsätzlich bestimmt der Gesetzgeber die Prinzipien, die Gerechtigkeitsmasstäbe, an denen das positive Steuerrecht orientiert werden soll. Die Steuerrechtswissenschaft kann, sofern sie nicht Rechtspolitik treiben will, prinzipiell nicht ihre Auffassung von Steuergerechtigkeit an die Stelle der Auffassung des Steuergesetzgebers von Gerechtigkeit setzen. Der Steuerrechtswissenschaft ist es jedoch aufgegeben zu prüfen, ob der Steuergesetzgeber die Prinzipien oder Grundwertungen, die er der Besteuerung zugrunde legt, konsequent zu Ende geführt und durch positive Normen adäquat abgedeckt hat. Ist das nicht der Fall, enthält das

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Gesetz Lücken oder Überschneidungen, so ergeben sich Verstösse gegen den Gleichheitssatz. Es ist eine der wichtigsten Aufgaben der Steuerrechtswissenschaft der Gegenwart das in Deutschland aus etwa 50 verschiedenen Steuern bestehende Steuerrecht zu systematisieren, die ihm zugrunde liegenden Prinzipien aufzudecken und auf ihre konsequente Durchführung zu prüfen, um auf diese Weise Lücken und Überschneidungen sowie Verstösse gegen den Gleichheitssatz festzustellen. Dabei muss beachtet werden, dass das Steuerrecht nicht nur aus Finanzzwecknormen besteht, sondern auch aus Sozialzwecknormen, die wirtschafts-, sozial-, kulturpolitisch etc. motiviert sind und meist verdeckte Subventionen enthalten. Soweit solche Subventionsnormen in Steuergesetze eingebettet sind, ist es die Aufgabe der Steuerrechtswissenschaft, auch solche Normen auf ihre Systemhaftigkeit zu prüfen.

II. FORSCHUNGS- UND LEHREINRICHTUNGEN

Forschungs- und Lehreinrichtungen, die sich mit dem Steuerrecht befassen (Institute, Seminare, Lehrstühle) bestehen an den Universitäten Bielefeld, Bochum, Bonn, Erlangen/Nürnberg [1], Hamburg, Heidelberg, Köln, Mannheim, München, Münster, Regensburg, Würzburg sowie an der Technischen Hochschule Darmstadt.

Speziallehrstühle für Steuerrecht bestehen nur an den Universitäten Bielefeld [2], Bochum [2], Erlangen/Nürnberg, Köln [3] und an der Technischen Hochschule in Darmstadt. Der Lehrstuhl an der Universität Mannheim ist ein Lehrstuhl für Steuerrecht und Betriebswirtschaftliche Steuerlehre. Die übrigen Lehrstühle sind durchweg solche für Öffentliches Recht (an den Universitäten München, Hamburg, Heidelberg, Regensburg, Münster) oder solche für Bürgerliches Recht (an den Universitäten Bonn und Würzburg), die das Steuerrecht mitbetreuen.

An der Universität Regensburg ist die interdisziplinäre Ottmar-Bühler-Forschungsstelle für internationales Steuerrecht eingerichtet worden. Diese Forschungsstelle soll ihre Forschungsarbeit 1973 aufnehmen. Voraussichtliches Forschungsprogramm: Rechtsvergleichende Untersuchungen, EWG-Steuerharmonisierung, Probleme internationaler Unternehmenszusammenschlüsse.

Direktoren (Vorsitzende) der Institute (Seminare) und/oder Inhaber der Lehrstühle sind:

Bochum: Professor Dr. Heinrich Wilhelm Kruse

Bonn: Professor Dr. Werner Flume

Erlangen/Nürnberg: Professor Dr. Walter Schick

Hamburg: Professor Dr. Gerhard Wacke [4]

Heidelberg: Professor Dr. Klaus Vogel

Köln: Professor Dr. Klaus Tipke (Vorgänger: Prof. Dr. Armin Spitaler und Prof. Dr. Ottmar Bühler)

Mannheim: Professor Dr. Kuno Barth

München: Professor Dr. Hans Spanner

Münster: Professor Dr. Friedrich Klein

Regensburg: Professor Dr. H. Soell

Würzburg: Professor Dr. Heinz Paulick

Darmstadt: Professor Dr. Georg Strickrodt [4]

Der erst kürzlich eingerichtete Lehrstuhl in

1. Es handelt sich um ein Seminar und einen Lehrstuhl in der Wirtschafts- und Sozialwissenschaftlichen Fakultät.
2. Die Lehrstühle in Bielefeld und Bochum sind erst vor kurzem eingerichtet worden.
3. Es handelt sich um den ältesten Speziallehrstuhl; er besteht seit 1943.
4. Emeritiert, Lehrstuhl ist aber noch nicht neu besetzt.

Bielefeld ist zur Zeit noch nicht besetzt.
Leiter der Ottmar-Bühler-Forschungsstelle an der Universität Regensburg ist z.Zt. Dr. Albert Rädler.
Über den *Forschungsgegenstand* können nur pauschale Angaben gemacht werden: Hauptsächlich mit Fragen der Steuerverfassung befassen sich: Friauf/Köln; Klein/Münster und Vogel/Heidelberg; hauptsächlich mit dem allgemeinen Steuerrecht befassen sich: Kruse/Bochum; Spanner/München; Tipke/Köln; hauptsächlich mit Problemen der Unternehmensbesteuerung sind befasst: Barth/Mannheim; Flume/Bonn und Paulick/Würzburg. Tipke/Köln widmet sich gegenwärtig vor allem der Systematisierung des Besonderen Steuerrechts. Bei Prof. Spanner/München wird zur Zeit eine Habilitationsschrift über internationale Doppelbesteuerungsabkommen verfasst (Weber-Fas), in Mannheim bei Prof. Barth eine Habilitationsschrift über Konzernsteuerrecht (Brezing). Fast alle Steuerrechtler betreuen Doktoranden; die Zahl schwankt zwischen 3 und 30.

III. STEUERRECHT ALS STUDIENFACH

In den meisten westdeutschen Ländern sind vor etwa einem Jahr die Ausbildungs- und Prüfungsordnungen reformiert worden. Die neuen Ausbildungs- und Prüfungsordnungen unterscheiden zwischen Pflichtfächern und Wahlfächern. Jeder Student muss (in der 2. Hälfte seines Studiums) ein Wahlfach wählen. Zu den Wahlfächern gehört auch das Steuerrecht, und zwar in einigen Ländern solo (so z.B. in Nordrhein-Westfalen und im Saarland), in anderen Ländern zusammen mit Handels- und Gesellschaftsrecht, Wettbewerbs- und Kartellrecht, Wechselrecht und Grundzüge der Bilanzkunde (so z.B. in Bayern und Baden-Württemberg [5]).

Im 2. juristischen Staatsexamen werden nur in Bayern Kenntnisse des allgemeinen Steuerrechts und der Grundzüge des besonderen Steuerrechts verlangt.
Nach wie vor produziert die deutsche Juristenausbildung hauptsächlich den Justizjuristen. Dabei wird die ökonomische Komponente noch immer weitgehend ausgeklammert, das Studium folglich den Anforderungen einer modernen Industriegesellschaft nicht gerecht.
Im Sommer 1972 ist ein reformiertes Steuerberatungsgesetz verabschiedet worden. Danach soll die Steuerberatung zukünftig prinzipiell von Akademikern besorgt werden. Verlangt wird entweder ein rechtswissenschaftliches oder ein wirtschaftswissenschaftliches Studium. Es ist aber unschwer vorauszusehen, dass die grosse Mehrzahl derer, die das Berufsziel "Steuerberater" anstreben, das Studium der Wirtschaftswissenschaften wählen wird [6].
An den genannten Hochschulen werden

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5. Diese Wahlfachgruppe wird voraussichtlich wenig gewählt werden, weil das Wahlfach mit Stoff überladen ist. Soweit die Urheber von Prüfungsordnungen Ziviljuristen sind, pflegen sie die Stoffmasse des Steuerrechts durchweg zu unterschätzen. Allerdings werden in den zuletzt genannten Ländern nur „Grundzüge" des Steuerrechts geprüft. Mindestens die Kombination mit Wettbewerbs- und Kartellrecht ist m.E. überdies verfehlt. — In Hamburg lautet die Wahlfachgruppe: „Finanzverfassungs- und Allgemeines Abgabenrecht". Diese Limitierung wird den Erfordernissen auch einer steuerrechtlichen Grundausbildung nicht gerecht.
6. In Köln können Studierende der Betriebswirtschaftslehre sowohl die Betriebswirtschaftliche Steuerlehre als auch das Steuerrecht als Wahlfach wählen.
Die steuerrechtlichen Veranstaltungen an der Technischen Hochschule Darmstadt dienen der Ausbildung von Diplom-Wirtschaftsingenieuren, Diplom-Kaufleuten und Diplom-Volkswirten, nicht der Ausbildung von Juristen.

steuerrechtliche Vorlesungen, Übungen und Seminare abgehalten. An allen Hochschulen, an denen es keine Speziallehrstühle für Steuerrecht gibt, sind mit der Lehre auch Honorarprofessoren und Lehrbeauftragte befasst. An einigen noch nicht erwähnten Universitäten (Berlin, Göttingen, Mainz, Freiburg, Frankfurt, Kiel) wird die Lehre nicht von hauptamtlichen Professoren, sondern nur von Honorarprofessoren und/oder Lehrbeauftragten bestritten.

JOSE MARTINS PINHEIRO NETO *:

LES INVESTISSEMENTS AU BRESIL[1]

Les investissements étrangers au Brésil sont régis par la loi No. 4131 du 3 septembre 1962 (modifiée par la loi No. 4390 du 29 août 1964) qui a été votée à une époque où la situation était difficile pour le pays. Nous étions dans une période d'inflation très grande et croissante et les problèmes sociaux s'aggravaient d'une manière alarmante. La création de la loi, à laquelle j'ai eu l'occasion de collaborer, paraissait contraire aux investissements étrangers. La réaction du moment fut défavorable, car personne ne pouvait admettre aisément une règlementation, là où il n'en existait aucune auparavant; mais avec le temps cette réaction ne trouva plus de fondements.

Les investissements étrangers, en accord avec l'article premier, sont constitués par les devises ou les biens envoyés au Brésil. Tout ce qui peut exister, par sa valeur en argent, soit en monnaie étrangère, soit en monnaie brésilienne, sera déclaré. Il existe des problèmes: non pas au point de vue des investissements en devises, car nous disposons de contrats de change, et les chiffres sont facilement établis, mais au point de vue des transferts de biens qui doivent avoir leur valeur fixée. Avant l'application de cette loi, au début de l'industrialisation brésilienne, les investisseurs étrangers envoyaient au Brésil des fabriques obsolètes qui, si dans leurs livres comptables (d'origine) étaient déclarées à leur valeur dépreciée voulaient en arrivant au Brésil être enregistrées avec une valeur supérieure, déterminée par l'évaluation que la loi des S.A. prévoit quand il existe un apport en biens. Nous avons eu des différents administratifs et judiciaires à ce sujet et il a été finalement établi que la valeur monnaie étrangère serait celle mentionnée dans la licence d'importation.

Aujourd'hui, quand il s'agit d'un investissement en biens, nous suggèrons généralement pour faciliter les formalités d'enregistrement, une remise en numéraire avec le retour immédiat de cette même remise par l'importation des biens que l'on a l'intention d'introduire au Brésil; cette importation se fera par la société constituée. Toutefois, il existe des cas spéciaux, tel que les privilèges fiscaux appliqués aux importations qui bénéficient alors de l'exemption totale ou partielle de l'impôt sur l'importation, ou de l'impôt sur les produits industrialisés. Il faut alors entamer auprès des autorités gouvernementales tout un processus pour l'obtention du projet qui prévoit l'importation de ces biens.

Aujourd'hui nous n'avons plus toutes ces difficultés apparues lors de la mise en application de la loi. L'irritation ou la mauvaise volonté n'existent plus vis-à-vis des investisseurs étrangers. Les avantages que nous ont amené les nouvelles industries et la stabilité politique et économique, ont fait presque disparaître le danger que représentait la domination étrangère dans les divers secteurs d'activité. De plus et aussitôt après l'installation du régime actuel en 1964, la loi 4131 a été debarrassée de ces côtés les plus restrictifs. Pour avoir une idée de la différence de mentalité entre septembre 1962 et août 1964, il suffit de dire que par la loi originale, les réinvestissements seraient déclarés en monnaie brésilienne; comme nous étions dans une période inflationniste très difficile, cette déclaration ne

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1. Extrait du discours du 17 octobre 1972 devant la Chambre de Commerce France-Amérique Latine.

possèdait presque aucune valeur et disparaissait en quelques années d'inflation. La loi 4390 de 1964 a tout changé en permettant l'enregistrement des réinvestissements (en monnaie étrangère) en moyenne du cours de la monnaie étrangère pendant la période dans laquelle ils ont été acquis. La déclaration de ces réinvestissements élevait donc la déclaration initiale, en donnant droit à des remises plus importantes de dividendes et en permettant, si l'occasion se présentait, un retour de capital au montant supérieur à celui qui fût envoyé au commencement de l'investissement.

C'est ainsi que les investissements étrangers peuvent être faits pratiquement dans toutes les activités économiques qui se développent au Brésil. Il en existe quelques-unes sans doute qui sont totalement interdites, de même que dans les pays plus développés: la presse, la radio et la télévision, les systèmes de télécommunications, mais non la fabrication des éléments nécessaires à ces secteurs, la navigation côtière et aérienne, quelques services publics, les chemins de fer, l'extraction et le raffinage du pétrole, voilà en résumé les secteurs pour lesquels la participation étrangère n'est pas admise. Il en existe d'autres où la participation est limitée: je pense d'abord et par expérience, aux banques commerciales, pour lesquelles les autorités qui contrôlent leurs activités ont établi des critères qui n'admettent pas les investissements étrangers, à l'exception de ceux qui étaient déjà établis et qui continuent à fonctionner sans aucun empêchement. Dans les banques d'investissement un maximum de 30% du capital votant est autorisé aux étrangers. La participation peut atteindre 50% du total du capital entre les actions donnant droit au vote et celles n'y donnant pas droit. La limitation est la même dans l'industrie pétrochimique; il est bon de noter que dans ce secteur le gouvernement cherche à favoriser les activités privées en répartissant à peu près également les participations entre les entreprises nationales, le gouvernement, et les entreprises étrangères, c'est-à-dire 1/3 chacun.

Tous les capitaux qui entrent dans le pays doivent être déclarés. Il existe pour cela, un département de la Banque Centrale qui examine les demandes de déclaration. Quand l'investissement est fait en devise, la demande de l'enregistrement doit être présentée dans les 30 jours qui suivent son entrée dans le pays. Quand il s'agit de biens, le délai est de 30 jours à partir de leur arrivée au Brésil. On délivre un certificat dans lequel est mentionné sa valeur en monnaie étrangère et l'équivalent en cruzeiros au moment de l'entrée au Brésil. L'enregistrement en monnaie d'origine est le seul important pour l'investisseur. C'est sur cette valeur déclarée en monnaie étrangère que seront calculés les gains à remettre aux actionnaires et à rapatrier le cas échéant.

Les gains obtenus par l'entreprise brésilienne, et résultant totalement ou partiellement d'un investissement étranger, peuvent être remis à l'investisseur. Les gains, allant jusqu'à 16% du montant de l'enregistrement en monnaie étrangère, sont sujets à un impôt sur le revenu de 25%, ce qui laissera un dividende net de 12%. Pour les dividendes supérieurs, il existe un impôt supplémentaire qui peut atteindre jusqu'à 60%. Le calcul est fait par une moyenne des dividendes sur une période de 3 ans et le paiement des dividendes est alors effectué par l'entreprise brésilienne pour le compte de ses actionnaires étrangers.

C'est dans le même département de la Banque Centrale que sont enregistrés les contrats qui incluent des remises de fonds à l'étranger. Ce sont les contrats autorisant

l'utilisation des brevets d'invention, des marques et ceux qui régissent l'assistance technique, administrative et quelques autres. Auparavant, peu après 1972, il était relativement facile d'enregistrer ces contrats et nous avions une grande liberté en ce qui concerne les clauses. Aujourd'hui, la situation est différente à cause des meilleures connaissances dont dispose le département de la Banque Centrale. On n'admet plus à présent les clauses qui limitent l'exportation des produits fabriqués par l'entreprise brésilienne. En ce qui concerne l'assistance technique, il faut que celle-ci soit reconnue nécessaire et démontrer qu'elle a été effectivement donnée. Dans le cas des brevets d'invention, il faut convaincre le département chargé de l'enregistrement qu'il y a réellement un transfert de technologie vers le Brésil. Nous savons depuis peu que le département des Marques et Brevets au Brésil maintient des accords avec les départements correspondants des autres pays, ainsi qu'avec la France: grâce à ces accords, il est possible de connaître tous les brevets d'invention reconnus et enregistrés. Les brevets d'invention doivent être enregistrés au nom du propriétaire, aussi bien dans le pays d'origine comme au Brésil, pour que les paiements prévus dans les contrats puissent être effectués. Ce même département prétend créer une espèce de Banque de Brevets d'invention pour être en mesure d'indiquer, aux organisations brésiliennes intéressées, l'existence des divers brevets traitant de la même invention, et orientant par la même occasion un choix moins onéreux. Il existe une intention délibérée de connaître tout ce qui se fait dans le monde, dans le domaine de la technologie, et de transférer ce qu'il y a de plus moderne et de plus actuel au Brésil.

Le paiement des brevets d'invention, ainsi que celui de la technologie, peut être fait sur la base d'un accord calculé avec le pourcentage sur la valeur des ventes. Le pourcentage maximum est de 5% pour les industries de base. Pour les autres, il se réduit jusqu'à 1% ce qui est aussi le pourcentage maximum que l'on peut expédier à l'étranger quand il s'agit de marques. Les limitations applicables pour les transferts d'argent, servent aussi de base pour l'impôt sur le revenu et sont acceptées comme des dépenses courantes des sociétés, mais ne sont pas toujours acceptées par les autorités. Dans le cas de l'industrie automobile, par exemple, le département ayant conclu que 5% sur les ventes serait excessif, autorise seulement 3%. Il existe d'autres cas.

En matière d'assistance technique, il faut distinguer les différentes formes sous laquelle elle se présente et sous certains aspects reconnaître l'adaptation des autorités brésiliennes aux conditions de la vie réelle. La loi admet, assez sommairement, l'assistance technique seulement pour une période de 5 ans, renouvelable pour le même délai. Ce renouvellement s'est montré extrêmement difficile à obtenir. Cette mesure s'explique de la façon suivante: il est entendu que l'entreprise brésilienne doit apprendre dans ce délai de 5 ans, tout ce qui lui est nécessaire pour continuer avec ses propres ressources la fabrication pour laquelle elle a bénéficié au début de l'assistance technique. Ce qui mène à penser d'une façon simpliste que l'assistance technique ou le progrès technologique est statique et ne progresse pas. C'est-à-dire, qu' une fois acquis tout ce qui est nécessaire à une fabrication, les autorités oublient qu'actuellement, un produit, une méthode, un procédé peuvent être dépassés en peu de temps et remplacés par d'autres qui seront plus efficaces. Le paiement aussi devrait être calculé sur la base d'un pourcentage sur le prix de vente. Or, dans de nombreux

cas l'assistance technique cesse pratiquement après l'installation des équipements, la fourniture des plants et spécifications et la révélation des procédés. En outre pour une fabrication naissante, la production ne peut être satisfaisante que de nombreuses années après l'acquisition de l'assistance technique. Si le contrat a une durée limitée de 5 ans quelques années se seront passées avant le lancement des ventes.

Aujourd'hui pour les cas plus sérieux ou plus compliqués, il faut entrer en contact direct avec les organismes de la Banque Centrale en cherchant à les convaincre que l'assistance technique ou la vente du Know-How doit être rémunérée de façon différente. On connait plusieurs cas pour lesquels il fût possible d'obtenir le paiement du total prévu, à condition que ce paiement soit enregistré comme un investissement par l'entreprise brésilienne.

Il en est de même pour les services d'engineering ou technique qui ont lieu lors de l'installation d'une industrie ou d'une activité nouvelle. Il existe l'Arrêté ministériel n° 184, disant que les services de ce type, appliqués hors du Brésil, peuvent être payés intégralement, sans déduction de l'impôt sur le revenu. Quelques problèmes encore ne sont pas résolus de manière satisfaisante: l'envoi de techniciens au Brésil, pour l'implantation d'un nouveau procédé ou l'installation d'une nouvelle fabrique, se heurte à des difficultés, non pas pour le paiement de ces techniciens car cela est toujours possible, mais sur l'incidence des impôts à verser sur les paiements. Nous espérons qu'avec la signature du traité franco-brasilien qui évite la double imposition — traité signé le 10 mai 1971 et approuvé au Brésil par le Décret 70.506 du 12 mai 1972 — les problèmes seront résolus de manière satisfaisante. De toute façon, ce qui est certain, c'est que les paiements occasionnés d'abord par les «royalties» sur les Brevets d'invention et les Marques, et ensuite par l'assistance technique, ne sont plus imposés à 25% ce qui est normal, mais seulement à 15% pour l'assistance technique et à 10% pour les Marques.

Dans le cas de l'assistance technique, un dispositif de la loi qui date de sa création en 1962, et qui me paraît totalement injuste, annonce l'interdiction de paiements à la société mère. La loi fut mise en application pour combattre le procédé qui consistait à distribuer les bénéfices sous le couvert de paiements d'assistance technique: il faut reconnaître que ce procédé fut effectivement utilisé dans le passé: le paiement de l'assistance technique pour les entreprises brésiliennes représentait des dépenses, et n'était donc pas imposable ou alors l'impôt était inférieur à l'impôt sur les bénéfices. Plusieurs entreprises étrangères utilisèrent ce moyen pour obtenir des avantages considérables. Quelques sociétés furent donc responsables des conséquences qui furent appliqueés d'une façon générale, à savoir l'interdiction de ces paiements aux sociétés mères ou aux sociétés dont la participation était supérieure à 51%. Il est possible d'obtenir l'enregistrement du contrat, et d'effectuer les paiements de l'assistance technique. Mais les remises ne sont pas acceptées comme des dépenses de la société brésilienne, mais comme des gains additionnels payés aux actionnaires étrangers, ce qui élève excessivement le coût de l'assistance technique.

Les emprunts lancés par les entreprises brésiliennes et leurs conditions nous donnent l'occasion d'observer les variations de la bonne volonté brésilienne à l'égard des étrangers. La situation actuelle est réellement bonne, parce qu'on note depuis quelques années l'intérêt énorme que portent

les investisseurs étrangers ou les financiers aux emprunts brésiliens. Il y a quelques années, devant l'impossibilité pour les banques établies au Brésil, d'affronter les activités en plein développement, les entreprises installées au Brésil, mais disposant de contacts à l'étranger, étaient favorisées. Aujourd'hui, heureusement, la présence au Brésil des représentants de la plupart des grandes banques internationales, offrent aux entreprises totalement brésiliennes des conditions identiques. Les emprunts en monnaie étrangère doivent être enregistrés dans le même département de la Banque Centrale, en outre il est indispensable d'obtenir une autorisation anticipée avant de conclure. Cette autorisation, qui après son obtention doit être utilisée dans les 15 jours qui suivent, prévoit la durée de l'emprunt, les modalités de sa liquidation, les intérêts, et le montant. La durée aujourd'hui ne peut être inférieure à 6 ans; les intérêts doivent correspondre à ceux qui sont en vigueur sur les marchés financiers internationaux, même si des intérêts variables sont admis principalement sur le marché de l'Eurodollar ou avec «le prime rate américain». Pour faciliter les emprunts à longue échéance, le gouvernement vient de créer une loi qui accorde l'exemption de l'impôt sur l'intérêt, quand l'emprunt est considéré d'une importance primordiale pour l'activité à laquelle il se destine et quand l'emprunt est délivré pour une durée supérieure à 10 ans.

Les intérêts, comme pratiquement tous les paiements effectués à l'extérieur, subissent un impôt à la source de 25%. Quand il existe des traités de double imposition, comme c'est le cas maintenant avec la France, cet impôt est réduit à 15%. Il est possible à la Société Brésilienne d'assurer la charge de ces intérêts en les payant dans la valeur nette c'est-à-dire libre d'impôt. Dans ce cas, il faut additionner au montant dû une somme, qui après l'incidence des 25% permet de faire le paiement complet. En d'autres mots, si les intérêts s'élèvent à 100 il y aurait normalement une retenue à la base de 25%, ce qui ramène le paiement à 75; si l'emprunteur prend l'impôt à sa charge, la valeur des intérêts doit alors s'élever à 133 sur laquelle sont appliqués les 25% d'impôt, ce qui permet le paiement net de 100.

Le Brésil est très intéressé par l'exportation de ses produits, non seulement en ce qui concerne sès matières premières comme le café, le cacao et les minerais, mais aussi les produits industrialisés, manufacturés. Le gouvernement a concédé des avantages fiscaux considérables pour que ces objectifs soient atteints, donnant ainsi à ses produits la possibilité d'être compétitifs sur le marché international. On a créé récemment la loi n° 1219 qui prévoit l'exemption totale d'impôt pour les fabriques qui s'installent au Brésil et destinent principalement leur production à l'exportation. Cette loi a soulevé un grand intérêt, et on attend dans les prochains jours sa réglementation.

Un grand intérêt aussi, a été démontré par l'ouverture du capital des entreprises établies dans le pays. En fait, il n'y a pas si longtemps, les sociétés qui avaient des actions cotées en bourse, étaient rares. Pour augmenter ce nombre et pour attirer l'épargne vers les sociétés qui avaient jusqu'alors recours aux banques et aux sociétés financières, le gouvernement a adopté certaines mesures qui favorisent le public pour l'acquisition d'actions des S.A. La première mesure fut d'exempter de tout impôt les primes payées par l'achat des actions. Ces primes étaient nécessaires, considérant l'inflation dans laquelle nous vivions: la valeur nominale des actions, tout le capital des sociétés ne correspondait pas à la va-

leur réelle de son actif. Il fallait alors trouver une façon de payer un supplément aux anciens actionnaires, si de nouveaux actionnaires participaient à l'entreprise. La loi 4278 de 1965 accepta alors la prime reçue par les sociétés à l'émission de nouvelles actions, et totalement libéré de l'impôt sur le revenu; cela constituait un capital additionnel qui devait par la suite être partagé entre tous. En même temps se confirma ce qui avait été établi, à savoir le total exempté que l'actionnaire pourrait obtenir par la vente de l'action à une valeur supérieure à sa valeur nominale. Pour cette raison, les lancements d'actions se multiplièrent il y a quelques années occasionnant une véritable révolution sur le marché des capitaux. Cette révolution terminée, des bases plus véridiques purent être établies, permettant alors le développement nécessaire.

Des efforts ont été faits pour que les entreprises étrangères, bien souvent totalement fermées et sans aucun actionnaire local à l'exception des 6 actionnaires nominaux indispensables, ouvrent leur capital aux investissements nationaux. En ce sens on peut dire qu'il existe quelques préventions contre les sociétés appartenant exclusivement aux étrangers. Dans la même loi 4131 il est spécifié que les institutions financières gouvernementales ne peuvent concéder des emprunts aux sociétés appartenant exclusivement à des non-résidents. En fait, cela signifie que les sociétés doivent chercher auprès de leur maison mère les recours additionnels dont elles ont besoin.

Le transfert des centres de décision du Brésil vers les pays d'où proviennent les investissements n'a pas représenté de problèmes particuliers pour nous. Sous certains aspects, il est impossible d'éviter que certaines décisions soient prises dans les centres des entreprises qui déterminent l'investissement. Ceci se passe de la même façon dans le monde entier, et très probablement, il serait impossible à la France ou à l'Angleterre d'éviter une décision de Ford, à Detroit, qui déterminerait la fermeture de ses usines en France ou en Angleterre, ou bien alors le transfert de ces usines en Allemagne par exemple. Mais à l'égard des activités des entreprises étrangères au Brésil, aussi grandes soient-elles, nous ne doutons pas qu'elles accomplissent et se soumettent aux décisions totalement libres qui sont adoptées par le pays où elles se sont établies; quand le gouvernement prend une mesure, les entreprises comme toutes les autres pourront agir pour obtenir une révocation ou une altération si cette mesure va à l'encontre de leurs intérêts. Cela ne signifie pas qu'elles désapprouveront ou ne respecteront pas systématiquement cette mesure; en cherchant une modification ou une annulation, elles défendront seulement leurs intérêts, tout comme agirait un homme d'affaire conscient de ses obligations envers son entreprise et ses actionnaires.

On note au Brésil, progressivement, une concentration des entreprises due à l'augmentation de la production; l'économie d'échelle oblige la création d'unités plus grandes. En cela, sans doute, les entreprises étrangères disposent davantage de recours, possèdent un avantage sur les entreprises nationales. Il est ainsi fréquent de voir une entreprise brésilienne se développer après avoir été achetée par une entreprise étrangère. On devine qu'il serait possible aux étrangers de s'installer seul et de créer leur propre organisation. Il est toutefois préférable de faire l'acquisition d'unités qui sont déjà en fonctionnement, parce que cela évite la perte de temps due à l'installation, et permet aussi d'obtenir en même temps que l'usine en fonctionnement, sa direction. Les dirigeants représentent un problème important pour le Brésil, en effet, le déve-

loppement rapide du pays n'a pu être accompagné par la formation nécessaire des dirigeants qui actuellement par leur nombre ne correspond pas aux besoins. Des écoles d'administration apparaissent un peu partout, mais il faudra encore quelques temps pour qu'elles puissent satisfaire aux besoins croissants de l'économie.

Il existe au Brésil, une loi anti-trust, ressemblante à celle qui existe aux Etats-Unis. Cette loi n'a pas été appliquée, et considérant l'appui que le gouvernement accorde aux concentrations d'entreprises, il est peu probable qu'elle soit appliquée dans un futur proche. Il y a eu récemment des fusions de banques et de grandes entreprises; une loi a été émise qui permet, quand le gouvernement approuve la fusion ou l'incorporation, une réevaluation de l'actif à une valeur supérieure à celle qui est normalement admise, en conséquence de la correction monétaire. Cela démontre à mon avis les bonnes dispositions du gouvernement à l'égard de ces regroupements.

NOTE TO SUBSCRIBERS

We neglected to mention that the following articles which appeared in the November 1972 issue of the BULLETIN, were originally presented in the Seminar on Export Incentives which was held at the XXV I.F.A. Congress in Washington, D.C. in October 1971:

1. Export Subsidization by Robert Baldwin,
2. Tax Incentives for Export by Developing Countries by G.A. Brown, and
3. Export Incentives in the Context of the Indirect Tax Structure by Carl S. Shoup.

MAITRE MAX HUBERT BROCHIER:

LE PLAN FRANÇAIS ANTI-INFLATION

Le lancement d'un emprunt national, la réduction des taux de la T.V.A. sur un certain nombre de produits, l'augmentation des intérêts versés sur les livrets des Caisse d'Epargne, sont les principales mesures prises par le Gouvernement français, qui ont été adoptées le 7 DECEMBRE 1972 par le Conseil des Ministres, puis présentées à l'Assemblée Nationale et au Sénat.

1°. EMPRUNT NATIONAL

Dès 1973, l'Etat français lancera un emprunt national de cinq milliards de francs sur quinze ans, garanti en valeur par une référence à l'unité de compte européenne.

La valeur de cette unité de compte (U.C.) est de 5,555 F.

La souscription à l'emprunt national ne comportera pas de détaxations fiscales.

Le taux de l'emprunt sera compris entre 6 et 7%.

Le reste sera fourni et financé d'une part, par la plus-value des rentrées fiscales attendues sur l'éxécution du Budget 1972 (un milliard de francs), d'autre part par les économies réalisées par l'Etat consommateur grâce à ses baisses de T.V.A. (un milliard de francs).

Un compte d'allégement de la fiscalité indirecte sera créé dans le Budget pour rendre compte de l'amortissement progressif de ces allégements par:

— un deuxième emprunt en 1974.
— l'affectation de la moitié des plus-values de T.V.A. réalisées au cours de chacune des années suivantes.

2°. REDUCTION DE LA T.V.A.

Le Gouvernement français demandera au Parlement l'autorisation de diminuer les taux de la T.V.A. Ces allégements se traduiront par une diminution de recettes fiscales de 7,6 milliards de francs.

Le taux normal de la T.V.A. sera réduit de 23 à 20%.

En conséquence, les produits manufacturés verront leurs prix de détail diminuer de 2% par rapport à leur niveau du PREMIER DECEMBRE.

Pour les produits pharmaceutiques, la baisse sera de 3%.

Le taux réduit de T.V.A. passe de 7,5 à 7%.

La T.V.A. (7,5%) sur la viande de boeuf est suspendue du PREMIER JANVIER au 30 JUIN 1973.

En conséquence, le prix de la viande de détail diminuera de 7%.

Ainsi, le prix plafond de l'entrecôte, actuellement de 24,80 francs le kilo, passera à 23 francs le kilo.

La T.V.A. sur la pâtisserie fraîche passera de 17,6% à 7%. Cette réduction sera intégralement répercutée sur les prix de détail.

Les principaux produits imposés au taux normal de la T.V.A., qui de 23% passera à 20%, sont les suivants:

Ameublement: peintures, papiers peints, tapis.

Produits ménagers: téléviseurs, appareils d'éclairage.

Habillement: produits textiles, lingerie, chaussures.

Loisirs: vélos et vélomoteurs de petite cylindrée, réparations automobiles, outillage et pièces détachées, articles de pêche, de chasse, articles de fumeurs et matériels de développement de films cinématographiques.

Métaux et Minerais: produits sidérurgiques.

Médicaments et produits de parfumerie et de beauté.

Immeubles professionnels, affaires de publicité, emballage et transports de marchan-

dises.

3°. EPARGNE

L'Epargne déposée dans les banques et les caisses d'épargne sera mieux rémunérée.

Le nouveau régime des livrets de caisses d'épargne est le suivant:

LIVRETS A: taux d'intérêts: 4,25% inchangé, plus une prime de fidélité de 1%, au lieu de 0,75% actuellement.

LIVRETS B: taux d'intérêts: 4,25% au lieu de 4%, plus une prime de fidélité de 1% au lieu de 0,75%.

Les livrets A sont des comptes d'épargne éxonérés d'impôt et plafonnés à 20.000 francs.

Les livrets B ne sont pas éxonérés ni plafonnés.

Par ailleurs, les comptes sur livrets dans les banques voient leur taux de rémunération passer de 4% à 4,25%. Une prime de fidélité de 0,25% est instituée pour la première fois sur ces comptes d'épargne. Cette prime sera versée chaque année au 31 DECEMBRE sur tout livret dont le solde moyen au cours de l'année considérée serait égal ou supérieur au solde de l'année précédente.

4°. CREDIT

La progression de la massa monétaire devrait être ramenée de 20% pour l'année 1972 à 15,16% pour l'année 1973.

Dans ce cas, l'augmentation des credits à l'économie doit être limitée à 19% au premier trimestre 1973 par rapport au premier trimestre 1972, et à 17% pour le deuxième trimestre 1973 par rapport au deuxième trimestre 1972.

Chaque banque doit respecter cet objectif dans la progression de la masse de crédits qu'elle accorde. Son taux de réserve obligatoire sur les crédits sera alors maintenu à 33%. Autrement elle sera pénalisée et verra augmenter progressivement ce taux proportionnellement au dépassement de l'objectif dont elle se sera rendue coupable.

5°. REVENUS

Le Gouvernement français va adresser à l'ensemble des partenaires sociaux une recommandation de stabilité des prix et de garantie du pouvoir d'achat, excluant, tout au moins dans le domaine des salaires, toute action autoritaire. Elle visera «à proposer une politique de rémunération pour 1973».

Les Ministres des Finances de la Communauté étant convenus d'essayer de ramener la hausse des prix à 4% en 1973, les partenaires sociaux seraient invités à maintenir la progression des rémunérations à 6% pendant l'année, plus 1% au maximum pour en faire augmenter plus rapidement, les revenus les plus bas, soit 3% en tout, au maximum.

Elle invitera les partenaires sociaux à «faire usage d'une clause de sauvegarde du pouvoir d'achat» de manière à ce que tout dépassement de l'objectif de 4% par la hausse des prix soit répercuté et compensé par une hausse équivalente des rémunérations. Ces 3% de hausse maximum de pouvoir d'achat correspondent au gain du pouvoir d'achat constaté en moyenne période au cours des dernières années en France.

CONCLUSION

Le Ministre français des Finances, M. Valéry Giscard d'Estaing, présentant cet ensemble de mesures, a souligné qu'elles s'intégraient dans une série de mesures «*destinées à lutter contre l'inflation*». Il a constaté que l'Etat «prend à sa charge, l'essentiel des sacrifices».

Le Gouvernement, quant à nous, a voulu s'attaquer aux causes mécaniques de la hausse. C'est ce qui l'a conduit à prescrire

un abaissement du taux de la T.V.A.
La perte de recettes va être compensée presque en totalité par le lancement de l'Emprunt National. Son caractère inédit apparaît dans la possibilité de rembourser «en Unités de Compte», ce qui préservera les contribuables français, souscripteurs, de tous les dangers d'une dévaluation.

COMMUNAUTES EUROPEENNES

Question écrite No. 186/72 à la Commission (22 juin 1972) [1]

Objet: Objet et perspectives des consultations fiscales en cours entre les États-Unis et la CEE

La Commission est-elle en mesure de préciser l'objet et les perspectives des consultations fiscales actuellement en cours entre la CEE et les États-Unis? Est-il exact que le régime appelé «DISC» établi par les autorités américaines en faveur des entreprises exportatrices ferait notamment l'objet des discussions en cours?
Enfin, ces consultations se déroulent-elles dans le cadre du GATT ou ont-elles un caractère bilatéral entre la CEE et les États-Unis?

Réponse

(3 octobre 1972)

La question de l'honorable parlementaire vise les consultations demandées par la Communauté aux États-Unis au titre de l'article XXIII-1 du GATT, au sujet du statut fiscal dénommé «Domestic International Sales Corporation», qui fait partie du «Revenue Act of 1971» entré en vigueur le 10 décembre 1971.
Au titre des dispositions de cette législation, les sociétés «DISC», dont une des conditions essentielles est qu'au moins 95% de leurs activités se rapportent à l'exportation, bénéficient d'un report partiel des impôts sur les bénéfices qui, de l'avis de la Communauté, équivaut à une exemption. Le régime privilégie «DISC» peut avoir comme résultat une réduction des prix à l'exportation. L'objet déclaré de ce nouveau régime est d'accroître les exportations américaines.
La Communauté considère que le régime «DISC», qui modifie les conditions du commerce international, est incompatible avec les engagements des États-Unis au titre du GATT dans les domaines des subventions à l'exportation.
Au cours des consultations bilatérales dans le cadre du GATT, qui ont eu lieu à Genève le 4 juillet 1972, la Commission a exposé sa manière de voir et entendu le point de vue de la délégation des États-Unis. Les institutions communautaires vont maintenant examiner le résultat de ces consultations et la question de savoir quelle suite il convient de donner à cette affaire.

Question écrite No. 278/72 à la Commission (29 août 1972) [2]

Objet: Facilités fiscales en faveur de la navigation maritime aux Pays-Bas

1. La Commission a-t-elle pris connaissance des facilités fiscales que les Pays-Bas ont annoncé qu'ils accorderont aux navires

1. Journal Officiel du 14 octobre 1972.
2. Journal Officiel du 1er décembre 1972. Voir European Taxation II/48 (juillet 1972).

battant pavillon néerlandais et à la pêche maritime, facilités consistant en:

— le rétablissement de l'amortissement anticipé pour les navires (un tiers du prix d'achat ou du prix de construction);
— l'augmentation de la déduction d'investissement pour les navires, qui passe de deux fois cinq pour-cent à cinq fois cinq pour-cent (chaque année, pendant cinq ans, cinq pour-cent du montant investi peuvent être déduits des bénéfices);
— la disposition selon laquelle les pertes fiscales imputables à cette déduction d'investissement ne peuvent être compensées que par des bénéfices provenant de la navigation maritime?

2. La Commission reconnaît-elle que ces facilités sont nécessaires pour éviter que des navires d'origine néerlandaise ne soient enregistrés sous d'autres pavillons?

3. Les autres États membres (y compris les futurs adhérents) connaissent-ils des mesures analogues?

4. Des distorsions de concurrence risquent-elles d'apparaître dans ce domaine entre ces États membres?

5. La Commission estime-t-elle souhaitable que la Communauté établisse des règles dans ce domaine?

Réponse

(10 novembre 1972)

1. La Commission a pris connaissance seulement par la presse des mesures visées par l'honorable parlementaire.

2. Ces mesures, prises et envisagées dans le cadre de dispositions législatives déjà existantes, tendent à éviter que des navires enregistrés sous pavillon néerlandais ne soient enregistrés sous d'autres pavillons.

Ne connaissant pas encore l'ensemble des mesures d'aide accordées à la navigation maritime aux Pays-Bas, la Commission n'est pas actuellement en mesure d'en apprécier la portée et la nécessité.

3. A la connaissance de la Commission, des facilités fiscales favorisant la navigation maritime existent dans la plupart des États membres et des États adhérents.

4 et 5. Sur la base des informations en possession de la Commission, ces mesures n'entraînent aucune distorsion de concurrence dans le secteur de la construction navale puisqu'elles sont accordées aux armateurs quel que soit le chantier où le navire est construit.

En ce qui concerne l'exploitation des navires faisant l'objet de ces facilités, la Commission ne pourra se prononcer sur d'éventuelles distorsions de concurrence et sur l'opportunité d'établir des règles particulières en la matière, qu'après avoir procédé à l'examen de l'ensemble des régimes d'aides accordées à la navigation maritime, sur la base des informations qu'elle a demandé aux États membres de lui communiquer conformément aux obligations prescrites en vertu de l'article 93 du traité CEE.

* * * DOCUMENTS * * *

FRANCE

Avoir Fiscal

Instruction du 31 mai 1972 de la Direction générale des Impôts relative à l'extension à certains investisseurs institutionnels de pays membres de la communauté économique européenne du remboursement de l'impôt déjà versé au Trésor (avoir fiscal) *

1. *Généralités*
Plusieurs accords internationaux prévoient au profit des actionnaires de sociétés françaises, résidents des pays liés à France par ces accords, le remboursement de l'impôt déjà versé au Trésor (avoir fiscal) afférent aux dividendes distribués par ces sociétés. D'une façon générale, cet avantage est accordé aux personnes physiques et aux sociétés répondant à certaines conditions, sans que la situation des organismes d'épargne collective ait pu être réglée de façon entièrement satisfaisante. Pour mettre fin aux difficultés d'application pratique rencontrées dans ce domaine, une décision ministérielle du 24 novembre 1971 a étendu à certains investisseurs institutionnels en valeurs mobilières des pays membres de la Communauté économique européenne liés à la France par une convention fiscale le mécanisme du remboursement de l'avoir fiscal aux dividendes d'actions de sociétés françaises qu'ils détiennent en portefeuille.

2. *Investisseurs concernés*
Cette décision vise les organismes suivants:
— d'une part, les fonds d'investissement ou de placement à vocation internationale affirmée;
— d'autre part, les caisses de prévoyance ou de retraite sans but lucratif, lorsque ces fonds ou ces caisses sont établis dans les pays ci-énumérés:
République fédérale d'Allemagne (1);
Royaume-Uni;
Luxembourg;

3. *Portée de la mesure*
Le transfert de l'avoir fiscal aux organismes concernés s'opérera sous déduction de la retenue à la source calculée au taux réduit de 15% sur l'ensemble du revenu constitué par le dividende mis en payement par la société, majoré de cet avoir fiscal.

4. *Date d'effet*
Le nouveau régime s'applique, vis-à-vis de chaque fonds ou caisse admis à en bénéficier, aux dividendes des actions françaises détenues par les ayants droit mis en payement par les sociétés débitrices à compter du 1er janvier en l'année en cours de laquelle l'organisme intéressé a présenté une demande à cet effet; à l'Administration française (V. ci-dessous n. 5).

5. *Modalités d'admission*
Pour obtenir le bénéfice de ces dispositions, le créancier doit adresser une demande préalable, en double exemplaire, à la Direction générale des Impôts, service de la Législation, sousdirection III E, bureau III E 1, 93, rue de Rivoli, 75 - Paris 1er.
Cette demande, qui se référera à la décision ministérielle précitée, devra indiquer avec précision la dénomination, la qualité et le siège de direction de l'organisme requérant

* Bulletin Officiel de la Direction Générale des impôts, 7 juin 1972 (14-B-10-72).

et être appuyée, selon le cas, des documents suivants:

— en ce qui concerne les fonds d'investissement ou de placement, d'un exemplaire de leurs statuts et d'un document faisant apparaître la composition de leur portefeuille de valeurs mobilières à la date du dernier exercice clos;

— en ce qui concerne les caisses de prévoyance ou de retraite, d'une référence au texte législatif ou réglementaire autorisant leur création ou leur fonctionnement et d'une attestation certifiant qu'elles ne poursuivent pas un but lucratif et précisant leur régime fiscal.

La Direction générale des Impôts notifiera sa décision à l'organisme demandeur en lui renvoyant le double de sa demande, annoté de son visa ainsi que de la date et du numéro de l'autorisation accordée.

6. *Modalités de règlement de l'avoir fiscal*

Les organismes ainsi admis à se prévaloir du régime défini ci-avant devront, pour obtenir le règlement des sommes leur revenant à ce titre, établir une demande de transfert de l'avoir fiscal sur un formulaire spécial, modèle A F, et portant, selon le pays concerné, le numéro de la nomenclature:

5019 (Allemagne fédérale);
5089 (Royaume-Uni);
5109 (Luxembourg).

Chaque demande est munie d'une notice qui en précise, sous les numéros 4 à 10, les modalités d'utilisation et à laquelle il convient de se reporter.

7. Pour le surplus, l'attention est appelée sur les points suivants:

Epoque d'attribution de l'avoir fiscal

Par analogie avec le régime conventionnel d'attribution différée de l'avoir fiscal applicable aux résidents de l'Allemagne fédérale (cf. B.O.D.G.I. 14 B-8-70) (V. *Droit fiscal* 1971, n. 4, comm. 56, I.D. 3473), du Royaume-Uni et du Luxembourg, le transfert aux intéressés de l'avoir fiscal sera opéré à partir du 15 janvier de l'année suivant celle de la mise en payement des dividendes y ouvrant droit, c'est-à-dire, pour la première fois, à partir du 15 janvier 1973 (Voir ci-avant n. 4).

8. *Récupération des sommes versées par les établissements payeurs*

Les établissements payeurs sont admis dans les conditions habituelles à récupérer le montant des règlements qu'ils auront ainsi opérés au profit des ayants droit par voie d'imputation sur les versements qu'ils effectuent au Trésor au titre de la retenue à la source sur les dividendes et du prélèvement sur les produits de placements à revenu fixe.

Ils justifieront de l'imputation ainsi pratiquée en joignant à leurs déclarations de versement n. 2749 (retenue à la source) ou 2768 (prélèvement) le 2e exemplaire des formules n. 5019, 5089 ou 5109 qu'ils auront honorées.

En cas d'absence ou d'insuffisance de versements, les établissements payeurs concernés joindront lesdits exemplaires à la demande de restitution qu'ils devront alors adresser au directeur des Services fiscaux dont ils relèvent en vue d'un remboursement direct par le Trésor.

9. *Mesures de surveillance*

L'I.F.A.C. des non-résidents surveillera le fonctionnement du système dans l'esprit des directives générales tracées par la note générale du 24 juillet 1970 (B.O.D.G.I. 13 G-12-70).

Les anomalies qu'elle serait éventuellement amenée à constater seraient signalées à la Direction générale sous le présent timbre.

FRANCE

Interventions auprès des Services fiscaux *

Aux termes de l'article 1931 du Code général des Impôts, le redevable qui entend contester la créance du Trésor doit adresser une demande au service. Il en est de même, en vertu des dispositions de l'article 417 de l'annexe III du même code, pour les redevables qui désirent bénéficier d'une remise, d'une modération ou d'une transaction. Ces demandes sont le plus souvent formulées par les intéressés ou leurs mandataires.

Il arrive néanmoins qu'elles émanent d'une tierce personne. En outre, les redevables adressent parfois leurs pétitions à une autorité hiérarchiquement supérieure à celle qui a normalement qualité pour prendre la décision.

Je vous rappelle que ces demandes, que l'on qualifie toutes d'interventions, trouvent leur origine, plus que séculaire, dans le *vieux droit français de pétition.* Elles constituent l'une des voies de recours dont disposent les contribuables qui s'estiment fondés à contester l'action des représentants de l'Administration.

En fait, si j'en juge par les éléments connus des services centraux de la Direction Générale des Impôts, les interventions sont très peu nombreuses eu égard au volume des réclamations et des pétitions habituelles. Leur traitement, néanmoins, *soulève certaines difficultés* et semble parfois ne pas être parfaitement compris. Cette constatation a conduit votre Directeur Général a réunir un *groupe de travail* qui a bénéficié d'une participation très large. Les informations que cette procédure a permis de recueillir m'ont donné à penser que je devais appeler tout spécialement votre attention sur le problème dont il s'agit.

Voici les *directives* que vous voudrez bien appliquer en la matière:

Je rappelle, tout d'abord, que *le service ne doit pas se prêter à l'examen d'interventions ou de pétitions qui ne sont pas formulées par écrit.* Certes, cette exigence ne saurait être opposée systématiquement aux demandes qui répondent à un simple souci d'information et qui émanent de personnes ayant qualité pour les formuler. Mais l'expérience montre que les interventions orales peuvent constituer de véritables pressions. A l'égard de celles-ci, la demande d'une confirmation par écrit constituera presque toujours une dissuasion efficace. Le cas échéant, les agents ne devront pas hésiter à signaler à l'autorité dont ils dépendent les interventions anormales dont ils seraient l'objet.

En ce qui concerne les services centraux et extérieurs de la Direction Générale, et en vue d'éviter tout risque d'équivoque, les agents doivent s'abstenir de toute intervention auprès des personnels de grade inférieur qui ne se trouvent pas placés directement sous leur autorité. Le *respect de la voie hiérarchique* ne répond pas seulement à une préoccupation d'ordre, il constitue aussi la meilleure des garanties. Cette règle ne doit souffrir aucune exception. Je vous demande de bien vouloir veiller à son observation et de rendre compte à votre Direction Générale, si besoin est, des manquements qui se trouveraient portés à votre connaissance.

En deuxième lieu, il va sans dire que les interventions doivent être traitées suivant les mêmes critères que les pétitions et réclamations ordinaires, dont elles ne diffèrent que par leur origine. La décision doit découler d'un examen objectif de la situa-

* Lettre personnelle du 8 novembre 1972 du Ministre de l'Economie et des Finances aux Directeurs des Services fiscaux.

tion évoquée. Cet examen doit toujours être conduit dans un *esprit de parfaite neutralité,* sans que l'intervention d'un tiers, quelle que soit sa qualité, affecte dans un sens ou dans l'autre la position du service. Aussi bien ces principes inspirent déjà l'action quotidienne de la très grande majorité des agents, qui sont, je le sais, soucieux de préserver les qualités traditionnelles de rigueur et d'équité des Régies financières.

Néanmoins, en vue d'éviter tout malentendu, je vous recommande de veiller au *respect de certaines règles:*

a) Il faut bannir des réponses aux intervenants les *formules dont la courtoisie est équivoque* dans la mesure où elles donnent à penser que la médiation du destinataire a pesé sur la décision.

b) Les communications en vertu desquelles l'attention est simplement appelée sur un redevable ou une action particulière du service, sans autre justification, doivent être prohibées; si elles parviennent dans cet état, il convient de *demander* de plus amples *précisions à l'intervenant,* sans les transmettre aux agents compétents auxquels leur traitement impose nécessairement des recherches inutiles.

c) Les *réponses* faites aux intervenants doivent être *motivées.* De même, toute autorité qui modifie les propositions des échelons subordonnés doit faire connaître les motifs de sa décision, et ces derniers doivent être communiqués à l'inspecteur dont les conclusions ont été réformées.

Chaque fois que cela sera possible, il convient de préférer à toute autre procédure celle de la *communication pour réponse directe* ou pour projet de réponse, à l'agent dont la décision est à l'origine de l'intervention.

Je compte d'autre part sur votre action pour faire disparaître les causes auxquelles il faut attribuer une partie importante, sinon prépondérante, des interventions de toute nature dont les services se trouvent saisis. La meilleure des *préventions* possibles consiste, de toute évidence, à s'interdire tout excès, à faire une *application correcte et équitable des dispositions légales,* et à expliquer aux intéressés les fondements de fait et de droit des décisions prises à leur égard.

La hiérarchie, de son côté, doit réformer les positions arrêtées par ses subordonnés lorsque ces dernières ne sont pas justifiées. En ce faisant, elle n'exerce pas un droit: elle remplit une mission de justice. Mais mieux vaut, de sa part, agir pour réduire le nombre, heureusement limité, des cas dans lesquels elle doit réparer les erreurs commises par les services. C'est dans cet esprit, qui leur est commun, que tous les éléments de la Direction Générale des Impôts continueront à participer, demain comme hier, à l'exercice de leurs difficiles fonctions.

MADRID CONGRESS 1972

Seminar for young fiscalists

At the initiative of the Belgian/Luxemburg Branch of the International Fiscal Association, a special session for young fiscalists was included in the programme of the 26th IFA Congress on the Friday morning on the subject: *Turnover tax and occasional transactions with a foreign country.* The Spanish Branch made the congress hall with simultaneous translation available.

The following questionaries were distributed to the national branches in preparation of this special session:

A. QUESTIONARY DESTINED FOR THE PARTICIPANTS RESIDING IN A COUNTRY APPLYING THE VALUE ADDED TAX (VAT)

I. *General questions*

— Which are, as a rule, the transactions subject to VAT?
— Is there a distinction between transactions which are taxable in any event and transactions which are taxable only if they are carried out by a person subject to tax?
— Among the criteria of taxability of a transaction, please mention the geographical criterion and distinguish the case of the deliveries of goods from that of the performance of services?
— Which are the transactions normally taxable but exempted for geographical reasons?
— Who must pay the VAT on importations and who is entitled to the deduction thereof?
— Are the parties to a taxable transaction jointly and severally liable for the payment of the VAT?

II. *Questions relating to the alternative in which the person established abroad is the supplier.*

— To what extent does a person established abroad, who supplies occasionally a good or a service to a client established in your country, acquire the capacity of a person subject to tax, bound to apply the VAT on the price of the supply?
— Which are the formalities and obligations imposed upon a person established abroad who acquires the capacity of a person subject to tax in your country? Which are his rights?
— Aren't the formalities and obligations simplified when the transactions so carried out are very occasional?
— Does the obligation to appoint a responsible representative for VAT purpose appear among such formalities? If so, please mention who are the persons who generally accept to perform such functions and which is the cost of such formality?

III. *Questions relating to the alternative in which the person established abroad is the supplier.*

— To what extent is the occasional supply of a good or service to a client established

abroad by a supplier established in your country subject to the VAT in your country?
— Is the recuperation of the VAT possibly due by the client established abroad available to such client?
— If so, — would such recuperation be obtained by way of a repayment or by way of a deduction?
  — does the eventual repayment require the fulfillment of certain conditions relating to form or substance?
  — does the eventual deduction imply that the foreign client acquires the capacity of person subject to tax in your country?
  — is it possible, for the purpose of exercising the credit, to acquire voluntarily the capacity of a person subject to tax when all what the person established abroad and desiring to exercise such right does in your country is to sell directly from his country?

B. QUESTIONARY DESTINED FOR THE PARTICIPANTS RESIDING IN A COUNTRY WHICH APPLIES A SYSTEM OF TURNOVER TAX OTHER THAN THE VAT

I. *General questions*
— Which are, as a rule, the transactions subject to a turnover tax in your country?
— Among the criteria of taxability of a transaction, please mention the geographical criterion and distinguish the case of the deliveries of goods from that of the renditions of services.
— Which are the transactions normally taxable but exempted for geographical reasons?

II. *Questions relating specifically to the subject under review*
— To what extent does the occasional supply of a good or service, either to a client established in your country by a supplier established abroad, or to a client established abroad by a supplier established in your country, attract a turnover tax?
— Who is legally liable for the payment of the turnover tax which is eventually due and how should such tax be paid to the Treasury?
— Can a contract validly provide that the turnover tax shall not be supported by the legal debtor of such tax?
— Are the parties to a contract jointly and severally liable for the payment of such turnover tax?

Round Table

The round table which was attended by approximately 50 participants passed the following resolution:

English version
The round table held at the XXVIth IFA Congress in Madrid expressed the following wish:
In view of the difficulty to harmonize the criteria of the place of use of services for the application of Value Added Tax and to avoid the risk of double taxa-

tion, that:

a) The States which apply a VAT system
— would grant in their tax law a right for persons established abroad to obtain reimbursement of the national VAT charged to them, insofar as those persons fulfill the conditions for being considered as taxpayers having a right to deduction.
— Would not submit the exercise of this right to the obligation to realise in the country taxable transactions and to the obligation to appoint a responsible tax representative.

b) The EEC would impose to its members the adoption of simplified conditions of the exercise of this right.

French version

La Table Ronde qui s'est tenue à Madrid à l'occasion du XXVIme Congrès de l' I.F.A. exprime le souhait suivant:

Vu les difficultés d'harmoniser les critères de lieu d'utilisation des services en matière de TVA et pour pallier le risque de double imposition que,

a) Les états qui appliquent un régime de TVA
— consacrent dans leur législation un droit pour les personnes établies à l'étranger au remboursement de la TVA nationale qui leur serait portée en compte dans la mesure où ces personnes répondent au critère d'assujetti auquel est reconnu le droit à déduction
— ne soumettent pas l'exercice de ce droit à l'obligation de réaliser dans leur pays des opérations imposables et à l'obligation de désigner un représentant fiscal responsable.

b) La CEE impose à ses membres l'adoption des conditions d'exercice simplifiées de ce droit.

A general report was submitted by Mr. Jacques Autenne (Belgium).

Congress Resolutions

Subject I: The income, fortune and estate tax treatment of household units.

RESOLUTION

The 9th Congress of IFA held in Amsterdam in 1955 studied the problems connected with the common assessment of members of one household for income tax purposes. Since then a certain number of countries have modified or even abandoned the principle of the joint taxation of married couples.

The 26th Congress, after studying the question of the tax treatment of household units in the light of this development, makes the following statement.

1. The question whether members of a household should be jointly or separately taxed, and the relevant provisions for the treatment of children, must be decided within each country, consideration being given to such factors as ways of life, traditions, and internal conditions of a social, economic and political kind.

2. It is illogical and harmful that the mere fact of marriage should increase the tax burden on the two spouses, thus placing them in a less favourable tax situation than if they were not married.

3. When the earned incomes of the two spouses are taxed jointly, appropriate

measures should be taken to relieve this additional burden, whether by the use of differential tax rates or by a "family quotient" system.

4. It is important that the provisions for the taxation of household units should not discourage a spouse's readiness to take up gainful employment. Such an effect can result from joint taxation of the household unit, since additional income is taxed at marginal rates. This adverse effect can be avoided, for example, by making it possible to have this additional income taxed separately and in accordance with the principles that would have applied if the income had been received by a person who is not a member of the household.

5. Married couples of whom one spouse helps the other in his or her occupation should not bear heavier burdens than couples of whom each spouse has his or her own occupation.

6. The mere fact that a taxpayer's family does not live in the country in which the taxpayer carries on his occupation should not impose a greater burden of taxation on the taxpayer than would be the case if the family lived in the same country as the taxpayer.

Subject II: Tax consequences of changes in foreign exchange rates.

RESOLUTION

1. In view of the title of the subject being differently stated in the official languages of the International Fiscal Association, the Congress chose to deal with the subject in terms of effective changes in foreign exchange rates, without regard to their legal nature.

2. The following main effects of changes in foreign exchange rates are to be taken into account in taxation:

— *externally,* these changes modify the value in domestic currency of claims and debts denominated in foreign currency and the value of foreign investments; at the same time they affect foreign trade and capital movements;

— *internally,* these changes may reflect a variation in domestic prices which affects the value of the wealth, the incomes and the products subject to taxation.

3. The Congress adopts the following recommendations:

a) *Externally:* —

so as not to harm the development of international economic relations and so as not to lead to discriminatory tax on businesses:

— cash, claims and debts denominated in foreign currency should be valued according to the rates of exchange in force at the end of the accounting period, the appreciations and the depreciations being treated as gains and losses of the accounting period; however, tax on gains may be deferred until their effective realisation;

— stocks of foreign origin should be the subject of special provisions in the national tax legislation with a view to maintaining the stock required for the functioning of the business (as, for example, provision for fluctuation of the exchange rates or of external prices);

— gains and losses of a permanent establishment abroad, caused by a change of the exchange rate, should not be subject to a tax regime, in calculating world income, less favourable than that

applied to similar gains and losses of permanent establishments at home.

b) *Internally,* considering that the variation in exchange rates is often the result of economic disequilibrium, taxation can be considered as an effective means for combatting such a disequilibrium within the framework of an anti-cyclical policy, as has been the experience of several countries.
In this regard, the fiscal measures aimed at combatting this disequilibrium should be given priority over such tax measures as are aimed at merely taking account of a disequilibrium.
These latter measures contain the risk of institutionalising the harmful inflationary process.
If, nevertheless, special measures appear desirable, because the inflation is persistant and significant, the following guidelines can be adopted: —

— In relation to taxes on income and wealth the base and/or the rate schedule and the allowances should be revised, taking into consideration a satisfactory index;
— Analogous tarif modifications should be applied to indirect taxes when they are specific;
— For taxes on business profits, two different methods can be used: —

either specific provisions relating especially to amortisation, to the value of stocks and to tax on gains; or by a complete redrafting of the balance sheet (accounting by reference to the current price level).

Summary of discussions

First Subject:
The title of subject I comprised the income, fortune and estate tax treatment of household units, in other words, the whole range of personal taxes with the exception of those on expenditure. This subject forms a logical whole, since the income tax concessions that may be accorded to married couples and parents of minor children are related to estate duty concessions on transfers to spouse or lineal descendants: both forms of concession pay some regard to the principle that the taxpaying unit is the family, not the individual. Moreover, any form of estate and succession duties on transfers within families can be considered at variance with this principle: the individual dies, but the family need not.
In the event, the discussion was substantially confined to income tax. The wide variety in the systems of estate and succession duty and fortune tax and the largely political character of these taxes were felt to preclude their inclusion in the subject matter of the resolution.
The General Reporter provided at the end of his report a passage which served as the first draft of the resolution. Paragraphs 1, 4, 5 and 6 of the resolution correspond closely to passages in this first draft. The ideas embodied in these passages are: the recognition of diversity between countries in the tax treatment of the family and the acceptance of this diversity as inevitable; avoidance of the discouragement to work resulting from the joint taxation of earnings by man and wife; avoidance of the additional discouragement to joint earnings by man and wife as opposed to separate earnings; avoidance of the loss of family relief in the taxpayer's country of occupation as a result of his family's living

abroad.
The new paragraphs of the resolution are 2 and 3. Paragraph 2 is in general terms and applies to investment income as much as to earned income. Paragraph 3, which serves as an introduction to the remainder of the resolution, puts the emphasis on earnings.

Deuxième Sujet:
Le 26ème Congrès de l'Association Fiscale Internationale tenu à Madrid en septembre 1972 a étudié «les conséquences fiscales du changement de parité monétaire» (Deuxième sujet).
Cette question a donné lieu à des discussions très intéressantes du fait de ses implications avec le problème actuel de l'inflation.
Les débats ont permis de dégager une thèse, nettement majoritaire, selon laquelle la fiscalité doit être utilisée, concurremment avec d'autres instruments de la politique économique, pour lutter contre l'inflation et rétablir l'équilibre entre l'offre et la demande.
Les délégués de plusieurs pays d'Europe, notamment l'Allemagne Fédérale, ont souligné que les mesures fiscales d'adaptation à la hausse des prix risquaient d'«institutionnaliser» l'inflation, les clauses d'indexation des barèmes ou des valeurs supprimant tout frein fiscal à la hausse et ayant un effet de contagion à l'égard des autres instruments de mesures de l'économie.
La résolution finale a été préparée par un Comité des résolutions composé de:
France: M. DELORME Guy, Président
Allemagne: Dr. Horst VOGEL, Président de la séance de travail
Espagne: M. SEBASTIAN
Fonds Monétaire International: M. LEIF MUTEN
Israël: Dr. J. F. PICK
Chili: M. PIEDRABUENA Richard
Argentine: Dr. E. REIG
Pays-Bas: A. NOOTEBOOM
Allemagne: Dr. Hans A. FISCHER
Grande-Bretagne: M. CLARKE
La résolution finale a été adoptée à l'unanimité par l'Assemblée générale du Congrès.
Ce texte distingue deux catégories de problèmes:

a) *Sur le plan externe,* les variations des taux de change modifient la contre valeur des créances et des dettes libellées en monnaie étrangère et la valeur des investissements réalisés à l'étranger.
S'agissant d'un problème classique, le Congrès a retenu une formule logique: la trésorerie en devises et les créances et les dettes libellées en monnaie étrangère doivent être évaluées selon les taux de change en vigueur à la date de clôture de l'exercice, les plus-values et les moins-values correspondantes étant considérées comme des gains et des pertes de l'exercice. Toutefois, dans le cas des gains, la taxation pourrait être différée jusqu'à la réalisation effective de la plus-value.
Pour les stocks d'origine étrangère, un système de provisions a été suggéré en vue de permettre le maintien du stock nécessaire au fonctionnement de l'entreprise.
Quant aux gains et pertes d'un établissement stable situé à l'étranger causés par les variations des taux de change, il a été demandé qu'ils ne soient pas soumis à un régime discriminatoire.

b) *Sur le plan interne,* les variations des taux de change peuvent traduire un changement des prix intérieurs; par suite ils sont souvent la conséquence d'un déséquilibre économique interne.
Le Congrès a noté que la fiscalité peut être un moyen efficace de lutter contre un tel

déséquilibre, ainsi qu'en témoigne l'expérience de plusieurs pays. Il a souligné à ce propos que les mesures fiscales destinées à lutter contre ce déséquilibre doivent avoir la priorité sur les mesures fiscales destinées à en tenir compte, ces dernières risquant en effet d'institutionnaliser le processus nuisible de l'inflation.

Si des ajustements apparaissent néanmoins souhaitables, parce que l'inflation est persistante et significative, le Congrès a retenu des orientations intéressantes.

En ce qui concerne les tarifs et l'assiette des impôts sur le revenu et sur le patrimoine, une révision doit être envisagée en considération d'un indice adéquat.

Des modifications analogues doivent être prévues en ce qui concerne les impôts indirects spécifiques.

Enfin, en ce qui concerne les ajustements qui peuvent être apportés aux valeurs d'actif des entreprises, le Congrès a souligné qu'il existait une alternative entre des dispositions spécifiques comme le régime des amortissements, le système des provisions sur stocks ou la taxation des plus-values d'une part et un révision des bilans d'autre part.

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Ninth revised edition of a work explaining the net worth tax and valuation problems as of January 1, 1972.

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Immediate information on income tax and surtax.

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First loose-leaf in Business Taxation Handbooks Series explaining the United Kingdom tax on value added in so far as the Finance Act, 1972 is concerned.

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Co., 88 Kingsway, London WC2, 1972. ± 1000 pp.
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U. S. A.

AMERICAN FEDERAL TAX REPORTS.
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Fifth edition of a book originally written by Martin Atlas providing information on the way in which today's tax laws affect real-estate transactions with examples.

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Description of each state's tax system, including the district of Columbia, as of October 1, 1972.

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* * * ARTICLES * * *

ANIL KUMAR JAIN *:

COMPUTATION OF NET TAXABLE INCOME FOR ASSESSMENT IN INDIA

The Income-tax Act 1961 provides that the total income of an assessee is to be computed [1] under the following heads:

A. Salaries
B. Interest on Securities
C. Income from House Property
D. Profits and Gains from a Business or Profession
E. Capital Gains
F. Income from Other Sources

Computation of income under separate heads is made because different types of incomes require different efforts. In the case of salaries and profits and gains from business or profession, physical effort of the assessee is involved but in the case of other incomes such as interest on securities, house property and capital gains, personal physical or mental efforts of the assessee are not needed. Then, different deductions are allowed under different heads. But the classification under the above heads has been done mainly for administrative convenience.

It is obligatory on the Income-tax Department to tax income under the specified head, even if the assessee has returned it under a wrong head. This has been established by the Supreme Court's decision in the case of *United Commercial Bank* vs. *C.I.T.* [2] Where it was held that "interest on securities" is a specific head of charge and therefore, it cannot be charged as profits from business even if the securities are held as trading assets. However, if a case appears to fall in either of two heads of income, the assessee will be taxed under the one which leaves him with the lighter burden.

While computing income, deductions permissible under a specific head can be allowed only under that head. But if there is a loss in any of the heads, it may be set off against income under any other head in that year. [3]

Now we shall deal briefly how taxable income under each head is computed.

SALARIES

Any salary or wages, advance salary, annual accretions to the balance of an employee participating in a recognised provident fund beyond 10 per cent and profits in lieu of salary are taxed under the head 'Salaries.' In addition, salary also includes annuity or pension, gratuity, fees, commission and perquisites. [4]

However certain receipts do not form a part of the salary of the employee. [5] The

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1. Computation of income under different heads for assessment is dealt with by Sections 15 to 59 of the Income-tax Act, 1961.
2. (1957) 32, I.T.R., 688 (S.C.).
3. Vide Section 71 of the Income-tax Act, 1961.
4. As defined in Section 17(2) of the Income-tax Act, 1961.
5. These are exempted under Section 10 of the Act.

important ones among them are: (a) the value of any travel concession in connection with proceeding on leave to home district; [6] (b) the remuneration received by a foreigner as ambassador, high commissioner, envoy, minister etc.; [7] (c) any allowance or perquisite paid to an Indian citizen for rendering services abroad, (d) remuneration received in connection with a co-operative technical assistance programme; (e) any death - *cum* - retirement gratuity subject to a maximum of Rs. 24,000 or fifteen month' salary, whichever is less or any payment in commutation of pension; (f) payments from provident fund and superannuation fund; and (g) actual house-rent allowance received subject to a maximum of Rs. 300 per month.

Salaries of all employees are taxed under this head. Every servant is an employee; but an agent may not be an employee. A director of a company is not an employee of the company and therefore, the fees received by him are taxable under the head 'income from other sources'. But if the director is appointed as an employee of the company, his remuneration will be taxed under the head 'salaries'. Persons exercising a profession like film actors or actresses, professional authors etc. are taxed under the head 'profits and gains from business or profession' and not under the head 'salaries' even though they make contracts with other persons. This is because their employment is merely incidental to the exercise of the profession.

Income-tax is levied on salaries which are due whether paid or not, as well as on salaries which are paid, whether due or not. The tax is attracted at the earliest possible point of time and the employee cannot affect the rate of tax by drawing his salary late. A contribution made by an employer to a trust fund for providing retirement benefits to the employee is not taxable in the year of contribution under the head 'salaries' unless the employer has a vested interest in the contribution. However, lump sum paid in commutation, reduction or substitution of salary, pension or other profits of employment, is taxable as 'salary'. If an employee receives tax-free salary, he has to include in his total income gross salary i.e. net salary plus amount of tax.

The voluntary forgoing of salary by an employee is regarded as mere application of income and is therefore taxed. However if by reason of payment of salary in arrears or in advance, the assessee's income becomes taxable at a higher rate, the Income-tax Officer is empowered to grant appropriate relief. [8]

From the gross salary certain deductions [9] are allowed:

(i) price of books and other publications upto Rs. 500;

(ii) entertainment allowance of 20 per cent of the salary or Rs. 5000, whichever is less, in the case of Government employees and upto 20 per cent of salary or Rs. 7500, whichever is less, in the case of other employees provided he was in receipt of such entertainment allowance before April 1, 1955: A new incumbent of an office is not entitled to claim such a deduction from his income even if his predecessor used to

6. For foreigners the exemption is available in respect of passage money only.
7. See Section 10(6) of the 1961 Act.
8. Before April 1, 1971 only the Commissioner was empowered to grant such relief.
9. These deductions are enumerated in Section 16 of the Income-tax Act, 1961.

draw such allowance before April 1, 1955;

(iii) payments made in the form of taxes on professions, trades, callings or employment levied under any State or Provincial Act;

(iv) conveyance deduction at the rate of Rs. 200 per month for a motor car, Rs. 75 for a motor cycle or scooter and Rs. 50 in every other case:

(v) actual expenses wholly, necessarily and exclusively incurred in performance of duties. However, travelling expenses incurred in going to the place of employment are not deductible as they are incurred before the performance of duty begins.

INTEREST ON SECURITIES

Interest on securities is taxed in the year in which it accrues, although it may be received in a later year. But if in any case interest has not been assessed to tax in the year of accrual, it will be taxed in the year of receipt.

Interest on securities accrues on certain fixed days. Where securities are purchased, the purchaser is assessable on interest on the next due date and he is not entitled to any deduction in respect of the interest paid by him to the vender. Similarly, the seller of securities-cum-interest is not taxed on the interest he receives from the purchaser. The interest so received would go to enhance the sale price of the securities sold. Even if the sale takes place on the eve of payment of interest, the purchaser would still be taxed and not the seller.

In order to mobilise small savings and encourage investment in Government securities, interest in the case of certain securities is declared to be exempt from tax. This exemption is of two types. Firstly, interest on securities of the Central or State Government issued or declared to be income-tax free, [10] is nevertheless included in total income for determining the rate applicable to other incomes. Since the rate of tax depends on the assessee's total income, such inclusion attracts a higher rate of tax but the rate of rebate on such interest is granted at the average rate of tax payable by the assessee. [11] Moreover, in some cases such as life insurance premiums and provident funds tax relief is granted on the basis of gross total income and such interest would have to be taken into consideration for this purpose. [12] Tax in respect of tax free securities issued by a State Government is paid by that Government. Secondly, in the case of certain other securities such as 15 year Annuity Certificates, National Defence Gold Bonds 1980, Treasury Savings Deposit Certificates, Post Office Cash Certificates, National Plan Certificates, Twelve Year National Plan Savings Certificates etc., interest is exempt from tax and is also not included in total income for rate purposes.

A person responsible for paying interest on taxable securities must deduct tax at the time of payment. However, interest may be paid without deducting tax in cases where it is so permitted by the Income-tax Officer. If the tax so deducted exceeds the amount of tax payable by the assessee, he can claim a refund.

Interest paid on money borrowed to purchase securities is allowed to be deducted even if there is no income from such securities and the resulting loss can be set off against income under any other head. But

10. Under Section 86 A.
11. Vide Section 110.
12. Vide Section 66.

in the case of tax-free securities, the assessee cannot claim a deduction of interest paid on money borrowed for such purpose. However, in the case of a banking company, a part of the overhead expenses, which would normally be allowed as business expenses, is allowed as a deduction in computing interest on securities. For this purpose, 'moneys borrowed' includes moneys received by way of deposits.

If the interest is payable outside India and is taxable in the hands of the lender, it is not a permissible deduction unless (i) the interest is on loan issued for public subscription before April 1, 1938, or (ii) tax has been paid or deducted at source in respect of such interest, or (iii) there is a person in India who may be charged as an agent in respect of such interest. This provision has been inserted to counteract evasion of tax otherwise payable by the lender in respect of interest he receives.

INCOME FROM HOUSE PROPERTY

Tax is levied under the head 'Income from House Property' on 'buildings and lands appurtenant thereto' conveniently referred to as house property. Income derived from a Zamindari or from vacant plots of land is taxed not under this head but under the head 'Income from Other Sources'.

The tax under this head is levied upon the owner who is normally in possession of the property. But there are certain cases where the property, though not in the possession of the owner, is, nonetheless, taxed in his hands. Firstly, where the income of an individual includes [13] the income from house property transferred to the spouse or a minor child, such individual is deemed to be the owner of the house property. But if the spouse constructs a house out of the money gifted by the individual, the income from this house, although assessed to tax in the hands of that individual will be computed in a manner as if the spouse was the owner of that house. Secondly, the holder of an impartible estate is deemed to be the individual owner of the house properties comprised in the estate. Thirdly, a member of a co-operative society to whom a building or a part thereof is allotted or leased under a house building scheme of the society, is deemed to be the owner of that building or part thereof.

The tax under this head is levied upon the annual letting value of the property which is equal to "the sum for which the property might reasonably be expected to let from year to year." [14] From the annual letting value so determined certain deductions are made to arrive at net annual value:

(i) In case the property is in the occupation of the tenant, the taxes levied by any local authority on such property are deducted to the extent such taxes are borne by the owner.

(ii) In case the construction of the property has begun after April 1, 1961 perty has begun after April 1, 1971 but has been completed before April 1, 1970, a sum of Rs. 600 (for the initial period of three years) and a sum of Rs. 1200 (for five years) in respect of those properties the construction of which has been completed after March 31, 1970, is allowed to be deducted. Having regard to the general rise in rents this provision has been inserted to encourage construction of house property so that it

13. Under Section 64 of the 1961 Act.
14. Section 23(1) of the 1961 Act.

may be let out on rent to low and middle income groups. [15]

In order to encourage construction of house property for self-occupation, some concession is granted if the assessee uses the property for his own residence. The annual value of such property (after deducting taxes levied by any local authority in respect of the property) [16] is reduced by an amount equal to one-half thereof or Rs. 1800, whichever is less, and the resultant value is further limited to one-tenth of the other taxable income of the assessee. In other words, the annual value in no case can be placed higher than 10 percent of the assessee's total income.

If the property or a portion of it is occupied by the assessee for the purposes of his own business, profession or vocation the profits of which are assessable to tax, the annual value in respect of such property or a portion of it is not taxable. In such cases notional rent is not allowed to the assessee in computing the profits of business.

Where the property reserved by the owner for the purposes of his own residence consists of one residential house only and the residential house is neither actually occupied by the owner nor let to a tenant and no other benefit is derived therefrom by the owner, and if the property has remained unoccupied during the whole of the previous year, its annual value is taken to be nil. If it was occupied for a part of the previous year, the value is computed proportionately. But in no case a loss can be returned in such cases.

Income from property held for charitable and religious purposes is exempt from tax. Similarly, if a building is situated near an agricultural farm and is used for agricultural purposes, its income is exempted from tax. Certain co-operative societies, [17] trade unions [18] and marketing authorities [19] in certain circumstances [20] have been exempted in respect of their income from property.

From the net annual value certain deductions are allowed in arriving at the net taxable income. These are: (a) repairs equal to one-sixth of the annual value irrespective of the fact whether the owner actually undertakes the repairs or not; [21] (b) insurance premium to insure property against risk of damage or destruction, (c) mortgage, capital or annual charge, [22] ground rent and interest on borrowed capital; (d) land revenue and any other tax levied by the State Government in respect of the property; (e) rent collection charges upto 6 per cent of the annual value; [23] (f) if the property has been

15. This exemption is available only where the net income from the property is not a loss and it is available only in respect of house property which is let out on rent and not in respect of house property which is occupied by the owner for his own residence.

16. Prior to the assessment year 1971-72, taxes levied by local authority were not deductible in arriving at net annual value in such cases.

17. Vide Section 80 P.

18. Vide Section 10(24).

19. Vide Section 10(29).

20. These circumstances are the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

21. But where the tenant undertakes to bear the cost of repairs, the excess of the annual value over the rent payable for a year by the tenant is deductible, subject to a maximum of one-sixth of the annual value.

22. Section 27 defines annual charges and capital charge. An annual charge implies a liability which recurs from year to year while a capital charge means the discharge of a liability of a capital nature.

23. Legal expenses incurred in recovering rent from tenants are included in collection charges under administrative instructions.

vacant for a part of the year, deduction proportional to the length of the vacancy; and (g) irrecoverable rents.

It must be noted here that in case where the property is occupied by the owner himself, the total amount deductible should not exceed the annual value of the property. However, if the property is let out, the loss under this head can be set off against income from other heads in the same year but it cannot be carried forward.

PROFITS AND GAINS FROM A BUSINESS OR PROFESSION

Computation of income under this head is, by far, the most important and at the same time, a very complicated subject in all taxation laws including India. The reasons are obvious. Concepts of 'business' and 'profits' have been undergoing changes. In every economy business forms a very important sector of the economy. A developing economy also requires incentives and concessions in business so that it may flourish. Hence, the rules for computation of income under this head have to be carefully framed. Otherwise, even a small error in framing the rules is likely to lead to considerable evasion of tax.

Profits and gains from any business, profession or vocation *carried on* [24] by the assessee are taxed under this head. The inclusion in the term 'business' of any "trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture", [25] is of primary significance for the purpose of distinguishing between those capital transactions which are taxable as capital transactions and those which are taxable as business transactions. [26] In order to be taxable it is necessary that the business, profession or vocation should be carried on for some time during the accounting year. Businesses outside India are also taxed under this head.

In order to be liable to tax it is not necessary that the business is carried on by the assessee personally. He may carry on the business through a manager or other servant but he would still be liable to tax. No tax can, however, be levied on a benamidar in whose name the business transactions are effected. Guardians for minors or receivers or trustees are assessed in respect of the profits of the business carried on by them. The tax is levied not on gross profits but on profits and gains which are ascertained on ordinary principles of commercial trading and commercial accounting. Profits are computed in accordance with the method of accounting regularly employed by the assessee — whether on accrual or receipt basis — provided real profits can be ascertained from the method. [27] Profits whether realized in money or in money's worth, in cash or in kind are taxable. All revenue receipts arising from business or the exercise of a profession or vocation are taxed even if they are of a casual and non-recurring nature. Value of any benefit or perquisite, whether convertible into money or not, is also included in the profits assessable to tax.

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24. The word 'carrying on' is important here. In a case where the Court intervenes and deprives the owner of the right to carry on his own business and authorises some one else to carry on the business, the owner would not be taxed since he cannot be regarded as 'carrying on' the business.

25. Section 2(13) of the 1961 Act.

26. World Tax Series, *Taxation in India,* Harvard Law School, International Programme in Taxation (1961), p. 183.

27. Vide Section 145 of the 1961 Act.

Where an assessee carries on one and the same business at a number of places, net profits of the business are ascertained by pooling together the profits earned in all the branches. But if the businesses are distinct, profits of each business are computed separately. Further, if the businesses belong to one man profits of all the businesses are lumped together and taxed.

Income from a trade, professional or similar association is taxed only if it arises from the specific services rendered to its members. Thus, the entrance fees or members' periodic subscription are not taxable but the fees and contributions received by the chamber of commerce for rendering specific services to any member or members are taxable. This clause, however, does not apply to social clubs and therefore, the surplus accruing to a social club even from specific services rendered to its members is not taxable because the social club has been formed to protect and advance the common interests of its members.

Profits and losses of speculative transactions are computed separately and are not included under ordinary business transactions. Speculative losses can be set off only against profits of any other speculative business and such losses, if carried forward, can be set off only against profits of any speculative businesses of such subsequent year.

Recovery of a bad debt previously written off as bad, as well as any reduction of a liability or recoupment of a loss or expense previously allowed as a deduction, is included in business income in the year in which the recovery, reduction or recoupment occurs.

Income illegally earned is nonetheless taxable as the revenue is not concerned with the taint of illegality in the income or its source. This is because once the character of an enterprise has been ascertained as being of the nature of trade, the person who carries it on cannot found upon elements of illegality to avoid tax.[28] Thus 'pugress' illegally exacted from tenants by landlords, profits arising from transactions in smuggled goods, illegal bets taken by bookmakers on racecourses etc., are taxable.

Certain deductions and allowances[29] are granted in computing the taxable income under the head 'profits and gains from business or profession'. Since this list is not exhaustive, losses or expenditures incidental to business such as losses due to embezzlement, theft, destruction of assets, overdrawing by employees are allowed on the basis of ordinary commercial principles of computing profits. Further, any expenditure wholly and exclusively incurred for the purpose of the business which is neither a capital expenditure nor a personal expense of the taxpayer, is allowed to be deducted. While arriving at the net taxable income, certain deductions are allowed. Firstly, rent, land revenue, local rates or municipal taxes and any premium in respect of insurance against risk of damage or destruction of the business premises is deducted. Secondly, any amount spent on current repairs to and in respect of insurance of machinery, plant or furniture is allowed as an item of deduction. Thirdly, depreciation is allowed in respect of buildings, machinery, plant, furniture or ships. In the case of ships, the straight line method is used while in the case of other assets the written down value method is

28. Kanga and Palkivala, *The Law and Practice of Income Tax*, Student Edition (1971), p. 62.
29. These are enumerated from section 30 to section 37 of the 1961 Act.

employed. [30] Fourthly, development rebate at varying rates [31] is provided in respect of new ships, machinery or plant (other than office appliances or road transport vehicles) used for the purposes of the business. Fifthly, development allowance at prescribed rates [32] is allowed in respect of planting of tea bushes on any land in India. Sixthly, when the business of any industrial undertaking is discontinued on account of extensive damage due to flood, typhoon, cyclone, earthquake, accidental fire, enemy action etc. and is re-established before the expiry of three years, rehabilitation allowance is granted at the rate of 60 percent of the amount of deduction allowed to him in respect of building, machinery, plant or furniture so damaged or destroyed. Seventhly, expenditure on scientific research and on acquisition of patent rights or copyrights is deductible. Eighthly, export-market development allowance and agricultural development allowance are also granted. [33] Finally, any expenditure incurred by an assessee after March 31, 1970 but before or after the commencement of his business in connection with the extension of his industrial undertaking or in connection with his setting up a new industrial unit or on prospecting etc. for certain minerals, is allowed to be deducted in ten years in equal instalments.

In addition, some deductions of a general nature are also allowed such as insurance premium paid in respect of insurance against risk of damage or destruction of stock, bonus or commission paid to employees for services rendered, interest paid in respect of capital borrowed for purposes of business contributions made towards a recognised provident fund or an approved superannuation fund, bad debts and any expenditure *bona fide* incurred for the purpose of promoting family planning amongst its employees.

In order to check proliferation of profits amongst employees, relatives or persons having substantial interest in the company and to check tax evasion, certain expenses are not deductible. Any interest paid out of India without tax deduction at source, amount paid on account of any rate or tax levied on the profits and gains, salaries paid out of India without deduction of

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30. An assessee is allowed three types of depreciation allowances: (a) normal depreciation allowance on buildings, machinery, plant and furniture owned by the assessee and used for the purpose of the business or profession, (b) extra-shift allowance in respect of machinery or plant used for double or triple shift working and (c) initial depreciation allowance in respect of newly constructed buildings at the rate of 20 per cent for buildings completed after 31st March, 1961 and used for the residence or welfare or certain categories of employees and at the rate of 25 percent for buildings completed after March 31, 1967 and owned and used by an Indian company as an approved hotel. But the aggregate of all deductions in respect of depreciation cannot exceed the actual cost of the buildings, machinery, plant or furniture to the assessee.

31. These rates are 40 percent for ships, 35 percent for machinery or plant in priority industries installed before April 1, 1970 and 25 percent if it is installed after March 31, 1970, and 20 percent for other machinery and plant installed before April 1, 1970 and 15 percent if it is installed after March 31, 1970. The rebate is proposed to be abolished from April 1, 1974.

32. The rate is 50 percent of the actual cost of planting if tea bushes have been planted on new land and 30 percent of such cost if tea bushes are planted in replacement of tea bushes that have died.

33. The export market development allowance is equal to one and one-third times the amount of expenditure on development of export markets and the agricultural development allowance is equal to one and one-fifth times the amount of expenditure on agricultural development.

tax at source, payment of salary in excess of Rs. 5000 per month and value of perquisites in excess of Rs. 1000 per month or one-fifth of the salary, [34] whichever is less, and payment to a provident fund established for the benefit of employees [35] are not deductible for any assessee. In the case of any firm, payment of interest, salary, bonus, commission or remuneration paid to any partner is not deducted. For a company, any expenditure which results directly or indirectly in any remuneration or benefit or amenity to a director or a person having substantial interest in the company or to his relative in excess of Rs. 72,000 a year is disallowed. These limitations on payment of salaries, perquisites and remuneration have been imposed so that a restraint is put on business expenses resulting in larger tax base and income disparities are reduced. Further, in order to check black marketing and tax evasion, payments made after April, 1969 in excess of Rs. 2500 without crossed cheque or bank draft are disallowed.

CAPITAL GAINS

Capital gains arise when the price at which an asset is sold exceeds the price at which it was purchased or acquired. In India, any profits or gains arising from the transfer of a capital asset effected in the previous year are taxed under the head 'Capital Gains' and are regarded as income of the previous year. The word 'transfer' here includes "the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law". [36] Certain capital assets have, however, been excluded from the purview of this tax. These assets are stock-in-trade, personal effects (including wearing apparel, jewellery [37] and furniture), agricultural land [38] and 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980 issued by the Central Government.

Taxation of capital gains is based entirely upon realisation and in this respect it differs from taxation of income under any other head, where tax is payable on income that is either realised or accrued. However, capital gains are assessable as the income of the year in which the transfer takes place, even though they may be realised later on or there may be no realisation at all.

The general principle for computing capital gains is to deduct from the sale price the cost of acquisition to the assessee. In case a capital asset becomes the property of the assessee on account of total or partial partition of the Hindu undivided family under a gift or will, by succession, inheritance or devolution, cost to the previous owner is deemed to be the cost of acquisition to the assessee. In the case of depreciated assets, the written-down-value, as adjusted on account of balancing allowance or balancing charge, is deemed to be the cost of acquisition of the asset. The adjustment is done with reference to the actual balancing charge. In case, no such balan-

34. With effect from April 1, 1972.
35. Where no arrangement of deduction of tax at source has been made from the fund chargeable to tax under the head 'Salaries'.
36. Vide Section 2(47) of the 1961 Act.
37. Profits made on the sale of personal jewellery have however, been made taxable by the Finance Act, 1972, with effect from the assessment year 1973-74 onwards.
38. Unless it is in an area having population of 10,000 or more or is within 8 kilometres from local limits of any municipality or cantonment board.

cing charge is actually levied, the written-down-value (after deducting initial depreciation) is taken to be the cost of acquisition. In case any asset was acquired before January 1, 1954, the assessee has the option to adopt the fair market value of the asset as on January 1, 1954. In such a case, the cost of acquisition shall, at the option of the assessee, be the fair market value of the asset on the said date, as reduced by the amount of depreciation, if any, allowed to the assessee after the said date and as adjusted. In case an assessee gets bonus shares from a company, the cost of such shares would be determined by the process of averaging i.e. by spreading the cost of the old shares and new bonus shares taken together if the shares are of the same type. A company is not regarded as having made capital gains if it merely distributes its assets among its shareholders on liquidation.

Any distribution of capital assets on the total or partial partition of a Hindu undivided family, distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons, any transfer of a capital asset under a gift or will or an irrevocable trust, any transfer of capital asset by a company to a wholly owned subsidiary Indian company or *vice versa,* any transfer of capital asset on account of amalgamation and any transfer of agricultural land in India before March 1, 1970, are transactions which are not regarded as transfer and hence not liable to capital gains tax.

To arrive at the figure of taxable capital gains, two items are deducted from the full value for which transfer is made, viz., (a) the cost of acquisition and the cost of improvement thereon, and (b) expenditure incurred solely in connection with the transfer.

Capital gains arising out of the transfer of residential property are exempt from tax provided the assessee has within a period of one year before or after the date of transfer purchased, or has within a period of two years after that date constructed, a house property for residential purpose and provided further that the amount of the capital gain is not greater than the cost of the new asset. In case such gain is greater, only the excess of the capital gain over the cost of the new asset will be taxed. Similar provisions apply in a case where an assessee transfers agricultural land and within two years buys new land which is also used for agricultural purposes. Further, no capital gains tax is levied in the case of transfer of property or properties if (a) the aggregate sale price does not exceed Rs. 25,000 and (b) the aggregate of the fair market values of all the capital assets owned by the tax payer immediately before the transfer does not exceed Rs. 50,000. However, capital gains on sale of property used for the assessee's own business are not exempt.

A loss relating to a short-term capital asset can be set off in the same year either against gains in respect of any asset (whether short-term or long-term) or against income under any other head. Capital loss in such cases can be carried forward for eight years but in subsequent years it can be set off only against short-term capital gains. Losses relating to long-term capital assets can be set off only against such gains in the same year or subsequent years. Such losses can be carried forward only for four years. [39] But no capital loss (whether short-term or long-term) can be carried

39. Under the 1922 Act, they could be carried forward for eight years.

forward unless the amount of such loss exceeds Rs. 5,000.

INCOME FROM OTHER SOURCES

This is a residue head of income and incomes under this head are taxed only if they are not taxable under any of the preceding heads.

Income from an office not amounting to employment i.e. where employer and employee relationship is not found, is taxed under this head. Thus, the commission earned by a director or any other individual for negotiating the sale of a company's branch, shares or an estate, or for procuring insurance, underwriting shares or guaranteeing another's overdraft or fees received by him for attending the Board's meeting, are taxed under this head. Interest on securities,[40] interest on loans, deposits or current account, interest received by a retired employee on his contributions to an unrecognised provident fund are taxable under this head. Further, mining rents and royalties, non-agricultural rents and profits from a zamindari or bustee lands, income from market rights, fisheries, grazing rights and rents and royalties paid for a licence to take away earth are taxable. In case the assessee is a short-term lessee of a building or earns a profit by sub-letting or reletting it, such profit is taxed here. Payments received by a non-professional writer and interest received by the heirs of a deceased moneylender on outstanding loans are taxed under this head. If the assessee gets the annuity tax-free and the trustees pay the tax thereon, the amount of tax is added and the gross annuity is taken to be the income of the assessee under this head. Further, dividends from Indian companies, annuities and commuted value of annuities, income from machinery, plant or furniture let out on hire, are also taxable under this head.

Income under this head is computed in accordance with the method of accounting regularly employed by the assessee provided income can be properly deduced from the method. While computing income certain deductions are allowed. In case of dividends, any sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend, is deducted. For machinery, plant or furniture let out on hire, the assessee is entitled to deduct expenses on account of current repairs, insurance premium, depreciation and balancing allowance. Deduction is also allowed in respect of any revenue expenditure incurred wholly and exclusively for the purpose of earning such income.

The above discussion clearly demonstrates that for purposes of income-tax income is divided into several categories on the basis of the source of income and that these schedules are exhaustive in the sense that an item which falls under a particular head can be taxed only under that head and if an item does not fall under any of the heads, it escapes the net of taxation. In this respect India has a schedular system as is prevalent in most Latin American and European countries. Under such a system, it is pointed out, one has to deal with a wide variety of incomes in a piecemeal fashion and this creates several difficulties. On the one hand it creates complexity in the tax system by prescribing separate rules for computation of income under several heads and on the other, by providing that

40. Other than those specified in Section 18 of the 1961 Act.

"an assessee may have different previous years in respect of separate sources of his income", [41] the system permits further erosion of tax base and creates inequity. Further, the existence of numerous schedules "makes for a complicated declaration form and for a complicated tax computation", [42] and "makes it difficult to think clearly about the structure of the income tax, its impact upon tax payers and the burden it involves". [43]

We should remember here that although the Indian Income-tax system contains certain features of a schedular system, yet the disadvantage is mitigated, to a large extent, by the inclusion of category F — Income from Other Sources, under which "income of every kind which is not excluded from total income under this Act... if it is not chargeable to income-tax under any one of the heads specified in section 14, items A to E" is included. This means that whatever items escape schedules A to E are included in schedule F. Moreover, income is not considered piecemeal for tax purposes, but "all income from whatever source derived" is lumped together for tax purposes and only one rate schedule is applied. "The function of the division of income into categories is merely to prescribe the rules applicable to the computation of taxable income of each particular type. Taxable income from all sources is reported on a single return and only one assessment is made of income under all categories." [44] Further, in a developing economy, it is desirable that certain types of economic activities are encouraged while certain others are discouraged. This points towards the adoption of a schedular system. Therefore the only change that is needed in India is that like the U.S.A. these schedules should be only illustrative and not exhaustive so that other types of income which may not fit in either of these categories may be made taxable and the principle of equity may be followed in general for all taxpayers.

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41. Vide Section 3(3) of the Income Tax Act, 1961.
42. C. S. Shoup, J. F. Due, L. C. Fitch, O. S. Oldman, S. S. Surrey, *The Fiscal System of Venezuela,* 1969, p. 103.
43. *Ibid.*
44. World Tax Series, Harvard Law School, International Program in Taxation, *Taxation in India,* 1960, Introduction.

F. CASTELLANOS*:

RESPONSABILITE FISCALE DES MEMBRES DES CONSEILS D'ADMINISTRATION DES SOCIETES ANONYMES DANS LA LEGISLATION ARGENTINE

LOI 19.550

La nouvelle Loi des Sociétés vient d'attribuer au Conseil d'Administration et à ses présidents la représentation de la société. Les actionnaires membres du Conseil de Surveillance sont responsables, vis à vis du Fisc, aussi bien que les membres du Conseil d'Administration des devoirs fiscaux de la Société.

En matière de responsabilité fiscale les directeurs ou directeurs généraux sont également responsables.

On doit encore dire que le représentant en Argentine d'une société étrangère a la même responsabilité légale devant le Fisc que celle établie par la loi pour le directeur ou pour les membres du Conseil d'Administration des sociétés anonymes argentines. Cette responsabilité est de caractère solidaire et illimité.

Nous allons essayer d'analyser par la suite, quelles sont les aspects précis permettant que cette responsabilité établie d'une façon générale pour la loi de Sociétés (No. 19550) soit applicable à un membre du Conseil d'Administration ou de Surveillance, à un Gérant ou un Représentant de Société Etrangère.

LOI DE PROCEDURE FISCALE (No. 11.683)

Cette loi ne fait aucune différence entre «administration» et «représentation» et rend obligatoire le payement des impôts aux membres du conseil d'administration, aux directeurs, gérants et représentants des personnes morales, avec les ressources sur lesquelles ils ont un pouvoir. Mais, en plus, le payement de la créance au Fisc devra être faite par les personnes indiquées ci-dessus avec des fonds propres et solidairement avec les vrais débiteurs de l'impôt (la société) dans les cas suivants:

a) la société n'ayant pas accomplie ces devoirs fiscaux;
b) la société n'ayant pas payée ses impôts;
c) la société n'ayant pas répondu à l'ordre de l'Administration de régulariser sa situation fiscale.

Il faut remarquer qu'en réalité la loi n'attribue cette responsabilité solidaire aux membres du Conseil d'Administration aux autres personnes physiques énumérées que quand il existe un certain degré de tort ou fraude dans le non accomplissement des devoirs fiscaux.

JURISPRUDENCE

Il faut d'abord attirer l'attention sur le fait que la jurisprudence qu'on peut analyser jusqu'à présent n'a pu tenir compte que du Code de Commerce avant la modification introduite par la nouvelle loi sur les sociétés No. 19.550 datée du 3 avril de 1972. Au debut l'Administration (Direction Générale des Impôts) attaquait un membre du Conseil pour une dette de la Société sans accomplir aucune formalité préalable (cas

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«Masjuan F.» arrêt du Tribunal Fiscal du 6 âout 1970 et de la Cour d'Appel du 16 septembre 1971).
Plus tard les tribunaux — Tribunal Fiscal; Cour d'Appel dans le Contentieux; Cour de Cessation — ont déclaré qu'il ne suffit pas d'être membre d'un Conseil d'Administration d'une Société Anonyme pour que cette solidarité dans les obligations à l'égard du Fisc, soit automatique avec la personne morale obligée au règlement du tribut, mais pour les personnes physiques qui administrent ou disposent des fonds de la société, selon leur comportement (tort ou fraude) leur responsabilité devient plus étendue. Cas. «Monasterio Da Silva, Ernesto».
Dans ce dernier cas mentionné il s'agissait d'un Vice Président du Conseil d'administration d'une Société étrangère qui a pu prouver que la compagnie avait ses livres et sa comptabilité en dehors de l'Argentine et lui même n'avait pas les fonds de la société à sa disposition.
La responsabilité du Vice Président a été exclue par la Cour.

DOCTRINE

L'auteur argentin Roberto O. Freytes observe qu'en principe quand le genre d'activité du Gérant, membre du Conseil, etc. montre un manque de relation entre la personne et le fait à cause duquel la compagnie doit payer le tribut, suffirait pour l'exclure de la solidarité que nous sommes en train d'analyser.
Aujourd'hui, par les nouvelles dispositions de la Loi 19550, nous nous permettons de conseiller aux fonctionnaires des sociétés la plus grande prudence dans l'accomplissement des devoirs tributaires de la compagnie et de surveiller attentivement la façon dont la personne morale remplie ces obligations vis à vis du Fisc.

CODE DE COMMERCE

D'une façon générale notre problème est prevu par les articles 255 et 274. Ils établissent une responsabilité personnelle et solidaire pour les membres du Conseil dans tous les cas où la Société aurait agi à l'encontre de ce qui est établie par les lois.
A présent, face au texte de la nouvelle Loi No. 19550 qui a modifié l'ancien Code de Commerce, en disposant que le bilan doit présenter séparement les dettes au Fisc, et que les impôts de toutes natures devront être établis par postes différents, nous estimons qu'un contrôle de la façon dont la compagnie règle ses devoirs fiscaux est indispensable de la part des membres du Conseil d'Administration, de Surveillance, Directeurs et représentants de compagnies constitué à l'étranger.

EXEMPTION DE RESPONSABILITÉ

D'autre part la loi vise l'exception à cette règle de responsabilité solidaire dans l'article 274 en disant que le membre du Conseil d'Administration sera exclu de toute responsabilité fiscale quand, en ayant connaissance d'une décision du Conseil contraire à une disposition du Fisc, il marque par écrit son opposition et la communique au syndic en tant que représentant des interêts des actionnaires. Le membre en question sera aussi exempté de responsabilité s'il fait une denonciation à la Justice ou à l'Administration.
Etant donné que la loi oblige au minimum d'une réunion du Conseil par mois, nous estimons qu'une bonne politique consistera à inclure dans chaque réunion l'analyse de l'accomplissement des obligations de la compagnie vis à vis du Fisc et de la Sécurité Sociale.

J. C. GOLDSMITH *

DEVELOPMENTS IN FRENCH T.V.A. THE ABANDONMENT OF THE SO CALLED "BUFFER RULE"

Prior to the enactment of a decree of February 4, 1972, France was the only country applying TVA where TVA payers were not fully allowed to recover the entire amount of the TVA on their inputs which, in France, is commonly called "TVA payée en amont" (i.e. TVA paid upstream). As a matter of fact no refund was, then, in principle, due by the State for any excess of the overall amount of TVA on inputs over the amount of TVA due with respect to the taxpayer's outputs, so that such excess had to be carried forward indefinitely as the case may be. This was called the "Règle du butoir" ("Buffer rule").

Of course export sales were a major exception to that rule. There were also other less important exceptions applying in particular to sales of goods attracting the reduced TVA rate (mainly foodstuffs and books). TVA credits arising from the purchase or construction of fixed assets could, with the specific accord of the tax authorities, be transferred to the user of those assets (Art. 227 to 228 of Annex II to CGI). Generally, the "buffer rule" was, however, with respect to national sales, not only a hindrance but a clear distortion of the basic principle on which the TVA system lies, that is the so called principle of "tax neutrality", whereas the rule obviously resulted into a double taxation.

Indeed, on this account, a number of concerns were loaded with "dormant" TVA credits relating to their inputs.

This was, in particular, the situation of concerns which had made substantial investments attracting an amount of TVA exceeding the TVA due with respect to current operations of the concern. The same applied to the case, which is specially considered below, of foreign concerns making direct sales in France, but being liable to some TVA on French inputs which, for some reason, was not imputable.

The decree of February 4, 1972 which has been implemented by an "Instruction" from the Finance Ministry of February 18, 1972, has not only laid down the rule that TVA credits arising after January 1, 1972 will be recoverable, but has also provided for a partial refund of past credits.

A copy of the Decree is reproduced as an Exhibit to this Article, for a better understanding of the applicable rules.

I. - *The refund of non-imputable tax credits which arose after January 1, 1972*

The basic rule is that all such credits are entirely refundable, whereas just one fourth of past credits, as will be specified below, is refundable.

This combined result is attained by means of the following method of calculation which is specified in Article 3 of the Decree:

(a) For taxpayers who had no outstanding TVA credit in 1971, the rule is very simple: all non-imputable tax credits arising as from January 1, 1972 are fully

* Avocat au Barreau de Paris, Chairman of the I.B.A., Business Section Tax Committee.

refundable;
(b) For taxpayers who had outstanding TVA credits in 1971: those credits aggregating with the credits arising in 1972 and, possibly, in the following years, a special rule was necessary in order to make an apportionment between the credits relating to past years or to the current year respectively.
That special rule is that a so-called "reference credit" equal to three fourths of the average outstanding credits for 1971, is held to be non-refundable and is, accordingly, to be deducted from the aggregated tax credits existing, at the end of say 1972. Only the balance is refundable, which indeed means in fact that all the imputable credits for each year after 1971 are fully refundable and just one fourth of prior credits.
The amount of refundable non-imputable credits for 1971 cannot exceed the amount of the outstanding non-imputable credits of the taxpayer at the time the refund is applied for (see Art. 5 of the Decree).
Accordingly, if for instance:
— The amount of non-imputable credits generated in 1972 is 100
— the average non-imputable credits outstanding in 1971 is 400
— the amount of the outstanding credits at time of application is 150
the refundable tax credit is computable as follows:
That refundable credit is the excess of the aggregated credit outstanding on December 31, 1972 (i.e. 100 + 400 = 500), over an amount equal to three fourths of the average non-imputable credits for 1971 (i.e. 3/4 x 400 = 300).
However, the refund will in fact not exceed 150, such being the amount of the outstanding credit at the time the refund is applied for.

II - *The refund of non-imputable credits generated prior to December 31, 1972*

That refund is provided for in Article 5 of the Decree.
As above indicated, it is limited to one fourth of the average credits for 1971 and to the amount of the outstanding credits of the taxpayer at the time the refund is applied for, whichever is lower.
It should be further noted that the applications for refund had to be filed prior to July 1, 1972 and not be for an amount lower than 500 FF.

III - *The refund procedures*

1 - *Generally: As regards tax credits generated since January 1, 1972*

— Application for refund must be filed in each month of January (in the case of annual refund) or within the month following each quarter concerned (in the case of a quarterly refund) (Art. 4 of the Decree).
— The amount for which refund is applied for must be 1,000 FF at least as regards annual refunds, or 5,000 FF as regards quarterly refunds (Art. 4 of the Decree).
It may be noticed that this mechanism is in fact very close to the Belgian system which provides for a refund at the end of each calendar year together with the possibility for a quarterly refund if the tax credit exceeds a certain amount (Art. 7 of Belgian Code and Art. 8 of Arrêté Royal No. 4 of December 29, 1969).
But, unlike the Belgian system, the French system does not provide for an automatic refund. This refund is to be applied for as in most other countries.
Upon cessation of their activities liable to TVA or of their business, taxpayers are entitled to a total refund of their outstan-

ding non-imputable credits (Art. 7 of the Decree).

2 - *As regards particularly tax credits generated before January 1, 1972 (Art. 5 of the Decree)*

The procedure was the same, except that the refund had to be applied for prior to July 1, 1972 and for amounts of at least 500 FF.

The "Instruction" from the Finance Ministry further specifies that application for the refund of past credits should be filed before application for the refund of future credits (See "Instruction, § II - D - 1 - h)

IV - *Other main rules*

1 — Of course, the right to impute refunded credits is automatically cancelled by the refund. (Art. 7 of the Decree).

2 — Article 6 of the Decree provides for special rules applicable to taxpayers who, making a limited turnover, are allowed to pay TVA either under a simplified system or on a lump basis.

3 — Articles 10 and 11 also provide for adjustments relating to special situations namely:

— Article 10 to taxpayers who, although not performing activities made compulsorily subject to TVA, have elected to pay that tax under the option which they have to that effect in pursuance of Article 260 — 1 of the General Code of Taxes.

— Article 11 to companies performing leasing activities relating to personal (as opposed to real) property.

4 — Article 8 and Article 13 of the Decree provide for some exceptions to the new system, namely:

— Under Article 8, companies making exports may as a "transitory" measure, elect to retain their former status under which they may apply for monthly or quarterly refunds irrespective of the above set forth FF 1,000 and FF 5,000 limits.

— Under Article 13, two categories of taxpayers are excluded from the same system, namely:

- companies which extract, store and refine oil and oil products under the control of the customs authorities will still be ruled by the previous system under which, in accordance with Article 298 - 4° of the General Tax Code, they are allowed to transfer their tax credits to their customers;
- taxpayers whose activities are just occasionally subject to TVA. This latter category includes mainly the taxpayers who are subject to TVA on account of "transactions which contribute to the production or the delivery of buildings" only.

5 — Administrative bodies ("établissements publics") have just recently been included among the taxpayers entitled to a refund of their TVA credits (Decree No. 72-1217 of December 28, 1972).

6 — Article 12 of the Decree specifies that the authorities may require that appropriate guarantees be given to the authorities in order to guarantee the reimbursement of any undue refund.

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The abandonment of the "buffer rule" is an illustration of the French tax authorities' effort to eliminate from the regulations distortions of a nature to jeopardize the fairness of the tax system.

It is of course regrettable that just a limited fraction of past credit is made refundable. This restriction was obviously motivated by budgetary preocupations. It may be noted, however, that the Finance

Ministry has recently announced that the Government intends to carry on a gradual refund of TVA credits although no date can immediately be fixed for the next step of the process (Rép. Jacques Genton, Sénateur, J.O. October 11, 1972 - Débats Sénat).

The new decree is of special interest to foreign concerns which were prevented from imputing their TVA payable on French inputs on the TVA affecting their sales in France.

This was in particular the case where said TVA on inputs was related to services rendered in France to the concern involved for the purposes of its sales in France but prior to the time where the goods were imported. To take an example, if, for instance, the import value of the goods was 100, the charge for services rendered in France to the seller before importation was 10 (that charge being included in the import value of the goods since the services were rendered before importation) and the amount of value added in France was 20, the selling price thus being 120; the total TVA paid by the foreign concern on its inputs was (at the assumed rate of 20%) : 20% (100 + 10 + 20) = 26 while the total TVA on outputs was 20% (120) = 24. The excess TVA on inputs over the TVA on outputs (i.e. 2 in the instant case) which was not imputable by the foreign concern is presently refundable as stated above.

But, foreign concerns not making sales deliverable in France are still unable to recover the amount of any TVA which they may pay on account of their acquisition of French goods or services, since they are not themselves subject to the French TVA on any of their outputs. This applies, among others, to foreign concerns selling goods ex-works or ex-French border. The reason is that Article 1 of the Decree of February 4, 1972 specifies that only the amount of TVA on inputs which are imputable is refundable.

ANNEXE

Décret n° 72-102 du 4 février 1972 relatif au remboursement de crédits de taxe sur la valeur ajoutée déductible.

Le Premier ministre,

Sur le rapport du ministre de l'économie et des finances,

Vu l'article 7-1° et dernier alinéa de la loi de finances pour 1972 (n° 71-1061 du 29 décembre 1971);

Vu l'article 5 de la loi de finances rectificative pour 1971 (n° 71-1025 du 24 décembre 1971);

Vu l'article 1er-1° de la loi n° 66-455 du 2 juillet 1966, modifié par l'article 1er de l'ordonnance n° 67-837 du 28 septembre 1967;

Vu le code général des impôts, notamment les articles 271 à 273;

Le Conseil d'Etat (section des finances) entendu,

Décrète:

Art. 1er. — La taxe sur la valeur ajoutée déductible dont l'imputation n'a pu être opérée peut, sur demande des assujettis, faire l'objet de remboursements dans les conditions fixées ci-après.

Art. 2. — Le remboursement porte sur le crédit de taxe déductible constaté au terme de chaque année civile.

Art. 3. — Pour les assujettis dont les déclarations de chiffre d'affaires ont fait apparaître des crédits de taxe déductible en 1971, le remboursement prévu à l'article 2 est limité à la fraction du crédit excédant un crédit de référence. Ce crédit de référence est égal aux trois quarts du quotient obtenu en divisant la somme des crédits figurant

sur les déclarations relatives aux affaires de 1971 par le nombre total de déclarations déposées au titre de la même année.

Art. 4. — Les demandes de remboursement doivent être déposées au cours du mois de janvier et porter sur un montant au moins égal à 1.000 F.
En outre, lorsque chacune des déclarations de chiffre d'affaires déposées au titre d'un trimestre civil fait apparaître un crédit de taxe déductible, une demande de remboursement peut être déposée au cours du mois suivant ce trimestre; elle doit porter sur un montant au moins égal à 5.000 F.

Art. 5 — Les assujettis qui détiennent un crédit de taxe déductible au 31 décembre 1971 peuvent obtenir un remboursement égal au quart du quotient défini à l'article 3. Ce remboursement ne peut excéder le crédit existant à la date de leur demande.
Les demandes de remboursement doivent être déposées avant le 1er juillet 1972 et porter sur un montant au moins égal à 500 F.

Art. 6. — 1. Pour les assujettis placés sous le régime simplifié d'imposition, le crédit de taxe déductible et le crédit de référence résultent des énonciations de leur déclaration annuelle. Les demandes de remboursement annuel doivent être déposées avec cette déclaration. Les remboursements trimestriels ont un caractère provisionnel et doivent être demandés au cours du mois suivant le trimestre considéré; ils donnent lieu à régularisation annuelle.
2. Pour les assujettis placés sous le régime du forfait, le crédit de taxe déductible et le crédit de référence sont déterminés lors de la conclusion du forfait. La demande de remboursement est déposée au cours de l'année civile suivant celle au titre de laquelle le crédit de taxe déductible est déterminé. Il s'y ajoute, le cas échéant, le crédit résultant de la déduction complémentaire visée à l'article 204 de l'annexe II au code général des impôts.
3. Pour les assujettis placés sous le régime simplifié des exploitants agricoles, autres que ceux qui ont opté pour le régime des déclarations trimestrielles, le crédit de taxe déductible et le crédit de référence résultent des énonciations de leur déclaration annuelle. La demande de remboursement doit être déposée avec cette déclaration.

Art. 7. — Le crédit de taxe déductible dont le remboursement a été demandé ne peut donner lieu à imputation; il est annulé lors du remboursement.

Art. 8. — A titre transitoire, les assujettis pourront bénéficier, sur option expresse, de remboursements mensuels ou trimestriels de leur crédit de taxe déductible dans la limite de la taxe sur la valeur ajoutée calculée sur le montant des exportations et opérations assimilées réalisées au cours de la période correspondant à chaque déclaration de chiffre d'affaires. L'option pour ce régime est exclusive du bénéfice des dispositions des articles 2, 3, 4 et 6 du présent décret; elle est exercée avant le 1er mars pour chaque année civile.

Art. 9. — Lorsqu'un assujetti perd cette qualité ou cesse son activité, le crédit de taxe déductible dont il dispose peut faire l'objet d'un remboursement pour son montant total. Toutefois, pour les assujettis visés à l'article 3, ce remboursement ne peut porter que sur la fraction excédant le crédit de référence défini audit article.

Art. 10. — L'option pour l'assujettissement à la taxe sur la valeur ajoutée prévue à l'article 260-1 du code général des impôts est reconduite de plein droit pour la période suivant celle au cours de laquelle les assujettis ayant exercé cette option ont bénéficié d'un des remboursements visés aux articles 2 à 6.

Art. 11. — Les sociétés qui effectuent à titre habituel et principal les opérations visées à l'article 1er (1°) de la loi du 2 juillet 1966 susvisée bénéficient du remboursement de leur crédit de taxe déductible non imputable résultant de droits a déduction nés depuis le 1er janvier 1972. Une demande de restitution peut être déposée, au titre de chaque trimestre civil, dès lors qu'elle porte sur un montant minimum de 5.000 F.
Les crédits de taxe déductible au 31 décembre 1971 détenus par ces sociétés ne peuvent faire l'objet d'aucun remboursement.
Ces sociétés sont tenues de distinguer en comptabilité les recettes provenant de contrats conclus postérieurement au 1er janvier 1972 ainsi que les droits à déduction visés au premier alinéa du présent article.

Art. 12. — Toute personne qui demande le

bénéfice des dispositions du présent décret peut, à la demande de l'administration, être tenue de présenter une caution solvable qui s'engage, solidairement avec elle, à reverser les sommes dont elle aurait obtenu indûment le remboursement.

Art. 13. — Ne peuvent prétendre au bénéfice des remboursements prévus aux articles 2 à 6:
Les assujettis qui peuvent se prévaloir de l'article 298-4 (4°) du code général des impôts;
Les personnes qui réalisent des opérations soumises à la taxe sur la valeur ajoutée à titre occasionnel.

Art. 14. — Un décret en Conseil d'Etat fixera, avant le 1er janvier 1973, les conditions dans lesquelles les établissements publics pourront bénéficier des remboursements prévus au présent décret.

Art. 15. — 1. Par application de l'article 7 de la loi de finances pour 1972 susvisée, sont abrogés:
L'article 1er de la loi n° 70-601 du 9 juillet 1970;
Les articles 271-2 *c* et 298-4 (2° [2e alinéa]) du code général des impôts, ainsi que l'article 271-3 du code susmentionné en ce qu'il a de contraire aux dispositions du présent décret.
2. Sont abrogés les articles 216 *ter* (3°), 216 *quinquies*, 221-2, 227, 228 et 228 *bis* de l'annexe II au même code.

Art. 16. — Le ministre de l'économie et des finances et le secrétaire d'Etat auprès du ministre de l'économie et des finances, chargé du budget, sont chargés de l'exécution du présent décret, qui sera publié au *Journal officiel* de la République française.
Fait à Paris, le 4 février 1972.

Jacques Chaban-Delmas.

Par le Premier ministre:

Le ministre de l'économie et des finances,
Valéry Giscard d'Estaing.
Le secrétaire d'Etat auprès du ministre de l'économie et des finances, chargé du budget,
Jean Taittinger.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM

Proposals for a "tax credit"-system

The Budget Speech in March 1972 contained proposals for a new "tax credit"-system. This new approach will bring together large parts of the British personal taxation and social security systems. In October 1972 the Government presented a "green paper" to Parliament describing the new scheme. Because of its significance the first two chapters of the "green paper" are reprinted in this issue. [1] *Other chapters will be reproduced in later issues.*

Chapter 1

Background to the Proposals

1. A complete merger of income tax and social security — whatever its theoretical attractions — is impracticable both on grounds of cost and administrative considerations. It would not, for example, be possible to merge the administration of supplementary benefit with the income tax machine, since it is not part of the normal administration of income tax to take into account rent and rates and other special needs nor to respond immediately to changes in these factors. Nevertheless, there is undoubtedly a degree of avoidable overlap between the two systems, and as each system, taken by itself, is complex in its operation and expensive to administer, rationalisation and simplification would yield substantial advantages.

2. Quite apart from the elimination of overlap between the two systems, there are complexities in the PAYE system on its own which need to be simplified. This system has operated fairly and well for nearly thirty years. But it is complicated and difficult to understand. It requires the employment of some 35,000 staff in the Inland Revenue and perhaps as many again in industry. It has been found to lack flexibility and governments of both political parties have found it difficult to adapt it to accommodate changes that they have felt desirable. Nor would those handicaps have been removed even if the system had been operated fully by computers. The complexities of PAYE arise partly from the annual coding, and partly from its cumulative basis which requires the tax office to maintain contact with all employees through their employer no matter how frequently they change jobs — and there are about ten million job changes a year. Any major simplification must start by avoiding the need for these features.

3. The overlap between the two systems which exists in the area of cash benefits for families with children and the Inland Revenue's dealings with the same families

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is a serious problem. The combination of the full tax allowances and family allowances alone results in nine different rates. Nor can it really be said that the differing amounts have a logical connection with one another. As a result, the system of family support is more costly to administer and more difficult to understand than is necessary. People in the tax field can benefit from tax allowances. All families with two or more children can claim family allowances, which are then subject to income tax and to a special tax deduction (the "claw-back"). A further set of increases for children is available to national insurance beneficiaries. Low earners with children can claim family income supplement.

4. Between them these systems provide substantial help for those who are bringing up children on low incomes. But because the various allowances are either flat-rate, with entitlement determined by reference to the number of children, or graded and selective by reference to age and income, there is scope for simplification and integration. Moreover, it would be desirable that any change should be towards a system that was more readily comprehensible than the present arrangements, so that a low income family could understand without difficulty what help they were entitled to, and should also make its provisions available, so far as possible, automatically — without a separate means-test.

5. As things are, a man who is receiving a family income supplement loses 50p in benefit if he increases his earnings by £1, and in some cases he may lose 35p [2] as well in income tax and national insurance contribution, leaving him only 15p better off. Cases where there is so marked a disincentive effect are of course exceptional, even if the possible loss of other means-tested benefits is taken into account. A comprehensive scheme for cash benefits, however, with a constant tax rate running right through the range of normal earnings, would substantially improve this situation.

6. The pensioners form another large group who in theory come within both the tax and social security systems; however, in practice many of them are well below the tax threshold (*i.e.* their incomes are too low to give rise to any liability to tax and they therefore get less than the full benefit from their tax allowances). On the social security side the White Paper "Strategy for Pensions" has outlined a plan for the development of national insurance benefits and of occupational pensions which "will provide independence in retirement, without recourse to supplementary benefit, for a steadily increasing proportion of the community". [3] But this is a long-term aim. In the meanwhile about two million pensioners receive additional help from the supplementary benefit scheme, and there are also two or three million retirement pensioners, including very many elderly widows, who are not eligible for supplementary benefit, but have incomes only a pound or so above the supplementary benefit level. Many of them are finding it hard to manage on an income which cannot attract the full benefit of the tax allowances under the present system.

7. These problems led the Government to seek a way to simplify and reform the whole system of personal tax collection and, at the same time, to improve the system of income support for poor people.

2. Assuming a basic rate of tax of 30 per cent: this is the basic rate of tax under the unified system provisionally fixed for 1973/74 and it is taken as the basic rate under the tax-credit scheme for illustrative purposes throughout this Green Paper.

3. Cmnd 4755, paragraph 16.

From this study have come the present proposals, which go a long way to meet both sets of problems within a single scheme.

8. In the next chapter the scheme itself is described in some detail (though the Green Paper does not attempt to cover all the matters that will eventually need to be settled, but which will first need to be considered in the light of public discussion). Chapter 3 sets out the simplifications in the income tax system which are inherent in the scheme. Chapter 4 examines three important issues which it raises. Chapter 5 considers its social impact and Chapter 6 its financial and budgetary implications. The assessments in this Green Paper of the effects, including the costs, of the scheme are throughout related not only to the illustrative levels of credits (see paragraph 9), but also to present levels of population, income, personal tax allowances and social security benefits. As is explained in paragraph 117 below, by the time the scheme could be implemented all these levels will have changed, as may the relativities between them. To the extent to which this happens there will be changes also in the effects; and all the calculations which follow must therefore be regarded as essentially illustrative.

Chapter 2

The proposed new system

ESSENTIALS OF THE SYSTEM

9. Those who came within the scheme would receive an entirely new form of tax credit for themselves and their families, which would take the place of the main income tax personal allowances and family allowances. It will not be possible to settle the level of the credits until close to the date at which the scheme is to come into operation, but as is explained in paragraphs 96 to 99 below it has been assumed for illustrative purposes in the Green Paper that the credits would be £4 for a single person, £6 for a married man and £2 for a child. These credits would normally be available for those in work and for occupational pensioners through the employer; for people drawing national insurance benefit or otherwise temporarily out of employment they would be available through the Department of Health and Social Security, or the Department of Employment. The question whether child credits should be paid to the father or the mother is however a matter which the Government regard as entirely open — see paragraphs 82 to 91 below.

10. Each individual in the scheme would be issued with a notification informing him of the amount of credit to which he was entitled. He would give this to his employer or make it available to the authority from whom he was receiving a pension, benefit or other relevant payment. In making payment of wages etc the employer or other payer would deduct tax at the rate of 30 per cent. Against this tax the employer would set the amount of credit to which the taxpayer was entitled. If credit exceeded tax, the difference would be paid to the taxpayer; if tax exceeded credit the difference would stand as a tax deduction just like PAYE.

11. The credits would thus perform two distinct functions. In the first place they would, like the present income tax allowances, graduate any income tax due broadly

according to family circumstances, by offsetting in part or in whole the tax that would be deducted from earnings, pension or national insurance benefit. Secondly, the credits would do something that the tax allowances do not do. Since they would be payable automatically week by week, they would become a form of additional income to the extent that they exceeded the tax which was currently due. If the credits for the whole tax year exceeded the tax payable for the year they would be a form of social benefit and would provide a new means of income support.

12. In any pay period in which the credit was not fully used by being set against tax the unused credit would be paid out as an addition to the wage or salary; there would therefore never be any need to carry forward unused credits. This differs from the present system. If, under PAYE, a person's earnings in a particular week fall below his tax threshold the part of his tax allowances that is not used may have to be carried forward for use in subsequent weeks, or backward to give a repayment of tax paid in previous weeks. This is because both pay and tax are accumulated through the whole of the tax year. This "cumulation" would no longer be necessary under the tax-credit system.

WHO WOULD BE IN THE SCHEME

13. The scheme would apply to people who regularly work for an employer, to office holders, to retirement pensioners and people in receipt of other national insurance benefits and to certain people who have retired from employment with an occupational pension before reaching the qualifying age for national insurance retirement pension.

14. For the reasons set out in paragraph 92 it would be necessary to have for employees a minimum qualifying level of earnings for entry to the scheme. The level proposed is that which will bring an employee into liability for earnings-related national insurance contributions as a Class I contributor under the Government's new pension proposals. The White Paper "Strategy for Pensions" indicated that the minimum qualifying level for contributions to the new scheme would be set at about one-quarter of average male industrial earnings [4]: in present terms this would be about £8 a week.

15. The credits would be payable if a person qualified for any of the principal benefits of the national insurance scheme. A number of these benefits which are at present tax free — unemployment, sickness and injury benefit, maternity allowance and invalidity pension — would, as a corollary to their giving title to a tax credit, become subject to tax, as was the original position under the national insurance scheme. This would remove the present anomaly whereby tax-free benefits are paid in place of taxable earnings. Where national insurance benefits were taxed in this way people who qualified for them but who were normally self-employed would, while on benefit, come temporarily within the scheme and receive credits; the tax paid and credits received would then be taken into account in assessing their annual tax liability under Schedule D.

16. It is not proposed to bring within the liability to tax either attendance allowance or the pensions paid on account of war or industrial disablement; at the same time

4. Cmnd 4755, paragraph 40.

these pensions and allowances would not of themselves give entitlement to credit where (exceptionally) this did not already exist.

17. Child credits would be at a sufficient level to replace the increases of short-term national insurance benefit which are payable for dependent children. But to the extent that the special children's allowances payable to widows and to invalidity and retirement pensioners were higher than the child credit, the balance would continue to be paid as a taxable benefit within the national insurance scheme.

18. The scheme would also extend to anyone with a flat-rate national insurance retirement pension or widow's benefit whether this was at the full or a reduced rate and regardless of the class of contribution on which it was based. War widows and women with widows' benefits under the industrial injuries scheme would also be included. The majority of retirement pensioners and widows do not at present pay income tax because their incomes are below the tax threshold. For them, as for invalidity pensioners, the deduction of tax and the award of the credit would normally result in a significant net increase in their income.

19. There are many people who retire somewhat before the age at which national insurance retirement pension is paid. If they received a pension which took the place of full-time earnings and which was above the qualifying level for admission to the scheme, that is, in current terms £8 a week, they would remain within the scheme. Where a person had retired only a few years before becoming entitled to national insurance retirement pension, continuity of credit entitlement would be particularly desirable. It is therefore proposed that a person who had been within the scheme for a substantial period and retired on pension shortly before reaching State retirement age should continue to qualify for tax credits, even though his pension was below £8 a week. To qualify in these circumstances he would have to have a pension or annuity from approved superannuation arrangements of an amount at least equal to the minimum level of flat-rate national insurance retirement pension, currently £1.89 a week. He would not however be eligible to remain within the scheme if he took up self-employment. Since the main purpose would be to bridge only a relatively short gap in membership of the scheme it would seem reasonable to confine it to those who had reached the age of 60.

20. On the basis set out above about 90 per cent of the adult population and their dependants would be in the scheme. For reasons which are discussed in paragraphs 92 to 95 below, the scheme would not — at least at the start — include the self-employed or those outside the field of employment altogether (unless they qualified on other grounds: for example, as national insurance pensioners).

21. The position of working wives needs special consideration. The husband would normally receive the higher rate of credit in just the same way as at present he receives the married tax allowance. The important issue is the future of the wife's earned income relief, which is given in addition to the married allowance. For the reasons set out in paragraphs 74 to 81 below, the relief would continue to be given as a tax allowance against the wife's earnings and would not be converted into a credit. This would mean that in the normal case the married woman at work would not be within the scheme in her own right.

22. The wife's earned income relief would as at present also apply to an occupational

pension or to a national insurance benefit earned by the wife's own contributions, but not to a retirement pension based on her husband's contributions.

23. In the very few cases where the husband was not within the scheme and was not self-employed the wife would, exceptionally, be entitled as the family breadwinner to the credits appropriate to the family, if her own circumstances qualified her under the general rules for entry to the scheme.

24. *Summary*

(1) The following groups would be included:
   (a) any employed person normally earning above the qualifying level, in present terms about £8 a week;
   (b) all the main national insurance beneficiaries, both long and short term;
   (c) most occupational pensioners (subject to the limitations set out in paragraph 19 above).

(2) Married women at work would continue to receive wife's earned income relief as a tax allowance. Where a married woman was the breadwinner she would receive credits for her family if she came within any of the categories in the preceding paragraph.

THE NEW CREDITS

25. There would be only three rates of credit: (1) for a single man or woman, (2) for a married couple, (3) for each dependent child. The credits would be expressed in weekly amounts (converted to monthly amounts for those in monthly paid employment). If a change in personal circumstances occurred, *e.g.* marriage, or the birth of a child, the revised credit would normally be payable with effect from the week in which the change occurred. Thus for the year in which the child was born the child credit would be due for the appropriate part of the year, *i.e.* for the periode after the date of birth. Similarly in the year of marriage the wife would receive the single credit up to the date of marriage and the wife's earned income relief thereafter (the husband of course would also receive the married credit from the date of marriage). The levels at which credits might be fixed are discussed in paragraphs 96 to 99 below.

26. For those within the scheme, credits would be available in respect of a wife and children resident in this country. The United Kingdom is also a party to a number of reciprocal agreements with other states whereby families not in this country are treated as resident here for the purpose of certain national insurance benefit claims. On entry to the EEC this arrangement would extend to claims for family allowances. In all such cases there could similarly be a commitment to pay tax credits under the new scheme for dependants overseas. The position of families abroad in countries with whom we do not have such agreements would however require further study: at present family allowances, unlike income tax child allowances, are not normally given for children abroad.

27. An important feature of the scheme is that a person who had singlehanded responsibility for bringing up children would be entitled to the married rate of credit. The income tax system already recognises the special position of the single parent by granting an additional personal allowance for the children and the FIS scheme allows the same scale of benefits whether there are one or two parents in the family. The

new credits would provide a valuable source of help for a person bringing up children on his or her own.

28. There would be a single rate of credit for each dependent child, which would not vary with the age of the child, the number of children in the family, or the income of the child. This credit would take the place of family allowances, which would cease on the introduction of the scheme. It is a major attraction of the tax-credit system that the present family support provisions can be simplified. It is an important element in this simplification — for employers, taxpayers and Government alike — that the credit for each child should be at the same rate. To protect the position of families with older children who at present qualify for a higher rate of income tax child allowance, a relatively generous rate of child credit would be needed: its level is considered in paragraph 98.

29. The credit would continue so long as the child was in full-time education. In the normal case in which the child completed his or her education at the end of a summer term the credit would cease from a common fixed date following the end of the term.

30. The present income tax child allowance is reduced if the child's own income exceeds a certain amount. Such a restriction in the new scheme would give rise to great administrative problems. The child credit would therefore be paid in full irrespective of the child's own income. In calculating the tax on the child's own income however only a reduced personal allowance would be given; the value of this would correspond to the level of income which the child can now receive without affecting the parent's child allowance. The restriction in the allowance would end in the year in which the parent ceased to receive the child credit.

PERSONAL ALLOWANCES CORRESPONDING TO THE TAX CREDITS

31. Those who were not within the tax-credit scheme would receive personal tax allowances corresponding in value to the single, married and child credits excluding the standard expenses deductions (see paragraph 59). Where a person was within the scheme for part of the year only *(e.g.* if he entered or left self-employment) he would receive tax credits for the weeks for which he was within the scheme and corresponding personal allowances for the remaining weeks.

HIGHER RATE TAX

32. For those liable to tax at higher rates under the unified tax system which is to be introduced from 6 April 1973, the main personal tax allowances would continue to be given against higher rate tax, both for those within the tax-credit scheme and those outside it. From 1973 onwards the deduction of tax at higher rates will be merged with the ordinary PAYE system: about 150,000 taxpayers will be affected. Similar unified arrangements would continue under the tax-credit system. The tax deductions would be on a non-cumulative basis; if this resulted in an overpayment of higher rate tax, the matter would be put right in the assessment made at the end of the year, which would also take account of other income.

33. In calculating deductions of higher rate tax the main income tax personal allowances, *i.e.* the single and married allowance and the child allowance, would be given currently; similarly the other reliefs (including in particular interest on property loans) would be allowed by repayment of tax at the end of the year. If a person

liable at higher rates had two or more employments, employers might be asked to make deductions at special rates to approximate as closely as possible to his true liability.

34. A married couple whose earnings jointly took them into liability for higher rate tax but who elected to be taxed separately on their earnings would have tax deducted during the year as if they were two single persons each receiving the single credit against their respective earnings.

35. A system of non-cumulative deductions involving more than one rate of tax tends inevitably to result in some overcollection of tax, particularly where earnings fluctuate above and below the starting point for higher rates, or if earnings for a period move up to a higher rate band. The number of people affected would be relatively small. Nevertheless it would be important to devise procedures to avoid this where earnings rose exceptionally above the point of higher rate liability in a particular week, *e.g.* because of a special bonus or a retrospective pay adjustment. There will be consultations to see whether satisfactory and workable rules can be devised.

ADMINISTRATION OF THE SCHEME

How the credits would be paid

36. A card would be sent to every employed person within the scheme showing his credit entitlement — *i.e.* single, married, or family with one, two, etc children. He would hand the credit card to his employer so that he could be paid the appropriate credits week by week (or month by month in the case of monthly-paid staff) with his pay.

37. PAYE in its present form would go. Employers would deduct tax from pay — generally at the basic rate — on a non-cumulative basis. The new system would work as follows. On making a payment of wages, salary or pension, the employer would look up the tax due at the basic rate and deduct it from the pay. (He would also make any additional deductions that might be required — see paragraphs 32 and 71). He would then add the credit for the relevant pay period at the rate shown by the employee's credit card. Thus, if the tax was greater than the credit there would be a net deduction from the employee's pay; if, however, the credit was more than the tax there would be a net addition to the pay. Deductions from pay on account of national insurance contributions would continue to be made separately.

38. Employers would be responsible for paying credits to all employees for whom they held a credit card. When an employer took on a new employee he would normally pay credits from the first pay day; but provision would also be made for him to pay credits which had not been issued for previous weeks — usually because the employee had had a short gap between employments without qualifying for national insurance benefit. Discussions will be held with employers' representatives and with the trade unions to work out these arrangements. Any credits still remaining unpaid would be dealt with after the end of the tax year. When an employee left an employment his employer would hand the credit card back to the exployee for use at his next employment. He would at the same time give him a certificate of pay and credits received and income tax and national insurance contributions paid in the employment.

39. A person who had two or more employments concurrently would normally obtain his credits through his main employer by depositing the credit card with him;

tax would then be deducted at the full basic rate from the pay from the other employments. If someone was temporarily without his credit card, because he had lost it or failed to obtain it from his previous employer, an emergency procedure would operate on the lines of the PAYE emergency coding; subject to suitable safeguards, this would allow him a single person's credit while matters were sorted out. This procedure would also cover anyone who entered qualifying employment before being issued with a credit card.

40. Payment of credits would continue during periods of entitlement to national insurance benefit, as explained in paragraph 15. Those getting unemployment benefit would receive their credits through the employment exchange. If someone who was sick was still receiving pay from his employer he would normally continue to receive his credits from his employer too; indeed, it would probably be convenient to make the payment of credits generally an employer's responsibility during the first weeks of sickness. If, however, sickness was prolonged the credits would be made available through the offices of the Department of Health and Social Security. If supplementary benefit was claimed, either in this case or in any other gap in employment, the credit would be fully taken into account as one of the claimant's resources in reckoning his entitlement. Tax at the basic rate would be deducted from unemployment, sickness and invalidity benefit; supplementary benefit would not of course be taxed.

41. The credits for retirement and widow pensioners would be taken into account together with a deduction of income tax at the basic rate in arriving at the amount of their pension to be shown on the pension order book. Since pensioners would receive their credits with their benefit they would not, if they entered employment, have a credit card to give to their employer. In such a case the employer would deduct tax from all the wages paid; this would produce the right result automatically.

42. To avoid problems for someone who was normally within the scheme but who was temporarily out of employment and could not draw his credits because of ineligibility for either sickness or unemployment benefit, credits would be allowed to continue during a period of short duration in which the qualifying conditions for credit were not met. Apart from this, where a person ceased to be entitled to be within the scheme credits would continue until the end of the income tax year only so long as the person remained in employment (even though earning less than £8 a week) or, if he was out of a job, only for so long as he was registered for work at the employment exchange. At the end of the year, unless he had meanwhile re-entered employment with earnings above the qualifying level or had become a national insurance beneficiary, he would not be eligible to continue within the scheme and would not be issued with a new credit card until he came within it again.

43. Some people will move between employment and self-employment in the course of a year. For that part of the year for which they were not entitled to credits they would be able to claim personal tax allowances. These could be used against the income tax which they had paid at any time during the year, to the extent that it exceeded the credits that they had actually received. It would be necessary for those concerned and others who had claims to repayment of income tax, to keep their certificates of pay and tax from each employ-

ment so that their claims could be dealt with speedily at the end of the year.

Adjustments at the end of the year

44. Nine out of ten taxpayers within the scheme would need no adjustment of their tax liability at the end of the year and the proposals outlined in this and the next chapter have been specifically designed to achieve this end. Adjustments would be necessary, however, where for example a person was liable to higher rate tax or to the investment income surcharge, or where he was entitled to reliefs which could not be given through the mechanism of the tax-credit system.

45. Claims to the income tax personal allowances that would remain for some members of the scheme would also be dealt with by repayment after the end of the year. The repayment would be limited to the excess if any of income tax paid over credits received, because only to this extent would there have been any *net* liability to tax.

Running the scheme

46. The way in which the scheme would be administered will be the subject of further detailed study. Computers would be used for the issue of credit entitlements and for such end of year tax adjustments as were still needed, but the aim would be that people would deal with a local office wherever possible. Within the Inland Revenue some PAYE work has had to be moved out of London to the regions because of staffing difficulties and this work would mostly remain where it is; so also would the work that has been centralised in preparation for automation, including that at East Kilbride.

47. The proposals for a tax-credit system as outlined in this Green Paper would en-

able an eventual saving of some 10,000 to 15,000 civil servants to be made. It is hoped that these reductions in staff could be achieved to a large extent through the process of natural wastage. The Government will be discussing the implications of the scheme with the representatives of the staff who would be affected by it.

Timetable

48. The changeover from our present tax and social security arrangements to the new system of tax credits would be an enormous undertaking requiring most careful planning. This and the necessary preparatory work for a computer system on the scale required must take a considerable time. If the tax-credit scheme on the lines set out in this Green Paper is generally acceptable, the Government would hope to introduce the necessary legislation for it during the course of the present Parliament, but the preparatory work before such a massive change could be made would take a good deal longer. It would take some five years to bring the scheme into operation but the timetable must depend on when a Parliamentary Select Committee might report and on the timing of the legislation.

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JOHN. N. TURNER *:

CANADA: BILL C - 222**

A few days after the election, the Prime Minister stated the government's intention to put Bill C-222 back on the order paper when Parliament returns to work. 1

I renewed that pledge earlier this month. I repeat it tonight.

We want to get on with this budget bill. In addition to the manufacturing incentives I will discuss later, Bill C-222 included a number of personal tax changes. For example, we want to increase the special exemption for persons 65 and over to $ 1,000 from $ 650, and to do the same thing for blind and disabled persons. We want to introduce a new, $ 50-a-month tax deduction for full-time students undertaking post-secondary education or training, and we want to expand the kind of medical care and treatment expenses which qualify for tax deduction purposes.

Bill C-222 also proposed a number of changes in the Income Tax Act arising from tax reform, and while I am not here to talk about tax reform tonight, it's not a subject that I will tiptoe past now or in the future.

Tax reform has taken on a meaning of its own in Canada — the Carter Report 2, white paper and reform legislation of 1971. In a more general sense, of course, reform is an ongoing thing. The annual brief of the Canadian Bar Association and the Canadian Institute of Chartered Accountants (C.I.C.A.) made this point last March in discussing continuity of reform. I certainly do not intend to treat the Income Tax Act as something sacred or unchangeable. I will deal with it in my capacity as Minister of Finance as I dealt with the Criminal Code while I was Minister of Justice. Only if our laws command respect will they be observed, and they will not be respected if they are allowed to become out of date, unfair or unworkable.

So I have said that I want to smooth out the rough edges of tax reform. We will continue to look at changes related to the legislation enacted in 1971. The government is already committed to review the definition of charitable organizations; the taxation of agricultural producers; the taxation of retirement income plans; and the taxation of international income. And this is not an exhaustive list.

In this connection I might mention one alleviating change concerning the payment of special tax-free dividends out of old surpluses. Many corporations have tripped up in the early months of the new system by not filing the proper elections at the time of the special dividend but we are now prepared to recommend acceptance of these late elections up to the end of this year.

The proposed change in the law would

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* John N. Turner, Q.C., M.P., P.C. is currently Finance Minister.

** Text of an Address to the 24th Tax Conference of the Canadian Tax Foundation, Toronto, November 28, 1972.

1. Bill C-222 (an Act to amend the Statute law relating to income tax).
2. Report of the Royal Commission on Taxation 1966.

validate any late election under subsection 83(1) [3] providing
(a) it was made by December 31, 1972
(b) it was valid in all other respects
(c) there was, at the time the special dividend was paid, a directors' resolution or other written authorization which clearly indicated the corporation's intention to have the dividend come from pre-1972 surplus.

As practitioners and as members of this Foundation you are concerned not just with the results of tax policy formulation, but with the method of making policy as well. The annual submission of the Bar-C.I.C.A. joint committee made both detailed recommendations on provisions of the Income Tax Act and general suggestions about procedures the government should follow in the policy process.

I agree entirely with the view taken by the committee that the private sector can offer valuable assistance in the preparation of detailed legislation. It makes good sense, and in fact we are already moving along some of the lines laid out in the brief.

Certain traditions of budgetary secrecy and parliamentary process must be observed in both the policymaking and legislative phases of government. I will not hide behind these traditions or use them as excuses for lack of consultation and communication with tax experts. But we must all recognize that such restraints do exist. I am not sure that a formal advisory body as suggested by the brief is consistent with our obligations to Parliament or sufficiently flexible for its intended purpose. I would like to reserve further comment on that point. However, we intend to draw on professional, outside advice more frequently. We also agree that the advance publication of regulations in draft form is useful — both to permit corporate managers and advisers to assess their positions sooner and to attract comment on our progress in translating policy into precise and workable rules. We have followed this procedure pretty consistently for some time.

In addition to tax reform amendments and

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3. The text of this section reads:
SEC. 83. Dividend out of tax-paid undistributed surplus or 1971 capital surplus.
(1) Where at any particular time after 1971 a dividend becomes payable by a Canadian corporation to shareholders of any class of shares of its capital stock, if the corporation so elects in respect of the full amount of the dividend, in prescribed manner and prescribed form and at or before the particular time or the first day on which any part of the dividend was paid if that day is earlier than the particular time, the following rules apply:
(*a*) the dividend shall be deemed to be payable out of the corporation's tax-paid undistributed surplus on hand to the extent that the portion of the dividend designated in the election to be payable out of such surplus does not exceed the corporation's tax-paid undistributed surplus on hand immediately before the particular time:
(*b*) the dividend shall be deemed to be payable out of the corporation's 1971 capital surplus on hand to the extent that
(i) the amount, if any, by which the portion of the dividend designated in the election to be payable out of such surplus exceeds the corporation's 1971 undistributed income on hand immediately before the particular time,
does not exceed
(ii) the corporation's 1971 capital surplus on hand immediately before the particular time;
(*c*) no part of the dividend shall be included in computing the income of any shareholder of the corporation by virtue of this subdivision; and
(*d*) in computing the adjusted cost base to any shareholder of the corporation of any share of the capital stock of the corporation owned by him, there shall be deducted in respect of the dividend an amount as provided by subparagraph 53(2)(*a*)(i).

personal income tax changes, Bill C-222 proposed two basic changes affecting manufacturing and processing corporations — a two-year write-off for their machinery and equipment and a lower corporate tax rate on their profits. I intend tonight to speak for a few moments about the second of those changes, the reduced rate. We've been working hard to devise rules to implement the proposal that will be as fair, effective and uncomplicated as possible. I think you will be interested in our progress with what technically is a complex problem.

If I may review the measure quickly, Bill C-222 proposed to reduce to 40 per cent the top rate of corporate tax applicable to manufacturing and processing profits earned in Canada.[4] At the same time, the effective rate of corporate tax applying to manufacturing and processing profits earned in Canada and eligible for the small business deduction would be reduced to 20 per cent from 25 per cent. These changes would be effective January 1, 1973, even if approved by Parliament at a later date.

My budget speech explained the reasons for this step. I spoke of the importance of spurring production and employment in manufacturing industries, of the importance of these industries to the growth of the economy as a whole, and of the need for them to form the leading edge of technological advance in this country.

If we are to sustain and improve our position as a trading nation, we cannot do so without a strong manufacturing sector. But we find ourselves in a period of intensified competition from foreign manufacturers, in some instances supported by export subsidies or protectionist measures. I took some time during the budget speech to explain how the positions of other economic sectors differ in my view from that of manufacturers and processors. I spoke of the incentives already available to the resource industries. I discussed the somewhat more sheltered position of service industries, and the very great adjustments already made by the agriculture and fishing industries, with the help of wide-ranging programs of government assistance. So the policy is quite clear. We want the

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4. The rate of corporate income tax for 1973 is 49%. Section 18(1) of Bill C-222 inter alia provides for a special credit of 9% in this case.
18. (1) The said Act is further amended by adding thereto, immediately after section 125 thereof, the following section:
Deduction from corporate tax:
Manufacturing and processing profits
125.1 (1) There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to the aggregate of
(a) 9% of the lesser of
(i) the corporation's Canadian manufacturing and processing profits for the year, and
(ii) the amount, if any, by which the corporation's taxable income for the year exceeds the aggregate of
(A) where the year ends after 1976, the lesser of the amounts determined under paragraphs 124(2)(a) and (b) in respect of the corporation for the year,
(B) the least of the amounts determined under paragraphs 125(1)(a) to (d) in respect of the corporation for the year,
(C) 2 times the aggregate of amounts deducted under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation, and
(D) the amount, if any, by which the aggregate of the corporation's Canadian investment income for the year and its foreign investment income for the year (within the meanings assigned by subsection 129(4)) exceeds the amount, if any, deductible under paragraph 111(1)(b) from the corporation's income for the year;

application of the policy to be clear as well. Grey areas in tax administration are no more popular with governments than with taxpayers.

To apply the reduced rate, a taxpayer must be able to answer two questions:

Am I carrying on a manufacturing or processing activity?

If I am, how much of my business income is subject to the reduced rate?

The first question is easier to answer than the second. It was possible for us to incorporate some general rules and some specific exclusions in the bill itself. [5] Since then, we have announced that the government would not try to define exhaustively the terms "manufacturing and processing" as such.

The bill excludes certain activities, such as farming or fishing, logging construction and various activities associated with mineral extraction. The bill also limits use of the reduced rates to corporations whose revenue from manufacturing and processing is more than 10 per cent of their business revenue.

Rather than attempt to define the terms themselves, manufacturing and processing would be given the common usage based on accumulated experience, on the court decisions which already exist and on the decisions that can be expected to appear in future as industrial activity changes.

We have stated the view that any catalogue of the activities in Canadian industry would quickly become out of date. It seems to us to be much more realistic to proceed on the basis of an existing consensus and practice, written and unwritten. In marginal cases where the taxpayer is uncertain about the character of an activity, I want to state again that the Department of National Revenue has undertaken to provide advance rulings and interpretations. Until Bill C-222 becomes law, these interpretations and rulings cannot be binding. But informal opinions available in the meantime will help taxpayers to proceed with business decisions.

When a taxpayer determines that he is in fact carrying on a manufacturing or processing activity, he must address himself to the second question, that is, how much of his income will be eligible for the manufacturing rates.

We have wrestled with this problem

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5. Section 18(3) provides in this respect:
Definitions
(3) In this section,
"Canadian manufacturing and processing profits"
(a) "Canadian manufacturing and processing profits" of a corporation for a taxation year means the amount, determined under rules prescribed for that purpose by regulation made on the recommendation of the Minister of Finance, of the corporation's income for the year from the manufacturing or processing in Canada by it of goods for sale or lease; and
"Manufacturing or processing"
(b) "manufacturing or processing" does not include
(i) farming or fishing,
(ii) logging,
(iii) construction,
(iv) operating an oil or gas well,
(v) extracting minerals from a mineral resource,
(vi) processing, to the prime metal stage or its equivalent, ore from a mineral resource,
(vii) producing industrial minerals,
(viii) producing or processing electrical energy or steam, for sale,
(ix) processing gas, if such gas is processed as part of the business of selling or distributing gas in the course of operating a public utility, or
(x) any manufacturing or processing of goods for sale or lease, if the gross revenue of the corporation for the taxation year in respect of which the expression is being applied from the manufacturing or processing by it in Canada of goods for sale or lease was less than 10% of its gross revenue for the year from all sources.

through the summer and fall, and it has not been an easy task. Many hundreds of millions of dollars in taxable income are involved. In some respects we are working in uncharted country. Yet we are obliged to be selective. For example, a manufacturing corporation may have profit-making distribution, wholesaling and perhaps retailing activities in addition to its manufacturing operations. It would contradict our policy intent to permit an integrated corporation to apply the special rate to its profits from these other operations. This spillover would before long disrupt normal commercial practices and patterns. It would give an immediate advantage to integrated companies over retailers; it could force or invite manufacturing companies to add new wholesaling or retailing activities to their operations (in order to extend use of the low rate to profits from such operations); by the same token, a retailer denied the special rate might seek to get into manufacturing (in order to apply the rate of his retailing income).

I do not imply that I am for or against integration, in general or in particular sectors of our economy. I am simply saying that integration should not be the accidental or unforeseen result of a tax change introduced to achieve quite different purposes.

I want to talk about our approach in defining income subject to the reduced rate and to outline some of the alternatives we have considered and set aside. We think our proposed solution is based on familiar and reliable concepts and provides a method that will blend the incentives smoothly into our tax structure. I won't take you into the full detail orally, but my written text will be distributed and it will give you a fuller picture. We hope that before the end of the year we can issue a comprehensive news release on the definition of eligible income, containing essential features of the regulations that will appear after Bill C-222 becomes law.

There are two ways to approach this problem of profit allocation. Perhaps the most obvious one is some form of divisional accounting. This method would account for each profit-making activity of a corporation as if it were a separate enterprise. This is where we started, and we pushed this option hard, but we were forced to abandon it.

Divisional accounting would have to be based on an accepted, consistent, set of principles. While accounting principles used in published financial statements are becoming more highly developed, there is little consistency in the area with which we are concerned — that of internal accounting among divisions of a company.

The key difficulty is in establishing a transfer price on goods as they move from one phase of a company's operation to another. It is one thing to say that this is simply a matter of applying a "fair market value" principle; it is quite another to apply this principle to the countless variations of products and the many ways in which they are distributed.

We had hoped to get some help with this problem from experience with the application of the federal sales tax, which is levied at the end of the manufacturing stage. But this, too, has proved impossible for several reasons. The sales tax value is not determined consistently between industries and it is often, in fact, simply derived or hypothetically established by a discount from a retail price. Food, drugs, publications and many other manufactured goods are exempt from sales tax. Finally, there is no current consistency in allocation of costs, such as pension contributions,

interest and taxes, between manufacturing and other functions.

So we have set aside alternatives involving any sort of stop-action snapshot of an industrial operation which would attempt to break into a continuous process and isolate the contribution of a particular range of activities to total income. We do not think we could avoid arbitrary and unfair results, because the method would apply inconsistently to taxpayers in comparable circumstances.

The other approach we have explored and propose for adoption, is a formula method. We felt that the formula should make use of, and be most influenced by, those factors which contribute most to generating business profits. What are these key factors? Ideally, they should be basic to all corporations, they should be reasonably easy to measure, and they should be recognized as commonly-employed yardsticks in other formulae of this kind.

We believe the two factors that best meet these tests are labour and fixed capital. In one combination or another they are virtually always present in a manufacturing operation. We have developed what is essentially a mathematical tool to represent that combination as it contributes to a corporation's total income and to a corporation's income from manufacturing.

It is people who carry out the profit-making activity of a corporation, and they are remunerated on the basis of the services they render. Their wages and salaries are as exact a measure as we could hope to establish for the amount of profit they contribute to a corporation. There are a good many precedents for use of a labour factor in formulae of this kind.

Fixed capital is an equally essential factor in generating corporate profit. Every business uses capital in the production process. It has become customary in measuring profitability or success of an enterprise to relate its income to capital employed. It, too, is a common concept of allocating profits. The measurement of capital and its cost is a matter more likely to generate differences of opinion. But we believe that our proposal to establish an annual cost of investment in depreciable assets should suit taxpayers well.

We recognize that a formula will not work perfectly for every corporation, if only because the circumstances of individual corporations differ so widely. However, we think the formula is reasonable and comes as close as possible to the general situation in industry. We think the discrepancies, favourable and unfavourable to the taxpayer, between the results of this formula and a theoretical ideal will be minimal.

We often need complex tax law to deal with complex business affairs, because this is the only way to guarantee accuracy and fairness. However, in this instance we hope to combine simplicity of law with certainty and reasonable results in its application. Where we came to choices in this design, we tended to go for simplicity at some minor sacrifice of precision. Tax laws are complicated enough and where I can do so without significant loss of precision, I will aim to make them simple.

The formula puts together two elements in order to establish an amount of income to qualify for the reduced rates.

First, it looks at the total manpower bill and at the portion of that bill devoted to manufacturing activity.

Secondly, it looks at the total fixed capital of the corporation, and at the amount of that fixed capital utilized in its manufacturing activity.

The amount of *manufacturing* labour and capital, over the *total* labour and capital,

is the proportion of the corporation's eligible business income which is taxed at the reduced rate.

The formula employs the concept of "active business income", which is familiar to you and embodied in the Income Tax Act. This income is adjusted to take out investment income, foreign income and mineral resources income, that is, incomes from non-qualifying sources.

The remaining adjusted business income must be allocated between manufacturing operations and other non-qualifying operations. And that proportion allocated to manufacturing is established by the share of total labour costs formed by manufacturing labour costs, added to the share of total capital costs formed by the costs of manufacturing capital.

The manufacturer needs to know his total wages bill and his bill for manufacturing wages. He needs to know his total costs of fixed capital, and his costs of fixed capital for the manufacturing activity alone. I should make clear that these two sets of costs will be comprehensively defined.

For example, total wages will include all salaries and wages paid to all employees of the corporation. It will exclude other forms of remuneration such as board and lodging and various allowances or contributions to retirement and deferred income plans.

Manufacturing wages will, in general, be the factory payroll, the salaries or wages paid to employees for the portion of their time in which they are directly engaged in manufacturing or processing activities. Manufacturing wages will normally include those paid for time spent in production assembly, inspecting, handling, packing, maintenance, repair, janitorial and line supervision.

For the purposes of the formula total capital will be taken to mean the fixed capital of the corporation — machinery, equipment and plant. That is, all the corporation's depreciable assets. Manufacturing capital will be taken to mean the depreciable assets which may reasonably be viewed as directly related to manufacturing and processing activities. Both manufacturing capital and total capital will be reduced to annual cost figures. This will be done by applying a fixed percentage to represent an approximate annual cost of funds required to purchase the capital assets. Where the assets are rented, the annual rental costs will be included in the annual capital cost.

I have said that the reduced tax rates will not be applied to other profit-making activities of a corporation such as wholesaling or retailing. However, we recognize that no corporation can get along without incurring certain costs apart from direct manufacturing costs. It cannot avoid some expenditures in marketing; it needs management and administration; ancillary functions are essential to a manufacturer and he cannot perform his central function without incurring overhead costs of this kind.

We will provide for this in the formula. For every $ 75 of manufacturing wages a further $ 25 in wages for necessary ancillary functions may be added. Similarly, an additional $ 15 may be added to each $ 85 of annual capital costs.

We have given a good deal of thought to the position of our small manufacturers. There are many of them, and they operate in all regions. The represent a lot of untapped potential for product innovation and expansion of existing production. We want smaller companies which earn most of their business revenues from manufacturing and processing to receive the full

thrust of the incentive, and without any unnecessary calculations or accounting. Therefore we have decided that if small manufacturing corporations can meet four qualifying tests they will not need a formula calculation at all. They may apply the reduced rate — whether 20 per cent or 40 per cent — to their total active business income.

This more generous treatment will be open to corporations:

— if their active business income, including the income of any associated Canadian corporations, is $ 50,000 or less;

— if their gross manufacturing and processing revenue is more than 75 per cent of their total gross revenue;

— if they are not engaged in any of the non-manufacturing activities specifically excluded by paragraph 125.1 of the bill;

— if they have no foreign active business income.

We estimate that three-quarters of our manufacturing corporations will qualify for this full-incentive treatment.

All larger manufacturing corporations and other smaller corporations less involved in manufacturing will of course use the formula approach.

Twelve days ago in this city I said that the government's economic policies and programs will continue to be aimed at promoting the long-term growth and stability of the Canadian economy as a whole. I said we would not seek short-lived advantages at the expense of Canada's future.

Our reintroduction of the legislation to bring about these structural changes in our tax system will be one measure of this commitment. I think it demonstrates our will to stand firm on a critical issue. And I think it demonstrates our conviction that this is the correct way to strengthen our industrial base and employ more Canadians in good jobs.

DR. P. K. BHARGAVA *:

PROBLEM OF PENDENCY OF INCOME-TAX APPEALS IN INDIA

The statutory powers enjoyed by the authorities administering the direct taxes appear to be quite large but they are, however, not unlimited in the sense that the appellate and revisionary authorities have the right to review and examine the assessment decisions. Such an arrangement ensures justice to the tax-payers and reduces the growth of an arbitrary and discriminatory administration. In India, there exists a four tier system for appeals. [1] The first stage of appeals constitutes an appeal from the orders of Income-tax Officer to the Appellate Assistant Commissioner who is under the administrative control of the Department of Revenue in the Ministry of Finance. The second stage of appeals relates to Appellate Tribunal which is a final fact finding authority. It works through Benches in different regions and is under the administrative control of the Ministry of Law. Therefore, references are permissible to the High Court and Supreme Court but only on the points of law. This procedure for appeals is almost invariably followed, although there is a provision that the Appellate Tribunal can directly make a reference to the Supreme Court under certain circumstances. In addition, there is also a provision that a tax payer may approach to the Commissioner for revision at any stage until the Tribunal gives a decision. However, once the assessee opts to do so, he forfeits the right to use the regular appellate line.

The increasing number of appeals at various stages and delay in their disposal indicates the inefficiency of the administrative authorities and of the appellate machinery. Inordinate delays in the disposal of appeals on the one hand delay the realisation of revenue receipts by the Government and on the other assessees are put to harrassment and are denied proper justice in time. This is an unhealthy development in an tax administration and appellate machinery. The available data show that the situation at various stages of appellate machinery is far from satisfactory and some remedial measures are urgently called for. Table 1 (see for Tables pp. 100 ff.) shows the number of appeals pending before the Appellate Assistant Commissioners of Income-Tax. It is clear from the Table that the number of appeals pending before the Appellate Assistant Commissioners as on 31st March 1955 stood at 99,770 which decreased to 82,914 on 31st March 1959 but rose again to 89,349 on 31st March 1963 and since then they have continuously increased and at the end of March 1971 the number of appeals pending was two and a half times the number of appeals pending at the end of March 1963. It may, however, be emphasised here that throughout the period the number of appeals instituted each year is also steadily increasing — from 91,458 in 1954-55 to 184,004 in 1965-66 and further to 240,493 in 1969-70 as shown in Table 2. But this increase does not appear to be unreasonably high in view of the

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1. For a detailed discussion see Anil Kumar Jain's Paper "Appellate Machinery for Income-tax in India" submitted for publication in the *Bulletin for International Fiscal Documentation.*

increase in the number of assessments during this period. The rate of disposal, however, has not been satisfactory. The average rate increased from 1092 in 1954-55 to 1,440 in 1958-59 but declined to 933 in 1965-66. In 1968-69 it reached again to the same level of 1954-55 but showed an satisfactory improvement in 1969-70 although it was below the average disposal of 1958-59.

While the number of cases disposed of shows an improvement throughout the period and yet the number of appeals pending before the Appellate Assistant Commissioners has increased except for the year 1958-59. The reason for such a state of affairs exists because a large number of appeals remain blocked for a number of years as shown in Table 3. Though it is clear from this Table that almost 70 per cent appeals of total were covered by appeals pending for less than one year and that cases pending for more than one year formed only 30 per cent of the total appeals pending on 30th June 1971, they amounted to 64,054, which is an unduly large number. It is necessary that the pendency of the old appeals should be reduced as speedily as possible and suitable steps should be taken for the purpose.

The position is no better regarding the disposal of appeals by the Appellate Tribunal. The number of cases pending for disposal has increased much rapidly as compared to the number of cases disposed of as shown in Table 4. The number of cases pending for disposal almost doubled between 1954-55 (7,277) and 1961-62 (14,903) and again more than doubled during 1962-63 from 15,169 to 37,949 in 1966-67. However, the number of appeals filed during each year from 1960-61 has fluctuated not very appreciably except during 1963-64 and 1966-67. But the slow disposal of cases by the Tribunal has continuously added to the number of cases for disposal resulting into an increasing number of cases pending for disposal before the Tribunal.

Table 5 shows the progress of disposal of references by High Courts. It could be seen from the Table that the number of cases instituted during each of the years has increased while the number of cases disposed of has fluctuated. It is also clear from the Table that at the end of each year the number of cases pending for disposal was much more than the number of cases instituted and disposed of each year. Shri S. Bhoothalingam has therefore rightly observed that, "The position in the High Courts is no better. From such figures of pendency of Income Tax references as are available there is no reason to think that they are disposed of appreciably quickly. It would appear that a decision from High Courts cannot be ordinarily expected in less than two years from the time of filing of a reference in most High Courts. In the more important High Courts this period is about four years." [2]

There has also been a steady increase in the number of appeals for disposal by the Supreme Court as shown in Table 6. There has been an increase in the number of cases pending disposal except in 1958-59 when the number of cases disposed of was the highest. It may also be emphasised that for each of the years the number of cases pending for disposal was more than the number of appeals instituted during each year which suggests that there is a need for quick disposal of appeals by the Supreme Court to reduce the pendency of such cases.

2. *Final Report on Rationalisation And Simplification Of The Tax Structure* by Shri S. Bhoothalingam, p. 75.

The delay in disposal of petitions filed before the Commissioners of Income-tax has resulted into an increasing number of petitions pending before them from 4,626 in 1954-55 to 6,298 in 1958-59 and further to 9,513 in 1969-70 as shown in Table 7. It may also be emphasised here that the number of petitions disposed of during any year has been more or less equal to the number filed during the year till 1956-57 as shown in Table 8. Thereafter, the disposal has been much less than the number of fresh appeals instituted. As a result the number of petitions remaining undisposed of year after year has increased as shown in Table 9 where a year-wise break-up of revision petitions pending with Commissioners of Income-tax has been shown. It is clear from the Table that after 1965-66, the number of petitions pending for disposal has increased rapidly year after year except for the year 1971-72 when it declined as compared to the figures of 1970-71.

The increasing number of appeals and delays in their disposal has not only posed a problem for the appellate authorities but has created difficulties in speedy dispensation of justice to the tax payers. It is, therefore, necessary that proper measures must be taken to ensure expeditious disposal of appeals. As a first step in this direction it should be the efforts of the Income-tax Officers that the area of dispute should be reduced as far as possible at the assessment stage itself." If assessments in most of the small cases are made on the basis of returns, and if overpitched assessments are avoided in others, the number of appeals will get reduced and the manpower released can be diverted to making more and better assessments." [3] Quick disposal of appeals can also be ensured by fixing a statutory time limit as it has been fixed for disposal of income tax returns submitted for assessment purposes. It may, however, appear to be somewhat contradictory to the existing situation as no such time limit exists with regard to other pieces of legislation. We do not think that this fact should be a hurdle in that direction but it would be necessary to ensure that fixation of statutory time limit for disposal of appeals does not adversely affect the quality of the orders passed.

Although "Rule 29 of the Income-Tax Appellate Tribunal Rules clearly provides that the parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal except where the Income-tax Officer has decided the case without giving sufficient opportunity to the assessee to adduce evidence, either on points specified by him or not specified by him" [4] it is, however, depressing that in practice additional evidence at the appeal stage, in cases where evidence was not produced at the assessment stage, is admitted. Admission of fresh evidence by the appellate authorities too freely causes undue delay in the disposal of appeals. Shri S. Bhoothalingam has, therefore, rightly observed that, "Restraint in this matter is very desirable as laxity will not only cause delay brut provide opportunities to the recalcitrant. As it will be obviously not possible, or indeed desirable, to legislate that appellate authorities should never entertain fresh evidence, I can only suggest they should be required to record reasons for admitting fresh evidence. Similarly, reasons should be recorded in writing when decisions are not given till long after — say more than a

3. *Direct Taxes Enquiry Committee Final Report,* December 1971, p. 155.
4. *Ibid,* p. 157.

month — the last hearing." [5]

It is suggested that the Appellate Assistant Commissioners of income-tax should be placed outside the administrative control of the Central Board of Direct Taxes so that these officers may exercise independent judgement in their appellate work even when their decisions are prejudicial to revenue. In the absence of such independence for them "It has been urged that . . . fear does exist at present and does influence Appellate Assistant Commissioners in the conduct of their work and that this defect is by no means cured by the fact that statutory provision exists specifically barring the interference of the Central Board of Revenue with the discretion of Appellate Assistant Commissioners." [6] Accordingly, the Direct Taxes Administration Enquiry Committee (1958-59) emphasised that, "Removal of Appellate Assistant Commissioners from the administrative control of the Central Board of Revenue would also help in completing the process of separating the judiciary from the executive. In matters like this, due consideration has to be given to the feelings of assessees and justice should not only be done but it should also appear to be done. Therefore, without casting any reflection on the working of the Appellate Assistant Commissioners and acknowledging the fact that their independence and judious outlook have not been interfered with in any manner by the Central Board of Revenue or the Commissioners of Income-tax we *recommend that the Appellate Assistant Commissioners should be transferred from the Control of the Central Board of Revenue to that of the Ministry of Law.*" [7] However, we do not agree with this view because under the Income-tax Act there are two further stages of appeals and then finally the assessee can approach the Supreme Court. Apart from this the facts show that the Appellate Assistant Commissioners exercise their functions independently and that in most of the cases Board do not seem to have interfered with their decisions. It may be emphasised here that "as many as 91 per cent of the orders of the Appellate Assistant Commissioners are either accepted as correct or are confirmed by the Appellate Tribunal. In the remaining nine per cent cases where relief is given by the Appellate Tribunal, complete relief is given only in 20 per cent of them; only partial relief is given in the rest." [8] "In this context comes a suggestion that administrative control over the Appellate Assistant Commissioners and inspection of their work should be entrusted to higher appellate authorities and not to the higher administrative authorities. The control which the Board exercises and the inspections which the Directorate of Inspection carries out are meant to co-ordinate the functions of the appellate and assessment divisions and in no way interfere with the judicial functions and discretion of the Appellate Assistant Commissioners. We do not think any change in the pattern of control is necessary. *We recommend that the control over the Appellate Assistant Commissioners should remain with the Board and the Director of Inspection should carry out inspection of their offices once at least in every five years.*" [9]

The control over the Appellate Assistant

5. *Op.cit.*, p. 76.
6. *Report of the Taxation Enquiry Commission* (1953-54) Volume II, p. 233.
7. *Report*, p. 77.
8. Report of the Taxation Enquiry Commission, *op.cit.*, p. 235.
9. Direct Taxes Enquiry Committee Final Report, *op.cit.*, p. 156.

Commissioners should remain with the Central Board of Revenue for the reasons stated above. However, there is need for some improvement in their work method. For instance, the office of the Appellate Assistant Commissioners should be situated near the Income-tax Offices for the convenience of the appellants and their representatives. Discussions with Income-tax Officers in the absence of appellants should be avoided. The orders should be passed as early as possible and not later than a fortnight in any case after the last date of hearing. The appellate orders should be communicated to the appellants and the Department within a week of the date of the order. In cases of transfer the Appellate Assistant Commissioners should decide all the appeals heard by them before handing over the charge. The Appellate Assistant Commissioners should also give recomputation of the income and tax in their orders to reduce the area of dispute arising from interpreting the appeal order.

At present an Appellate Assistant Commissioner has to deal with appeals of varying degree of importance because their jurisdiction is generally defined in relation to Income-tax circles in contiguous wards or districts. In such a system appeals involving complicated question of law and fact do not receive the attention they deserve. The Direct Taxes Administration Enquiry Committee (1958-59), therefore, rightly recommended that "these appeals could be tackled better if they were all concentrated in ten or twelve ranges under experienced appellate officers. It would also secure that the knowledge and experience of senior Assistant Commissioners are utilised in the disposal of more important appeals. Both the appellants and the Department would have the satisfaction that the cases had been gone into thoroughly and the decisions were arrived at after looking into all the aspects of a case." [10]

As the taxing statutes are complicated and technical, they require the expertise knowledge of law and accountancy. This calls for an improvement in the procedure of work of the Appellate Tribunal as also in its composition. The Direct Taxes Administration Enquiry Committee (1958-59) rightly emphasised that, "The judiciary of the land cannot be expected to go into the minute technical and accounting aspects involved in tax appeals. *The Appellate Tribunal consisting of equal number of judicial members and accountant members is . . . but suited to deal with the problems arising from the administration of taxing statutes.*" [11] In addition, to reduce the pressure of tax cases on High Courts, every effort should be made to enhance the prestige of Appellate Tribunal in the eyes of the public as also in the judiciary. Much success in this direction could be gained if *"a serving High Court Judge . . . be deputed to act as President of the Appellate Tribunal by the President of India for a fixed tenure."* [12]

The High Courts are already overburdened since the number of cases pending disposal have continued to increase as shown in Table 5. "On an average 400 to 500 reference applications are being filed every year but out of this the High Courts are able to dispose only some 200 to 300 cases and the remaining add upto the arrears." [13] However, delays hardly occur in the High Courts once an appeal has been heard. Therefore, what is required as also re-

10. *Op.cit.*, p. 78.
11. *Op.cit.*, p. 81.
12. *Op.cit.*, p. 82.
13. *Op.cit.*, p. 82.

commended by the Direct Taxes Enquiry Committee (Final Report, December 1971) is that, *"the Income-tax Act may be suitably amended to provide for the creation of permanent Tax benches in the High Courts. The Tax Benches should sit continuously so long as there is sufficient income-tax work to be attended to. To clear the present back-log in some of the High Courts, retired judges may, if* necessary, be appointed under Article 224A of the Constitution." [14]

Under section 257 of the Income-tax Act direct references can be made by the Appellate Tribunal to the Suprement Court in certain cases. This provision has not been adequately used as during the last decade such direct references have been made only in five cases. The Direct Taxes Enquiry Committee (Final Report, December 1971) rightly emphasised that, *"in order that these provisions are invoked more often, the Commissioners be advised to apply to the Tribunal for making direct references to the Supreme Court in appropriate cases.* This would ensure that disputes having wide repercussions are authoritatively settled without delay." [15] In addition, to reduce the pending of appeals and for their quick disposal the Chief Justice of Supreme Court should be requested to constitute a special direct taxes bench to deal with these appeals.

Finally, we may emphasise that the provision of multiplicity of penalty proceedings in the Income-tax Act not only causes inconveniences to the taxpayers but hampers the administration and increases the number of appeals. It would be very much advantageous both for the taxpayers and the administration if a provision is made in the Income-tax Act so as to make it obligatory on the part of the Income-tax officer to pass a single order in respect of penalties to be imposed upon an assessee.

14. *Op.cit.*, p. 157.
15. *Op.cit.*, p. 157.

Table 1

No. of appeals pending before Appellate Assistant Commissioners of Income-tax.

As on 31st March	1955	99,770
" " " "	1959	82,914
" " " "	1963	89,349
" " " "	1966	170,914
" " " "	1969	208,288
" " " "	1970	217,839
" " " "	1971	223,073

Table 2

Disposal of appeals by the Appellate Assistant Commissioners of Income Tax

	1954-55	1958-59	1965-66	1968-69	1969-70
1. No. of appeals instituted during the year	91,458	119,198	184,004	216,320	240,493
2. No. of cases for disposal	170,752	202,428	309,022	402,771	449,324
3. No. of cases disposed of	70,982	119,514	138,108	194,483	231,485
4. Balance	99,770	82,914	170,914	208,288	217,839
5. No. of Appellate Assistant Commissioners at work	65	83	148	178	178
6. Average disposal	1,092	1,440	933	1,093	1,300

Table 3

Year-wise break-up of appeals pending with Appellate Assistant Commissioners of Income Tax.

	30-6-1970	30-6-1971
1956-57	2	2
1958-59	—	—
1959-60	7	—
1960-61	14	5
1961-62	55	37
1962-63	80	73
1963-64	181	93
1964-65	519	281
1965-66	948	502
1966-67	2,916	1,593
1967-68	10,105	5,364
1968-69	36,242	15,675
1969-70	124,708	40,429
1970-71	72,977	116,317
Total	248,754	180,371 *

* Does not include appeals filed between 1.4.71 to 30.6.71.

Table 4

Progress of disposal of appeals by the Appellate Tribunal

Year	No. of appeals instituted	No. of cases for disposal	No. of cases disposed of	No. of cases pending
1954-55	7,858	14,486	7,209	7,277
1955-56	8,777	16,054	8,451	7,603
1960-61	11,396	26,822	12,863	13,959
1961-62	11,841	25,800	10,897	14,903
1962-63	13,209	28,112	12,943	15,169
1963-64	17,234	32,403	12,035	20,368
1964-65	16,034	36,402	11,091	25,311
1965-66	16,844	42,155	12,213	29,942
1966-67	21,571	51,513	13,564	37,949

Table 5

Progress of disposal of references by High Courts

	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. of references instituted	369	368	434	436	521
2. No. of cases for disposal	1,553	1,649	1,751	1,923	2,174
3. No. of cases disposed of	272	332	264	270	285
4. No. of cases pending disposal	1,281	1,317	1,487	1,653	1,889

Table 6

Progress of disposal of appeals by Supreme Court.

	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. of appeals instituted	34	58	89	46	30
2. No. of cases for disposal	83	123	202	216	234
3. No. of cases disposed of	18	10	32	12	50
4. No. of cases pending disposal	65	113	170	204	184

Table 7

Revision Petitions pending before Commissioners of Income Tax.

1954-55	4,626
1958-59	6,298
1965-66	5,599 *
1966-67	6,544 *
1968-69	7,937
1969-70	9,513 *
1970-71	7,933 *

* Figures related to the period ending on 30th June of the year.

Table 8

Progress of disposal of revision petitions filed before the Commissioners of Income Tax.

	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. instituted	5,283	5,017	4,907	6,284	4,927
2. No. for disposal	9,819	9,643	9,247	10,611	9,791
3. No. disposed of	5,193	5,303	4,920	5,747	3,493
4. Balance	4,624	4,340	4,327	4,864	6,298
5. No. of Commissioners	17	17	17	18	18
6. Average disposal	305	312	289	319	194

Table 9

Year-wise break-up of revision petitions pending with Commissioners of Income-tax.

	30-6-1970	30-6-1971
1954-55	1	1
1956-57	—	—
1958-59	3	3
1959-60	10	7
1960-61	20	16
1961-62	18	13
1962-63	53	44
1963-64	90	71
1964-65	132	81
1965-66	143	74
1966-67	266	121
1967-68	462	187
1968-69	1,433	558
1969-70	4,646	1,161
1970-71	2,236	3,524
1971-72	—	2,072
		7,933

Y. C. JAO *:

TAX STRUCTURE AND TAX BURDEN IN TAIWAN

Taiwan's economic performance in recent years has rightly been hailed as an instance of successful takeoff into sustained growth. Even as late as 1960, her *per capita* income was a mere US $ 114, but by the end of 1972 this was reported to have reached US $ 372. Yet her fiscal system has often been criticized as failing to keep pace with economic development. The purpose of this article is to review Taiwan's present Tax structure and the related problems of tax burden, tax effort, and elasticity of taxation, and to assess briefly the achievements and failures of fiscal policy.

TAX STRUCTURE

From the purely administrative point of view, the existing taxes in Taiwan may be classified according to the different levels of government responsible for collection. Thus, Income Tax, Estate Duty, Customs Duties, Stamp Duty, Commodity Tax, Salt Tax, Securities Transactions Tax, and Mine Lot Tax are regarded as national taxes. Provincial taxes include Land Tax, Sales Tax, Vehicle License Tax, and Harbour Dues. Local taxes, collected by the municipalities, consist of Property Tax, Slaughter Tax, Amusement Tax, Feast Tax, and Deeds Tax. In addition, there used to be quite a number of surtaxes, and although some have been abolished in recent years, there are at present still four such surtaxes of a temporary nature. The Government also monopolizes the sales of wine and tobacco, earnings from which are tantamount to taxes on these two commodities. Under the Revenue and Expenditure Demarcation Law, there is a revenue-sharing scheme which specifies the ratios allocated to the three levels of government.

An economically more meaningful classification for our purpose is to divide the taxes into direct and indirect. Although the distinction is not without its ambiguities, as many writers on Public Finance have noted, experts are agreed that direct taxes in Taiwan are limited to Income Tax, Land Tax, Estate Duty, Property Tax, and Deeds Tax, the rest being all of an indirect nature.

Among the direct taxes, Income Tax and Land Tax are the most important. Introduced after the war, Income Tax comprises Comprehensive Income Tax and Business Income Tax. The former applies to individuals, both residents and non-residents, though not to income earned by residents outside Taiwan. As the name implies, the tax base is aggregate income from whatever sources, though payments already made in respect of other taxes, such as Property Tax and Business Income Tax by individuals in their capacity as owners, proprietors and partners, are deductible. A basic allowance of eight thousand New Taiwan dollars (NT $ 8,000.00) is granted each to the taxpayer and his spouse, with another NT $ 6,000.00 for each dependent.[1] There is a progressive rate structure ranging from 6% on net income under NT $ 30,000.00 to 60% on net income over NT $ 2 million. Other deductions include contributions to defense, educational

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1. The present exchange rate quoted by the Central Bank is US $ 1 = NT $ 40.

and charitable organizations, life insurance premium, medical expenses, and property losses. Business Income Tax is levied on "profit-seeking enterprises" irrespective of whether their income is derived inside or outside of Taiwan, but those with net income of less than NT $ 20,000 are exempted. The marginal rates are then 8% on total taxable income under NT $ 50,000, with the proviso that tax liability is limited to not more than half of the income over NT $ 20,000; 14% on income between NT $ 50,000 and NT $ 100,000; 18% on income between NT $ 100,000 and NT $ 250,000; and 25% on income over NT $ 250,000, subject to the further proviso that the tax liability of a qualified "productive enterprise" shall not be more than 18% of its total taxable income. There is provision for withholding at source on dividends, distributed profits, salary and wages, interest, rent and royalties ranging from 10% to 16% for residents. For non-residents, the rate is a uniform one of 15%.

To stimulate capital formation, modernization of business organization, and export sales, generous tax incentives are provided under the Statute for the Encouragement of Investment, first promulgated in September 10, 1960 and amended on December 30, 1970. [2] Under this law, a newly established "productive enterprise" — defined as a joint stock company engaged in manufacturing, handicraft, mining, agriculture, forestry, fishery, animal husbandry, transportation, warehousing, public utilities, public housing, technical services, tourist hotels, and heavy machinery — may select either one of the following incentives for application: (a) five consecutive years of tax holiday from the date of its inception, or (b) accelerated depreciation on machinery, equipment, buildings, and other fixed assets and facilities. In the event of capital expansion, the said enterprise may again select for application either four consecutive years of tax holiday on income derived from capital expansion, or accelerated depreciation. To enable the enterprise to make full use of depreciation allowance, there is provision for periodical revaluation of its assets whenever the wholesale price index exceeds by 25% or more such same index for January 1, 1961, or for the year in which the last revaluation was made. The appreciated value of the assets is moreover not taxable as income. The maximum amount of tax payable by such an enterprise, including all forms of surtax (such as Defense Surtax, Customs Surtax, Export Surtax, Education Surtax, Surcharge on Telephone and Telegraph etc.) is limited to 25% of its total annual income. However, for those new enterprises which adopt advanced technology and bear greater risks, special allowance will be granted when its tax liabilities exceed 22% of its total annual income. Stock dividends, inter-company dividends, and interests from fixed deposits are exempted from Income Tax. Export sales are exempted from Sales Tax, while qualified mining and industrial companies importing capital equipments from abroad which cannot be manufactured domestically are exempted from Customs Duties. An enterprise which incurs foreign currency debt in purchasing machinery and equipment may set aside a reserve up to 7% of the outstanding debt for compensating foreign exchange loss. To encourage the growth of capital market, further tax concessions are given to qualified companies going public on the stock exchange:

2. The English text of the Statute is published in full in *Bank of China Economic Review*, November-December, 1971, pp. 24-41.

exemption from withholding tax on undistributed profits, reduction of tax rate, discretionary suspension of Securities Transaction Tax etc. Stamp Duties on specified documents are either exempted or reduced, and Deeds Tax on real property used by a productive enterprise is levied at half the statutory rate. Finally, "profit-seeking enterprises" that have merged to become "productive enterprises" on government approval may enjoy exemption from all Income Tax, Stamp Duties, and Deeds Tax payable as a result of such merger or consolidation, and those enterprises whose export sales exceed 50% of their total output may further enjoy a 10% reduction of Income Tax from the second year of merger or consolidation.

The Land Tax is the most complicated tax, and includes three subcategories: Rural Land Tax, Land Value Tax, and Land Value Increment Tax. The Rural Land Tax is confined to lands outside designated urban areas, and is collected in kind in two instalments per year, except for those lands not used for growing rice. Farm output is estimated by the provincial government on the basis of different grades of land. Tax liability is then computed by multiplying the "presumptive" average unit produce with the tax rate applicable to a particular grade of land, the differential rates varying from 1.2% for Grade 15 Forest Land to 3.6% on Grade 1 Paddy Land. This tax liability in money terms is, in the case of rice-growing land, converted back into physical quantities of rice grain according to the conversion rates prescribed by the provincial government. Since 1968 the conversion rate has been fixed at 27 kg. rice grain per dollar of tax liability. This collection in kind is both a relic of the ancient Chinese tradition and of the early postwar inflationary era, when the government was anxious to maintain the real purchasing power of tax yield. [3] To determine the productivity of different grades of land, a cadastral survey is carried out every five years. There are provisions for exemptions and reductions in case of natural calamities, and for lands used by schools, public parks, hospitals, and other social welfare institutions. However, in addition to taxation, the government has the compulsory power of purchasing 12 kg. of rice per dollar of tax liability, and since the government purchase price is normally lower than the market price, the difference is tantamount to a surcharge. Land Value Tax is in principle levied on urban land within city planning areas. The tax base is the market value of land, with progressive rates ranging from 1.5% to 7%. Self-owned residential land is subject to a preferential rate of 0.7% provided the land so owned is under three ares. Lands used for industrial and agricultural purposes are taxed at a flat rate of 1.5% only. Land Value Increment Tax is essentially a capital gains tax levied on the increase in land value realized by the seller. Costs of improvements and special assesments already paid are deductible. A progressive structure is again applicable, with marginal rates ranging from 20% on the first 100% increment to 80% on 400% increment or above. For industrial land, the maximum rate is reduced to 40%, while the value increment of residential land under three ares is taxed at a flat rate. Exemption is granted to land sold by government or legally inherited. Another progressive direct tax is the Estate Duty, with marginal rates ranging from 4% on the first NT $ 60,000 to 70% on estate over NT $

3. This may se been from the fact that the ancient name for agricultural tax, *t'ien fu*, is still being used at present.

6,000,000.

As regards the indirect taxes, most of them are self-explanatory, though a few words may be necessary to clarify the distinction between Commodity Tax and Sales Tax. The former is levied on the wholesale price of specified commodities grouped under some 27 categories, whether locally manufactured or imported, with rates ranging from 5% on paper to a sumptuary rate of 120% on cigarettes and imported wine. The latter tax is imposed on the sales of goods and services, except for those already subject to the Commodity Tax, Slaughter Tax, Salt Tax, and Securities Transactions Tax. The rates range from 0.6% to 6%, depending on the nature of the business. Export sales and sales to transit passengers are exempted from Sales Tax, as are the sales of educational publishers, registered mass media, cooperatives, charitable and welfare institutions, government-operated enterprises, hawkers, and subsidiary produce of farmers and fishermen.

Since the fifties tax revenue has accounted for a fairly stable proportion of total government revenue, about 50-66%. If earnings from government monopoly over tobacco and wine (essentially a form of indirect tax) are included, total tax revenue then accounted for 65-80% of total government revenue during the period 1952-71, as in Table 1.

Table 1

Composition of Government Revenue

(per cent)

Fiscal Year	*Tax Revenue*	*Government Monopoly*	*Others*	*Total*
1952	53.6	11.6	34.8	100.0
1953	60.3	15.2	24.5	100.0
1954	63.5	17.5	19.0	100.0
1955	66.7	14.7	18.6	100.0
1956	61.9	18.1	20.0	100.0
1957	63.9	16.5	19.6	100.0
1958	58.9	16.5	24.6	100.0
1959	56.2	15.5	28.3	100.0
1960	62.8	16.9	20.3	100.0
1961	59.6	18.5	21.9	100.0
1962	54.9	20.3	24.8	100.0
1963	59.7	17.9	22.4	100.0
1964	57.6	16.7	25.7	100.0
1965	55.9	15.3	28.8	100.0
1966	60.8	16.5	22.7	100.0
1967	52.2	13.5	34.3	100.0
1968	58.6	12.7	28.7	100.0
1969	60.1	11.6	28.3	100.0
1970	59.0	11.2	29.8	100.0
1971	60.2	11.3	28.5	100.0

Source: Underlying data from Ministry of Finance, *Yearbook of Financial Statistics*

The outstanding feature of the tax structure in Taiwan is the predominance of indirect taxes. A detailed breakdown of tax revenue for selected years, and direct/indirect tax ratio for 1952-71 are presented in Table 2 and Table 3 respectively. During the period 1952-71, the share of direct taxes averaged about 24%, as against 76% for indirect taxes. The direct/indirect tax ratio actually revealed a downward trend from 1952 to 1966, and it was only since then that there has been some increase. However, the ratio for 1971 was still somewhat lower than that for 1952.

Table 2

Composition of Tax Revenue, Selected Years

(per cent)

Item	Fiscal Year 1955	1960	1965	1971
Direct Taxes:				
Income Tax	10.4	7.9	8.9	11.1
Estate Tax	0.0	0.1	0.1	0.2
Land Tax	5.1	5.0	5.7	8.2
Property Tax	6.3	4.4	5.3	3.3
Deeds Tax	1.0	0.6	0.9	1.3
Others	3.5	4.9	0.3	1.0
Sub-total	26.3	22.9	21.2	25.1
Indirect Taxes:				
Customs Duties	14.5	15.3	19.0	17.4
Salt Tax	2.2	1.6	1.0	0.4
Commodity Tax	9.5	10.9	13.6	17.3
Stamp Tax	4.5	4.6	3.4	3.3
Sales Tax	3.4	4.3	4.6	5.7
License Tax	0.8	0.9	1.0	1.0
Harbour Dues	2.1	2.2	2.7	3.3
Slaughter Tax	5.0	3.0	3.6	2.5
Entertainment Tax	1.2	0.9	1.6	1.3
Tobacco & Wine Monopoly	18.0	21.2	21.5	15.9
Others	11.5	12.2	6.8	6.8
Sub-total	73.7	77.1	78.8	74.9
Total	100.0	100.0	100.0	100.0

Source: See Table 1.

Notes: a. Income Tax includes Comprehensive Income Tax and Business Income Tax.
b. Land Tax includes Rural Land Tax, Land Value Tax, and Land Value Increment Tax.
c. Property Tax includes Property Tax and the former Household Tax.
d. Entertainment Tax includes Amusement Tax and Feast Tax.
e. "Others" include various surtaxes.

Table 3

Direct/Indirect Tax Ratio

Fiscal Year	*Ratio*
1952	0.42
1953	0.44
1954	0.30
1955	0.36
1956	0.35
1957	0.31
1958	0.30
1959	0.29
1960	0.30
1961	0.29
1962	0.27
1963	0.28
1964	0.28
1965	0.26
1966	0.25
1967	0.26
1968	0.29
1969	0.31
1970	0.31
1971	0.34

Source: See Table 1

TAX BURDEN, TAX EFFORT, AND INCOME ELASTICITY

Tax burden on an aggregate basis is usually measured by economists either by the ratio of tax revenue to Gross National Product or to Net National Product, on the grounds that national income, however defined, is a good indicator of tax capacity. In Table 4, both ratios for 1952-71 are presented. As will be seen, both varied within relatively narrow limits along a moderate uptrend, but indirect taxes always accounted for a larger share.

Table 4

Ratios of Tax Revenue to National Income
(per cent)

Fiscal Year	*T/GNP*	*T/NNP*	*DT/GNP*	*IT/GNP*
1952	11.7	13.2	3.4	8.3
1953	12.2	14.1	3.7	8.5
1954	12.1	14.4	2.8	9.3
1955	14.4	17.0	3.8	10.6
1956	14.2	16.8	3.7	10.5
1957	14.4	17.1	3.4	11.0
1958	15.2	18.1	3.5	11.7
1959	14.5	17.2	3.2	11.3
1960	13.5	16.0	3.1	10.4
1961	12.9	15.3	2.9	10.0
1962	12.6	15.2	2.7	9.9
1963	11.9	14.2	2.6	9.3
1964	11.9	13.9	2.6	9.3
1965	13.4	15.8	2.8	10.6
1966	13.7	16.3	2.7	11.0
1967	14.4	17.4	3.0	11.4
1968	16.7	20.5	3.8	12.9
1969	18.1	23.2	4.3	13.8
1970	16.6	21.2	4.5	12.1
1971	16.3	20.7	4.7	11.6

Keys: T = Total Tax Revenue; GNP = Gross National Product;
NNP = Net National Product; DT = Direct Taxes; IT = Indirect Taxes

Source: Ministry of Finance and Director-General of Budgets, Accounts and Statistics

International cross-section studies of tax burden and tax effort in developing countries have been made by a number of economists. One of the earliest studies is by R. J. Chelliah [2)], who covered the period 1953-63 for selected countries of the ECAFE [4] region: Burma, Ceylon, India, Japan, Korea, Malaya, Pakistan, Phillipines, Taiwan, and Thailand. He found that the tax/GNP ratio of Taiwan was fairly high in comparison with others, ranking third during 1953-55 and fourth during 1961-63. The variations in tax ratios were attributed to differences in the degree of "openness" (the larger the foreign trade sector, the higher the tax yield), *per capita* income levels, degree of monetization, administrative efficiency, and social philosophy. The static tax/GNP ratio therefore

4. ECAFE stands for the Economic Commission for Asia and the Far East, United Nations.

does not adequately reflect the tax potential or tax effort of the country concerned unless these factors are taken into account. The marginal propensity to tax in Taiwan, according to his estimate, was 0.154, lower than Ceylon, India, Japan, and Malaya, but higher than Pakistan, Philippines, and Thailand. The share of direct taxes in total tax revenue was however lower than all others except Thailand.

Lotz and Morss [8, 9], in their study of 52 developing countries during the period 1963-65, explicitly allowed for such factors as *per capita* income and degree of openness. They made a least-squares estimate of the "average" tax ratio for any country as a function of its *per capita* income and its degree of openness. The actual tax ratios and the averages were then compared: the country whose actual ratio exceeded the "average" one by the largest percentage was given the highest tax effort ranking, while the country whose actual tax ratio fell short of the "average" by the largest percentage was given the lowest ranking. On this criterion Taiwan ranked 23rd in tax effort, which is somewhat above average. In terms of tax/GNP ratio alone, however, Taiwan ranked 28th among the same 52-member group.

The most recent study is by R. W. Bahl [1], who used what he called a "representative tax system" approach for making inter-country tax effort comparison. The econometric methods are too complicated to be summarized here, but the essential idea is that the taxable capacity is the total tax revenue that would be collected if each country applied an identical set of effective rates to the selected tax bases, or the yield of a representative tax system. The actual collections are then compared with this yield, with an index of unity indicating an average tax effort. Ordinal rankings are then made according to this index. The sample was 49 developing countries during the period 1966-68. In terms of tax effort, Taiwan ranked 25th with an index of 0.9069, but in terms of relative taxable capacity Taiwan ranked 18th in the same group.

It is interesting to note that studies by different scholars all agree that Taiwan's tax effort was about average in comparison to other developing countries. However, Bahl's study also shows that Taiwan's actual collection of taxes fell short of its taxable capacity, implying there is room for improving tax effort and administrative efficiency.

Another related, but not identical concept is income elasticity of taxation, which measures the responsiveness of tax revenue to changes in national income in relative percentage terms. As such it is a critically important variable for developing countries that wish to mobilize domestic resources for public investment. Increase in tax revenue may, of course, be due to both autonomous as well as exogenous causes (such as government raising the tax rates, imposing new taxes, and improving administrative efficiency). To the extent that the latter causes are important, the concept may also serve as an indicator of tax effort. Using a linear double-log regression equation, Taiwan's elasticity of total tax revenue with respect to GNP during 1955-63 was estimated by Chelliah at 0.95, lower than all other countries studied (Ceylon, Malaya, India, Pakistan, Philippines, and Thailand). However, in an ambitious recent study by C. C. Tai [12] covering the period 1952-69, and using essentially the same methodology, the same elasticity was estimated at 1.138. Tai also made detailed estimates of the elasticities of various types

of taxes, ranging from 0.832 for Vehicle License Tax to 2.136 for Estate Duty. The elasticity of direct taxes as a whole was however much lower than that of indirect taxes: 0.951 as against 1.20. Another study by T. N. Chiang [3], covering the period 1951-69, gave the elasticities of total tax revenue, direct taxes, and indirect taxes as 1.066, 0.947, and 1.111 respectively.

However, the terminal date of even the most recent published studies was the end of 1969. For 1969-71, the present writer, using the same methodology in order to ensure consistency and comparability, has found that the elasticity of total revenue with respect to GNP had declined to 0.83. One important aspect which Tai tackled but neglected in other studies is the whole question of tax burden. The static tax/GNP ratio is a misleading indicator for true tax burden, since it ignores or assumes away the initial distribution of income. This is especially pertinent to Taiwan, where the role of indirect taxes, which tend to be regressive, is predominant. Using the 1966 Family Expenditure Survey data, Tai studied the incidence of selected direct and indirect taxes among different occupational and income groups. His findings confirm the general regressivity of indirect taxes, including the Government Wine and Tobacco Monopoly. If we take one of the main indirect taxes, the Commodity Tax, for example, in 1966 basic necessities accounted for 49.3%, manufactured goods 45.1%, and luxuries 5.6% of this source of income. The lower income groups therefore bear a higher proportional burden as far as this tax is concerned, especially in view of the fact that their marginal propensity to consume is normally higher. However, the degree of regressivity differed as between various occupational and income groups. Progressivity was found to be limited to Land Tax, Property Tax, and Income Tax, but because direct taxes accounted for no more than 25% of total tax revenue, the overall tax structure tended to be regressive on balance.

The core of the problem appears to be the relative inelasticity of direct taxes — a conclusion confirmed by all empirical studies. During the past two decades Taiwan's national income has shown a remarkable growth record; in fact the growth rate has been accelerating over the years. According to one leading authority on Taiwan's national income, M. H. Hsing [4], the average annual growth rate of Net National Product (NNP) in constant prices during 1953-60 was 6.35%, but this increased to 9.4% during 1961-68. Recent data suggest that during 1969-71, annual growth rate of NNP averaged about 14.7% at current prices, or 12% at 1966 prices. However, the fact that income elasticity of direct taxes has remained lower than unity and even declined suggests that revenue from this source has not kept pace with economic growth. Several reasons might be suggested. As has been shown earlier, the marginal rates of various direct taxes, with the exception of Land Value Increment Tax, are by no means steep. But the impact of even this mild progressivity has been softened by generous tax concessions provided under the Statute for the Encouragement of Investment. Furthermore, under the amended Income Tax Law, a wide range of incomes are permanently exempted. These include salaries of elementary school-teachers and military personnel, pensions and retirement benefits of public employees, housing allowance and fringe benefits paid in kind to public employees, insurance premium, interest

from savings deposits, earnings from government agencies and government-owned public utilities. Hence increasing prosperity does not necessarily bring a correspondingly higher proportion of the population or greater number of firms within the taxable brackets. Finally, inelasticity of direct taxes may reflect widespread tax evasion and administrative inefficiency.

CONCLUSIONS

During the post-war period fiscal policy in Taiwan has been mainly preoccupied with the dual objective of price stability and economic growth. That priority should have been given to the former objective is understandable since hyperinflation, resulting primarily from persistent budgetary deficit, was one of the major factors responsible for the downfall of the Nationalist Government in China. Even after its evacuation to Taiwan in the late forties, government deficit continued for a considerable time, made good only by the issue of bonds and American aid. It was only since 1963 that budgetary surplus has been consistently achieved. The need for stimulating growth is also obvious, due to the government's determined efforts to industrialize the economy. It follows from this policy orientation that tax incidence tends to fall on consumption rather than on saving (hence on investment).

Our survey makes it abundantly clear that tax revenue is dominated by regressive indirect taxes, and that there has been no major structural changes in this pattern during the past two decades. Taiwan's remarkable economic growth combined with mild inflation (averaging less than 5% a year during the past decade) indicates that the government has been reasonably successful in its primary objectives of fiscal policy. However, another objective of fiscal policy widely accepted by economists as equally important — distributional equity — has been largely neglected. Moreover, the lack of progressivity (partially reflected in the low elasticity of direct taxes) means that the automatic stabilizing functions of the tax structure in business cycles is relatively weak.

One of the major tasks in any future tax reform must therefore be to increase over the long term the relative proportion of direct taxes, and to raise the income elasticity of such taxes. Given the present social and political constraints, however, any radical overhaul of the tax system in favour of direct taxes (by introducing steeper progressive rates and reducing exemptions and tax incentives) appears highly unlikely. More feasible are administrative reforms aiming at simplifying procedures and increasing efficiency. It is in this area that the government has taken various *ad hoc* measures, such as amending various tax laws, intensifying tax auditing, and encouraging business firms to file income tax returns through certified public accountants. Efforts have also been made to ameliorate the burden on small farmers. Thus, small farmers with tax liabilities of less than two assessment units are now allowed to pay their tax in cash in lieu of rice crops. Self-employed farmers are also allowed to deduct production expenses up to a maximum of 70 (against 49% previously) of their aggregate income. These will bring marginal relief to the farmers, but since the net change in total tax revenue is trivial (the estimated loss to government being only NT $ 70 million, or 0.2%), the overall pattern of tax incidence will hardly be affected.

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(Note: Items marked with * are in Chinese)

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM

Proposals for a tax credit system

This is the third Chapter of the "green paper" concerning the proposed tax credit system in the United Kingdom. [1] *The first two Chapters appeared in the February issue of the BULLETIN.*

Chapter 3

Other income tax changes

49. People outside the scheme would, as explained in paragraph 31 above, receive personal allowances corresponding to the tax credits. For people within the scheme the new credits would take the place of the main income tax personal allowances and PAYE coding would disappear. It would thus no longer be possible to give other tax reliefs, such as that for mortgage interest, by adjusting tax deductions made from pay. Nor would the PAYE machinery any longer be available to recover the tax due on other income—for example, small maintenance payments or investment income received in full. This chapter outlines proposals, which would apply to all taxpayers, for dealing with the various reliefs and deductions that are at present mostly given through the PAYE coding and then considers how to deal with the tax on income other than employment income which has hitherto been collected by an adjustment of the coding.

THE PRINCIPAL CHANGES

50. First to be considered are three reliefs which are claimed by many millions of taxpayers: the relief for life assurance premiums, the relief for interest paid, and the deduction for expenses of employment. There would be no means of giving these reliefs under the new system as there are under the PAYE machinery; but to allow relief in a form which would require repayment after the end of the year would be so costly in staff as to put at risk the savings which the scheme would otherwise provide. It is essential to find other ways of giving effect to these reliefs and deductions. The proposed solutions are as follows.

Life assurance relief

51. Most of the fourteen million claimants to life assurance relief are now given an allowance in their PAYE coding which automatically gives the appropriate relief. Equivalent relief could be given at source at the time of payment and this is the course proposed under the tax-credit scheme. On payment of a qualifying premium, the policyholder would deduct tax

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at 15 per cent (the rate at which relief will be given after unification of income tax and surtax). The Life Office would be able to recover from the Revenue the 15 per cent withheld from qualifying premiums.

52. This change in the basis of relief would have two consequences. First, provided the policyholder paid an amount of tax on his income at least equal to the tax withheld from his premiums he would normally receive the correct relief automatically without further adjustments. Virtually all members of the new scheme would be in this position. Some policyholders would have incomes below the tax threshold. Under present arrangements they would not get tax relief in respect of the premiums, but what is proposed would in effect allow them to obtain relief in future.

53. Second, the effect of the change would be to reduce the amount of relief available to taxpayers whose total annual premiums are less than £ 20 and who, under the unified income tax system, will obtain relief at the basic rate of 30 per cent on £ 10 or on the amount of the premiums paid, if less. This degree of simplification, like that proposed in paragraphs 58 and 59 on the treatment of tax relief for expenses, would be essential to the operation of the new scheme. The loss in tax relief for someone paying premiums of not more than £ 20 would be very small, the maximum being £ 1.50 a year, or 3p per week, this being the difference between relief at 15 per cent and 30 per cent on a premium of £ 10; these small losses can reasonably be expected to be outweighed by the general improvement in tax relief given by the scheme as a whole. Moreover, the new arrangements would be of particular benefit to those whose incomes are not sufficiently high for them to take advantage of the tax relief at present given on small premiums.

54. Giving the life assurance relief by deduction at source would raise a number of other problems in the application of the law affecting life assurance relief, some of them inevitably somewhat technical, which the Government will wish to discuss with the Life Offices and other institutions concerned. They recognise that there may be certain difficulties, but they are confident that these can be overcome.

Relief for interest paid

55. Relief for interest paid on loans for buying or improving property in the United Kingdom (here referred to as "property loans") is claimed by over five million taxpayers. Up to 1970 annual interest on loans was paid under deduction of tax at the standard rate unless the interest was payable to a bank, building society, or (in certain circumstances) local authority, in which case it was paid in full. Since 1970 virtually all interest on loans to individuals has been payable in full, and relief to borrowers who are within PAYE is given through an adjustment to their PAYE code number.

56. From the introduction of the new scheme interest on property loans would in general be paid under deduction of tax; on paying interest the borrower would deduct income tax at the basic rate, paying over the net amount in satisfaction of the interest due. This would ensure that all borrowers received the full amount of relief due, generally when the interest was paid. This arrangement would be confined to interest on property loans by bodies which are qualifying bodies for the purpose of the present option mortgage scheme; this would include principally

building societies, friendly societies, local authorities and life assurance companies. No steps would be taken to recover tax withheld at source from interest on qualifying loans where the payer's income was below the tax threshold. The scheme would thus give everyone, irrespective of income, tax relief at the basic rate. It therefore has the important advantage that it would automatically make available assistance equivalent to that provided now under the option mortgage scheme to those who cannot under present arrangements obtain the benefit of full tax relief on the interest that they pay. It would thus be possible to wind up the option mortgage scheme, and to relieve borrowers of the need to make the sometimes awkward decision on whether or not to apply for an option mortgage subsidy.

57. The Government will discuss with the bodies concerned how the scheme would operate. Consideration will be given to the method of relieving other interest qualifying for relief.

Expenses

58. An employee may claim a tax deduction for expenses incurred "wholly, exclusively and necessarily" in the performance of his duties. Some eleven million claims to expenses deductions are made each year, of which the large majority are claims to small flat-rate allowances for the cost of tools and clothing in particular trades. The relief is given in nearly all cases through the PAYE coding and it would not be possible to give it in this way once the new scheme was in operation. To give relief by repayment at the end of the tax year would be impracticable, given the number of claims involved.

59. Under the new scheme a new standard deduction for expenses would be introduced and this would be taken into account in fixing the amounts of the new credits; this deduction would for the most part replace the separate individual allowances that are now given. It would cover allowances now given for tools, clothing, professional expenses, subscriptions and other small amounts of expenses, but not superannuation contributions, which are considered in the next paragraph. It would be given regardless of the actual expenses incurred. It is proposed that the amount of the standard deduction incorporated in the new credits should in terms of present values be £ 30. If an employee's expenses were larger than this sum he could claim for the extra, subject possibly to a *de minimis* rule. The standard expenses deduction would also be incorporated in the wife's earned income relief.

60. At present an employee who contributes to a superannuation scheme by regular deductions from his pay obtains tax relief either by an allowance through his PAYE coding or because his employer calculates the income tax on his pay after the contributions have been taken off. Arrangements are now being made whereby all employers will move over to the latter system so that the need to include superannuation contributions in the coding will disappear. No change in the treatment of superannuation contributions would therefore be required on the introduction of the new system.

OTHER CHANGES

61. The foregoing paragraphs have suggested ways of dealing with the three reliefs affecting very large numbers of taxpayers which under the tax-credit system it would not be possible to allow by coding adjustment. While the solutions pro-

posed raise certain technical problems they would not create any complications or difficulties for the great majority of those claiming the reliefs. The remainder of this chapter is concerned with the future of the secondary personal allowances and the treatment of income other than pay or pensions. Relatively few people would be affected by these changes, but it is nevertheless very important that the complications for those affected should be resolved.

SECONDARY PERSONAL ALLOWANCES

62. Under this heading are included the dependent relative allowance, the housekeeper allowance, the additional personal allowance given where a married man with children has a totally incapacitated wife, the allowance given to a single person who maintains a female relative to look after a younger brother or sister, the relief in respect of daughter's services and the blind person's allowance. The special allowance for the married man with children who has an incapacitated wife and the blind person's allowance rest upon considerations which are not affected by the scheme and these allowances would remain. But so far as the other allowances are concerned the effect of the scheme in most cases would be to give more favourable treatment than is at present available and it would be appropriate as a result to withdraw those allowances.

63. Most of the allowances which would be withdrawn are due in respect of relatives of the taxpayer who are in some degree dependent upon him. Many of these relatives have very little income of their own and thus cannot benefit fully from the income tax personal allowances. Under the new scheme, however, the majority of them would be helped directly by their tax credits; even if the single credit were no higher than the present single personal allowance it would give a net increase of £ 1.40 a week to the single pensioner with no other income than the basic pension, and with a £ 4 single credit the net increase would be £ 1.98 a week. This compares with the 58p a week which the standard dependent relative allowance for example is worth at a 30 per cent rate of tax.

64. The scheme would thus give many dependants a measure of financial independence, and it would be wrong to give an income tax relief in respect of them to somebody else in addition to the credit they received themselves. There would be others who could not be brought within the scheme at the start. Many of these will never have qualified for national insurance benefit because of prolonged incapacity. They are already entitled to claim supplementary benefit and it would seem better where help is needed to give it directly to the dependent relative than in the form of tax relief to the person helping to support him.

65. Finally, there would be a small number of dependants outside the scheme with incomes which were above the level at which they could qualify for supplementary benefit, but which were at the same time not large enough to disqualify a relative contributing to their maintenance from the dependent relative allowance. In these as in other cases the contributing relative would still benefit from his own tax credits, or, if he was outside the scheme, from the corresponding increase in income tax personal allowances, which would wholly or partly offset the loss of the allowance for the dependant.

COLLECTION OF TAX ON OTHER INCOME

66. In the past it has been convenient that certain kinds of income going to those below the tax threshold could be paid in full: this has avoided the need for a very large number of repayment claims which would have arisen if tax had been deducted at source. However, an increasing proportion of people have, over the years, become liable to tax and it has been a valuable feature of the PAYE scheme that the coding can generally be adjusted so that an employee's PAYE deductions cover the tax due on such income as well as that on his remuneration. Following introduction of the tax-credit scheme there would be very few people indeed who would not pay tax as a counterpart to receiving credits, and since the PAYE coding would have disappeared other ways of collecting the tax would have to be found. These are discussed below.

67. One solution would be that income tax should be deducted at source more widely than it is now. Interest on property and other loans to individuals is mostly paid in full. The normal rule for other interest and dividends is that they are paid under deduction of tax. This applies to most Government stock, local authority loans, company dividends and debenture and other company loan interest; but interest paid on War Loan, dividends on Government stock and bonds held on the National Savings Stock Register, Savings Bank interest, bank deposit interest and interest which is not annual interest is paid without deduction of tax.

68. The interest on 3½ per cent War Loan is payable without deduction of income tax under the original terms of issue, as are the dividends on a number of Government stocks and bonds held on the National Savings Stock Register. In the case of War Loan held on the register of the Bank of England or Bank of Ireland there is already provision [2] for a holder to apply to the appropriate Bank to have the interest paid in his case under deduction of tax if that is more convenient to him; no doubt once the tax-credit system was operating many more people would wish to avail themselves of this facility rather than meet a separate lump-sum demand for the tax.

69. The question whether arrangements should be made whereby tax is deducted at source on dividends on securities held on the National Savings Stock Register (other than those which are paid without deduction of tax under the terms of the prospectus), or on interest arising on deposits with the National Savings Bank or with a United Kingdom Trustee Savings Bank, will require further consideration. But in any event the introduction of the tax-credit system is not intended to affect the exemption from income tax at present allowed on the first £ 21 interest on deposits held in an ordinary account with the National Savings Bank or the Ordinary Department of a United Kingdom Trustee Savings Bank and certain other savings banks.

70. It is important to the new scheme that interest paid on other forms of bank deposit should be paid under deduction of tax and the Government will wish to enter into discussions with the banks to see how this might be done.

71. Tax cannot be collected at source from

2. Section 101(2), Income and Corporation Taxes Act 1970.

certain kinds of income, for example, earnings from self-employment, income from property and some forms of interest. Tax due on such income would normally be collected by direct assessment, as is done in many cases at present. The possibility of self-assessment in these cases is being considered. It may be desirable to arrange in some cases for the collection of directly assessed tax, including tax which has not for some reason been deducted at source from employment income, to be made by special deductions from pay made by employers; recovery of credits which have been overpaid might also be made by deductions from pay.

72. *Small maintenance payments.* As the law now stands, maintenance payments made under a Court Order have to be made in full without deduction of income tax provided they do not exceed a certain amount. Tax relief is then given to the payer by adjusting his code number or by a repayment. It would generally be more convenient under the new system if tax were deducted at source from maintenance payments. Where the wife was within the new scheme she would thus bear the right amount of tax without further action; at the same time the husband would automatically obtain the relief to which he was entitled as and when he made payments to his wife. If, however, the wife was outside the new scheme and below the income tax threshold the tax deducted would have to be repaid to her, and to avoid hardship such repayments would need to be made at regular intervals.

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Study of the history and determinants of private investment in India and Pakistan. All the major industries of the period are examined in detail.

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AN OUTLINE OF KOREAN TAXES, 1972

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NETHERLANDS / INTERNATIONAL

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NETHERLANDS / SPAIN

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by Th. J. F. Zeegers and P. E. Hollander. Published by Federatie voor de Nederlandse export, Bezuidenhoutseweg 76a, Den Haag. 19 pp.
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Fourth volume of a handbook on the taxation of individual income. This volume is devoted to the credit of schedular (withholding) taxes, the payment of tax and procedure.

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U. S. A.

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* * * ARTICLES * * *

MITCHELL B. CARROLL *:

THE UNITED STATES - CANADA INCOME TAX CONVENTION — ITS ORIGIN AND DEVELOPMENT

The Income Tax Convention with Canada, signed March 4, 1942, was the fourth concluded by the United States, two of the earlier conventions being those of 1932 and 1939 with France and the third was with Sweden of 1939. The treaty with Canada was the by-product of a Regional Tax Conference organized in Mexico in June 1940. Apart from settling a number of tax claims and complaints between the two countries the treaty with our northern neighbor set an example for treaties between a developed and a developing country.

Agreements restricting the fiscal jurisdiction of States to mitigate or prevent the overlapping of principles of tax jurisdiction that results in double taxation can be traced back to 1899 when Prussia set an example by concluding a convention with Austria-Hungary.

The United States had to resort to a treaty to protect its corporations from the extra-territorial application of the French tax on dividends distributed by US corporations in order to allay the suspicion of French administrators that they were paid out of profits made by subsidiaries in France. We negotiated the treaty in 1930 and it was signed on April 27, 1932.

Less than a decade later, Canadians were complaining against the U.S. Treasury in reaching into Canada to levy extraterritorially its tax on dividends and interest paid by Canadian corporations presumably out of profits derived in the U.S.A., and to collect the U.S. accumulated earnings tax from a Canadian company.

The government in Washington had long-pending claims against residents of Canada on gains from the sale of American securities and commodities on its stock and commodities exchanges.

As both the American and Canadian negotiators had collaborated with me in preparing a model convention on the allocation of business income to supplement general conventions on the avoidance of double taxation, and were attending the League of Nations Regional Tax Conference in Mexico, they were easily persuaded to try to formulate a convention between their two countries that would settle pending claims and complaints and lay a basis for enterprises to do business across the frontier of some 3,000 miles without becoming subjected to double taxation.

The basic provisions on dealings through branches are in Articles I to III, and through subsidiaries in Article IV. The main provision applying a 15% withholding tax on dividends and interest, and also patent royalties is Article XI; however, copyright royalties are exempt at source under Article XIII C.

BACKGROUND OF THE TREATY BETWEEN THE U.S.A. AND CANADA

Canada was the third country with which the United States adopted a convention to

* Honorary President, International Fiscal Association; Of Counsel, Coudert Brothers, New York. This article is based on the speech delivered on February 2, 1973 at the Conference of the International Fiscal Association (U.S. Branch) on the Canadian-U.S. Tax Treaty.

avoid the double taxation of income from international business and investments. Its contents reflected to a large degree the provisions in our first treaty with France, signed April 27, 1932 (TS No. 885) which was negotiated expressly to protect American corporations with subsidiaries in France from the extraterritorial imposition of the French tax on dividends distributed at their head office in the U.S.A. It was replaced by a broader treaty, signed July 25, 1939 (TS 988; Stat. pt. 2 893).

A treaty with Sweden was signed March 23, 1939 (TS 958; 54 St. pt. 2, 1759).

The epoch-making treating with Canada, signed on March 4, 1942 (TS 983; 56 Stat. 1399) has been amended by supplementary conventions of June 12, 1950 (TIAS 2347; 2 UST pt. 2. 2235); of August 8, 1956 (TIAS 3916; 8 UST 1619); and of October 25, 1966 (TIAS). Consideration is now being given to the question whether further amendments are desirable because of recent changes in the Canadian tax law.

The convention of 1942 was a by-product of the Regional Tax Conference held in Mexico City in June 1940 that I organized as chairman of the League of Nations Fiscal Committee.

This conference was composed mainly of ranking tax officials of governments in the Western Hemisphere. Canada was represented by its Deputy Minister of National Revenue, C. Fraser Elliott, K. C. The United States sent the Deputy Commissioner of Internal Revenue, Eldon P. King, and the Assistant Chief of the Department of State Treaty Division, William V. Whittington. Representatives attended from Mexico, Colombia, Venezuela, Ecuador, Bolivia, Chile, Argentina and Uruguay, and observers came frome Guatemala, Cuba and the Pan American Union. The objective was to formulate conventions that could be used as models for agreements between, on the one hand, the United States or a European government, and, on the other, any less developed country of Latin America, to remove tax obstacles to the resumption of business and investments after the termination of World War II.

Hence, the participants brought up-to-date the general provisions of the model conventions adopted at Geneva in October 1928 at a world meeting of experts from 27 governments and the supplementary clauses on the allocation of income of enterprises operating in two contracting states through permanent establishments or affiliated companies. This model was predicated on the results of an on-the-spot survey the committee had appointed me to conduct in some 30 countries around the world [1].

Tax treaties can be traced back in the United Nations collection to the first one concluded in 1899 between Austria-Hungary and Prussia. Commerce and investments were crossing frontiers in central Europe and the tax administrators, on noting the obstructive effects of imposing the taxes of two countries on income flowing from a source in one to a recipient resident in the other, decided that the only remedy was to agree by treaty on limitations on their respective jurisdiction that

1. League of Nations, Taxation of Foreign and National Enterprises, Vols. I to V and ABA, the Internation Lawyer, July 1968. Vol. 2 No. 4, pp 692-722, International Tax Law, by Mitchell B. Carroll, League of Nations, Fiscal Committee, Model Bilateral Conventions for the Prevention of International Double Taxation and Fiscal Evasion, Second Regional Tax Conference, Mexico D. F. July 1943.

would prevent double taxation.

Treaties followed between other pairs of states. When the League of Nations was invoked by the International Chamber of Commerce in 1919-20 to do something to protect international business from the "evils" of double taxation it appointed a committee of tax officials to begin to draft a model convention, reminiscent of the pre-world War I tax treaties, that would point the way. Officials who met at Geneva started to negotiate along the agreed lines treaties between themselves.

In the late 1920's French officials sought to recover taxes on income that they thought had been diverted from subsidiaries in France to US corporations. The officials assessed the tax on income from securities on dividends distributed in the United States by such parent corporations. the administration was upheld by the Tribunal de la Seine and the "agents" began to assess parent companies not only in the U.S.A. but also in other important European countries.

The State Department sent several of us to the American Embassy in Paris to try to persuade French authorities to abandon this invasion in effect of U. S. jurisdiction. However, they would only agree to a solution embodied in a reciprocal treaty, that could be used as an example in settling their claims against companies in the United Kingdom, Switzerland, and other countries.

Strangely enough, a decade later Canadians were complaining against the application by the USA of its tax to dividends and interest paid by Canadian companies which derived 50% or more of their income from certain U.S. sources. In addition Canadian companies objected to the Treasury's threat to subject them to the accumulated earnings tax when they retained income derived mainly from U.S. sources.

In the early 1930's the United States Treasury started a wave of assessments against residents in Canada and other countries to collect tax on capital gains from dealings in securities and commodities on U.S. exchanges.

Now and then one would hear of attempts by the Canadian authorities to reach U.S. corporations that were selling goods to Canadian customers by soliciting orders by mail or through traveling salesmen.

The 1932 convention with France had settled a huge volume of claims against U. S. corporations on a very satisfactory basis. Hence, it seemed logical for Canada and the U. S. to try the same method. This would show readily the usefulness of the model convention, we were drafting, as a guide for negotiations between officials of Canada and the USA. When I suggested to Messrs. King and Elliott that they try it, they agreed to do so with enthusiasm. The draft that they prepared in a room placed at their disposal in the Ministry of Finance in Mexico City was polished in Ottawa and Washington and signed in 1942.

SYNTHESIS OF US — CANADA TAX TREATY

Inasmuch as both Messrs. King and Elliott had attended meetings of the Fiscal Committee in Geneva, and helped in perfecting the model convention of 1935, it was logical that they would favor incorporating its provisions in the draft that was being prepared by the Mexico conference and embody it in the project for the treaty between Canada and the United States.

American taxpayers welcomed in this agreement the exemption of business income unless attributable to a permanent

establishment in Canada, the determination of income on the basis of separate accounts, and the deduction from such profits of all related expenses wherever incurred including executive and general administrative expenses (Arts. I-III).

Aware of the application at home of Section 482 of the Code US corporations understood the "independent-enterprise" test for allocating income between themselves and a Canadian subsidiary in Article IV. While called Section 45 in the 1928 Act, it had been incorporated for the first time in the 1932 treaty with France in order to assure that country of the cooperation of American officials in recapturing profits that might have been diverted to the parent on this side of the Atlantic Ocean. Canadian officials wanted it to retrieve the tax on income that had escaped across the border.

For many years U.S. parent corporations were concerned over the maintenance of the reduction in rate for a Canadian subsidiary's dividends from 15% to 5%, in Article XI2. However, need for revenue prompted Canada to terminate this reduced rate on December 20, 1960. The present rate of 15% on top of the Combined rate of the dominion and provincial rates brings the effective rate to a level well above the U.S. corporate rate of 48%.

The fact that the treaty rate of 15% would be applied on dividends flowing from a U.S. corporation to a Canadian company and that such income might escape tax in Canada if the recipient company were managed and controlled and therefore resident in a third country, (and might also escape tax there if said country had no income tax) occasioned the ending of the benefit in such a case by the supplementary convention of October 25, 1966.

INTEREST AND ROYALTIES

In general, the 15% rate is withheld from interest and patent royalties, (Art. XI 1). However, copyright royalties are expressly exempt if the recipient resident in the U.S.A. has no permanent establishment in Canada (Art. XIII C).

Canadian taxation of directors fees paid to U.S. residents for attending board meetings in the U.S.A. was ended (by Art. XIII B).

The extraterritorial application of U.S. taxes to dividends and interest paid by a Canadian company to residents of Canada other than U.S. citizens was ended by Article XII. The application of the accumulated earnings tax to a Canadian company, which was more than 50% owned by individual residents of Canada other than U.S. citizens, was terminated (by Article XIII).

THE TREATY PLACE IN INTERNATIONAL TAX LAW

Before closing I want to add that when Mr. King took a war plane to London to negotiate the treaty signed April 16, 1945 (TIAS 1546; 60 Stat. pt. 2. 1377) and flew on to South Africa to make the agreement signed December 13, 1946 (TIAS 2510; 3 UST pt. 3. 3821), he had with him the treaty with Canada as an example of what could be done. Since then it and the treaty with Britain have been used as examples in negotiating the treaties with other countries, of which there are 20 in force, not counting those with subsidiary jurisdictions to which the application of the main treaty has been extended.

In short, the treaty with Canada is an important part of the development of international tax law.

ANIL KUMAR JAIN *

APPELLATE MACHINERY FOR INCOME-TAX IN INDIA

An efficient and just administrative machinery is a *sine qua non* of the success of a tax. Since the payment of tax involves a sacrifice on the part of the taxpayer, justice in this field should not only be done but should also appear to be done. In all tax statutes the interpretation of law is needed and this interpretation may be made differently by different persons. The taxpayer may have a different view of his tax liability than the taxing authority. Hence, administrative machinery of all countries of the world allow the taxpayers to appeal against the order of the assessing authorities and appellate machinery has been provided for this purpose. It is the existence of these rights of review and redetermination of executive decisions by the appellate and revisionary authorities that has limited the power of administering authorities. While the right to go in appeal or revision is a powerful factor in preventing the growth of an arbitrary and discriminatory administration, its effectiveness depends upon the circumstances governing the exercise of that right and the efficiency with which the authorities discharge their duties. [1]

Under the Act of 1886, assessees, who were aggrieved by the assessment, had the right to appeal against the order to the collector in certain cases and to the Divisional Commissioner in other cases. Under the Act of 1918 the appeal could be filed directly before the Commissioner of Income-tax. Discretionary powers were also given to the Chief Revenue Authority, either on its own initiative or on application by the assessee, to refer to the High Court any points of law other than those arising from penalty or prosecution proceedings. [2]

Under the Income-tax Act, 1922, which marked "the first step in the disengagement of the Provincial Governments from administering central subjects" [3] a new administrative machinery of income-tax was set up. Under the new administrative set up the appeals against the order of Income-tax Officers lay with the Assistant Commissioners. [4] A second appeal lay with the Commissioner of Income-tax. The Commissioner could, however, refer the points of law to the High Court either at his own instance or on application from the assessee. In case the Commissioner declined to refer the case to the High Court (which he could do only if he felt that no law point was involved in the case), the assessee could approach the High Court for a *mandamus* requiring the Commissioner to State the case. In view of the conflicting decisions taken by different High Courts on the same point, a further right of appeal to the Privy Council was given in 1926. Since the Assistant Commissioners were looking after appeals in addition to their supervisory and administrative duties, the Income-tax Enquiry Committee (1936) felt that the right of an assessee to go in appeal before an Assistant Commissioner was illusory as the very order appealed against might have been framed under the Assistant Commissioner's directions. Ac-

* Department of Economics, Banaras Hindu University, Varanasi-5, India.

1. *Report of the Direct Taxes Administration Enquiry Committee,* (1958-59), p. 75.
2. *Report of the Taxation Enquiry Commission* (1953-54) Vol. II, p. 17.
3. V.S. Sundram, *The Law of Income-tax in India,* 1928, p. 15.
4. Except where the assessee had defaulted in filing a return or in producing his accounts.

cordingly, it recommended for a clear bifurcation of the appellate and executive functions and for two separate authorities to perform these two separate functions. Consequently, in 1939, a separate cadre of Appellate Assistant Commissioners was created to deal exclusively with appeals against orders passed by Income-tax Officers. The function of hearing second appeal was transferred from the Commissioner of Income-tax to a new authority, the Income-tax Appellate Tribunal, created in 1941. The Income-tax Appellate Tribunal became a final authority on questions of fact. On points of law, it could refer the matter to the High Court. The Commissioner of Income-tax, however, continued to have revisionary powers under which he had the power of reviewing the decisions of lower authorities. This system of income-tax appeals in India exists to this day and we have today, the following authorities in the appeals system in the ascending order:

(1) the Appellate Assistant Commissioner of Income-tax
(2) the Income-tax Appellate Tribunal
(3) the High Court
(4) the Supreme Court

In addition, the Commissioners of Income-tax also have the power to hear and decide revision petitions.

APPEALS TO THE APPELLATE ASSISTANT COMMISSIONERS

If an assessee is dissatisfied with an order of an Income-tax Officer, he may file an appeal before the Appellate Assistant Commissioner within 30 days of the date of service of the notice of demand relating to the assessment or penalty objected to or intimation of the order appealed against. An appeal may be filed against assessment, order of rectification, levy of interest, refund, cancel best judgement assessment, partition of Hindu undivided family, registration of firms, levy of penalty for non-payment of tax etc. The Appellate Assistant Commissioner may, however, admit an appeal even after the limitation period of 30 days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the statutory period. The right of appeal before the Appellate Assistant Commissioner has been given only to the taxpayer and not to the Income-tax Department.

Every appeal before the Appellate Assistant Commissioner has to be made in a prescribed form made for the purpose. The petition of appeal should be signed personally by the assessee if the appellant files the appeal in the status of an individual, by the 'Karta' [5] in the case of Hindu undivided family, by a member in the case of an association of persons, by any partner (not being a minor partner) in the case of a registered firm, by the principal Officer in the case of a company, and in the case of any person, by that person or by some other person competent to act on his behalf. A copy of the order appealed against has to be attached to the petition of appeal. If an appeal is made against an assessment order, the appellant has to specify the date of service of the notice of demand in the memorandum of appeal and the notice of demand has to be attached in original.

An appeal can be filed against any order of assessment. No appeal can, however, be filed against an order passed under section 143(*i*) of the Income-tax Act, 1961 under

5. 'Karta' is the head of the joint family who looks after and manages all the affairs of the family.

which a return filed by the assessee is accepted as correct and complete. Under section 144 of the Income-tax Act, 1961, the Income-tax Officer is empowered to make the best judgement assessment either compulsorily [6] or at his discretion. [7] In such a case, the assessee can not take a plea in appeal before the Appellate Assistant Commissioner that "he was prevented by sufficient cause from complying with the notice in question and that the assessment should be cancelled." [8] On the other hand the proper course for him would be to move an application before the Income-tax Officer [9] to cancel the best judgement assessment and make a fresh assessment.

It is obligatory on the part of the Appellate Assistant Commissioner to fix a date of hearing of an appeal and to intimate the same to the appellant as also to the Income-tax Officer against whose order the appeal has been filed. Both parties are, however, free to appear either in person or through their authorized representatives on the date of hearing. During the course of hearing the "Appellate Assistant Commissioner may . . . allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable." [10]

The hearing before the Appellate Assistant Commissioner is a quasi-judicial proceeding and therefore, each party is given an opportunity of being heard in support of its case. In consonance with the principles of natural justice, the Appellate Assistant Commissioner has to pass a written order stating therein the points for determination, the decision thereon and the reason for the decision.

During the course of appeal proceedings, the Appellate Assistant Commissioner has got enormous powers. His powers are wider than those of a court under the Code of Civil Procedure. Whereas the powers of the Civil Court are limited only to the issues raised in appeal, such is not the case with the Appellate Assistant Commissioner. He may examine all matters covered by the assessment order of the Income-tax Officer. He is also free to confirm, reduce, enhance or annul the assessment, or he may set aside the assessment and refer the case back to the Income-tax Officer for making a fresh assessment. [11] It should be remembered here that although in the exercise of his power of enhancement "the Appellate Assistant Commissioner can tax any income which the Income-tax Officer had, expressly or by clear implication, considered and held to be not taxable but he can not tax an item of income the taxability of which had not been considered at all by the Income-tax

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6. Best judgement assessment has to be made compulsorily in a case where the assessee has failed to file a return or where he has failed to comply with the terms of notice requiring him to produce accounts or other documents specified in the notice or he does not comply with the notice requiring him to appear or produce evidence in his support.

7. In a case where the assessee's accounts are incorrect or incomplete or where he does not employ any method of accounting regularly, the Income-tax Officer is free either to make a best judgement assessment or pass an ordinary assessment order.

8. *Income-tax Manual,* Part III, 1969, p. 155.

9. Under Section 146 of the Income-tax Act, 1961.

10. Vide Section 250(5) of the Income-tax Act, 1961.

11. Vide Section 251(i)(a) of the Income-tax Act, 1961.

Officer." [12] The Appellate Assistant Commissioner has to send a copy of his order to the assessee and to the Commissioner of Income-tax.

APPEALS TO THE APPELLATE TRIBUNAL

If an assessee is aggrieved by any order passed by (a) an Appellate Assistant Commissioner imposing a fine or penalty or disposing of an appeal, (b) by the Inspecting Assistant Commissioner imposing a penalty, or (c) by the Commissioner revising an Income-tax Officer's order which is prejudicial to the revenue, he may file an appeal before the Income-tax Appellate Tribunal. It is interesting to note here that whereas the right of appeal before the Appellate Assistant Commissioner has been given only to the assessee, the right of appeal before the Appellate Tribunal is given both to the assessee and the Income-tax Department. This power of appeal rests with the Commissioner of Income-tax who on his part, may direct the Income-tax Officer to prefer an appeal.

The appeal before the Income-tax Appellate Tribunal should ordinarily be filed within 60 days of the date on which the order complained against was communicated to the appellant. However, in computing this period of limitation, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order the time requisite for obtaining a copy of the order, is excluded. A fee of Rs. 125 [13] has been prescribed for an assessee to file an appeal before the Appellate Tribunal. On receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been filed before the Appellate Tribunal, both the parties, irrespective of which party has filed the appeal, are under an obligation to file a memorandum of cross objections within 30 days of the receipt of the notice. The Appellate Tribunal may, however, admit [14] such cross-objections even after 30 days if it is satisfied that there was sufficient cause for not presenting it within that period.

The Appellate Tribunal is free to regulate its own procedure to decide a case. Normally the powers and functions of the Appellate Tribunal are exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members. Usually a bench consists of two members of whom one is judicial member and one is accountant member. However, if a sum of Rs. 25,000 [15] or less is involved in the case, either the President or any authorized member may, singly, dispose of the case. If the members of the Bench differ in opinion on any point, the point is decided according to the opinion of the majority.

It is true that the Appellate Tribunal is not a Court but the powers of the Appellate Tribunal in dealing with the appeals are similar to the powers of an appellate court under the Code of Civil Procedure and any proceedings before the Appellate Tribunal are regarded as judicial proceedings. It is on account of this that the notice of the date of hearing of the appeal is served on the assessee by registered post and the

12. Kanga and Palkivala, *The Law and Practice of Income Tax,* (student edition by H. P. Ranina), 1971, p. 813.

13. Prior to April 1, 1971, a fee of Rs. 100 was prescribed for the purpose.

14. Vide Section 253(5) of the Income-tax Act, 1961.

15. This monetary limit has been increased to Rs. 40,000 with effect from April 1, 1971 to facilitate speeder disposal of appeals by the Appellate Tribunal.

Tribunal may, after giving both the parties to the appeal an opportunity of being heard "pass such orders thereon as it thinks fit." [16] Here, the use of the word 'thereon' restricts the jurisdiction of the Tribunal. Whereas the Appellate Assistant Commissioner is at liberty to consider all the aspects of the assessment order of the Income-tax Officer, whether appealed against or not, the Tribunal has to restrain itself only to the subject-matter of appeal which is constituted by the original grounds of appeal. Hence, "the power to pass such orders as the Tribunal thinks fit can be exercised only in relation to the matters that arise in the appeal. It is not open to the Tribunal to adjudicate or give a finding on a question which is not in dispute and which does not form the subject matter of the appeal." [17] However, during the hearing of the appeal, the Tribunal has jurisdiction to allow any new question to be raised, to allow the appellant to raise an additional ground and admit additional evidence in appropriate cases.

With effect from April 1, 1964, the Appellate Tribunal has been empowered to refer the question of valuation of assets to the arbitration of two valuers, one of whom shall be nominated by the appellant and the other by the respondent. However, in case of a dispute, the matter is referred to the third valuer, after agreement between the two parties, and his decision is final in the matter. It should also be noted here that the Appellate Tribunal is the final fact finding authority in India and its decisions are final on all points. A reference to the High Court can be made only on a point of law.

REFERENCE TO HIGH COURT

If the assessee or the Commissioner of Income-tax is dissatisfied with the order of the Appellate Tribunal, the Tribunal may refer the matter, at the instance of either party, to the High Court on any point of law arising out of an order of the Appellate Tribunal. It should be noted here, as already pointed out also, that only question of law [18] is referred to the High Court and the Tribunal can not be required to refer a question which was not raised before it in the reference application or which is question of pure fact, or which does not arise out of its order, or which pertains to a new point. A question of law can be said to arise out of the order of the Appellate Tribunal's only if it is dealt with by the Tribunal or is raised before though not decided by the Tribunal. [19] A reference application for the statement of the case before the High Court must be made within 60 days of the receipt of the order passed by the Appellate Tribunal. If the appellant was prevented, in the eyes of the Tribunal, by sufficient cause from filing a reference application within 60 days it may allow it to be presented within a further period of 30 days. If the application is by the assessee, he has to pay a fee of Rs. 100. It is obligatory on the part of the applicant to state the question of law which he desires to be referred to the High Court. On receipt of the application, the Appellate Tribunal draws up a state-

16. Section 254 of the Income-tax Act, 1961.
17. Kanga and Palkhivala, *op.cit*, pp. 818-19.
18. It has, however been held by the Supreme Court that if the Tribunal based its findings "partly on evidence and partly on suspicions, conjectures or surmises . . ., its findings even though on questions of fact, will be liable to be set aside by this Court." See the case of *Omar Salay Mohamedo Sait* v. *C.I.T.*, Madras (1959) 37 I.T.R. 151.
19. See the case of *C.I.T.* v. *Scindia Steam Navigation Co. Ltd.*

ment of case within 120 days of the receipt of the application and makes a reference to the High Court. If the High Court feels that the statements in the case referred to it are insufficient to determine the questions raised, it may refer the case back to the Appellate Tribunal for making the necessary additions or alterations. The High Court has to decide questions of law in the case upon hearing both the parties and deliver its judgement which must contain the grounds on which such decision is founded. A copy of the judgement is also sent to the Appellate Tribunal and it is then for the Tribunal to pass necessary orders to dispose of the case conformably to such judgement. It is worthy to note here that the jurisdiction of the High Courts in dealing with the income-tax references is only an advisory jurisdiction. [20]

If the Appellate Tribunal refuses to state the case before the High Court on the ground that no question of law is involved, the Commissioner of Income-tax or the assessee have two alternatives. Any one of them may either make an application, within 6 months of the receipt of the notice of refusal, to the High Court, requesting it to pass an order requiring the Appellate Tribunal to state and refer the case to it or he may withdraw his application within 30 days of the receipt of such notice and get a refund of Rs. 100. On receiving such application, the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case before it.

It should be noted here that generally the Appellate Tribunal refers the question of law to the High Court but if on a point of law there are conflicting decisions of High Courts, the Tribunal, through its President may refer the matter directly to the Supreme Court.

APPEALS TO THE SUPREME COURT

An appeal before the Supreme Court can be filed against the judgement of the High Court only after obtaining leave to appeal from the High Court. The High Court would certify the case as a fit one for appeal to the Supreme Court if the question is of great, public interest or private importance. [21] An appeal to the Supreme Court has to be filed within 90 days from the date of the judgement of the High Court. [22] But the time taken in obtaining a certified copy of the judgement would be excluded. However, in a case where the High Court refuses to grant leave to appeal, the Supreme Court may be approached by either party for granting special leave to appeal.

REVISION BY COMMISSIONERS

It has been pointed out earlier that the Income-tax Department has no right of appeal to the Appellate Assistant Commissioner of Income-tax. Therefore, the Commissioner of Income-tax has been authorized under Section 263 of the Income-tax Act, 1961 to pass orders in revision and enhance, modify or cancel an assessment and direct the Income-tax Officer to make a fresh assessment. But he can do so only if he considers that an order passed by the Income-tax Officer is erroneous and is prejudicial to the interests of revenue. An order under this

20. See the case of *C.I.T.* v. *Ashoka Marketing Ltd.*, (1971) 80 I.T.R. 26 (S.C.).
21. Kanga and Palkhivala, *op.cit.*, p. 830.
22. Income-tax Manual, *op.cit.*, p. 159.

section can be passed by the Commissioner even when an appeal is pending before the Appellate Assistant Commissioner. [23] However, before doing so he must give the assessee an opportunity of being heard. The Commissioner is empowered to revise all orders except the order in a case where income has escaped assessment. A time limit of two years from the date of the order sought to be revised has been prescribed for revising an order. However, in a case in which the Commissioner's order passed in time, has been set aside by a higher authority and the Commissioner has been asked to pass a fresh order, the time limit of two years would not apply in such cases.

An assessee may also seek redress against any order of an Income-tax Officer or the Appellate Assistant Commissioner adversely affecting him without going to the Appellate Assistant Commissioner or the Appellate Tribunal as the case may be, by approaching the Commissioner of Income-tax with a revision petition. Such application by the assessee must be made within one year from the date of the receipt of the order and should be accompanied by a fee of Rs. 25. The Commissioner *suo moto* can also revise orders passed by authorities subordinate to him. [24] If the revision order of the Commissioner is in favour of the Department, he has to pass an order under section 263 but if it is in favour of the assessee, the order is passed under section 264 of the Income-tax Act, 1961.

It should be noted here that the Commissioner can not revise the order under section 264 till the time within which the appeal may be made expires or the appeal is pending before the Appellate Assistant Commissioner. It should be remembered here that once an order has been made the subject of an appeal before the Appellate Tribunal, the Commissioner can not revise the order while the appeal is pending or even after it is diposed of. If however, the assessee withdraws his appeal from the Appellate Tribunal and appeals to the Commissioner, the Commissioner may revise the order.

It is thus clear that in India such an appellate procedure has been followed so as to allow the taxpayer to be fully satisfied with his tax liability under the Income-tax Act. However, it is a sorry state of affairs that in spite of such a system of appeals, the pendency of income-tax appeals has been increasing quite fast at all stages of appeals. [25] This increasing pendency has, no doubt, created an uncertainty in the revenues of the Government, but has, on the other hand, imparted justice to the taxpayers and a feeling has been created in the minds of the taxpayers that the appellate authorities are quite impartial in discharging their duties. This is a healthy sign in the Appellate Machinery for Income-tax in India.

A look at the appellate machinery of some other countries like the U.K., Australia and U.S.A. reveals that they, too, have a comprehensive appellate machinery to look into the grievances of the taxpayers. In U.K. the first review of assessment is made by an administrative body. If the assessment has been made by the Additional

23. See case of *C.I.T.* v. *Amrital Bhogilal & Co.*, (1958) 34 I.T.R. 130, 140-1.

24. The Commissioner's subordinate authorities are the Income-tax Officers, the Inspecting Assistant Commissioners and the Appellate Assistant Commissioners.

25. For a detailed discussion of the problem and remedies, see P. K. Bhargava's paper "Problem of Pendency of Income-tax Appeals in India", *Bulletin for International Fiscal Documentation,* March 1973, p. 95.

Commissioner, it is normally heard by the General Commissioners, of which the Additional Commissioner is an arm. Appeals against the orders of the Special Commissioners are heard by the Special Commissioners: "Where the General Commissioners or the Special Commissioners sit on appeal they are commonly referred to as 'Appeal Commissioners' and, while it is permissible for the assessing Commissioners to hear the appeal, it is customary for the appeal to be heard by Commissioners who did not make the assessment." [26] There is a provision in the statute for appeals against the orders of the Special Commissioners to the Commissioner of Inland Revenue, but in practice such review is not made. Appeals against the orders of Special or General Commissioners are made to the High Court of Justice which is restricted in its review to the hearing and determination of questions of law. The decisions of the High Court may be appealed by either party to the Court of Appeal and thence to the House of Lords. [27]

In Australia, any taxpayer who is dissatisfied with any assessment order may file an objection in writing before the Commissioner within 60 days of the notice of assessment. If he is dissatisfied with the decision of the Commissioner, he may, within 60 days of the receipt of the notice of decision "make written request to the Commissioner to refer his decision to a Board of Review or to treat his objection as an appeal and forward it either to the High Court of Australia or to the Supreme Court of a State." [28]

The High Court acts in its original jurisdiction and has unlike India and U.K., full power to consider both questions of fact and of law and to conform, reduce or vary the assessment.

In U.S.A., there is first a four-tier administrative procedure towards settlement consisting of four stages in the ascending order as follows: (a) Settlement with the Agent, (b) Informal Conference, (c) Thirty-Day Letter and Protest, and (d) the Appellate Division. [29] The Consideration of a case in the Appellate Division is informal in nature and is conducted by conference technique. „If a settlement can not be reached, the taxpayer ... can pay the tax and sue for a refund in a Federal District Court or in the United States Court of claims or he can take an appeal from the asserted deficiency to the Tax Court of the United States." [30]

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26. World Tax Series, International Program in Taxation, Harvard Law School, *Taxation in the United Kingdom,* 1957, pp. 412-13.
27. *Ibid.*
28. World Tax Series, International Program in Taxation, Harvard Law School, *Taxation in Australia,* 1958, p. 258.
29. For details, see, World Tax Series, International Program in Taxation, Harvard Law School, *Taxation in the United States,* 1963, pp. 1247-57.
30. *Ibid,* p. 1255.

KAILASH C. KHANNA *:

INDIA: THE FINANCE BILL, 1973

The following proposed changes of importance may be noted:

CORPORATE TAXATION

1. At present, widely-held domestic companies with income not exceeding Rs. 50,000/— pay tax at the rate of 45%; it is proposed to raise the limit of income from Rs. 50,000/— to Rs. 100,000/—. Thus, a public company with a total income not exceeding rupees one lakh (Rs. 100,000/—) will pay tax at 45%.

2. Closely-held industrial companies enjoy a concessional rate of tax of 55% on the first Rs. 10 lakhs of total income; it is proposed to reduce the limit of Rs. 10 lakhs to Rs. 2 lakhs. To this extent, private manufacturing companies will be adversely affected.

3. The surcharge on income-tax which was imposed by an Ordinance in December, 1971, to meet an emergency, will continue at the existing level of 5%.

4. A new provision is proposed to the effect that any capital gain arising from the transfer by way of compulsory acquisition of land or building forming part of an industrial undertaking which was used for the purpose of the business shall be exempt from tax if the taxpayer purchases any other land or building or constructs any other building for the purpose of re-establishing or shifting the undertaking within a period of three years.

5. At present, the 'tax holiday' to new hotels is subject to certain conditions in regard to the number of rooms and other amenities and facilities provided therein. It is proposed to omit these conditions for the purposes of the 'tax holiday'.

6. Under the existing law, capital gains arising from the sale or transfer of a capital asset held by a taxpayer for not more than 24 months prior to the date of sale or transfer are regarded as short term capital gains and included in the ordinary taxable income. It is proposed to extend the period of 24 months to 60 months, with the result that any gain arising from the transfer of a capial asset within 5 years of the date of its acquisition will be charged to tax at the rates applicable to the business income of the company.

7. The management of several industrial undertakings, mines, insurance companies, etc. has been taken over by the Government recently. It is being specifically provided that compensation payable in respect of the vesting in the Government of the management of these undertakings shall be liable to tax.

The above proposed amendments have been incorporated in The Finance Bill, 1973, which was presented to the Lok Sabha yesterday.

In addition, the Finance Minister has indicated the following proposed changes in Part B of his Budget Speech, but no amendments to the tax law have been proposed yet:

1. Initial depreciation at 20% of the cost of machinery and plant installed in selected industries after May 31, 1974, will be granted in lieu of Development Rebate. The list of industries is still under consideration.

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* Chartered accountant, Calcutta.

2. A deduction equal to 20% of the profits derived by an industrial undertaking set up in the backward areas after March 31, 1973, will be allowed for a period of 10 years from the establishment of the industry.

3. At present, capital expenditure on Scientific Research incurred during 3 years immediately preceding the commencement of business is allowed to be written off against the profits of the year in which the business is commenced; it is proposed to extend this concession to revenue expenditure incurred during the pre-investment period.

It is also proposed to allow a weighted deduction of one and one-third the amount paid for sponsored Research and Development work in approved laboratories.

4. At present, expenditure on Export Market Development is deductible for tax purposes to the extent of 133½% of actual cost; it is proposed to increase the weighted deduction to 150% in the case of public companies.

PERSONAL TAXATION

1. The quantum of the deduction available in respect of life insurance premia, provident/pension fund contributions etc. is proposed to be slightly increased. In the case of a person who saves or contributes Rs. 2;000 or less, the whole of the amount will be allowed as a deduction; in the case of others, the amount of the deduction will increase by Rs. 500 as compared to the existing position.

2. At present, premium paid to secure a contract for a deferred annuity qualifies for tax concession. It is proposed to make this concession subject to the condition that the policy for deferred annuity does not contain any provision for a cash option.

MISCELLANEOUS

1. A separate tax schedule has been prescribed for Hindu Undivided Families having one or more members with independent income exceeding Rs. 5,000. Under this schedule, the rate of tax applicable on various slabs of the taxable income will be the same as the rate of tax applicable to the next higher slab in the case of individuals. A uniform rate of surcharge of 15% will be applicable.
An exemption limit of Rs. 5,000 will apply in the case of all Hindu Undivided Families.

2. The agricultural income and non-agricultural income shall be combined in determining the rate of tax on non-agricultural income. Rules are being prescribed for the computation of net agricultural income. Losses incurred in agriculture will be set off only against gains from agriculture.

3. (a) Deduction of tax at source is proposed to be made obligatory from any remuneration or reward for soliciting or procuring insurance business.
(b) Co-operative Societies shall have to deduct tax at source from payments made to contractors.

4. It is proposed that donations to associations and institutions established in India for promotion of specified games approved by the Government be eligible for tax concession in the same manner as donations to approved charitable institutions.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM

Excerpts From The Finance Minister's Budget (1973-74) Speech

The Budget Speech of Mr. Anthony Barber delivered on March 6, 1973 contains the following regarding the taxation program for 1973-74:

A key part of the strategy must be to control inflation. There are no other means, no economic devices, no fiscal formulas for achieving the prime purpose to improve the living standards of all our people.

The twin theme of our strategy, therefore, is this—expansion and the attack on inflation. I start with expansion.

The primary objective of last year's Budget was to set our nation on a course of faster economic growth.

I said then that the aim was that our national output should increase at an annual rate of 5 per cent. over the 18-month period to the present half year.

There are still some months to go, but the indications are that we shall broadly achieve that objective. Indeed, in the closing months of last year, industrial production, consumers' expenditure, and retail sales all showed increases over a year earlier of considerably more than 5 per cent.

COMPANY TAXATION

It was decided at the outset, that it was no longer enough merely to "tinker" with the system. The right course, we decided, was to make a complete and thorough-going review of three main areas—the taxation of income, the taxation of expenditure and the taxation of companies.

On the first, the taxation of income, the old dual system of Income Tax and Surtax is being replaced next month by a new unified tax, simpler, more logical, and easier to understand. That reform is complete.

On taxation of expenditure, Purchase Tax and Selective Employment Tax were being replaced next month by Value Added Tax, with a single standard rate. That reform was complete.

The third completed reform was the replacement next month of the old Corporation Tax allied to a simpler and more generous system of investment incentives than ever before.

FACTORS IN TIMING OF TAX COLLECTION

The first is the Government's role as a source of finance for third parties—export credits, finance for industry, and so on.

The second factor is the one I have referred to—the very substantial change next year, not in overall tax liabilities, but in the timing of tax collection.

This is the biggest single factor accounting for the rise in the borrowing requirement and it is, of course, unique to this particular year.

As a result of the new arrangement for collecting VAT there will be a temporary interruption of the flow of revenue from indirect taxes, which will mean that the borrowing requirement in 1973-74 will be some £ 800 m. more than it would have been if SET and purchase tax had continued.

Of this, £ 112 m. is due to the ending of the SET 'forced loan' by industry.

This is a once-for-all change and does not alter the underlying tax liabilities as distinct from the timing of revenue receipts. Because of this, its effect on the claims on resources should be very small. Nevertheless, the large borrowing requirement in 1973-74 poses a considerable financing task for the authorities. It would be quite unacceptable to rely to any substantial extent on borrowing from the banking system.

ESTATE DUTY

Ever since the introduction of estate duty nearly 80 years ago, it has been the general rule that assets must be valued as at the date of death. This rule has been considered on a number of occasions, but the conclusion hitherto has always been that it could not be changed.

This has been so, despite the fact that it can cause real hardship if executors are compelled to sell quoted shares or securities some time after the date of death when the Stock Exchange quotation has fallen.

The result is that estate duty is paid on a valuation which is higher than the actual sale value of the shares. In certain circumstances, this can actually mean that the duty exceeds the realised value of the shares. This is clearly inequitable.

New rules will therefore be introduced. These will apply to shares and securities quoted on a recognised Stock Exchange and to holdings in authorised unit trusts.

Where such investments have been charged to estate duty, executors, or other persons accounting for duty, who realise them within 12 months of the death, will, subject to certain safeguards, be able to claim that the total of the sale prices should be substituted for the total of the date of death values of the investments realised.

The cost of the relief will depend on the movement of Stock Exchange prices; but it is likely to be about £ 2 m. in 1973-1974. The new rules will apply in relation to deaths occurring after to-day.

ACTS TO BE ALIGNED

I should also mention one other change in estate duty which, although comparatively minor, is important to protect our national heritage. The Finance Act 1930 allows a wide range of objects of historic or artistic value to be exempted from estate duty.

In addition, under the Finance Act 1956, the Government can accept an individual outstanding work of art in payment of estate duty. It was thought in 1969 that historic documents were covered by the 1956 Act as well as the 1930 Act.

Subsequent legal advice has shown that this is not in fact the case. To put the matter right, the two Acts will be aligned, so as to enable the same categories of objects to be accepted in payment of estate duty as can already be exempted from duty.

The necessary steps will be taken to apply these two estate duty changes to Northern Ireland.

I now turn to Corporation Tax. The new system of Corporation Tax for which we legislated in last year's Finance Bill comes into effect next month—in April. As from then, the old system will no longer be operative.

As the House knows, however, Corporation Tax is paid in arrear. It follows, therefore, that in this Budget it is necessary to fix the rate for the financial year 1972, the last under the old system.

SOLUTION TO THE PROBLEM

There will be no change in the present rate and it will therefore remain at 40 per cent. for the financial year 1972. Next year, the rate will reflect the change in the system, but it is too early yet to reach a

decision as to what the appropriate rate will then be.

As far as the structure of the Corporation Tax is concerned, the Finance Bill will provide two significant changes affecting groups of companies. These are the outcome of consultations between the Inland Revenue and representatives of industry.

I was urged last year by a number of important groups of companies, and in particular those with large overseas interests, to make more flexible the provisions under which companies may surrender advance corporation tax to their subsidiaries.

The problem was that I could not contemplate any relaxation in the treatment of groups unless I could also take action to counter certain artificial manipulations of the group relief provisions involving in effect the sale of capital and other allowances at a discount.

This abuse was spreading rapidly and there was reason to fear a possible loss of tax of the order of £ 100 m. a year.

We have now found a solution to deal with this problem. This is another instance of the value of the kind of consultation, at professional level, which we have tried constantly to foster in the programme of taxation reform. The changes will be described in detail by my Hon. Friend, the Chief Secretary, later in the debate.

Last year, much consideration was given, and rightly so, to the position of unquoted companies under the new tax system. I have looked again at the possibility of devising a transitional scheme of relief for such companies.

But the hard fact is that any scheme of this kind would inevitably be costly: to give a significant degree of relief across the Board could well entail a cost of £ 75 m. in the initial year. The House will understand why I cannot contemplate a cost of this order in present circumstances.

I come now to two further important changes concerning business taxation.

Under the law as it stands at present the U.K. sector of the country for the purposes of Continental Shelf is outside this taxation. The result is that profits from exploration and exploitation of the resources of the Shelf are normally liable to U.K. tax only if they are earned by an enterprise which is resident in the U.K.

This follows because a resident enterprise is liable to tax on all its income from any source throughout the world.

But under the present law profits which a non-resident enterprise makes from such operations on the Continental Shelf are not liable to tax here unless made through a branch in this country.

NORTH SEA PROFITS

This situation is no longer justifiable. All profits from exploration and exploitation of the U.K. sector of the Continental Shelf will therefore be brought within the charge to U.K. tax.

At the same time employments on the Shelf, which in many cases have been outside the scope of U.K. income tax, will become chargeable to tax under the normal rules.

The Public Accounts Committee last week drew attention to the probability that the yield of tax to be British Exchequer from the North Sea profits may in the case of many of the companies be seriously impaired by the set-off of artificial losses made by those companies from their trade in oil from other parts of the world.

The recommended that the Government should take action substantially to improve the effective tax yield from operations on the Continental Shelf.

I am sure the Committee was right, and I

accept this recommendation. The House will wish to know how these artificial losses arise.

The companies producing oil in the Middle East and elsewhere sell the crude oil at what are called 'posted prices.' These prices are largely dictated by the Governments where the oil is produced.

VAT RATE 10%

Next month, purchase tax and SET will be abolished and be replaced by VAT. In last year's Finance Act, the standard rate of VAT was provisionally fixed at 10 per cent.

The House will recall that in our debates last year it was suggested by Hon. Gentlemen opposite that I had it in mind to use the powers which I then took to fix the initial standard rate of VAT at 12½ per cent. Fortunately that is neither necessary nor appropriate.

There will be no change in the provisional figure, and the standard rate of VAT will therefore be 10 per cent. The rate of car tax was also fixed at 10 per cent. in last year's Act, and it will remain at that figure.

I should add that, if we had decided to collect the same amount of revenue as at the higher rates of purchase tax and SET, which existed when we took office, we should have had to fix the rate of VAT at 15 per cent.

Instead, as a result of the massive cuts in indirect taxation which we have already made since June, 1970, the 10 per cent. rate will be the lowest standard rate in Europe.

It is convenient next to deal with the revenue duties. In accordance with the arrangements for joining the EEC, protective duties charged on imports from the other member countries will be progressively reduced and finally abolished.

The relatively small protective elements in the Customs revenue duties will therefore be reduced by one-fifth in respect of imports from the EEC in accordance with the timetable set out in the Treaty of Accession. The Treasury will be empowered by Order to make the further adjustments to these duties required by the Treaty, beginning on January 1, 1974.

Next, I deal with the question of those goods liable to revenue duties which from April 1 will also be chargeable with VAT at the standard rate. They are alcoholic liquor, tobacco, matches and mechanical lighters.

The basic rates of these duties will be abated by such amounts as are necessary to secure from the goods concerned broadly the same total revenue—that is from revenue duty and VAT combined—in 1973-74 as would have been obtained solely from the existing rates of revenue duty.

TRANSITIONAL PROVISIONS

It follows from the decision to abate the revenue duties fully to offset the introduction of VAT that stocks which are held by registered VAT traders, and which have paid duty at the higher rates, will qualify for relief, to the extent of the abatement, under the stock rebate scheme which has already been announced, and to which I turn next.

Last November, I announced proposals for avoiding double taxation on goods which have been acquired before VAT comes into force on April 1, but which are sold by a registered VAT trader after that date and so attract VAT.

The transitional problem arises when such goods have borne either purchase tax, or one of the revenue duties which will be abated to take account of the introduction of VAT.

The rebate scheme has been widely welcomed by the trade interests concerned, and as a result of the scheme, there will be no excuse for increasing retail prices on the argument that traders need to recover purchase tax or revenue duty as well as VAT on goods in stock on March 31.

This leads to the action we are taking to safeguard the consumer, first, by special powers in the Counter-Inflation Bill which is now before Parliament, and, second, by a major campaign of newspaper and television advertising starting next week.

In the Counter-Inflation Bill, we are taking special powers to ensure that, where the yield of VAT is less than that of the purchase tax and SET which it is replacing, the cuts in taxation will lead to prices being reduced in line with the tax reduction, and that, where the reverse is the case, any price increases will be no more than is strictly justified by the tax change.

In this respect, therefore, the situation will be quite different from decimalisation, where there were no such powers. Of course, there is no question of a free-for-all when these special powers end: prices will continue to be subject to the strict control provided for in the Bill.

The newspaper and television advertising campaign will begin next week. We have had extensive consultations with representative trade bodies, in order to work out with them patterns of price changes which will be both commercially realistic for retailers and acceptable to the Government as correctly reflecting all the tax changes—the abolition of SET and purchase tax as well as the introduction of VAT.

All this has, of course, been on the provisional basis of last year's Finance Act. The trade organisations could not have been more co-operative.

MISLEADING STATEMENTS

I am grateful also to those consumer bodies and others who have already published fair and balanced forecasts of price changes, on the basis of the provisional rate of VAT. Some newspapers and magazines in particular, have in this respect performed an invaluable public service.

From some other quarters, there have been totally misleading statements about the consequences of the changeover from purchase tax and SET to VAT—some of them, I am sorry to say, made in this House.

What we shall do, therefore, in this newspaper and TV campaign is to give the nation the facts. We shall give the housewife clear information about how the changeover will affect her.

We shall set out in newspaper advertising and in leaflets a list of more than 150 main items of consumers' expenditure, and show how as a result of the tax changes their prices are likely to move.

If any member of the public finds that prices in a particular shop have changed in a way which is out of line with this Shoppers' Guide, he or she will be able to complain to the Weights and Measures Inspectorate who will be empowered to investigate whether the retailer has properly reflected the tax change in his prices.

VAT AND CHARITIES

As a result of consideration in the course of the year, there will be two changes concerning VAT and charities (one comparatively minor and the other of considerable importance to those running charity shops).

One of the points to which some charities have attached importance is that goods exported by a charity, for example to assist

the victims of an overseas disaster, might bear VAT.

This is not what was intended, and an Order will be laid which will ensure that all exports by a charity are zero-rated.

Perhaps the greatest anxiety about the effects of VAT on charities has been in respect of sales of donated goods by charity shops. The many voluntary workers in these shops are being increasingly successful in raising substantial sums for deserving causes.

"CHARITY SHOPS"

In the light of advice from a number of charities, I have decided that the best course is simply to zero-rate the sale in a charity shop of all goods, both new and used, which have been given for resale to a charity established for the relief of the distressed.

There will be no limit to the relief in respect of the value of goods donated by private individuals.

The relief will extend to gifts from stock by registered traders up to the statutory £ 10 limit for business gifts. The necessary Order will be laid to-day.

This change will be of very great help to charity shops and I am sure it will be welcomed by the charities concerned.

There is one further matter concerning charities which it is convenient to deal with at this point. It arises as a result of the new system of unified Income-tax.

Under the new system, charities which receive income under covenants for a net sum—that is a covenant which expresses the amount to be paid as a fixed sum after deduction of tax—will receive a smaller repayment of tax because the new basic rate tax of 30 per cent. is less than the old standard rate tax of 38.75 per cent.

This is, of course, a problem which has arisen whenever the standard rate of income-tax has been cut. Nevertheless, I have received many representations that the resulting cut in the income of charities will create considerable difficulties for them, because they are committed in the coming years to expenditure which they had expected to be financed out of covenants made before the 30 per cent. basic rate was announced in 1971.

New covenants need of course cause no problem, because they can take account of the change. I believe that the charities have a convincing case.

There will therefore be a scheme of transitional relief for charities which should relief them of their difficulties. Under this relief, charities making tax repayment claims in respect of charitable covenants will be able to claim a supplementary payment for the four years from 1973-74 to 1976-77.

This payment will be based on the tax repaid to them in respect of net covenants for the year 1971-72. For 1973-74 it will be the difference between that amount and what would have been repaid had the standard rate been 30 per cent. in 1971-72. For 1974-75 it will be 75 per cent. of that difference; for 1975-76 50 per cent. and for 1976-77 25 per cent.

These payments—which will be borne on a special sub-head of the Inland Revenue Vote—are estimated to cost about £ 3 m. in 1973-74 and some £ 7½ m. in all.

I should perhaps add that there is no case for continuing payments of this sort indefinitely. The reason is that most covenants are for seven years, and that by 1977-78 almost all payments will be under covenants made in the knowledge of the new system, which those entering into covenants will have been able to take into account.

The House may know that the National Council of Social Service has circulated a report which assesses the effect of the various changes in taxation which I made in last year's Finance Act.

TAX CLAIMS ON COVENANTS

The Council selected a sample of 95 charities, but they did not all respond.

However, 52 provided information which, in the view of the Council, was sufficient for the survey. Of those 52 charities, 42 were charities engaged in the relief of the distressed.

While I must, in fairness, say that I do not accept some of the assumptions on which the report is based, the House should know that even on the assumptions and conclusions of the National Council itself, with the changes which I have just announced, those 42 charities will, overall, gain next year.

The concessions to charities which I have made last year and this are substantial. It has sometimes been suggested that charities should not be expected to bear VAT at all. But it has never been accepted that charities should be relieved of all indirect taxation, and they have always borne purchase tax on the goods they have purchased.

Taking into account the estate duty and capital gains tax concessions I made in last year's Budget and the concessions which I have just announced, there can be no doubt that the net benefit to charities as a whole substantially outweighs the cost of the changeover to VAT.

Taking full account of the changeover to VAT, the cost to the Exchequer of the concessions to charities which I have made in these last two Budgets is estimated to be of the order of £ 20 m. in 1973-74.

ABOLITION OF SELECTIVE EMPLOYMENT TAX

The two taxes which have borne directly or indirectly on food have been purchase tax and SET. In March 1971, I announced that SET was to be cut by half, and in July 1971 purchase tax on food was cut from 22 per cent. to 18 per cent.

As from April 1, both purchase tax and SET will be abolished and, as a result of the decision I have just announced, all food sold in the shops for human consumption will be relieved from VAT.

By way of contrast, at the rates in force when we took office, the yield of purchase tax and SET on food would next year have been £ 225 m. I am sure that this change will be welcomed in all parts of the house.

To put the change in the system of indirect taxation into perspective, the phased changeover from purchase tax and SET to VAT will mean that, compared with the rates of purchase tax and SET in existence when the changeover was announced, the yield of VAT on a full-year basis will be about £ 900 m. less than it would otherwise have been.

Whatever may be the views of individual Hon. and Rt. Hon. Members about the change in the system of indirect taxation, I am sure the whole House will join me in paying tribute to Her Majesty's Customs and Excise and to my Hon. friend, the Financial Secretary, who has borne the brunt of the detailed work.

I come now to pensions and social security benefits. First I should remind the House that the prescribed amounts for Family Income Supplement will be increased next month by sums varying from £ 1 to £ 2.50 depending on the size of the family.

The House will recall that until last year, it had been the practice for pensions and

related benefits to be reviewed only once every two years. No one has doubted that we were right to change that, and to provide for a review every year.

The Secretary of State for Social Services will to-morrow be making a full statement of the Government's proposals but, so that those proposals can be seen in the context of the Budget. I will — as in the previous two Budget statements — give the House the background to our decisions and the substance of those decisions.

One of the main points of agreement in the tripartite talks last autumn was that the more the Government and the nation act together to counter inflation, the more the low-paid, the pensioners and others least able to protect themselves, will benefit.

FRANCE

Conseils juridiques

Instruction du 5 octobre 1972 de la Direction générale des Impôts relative à des conseils juridiques (3A-21-72) *

La loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions juridiques et judiciaires (*J.O. du 5 janvier 1972, p. 131 et s.*) et le décret d'application no° 72-670 du 13 juillet 1972 (*J.O. du 18 juillet 1972, p. 7556 et s.*) ont notamment défini un statut particulier à certains conseils juridiques.

A. PERSONNES CONCERNÉES

Il s'agit, tout d'abord, des personnes physiques et morales françaises:

1° Qui, à titre principal et professionnel, donnent des consultations ou rédigent des actes pour autrui en matière juridique;

2° Qui n'appartiennent pas à une profession judiciaire ou juridique antérieurement réglementée ou dont le titre est déjà protégé, mais:

— se proposent d'exercer, à l'avenir, leur activité sous le titre de conseil juridique assorti ou non d'une mention de spécialisation [1] ou sous un titre équivalent;

— sont titulaires de certains diplômes ou titres et justifient d'une pratique professionnelle *(cf. art. 54-1° et 2° de la loi du 31 décembre 1971, art. 2 à 6, 11-3° et 12 du décret du 13 juillet 1972, arrêtés du 4 août 1972 et, pour tout toute personne qui exerçait avant le 1er juillet 1971 les activités de conseil juridique ou fiscal, art. 61 de la même loi et art. 87 du même décret);*

— satisfont aux conditions de moralité exigées des avocats (*cf. art. 11-4° à 6° de la loi du 31 décembre 1971 et 11-1° et 2° du décret du 13 juillet 1972*);

— seront inscrits sur la liste spéciale établie par le procureur de la République près le tribunal de grande instance dans le ressort duquel se trouve leur domicile professionnel ou, s'il s'agit de sociétés, leur siège social.

Le statut particulier réglementant l'usage du titre de conseil juridique s'applique également aux personnes de nationalité étrangère qui, à titre professionnel, donnent des consultations ou rédigent des actes pour autrui en matière juridique à condition, d'une part, que leurs activités portent à titre principal sur l'application des droits étrangers et du droit international, d'autre part, qu'elles soient inscrites sur la liste spéciale des conseils juridiques. Mais ces deux conditions ne sont pas exigées des ressortissants des États membres des communautés européennes ou d'un

* Bulletin officiel de la Direction générale des Impôts No. 180 du 5 octobre 1972.

1. Seule est prévue la mention d'une des spécialisations suivantes:
— conseil juridique et fiscal ou conseil fiscal;
— conseil juridique en droit social;
— conseil juridique en droit des sociétés.
Mais un arrêté du ministre de la Justice pourra autoriser l'usage de la mention d'autres spécialisations, compte tenu des besoins de la vie juridique et des qualifications particulières qui y répondent.

État qui accorde sans restriction aux Français la faculté d'exercer l'activité professionnelle qu'ils se proposent eux-mêmes d'exercer en France (*art. 55 de la loi du 31 décembre 1971*).

La loi du 31 décembre 1971 est entrée en vigueur le 16 septembre 1972 et modifie, à partir de cette date, la situation au regard de la taxe sur la valeur ajoutée des conseils juridiques français inscrits sur la liste spéciale, auxquels doivent être assimilés, du point de vue fiscal, les conseils juridiques étrangers visés à l'alinéa précédent.

Mais, en tout état de cause, le régime effectivement applicable en matière de taxe sur la valeur ajoutée aux conseils juridiques inscrits sur la liste spéciale, comme aux conseils juridiques non inscrits, dépend de circonstances de fait concernant:

— les modalités d'exercice de l'activité;
— la nature des opérations réalisées.

B. INCIDENCE DES MODALITÉS D'EXERCICE DE L'ACTIVITÉ

Conformément aux principes généraux qui régissent la situation des professions libérales au regard de la taxe sur la valeur ajoutée, les conseils juridiques, qu'ils soient ou non inscrits sur la liste spéciale, deviennent imposables pour l'ensemble de leurs opérations lorsqu'ils adoptent, en fait, des modalités commerciales pour exercer leurs activité ou gérer leur établissement.

Il en est ainsi dans les cas suivants:

1° Lorsque les intéressés ne prennent personnellement aucune part effective aux activités libérales de conseil mais spéculent uniquement sur le travail d'autrui en ayant recours, pour effectuer toutes les opérations, à des techniciens salariés qui ne participent ni à la répartition des bénéfices, ni à la gestion de l'entreprise;

2° Lorsque les conseils juridiques exploitent de nombreuse agences dispersées géographiquement de sorte que le ou les exploitants ne peuvent être considérés comme prenant une part effective au fonctionnement de chacun des établissements composant l'entreprise. Toutefois, cette condition doit être interprétée largement en fonction des constatations de fait, notamment à l'égard des conseils juridiques inscrits sur la liste spéciale qui, dans le cadre de leur activité réglementée, ont la faculté d'ouvrir un ou plusieurs bureaux dans le ressort de la Cour d'appel dont dépend leur domicile professionnel, ou, s'il s'agit de sociétés, leur siège social (*art. 53 du décret du 13 juillet 1972*) [2];

3° Lorsque les conseils juridiques emploient de nombreux démarcheurs ou représentants et ont recours à une large publicité.

Cette précision ne peut viser que des situations de fait, car, en droit, l'article 54 du décret du 13 juillet 1972 interdit aux conseils juridiques inscrits sur la liste spéciale tout démarchage direct ou indirect ou par personne interposée et précise, à cet égard, que constitue un acte de démarchage le fait pour un conseil juridique de se rendre personnellement ou d'envoyer un mandataire, soit au domicile ou à la résidence d'une personne, soit sur les lieux de travail, de repos ou de traitement ou dans un lieu public, en vue d'offrir ses services pour consulter, rédiger des actes, assister ou représenter autrui.

Par ailleurs, l'article 55 du même décret

2. Les personnes physiques ou morales qui exerçaient les activités de conseil juridique ou fiscal avant le 1er juillet 1971 peuvent, sous certaines conditions, conserver les bureaux annexes qu'elles avaient ouverts, avant cette date, hors du ressort de la Cour d'appel où elles ont établi leur domicile ou leur siège social (*cf. art. 110 du décret du 13 juillet 1972*).

n'autorise la diffusion, par quelque moyen que ce soit, de documents, annonces ou communications pouvant constituer une publicité directe ou indirecte en faveur d'un conseil juridique inscrit sur la liste spéciale que dans la mesure où cette diffusion procure au public une nécessaire information. Tout conseil inscrit qui contreviendrait aux prescriptions des articles précités s'exposerait à une procédure disciplinaire.

C. INCIDENCE DE LA NATURE DES OPÉRATIONS EFFECTIVEMENT RÉALISÉES

1. *Conseils juridiques inscrits sur la liste spéciale*

L'article 58 de la loi du 31 décembre 1971 dispose, qu'en principe, l'inscription des conseils juridiques sur la liste établie par le procureur de la République ne peut être demandée que par une personne physique ou une société civile professionnelle [3]. Cependant, par dérogation à ce principe, l'article 62 de la même loi prévoit que les personnes morales autres que les sociétés civiles professionnelles qui exerçaient avant le 1er juillet 1971 les activités de conseil juridique ou fiscal pourront demander leur inscription sur la liste spéciale à condition de se conformer, avant l'expiration d'un délai de cinq ans à compter du 16 septembre 1972, aux règles ci-après:

1° Les actions des sociétés par actions doivent revêtir la forme nominative;

2° Plus de la moitié du capital social doit être détenu par des personnes inscrites sur la liste spéciale des conseils juridiques;

3° Le président du conseil d'administration, les directeurs généraux, les membres du directoire ou le directeur général unique et les gérants, ainsi que la majorité des membres du conseil d'administration et du conseil de surveillance, doivent être inscrits sur la liste susvisée;

4° L'adhésion d'un nouvel associé doit être subordonnée à l'agrément préalable, selon le cas, du conseil d'administration, du conseil de surveillance ou des porteurs de parts.

a. *Opérations non imposables des conseils juridiques inscrits sur la liste spéciale*

En application des dispositions combinées de l'article 54 de la loi du 31 décembre 1971 et de l'article 47 du décret du 13 juillet 1972, les conseils juridiques inscrits sur la liste spéciale peuvent, au titre de leur activité réglementée non imposable:

— donner des consultations en matière juridique et rédiger pour le compte d'autrui tous actes sous seing privé;

— procéder à toutes formalités qui sont la conséquence ou l'accessoire de ces actes (par exemple: présentation des actes à la formalité de l'enregistrement, accomplissement des formalités légales pour rendre les actes opposables aux tiers);

— apporter leur concours aux clients pour la rédaction des déclarations, mémoires, réponses et documents divers adressés aux administrations ou à tous organismes publics ou privés;

— assister et représenter les parties devant les administrations, les organismes publics et privés, les juridictions ou organismes juridictionnels, dans la mesure,

3. Les règles de constitution et de fonctionnement des sociétés civiles professionnelles constituées entre deux ou plusieurs conseils juridiques sont fixées par un décret n° 72-698 du 26 juillet 1972 portant règlement d'administration publique (*J. O. du 30 juillet 1972, p. 8177 et suiv.*).

bien entendu, où les dispositions législatives et réglementaires n'interdisent pas la représentation ou l'assistance pour tout mandataire ou par certaines catégories de mandataires parmi lesquelles sont rangés les conseils juridiques;

— procéder, pour le compte de leur mandant, aux règlements pécuniaires directement liés aux actes ou opérations mentionnés aux alinéas précédents on constituant l'accessoire de ces actes ou de ces opérations.

b. *Opérations imposables*

Les conseils juridiques inscrits sur la liste spéciale seront recherchés en payement de la taxe sur la valeur ajoutée lorsqu'ils réalisent, en fait, des prestations de services ou opérations de nature commerciale autres que celles expressément prévues par les articles 54 de la loi du 31 décembre 1971 et 47 du décret du 13 juillet 1972.

Dans ce cas, la taxation ne concernera pas l'ensemble de l'activité mais sera limitée aux prestations et opérations de nature commerciale imposables, dès lors qu'elles peuvent être connues et individualisées chez les différentes personnes qui, autorisées légalement à faire usage du titre de conseil juridique, respectent les obligations comptables qui leur sont imposées par la réglementation.

c. *Obligations comptables*

Les personnes physiques ou morales inscrites sur la liste des conseils juridiques doivent se faire ouvrir à leur nom, dans une banque ou à la Caisse des dépôts et consignations, un compte qui est exclusivement affecté à la réception des fonds remis à l'occasion des actes et opérations accomplis dans l'exercice de la profession.

Les versements faits à un conseil juridique au titre de ses opérations professionnelles et d'un montant supérieur à 1.000 francs doivent être effectués, soit par virement bancaire ou postal, soit par chèque bancaire ou postal.

Aux termes d'un arrêté du 4 août 1972 (*J.O. du 19 août 1972, p. 8950 et 8951*), toute personne physique ou morale inscrite sur la liste des conseils juridiques doit tenir une comptabilité comportant au moins les documents suivants:

— un livre-journal;
— une comptabilité-clients des fonds reçus;
— une comptabilité-clients des valeurs et effets reçus;
— des carnets de reçus.

Le *livre-journal* doit mentionner, par ordre chronologique, toutes les opérations concernant les fonds, effets ou valeurs qui sont versés ou remis au conseil juridique au titre de son activité professionnelle. Il doit indiquer, notamment, pour chaque opération, la date, le nom de la partie pour laquelle l'opération est effectuée, le libellé clair et succint de l'opération et son montant et, s'il y a lieu, le numéro du reçu délivré. Lorsqu'un conseil juridique possède des bureaux annexes, il a la faculté d'ouvrir des comptes bancaires distincts affectés à la réception des fonds, mais, dans ce cas, son livre-journal doit indiquer, pour chaque opération, le ou les comptes bancaires par l'intermédiaire desquels l'opération est effectuée.

Tout conseil juridique peut tenir plusieurs livres auxiliaires à condition que les écritures soient centralisées au moins mensuellement dans le livre-journal.

La *comptabilité-clients des fonds reçus* est retracée dans un grand livre des comptes clients qui reprend les écritures du livre-

journal et doit contenir le compte de chaque client par le relevé de toutes les recettes et dépenses effectuées pour lui. Les balances sont faites au moins semestriellement, au 31 juin et au 31 décembre. Ce grand livre peut être tenu sur feuillets mobiles.

Un relevé doit être établi au nom de chaque client pour toutes les entrées et sorties de *valeurs et effets reçus* de l'intéressé.

Tous les versements de fonds et remises d'effets ou valeurs faits à un conseil juridique doivent donner lieu à la *délivrance d'un reçu extrait d'un carnet.* Chaque carnet porte un numéro et les reçus sont numérotés en série continue; les reçus doivent être utilisés dans l'ordre numérique. Un double de chaque reçu délivré doit être conservé, liassé ou attaché à la souche. Le reçu et le double doivent porter le même numéro. Le reçu doit mentionner:

1° Le numéro du carnet dont il est extrait;
2° Le numéro du reçu dans la série;
3° Le nom ou la raison sociale et l'adresse du conseil juridique délivrant le reçu;
4° Le nom et l'adresse du garant;
5° La date et le lieu de la délivrance;
6° Le nom et l'adresse de la partie versante;
7° L'indication, en chiffres et en letters, des sommes, effets ou valeurs reçus et, pour les fonds, le mode de versement;
8° La cause du versement ou de la remise, en précisant notamment si le versement est effectué à titre de provision ou pour solde définitif;
9° La signature du conseil juridique ou de la personne mandatée à cet effet.

d. *Option pour le payement de la taxe sur la valeur ajoutée*

Cette option, dont le régime est fixé par les articles 189 à 192 de l'annexe II au Code général des Impôts (*cf. Documentation générale, série 3, feuillets A. 132*) est ouverte, dans les conditions de droit commun, aux personnes physiques et morales inscrites sur la liste des conseils juridiques.

Bien entendu, les conseils qui exerçaient leur activité dans un cadre libéral avant le 16 septembre 1972 (date d'application de la loi du 31 décembre 1971) sans avoir opté pour le payement de la taxe sur la valeur ajoutée, ainsi que les conseils juridiques qui commenceront à exercer leur profession après le 16 septembre 1972 et seront inscrits sur la liste spéciale peuvent, s'ils le désirent, exercer l'option dans le délai qui a été précisé par l'instruction n° 126 du 28 juillet 1969 (*B.O.C.I. 1969-I-201*) c'est-à-dire, pratiquement, dans la quinzaine suivant le premier jour d'un mois quelconque à partir duquel ils désirent que leur activité soit couverte par l'option.

Quant aux conseils juridiques ou fiscaux qui, antérieurement au 16 septembre 1972, avaient opté pour l'assujettissement à la taxe sur la valeur ajoutée, ils seront en principe tenus par leur option qui couvre obligatoirement une période expirant le 31 décembre de la quatrième année qui suit celle au cours de laquelle elle a été exercée; toutefois cette option devra être dénoncée en cas de modification substantielle des conditions d'exercice de l'activité; tel est le cas, par exemple:

— des conseils juridiques ou fiscaux qui se bornaient à exercer une activité de conseil pur et simple (consultations et rédaction de projets d'actes) mais qui vont se faire inscrire sur la liste spéciale et étendre désormais leur activité aux opérations d'entremise autorisées par le statut;
— des conseils juridiques qui exerceront leur activité, non plus à titre individuel,

mais en tant que membres d'une société civile professionnelle ou d'un groupement.

2. *Conseils juridiques non inscrits*

Il s'agit, du point de vue fiscal, des personnes qui, pratiquement:
1° Exercent pour le compte d'autrui, et à titre indépendant, une activité de conseil et d'intermédiaire à propos de problèmes d'ordre juridique ou fiscal;
2° N'appartiennent pas à une profession réglementée ou dont le titre est protégé;
3° Ne sont pas autorisés par la loi du 31 décembre 1971 à faire usage du titre de conseil juridique assorti ou non d'une mention de spécialisation.
Leur situation au regard de la taxe sur la valeur ajoutée est celle de l'ensemble des anciens conseils juridiques ou fiscaux avant l'application de la loi du 31 décembre 1971.

a. *Opérations non imposables*

Conformément à une abondante jurisprudence, élaborée par le Conseil d'État lorsque la profession de conseil juridique n'était soumise à aucune réglementation, les conseils juridiques non inscrits sur la liste spéciale échappent au payement obligatoire de la taxe sur la valeur ajoutée uniquement lorsqu'ils se bornent à donner des consultations juridiques ou fiscales et à rédiger des projets d'actes, sans s'entremettre entre leurs clients et un tiers ou une administration ou une juridiction quelconque, et sans procéder à des maniements de fonds, sinon pour assurer le payement des frais d'actes ou des frais de procès incombant à leurs clients.

b. *Opérations imposables*

Les conseils juridiques non inscrits sont redevables de la taxe sur la valeur ajoutée lorsqu'ils effectuent habituellement, dans l'intérêt de leurs clients, des actes d'entremise relevant de la gestion d'affaires tels que:
— recouvrement de créances;
— accomplissement des formalités légales pour rendre les actes rédigés par eux opposables aux tiers;
— représentation des justiciables devant les juridictions où le ministère des avocats n'est pas obligatoire ou devant les juges-rapporteurs, les arbitres ou les experts judiciaires;
— préparation des déclarations fiscales des clients;
— rédaction, pour ces derniers, de mémoires ou réponses aux demandes de renseignement émanant de divers organismes;
— constitution de dossiers et accomplissement de formalités administratives;
— assistance des clients dans leurs rapports avec l'Administration;
— administration de biens, gestion d'immeubles, opérations relevant de l'agence de location ou de l'activité d'intermédiaire en transactions immobilières.

c. *Assiette de la taxe sur la valeur ajoutée*

Lorsque les conseils juridiques non inscrits réalisent à la fois des opérations imposables et des opérations non imposables, ils sont passibles de la taxe sur la valeur ajoutée sur la totalité de leurs recettes dans la mesure où:
— les consultations d'ordre juridique ou fiscal qu'ils donnent effectivement n'ont qu'un caractère accessoire et concourent directement au but normal d'une activité principale relevant de la gestion d'affaires;
— la rémunération des services rendus a un caractère global et la comptabilité

ne permet pas de distinguer les activités de conseil pur et simple et les actes d'entremise (*cf. arrêt du Conseil d'État du 9 décembre 1968, aff. Sieur Loiseleur, req. n° 72675*);

— il n'est pas apporté la preuve, au moyen de documents comptables ou pièces justificatives, de l'existence de consultations d'ordre juridique ou fiscal indépendantes de tout acte d'entremise (*arrêts du 22 mars 1972, aff. Sieur Élie Lardière, req. n°s 81867 et 82252*).

BUNDESREPUBLIK DEUTSCHLAND

Urteil vom 13. September 1972 [1]

(DBA Bundesrepublik Deutschland-Niederlande)

1. Geht die Zuständigkeit für die Entlastung von deutschen Abzugssteuern aufgrund von Abkommen zur Vermeidung der Doppelbesteuerung nach Art. 5 des Finanzanpassungsgesetzes vom 30. August 1971 während des Revisionsverfahrens auf das Bundesamt für Finanzen über, so bleibt das FA, das den angefochtenen Bescheid erlassen hat, der richtige Beklagte.
2. Die Voraussetzung einer Beteiligung von mindestens 25 v.H. an einer anderen Kapitalgesellschaft im Sinne des Art. 13 Abs. 4 DBA-Niederlande muß in der Person der Kapitalgesellschaft erfüllt sein, die Gläubigerin der Kapitalerträge ist. Indirekte, sogenannte mittelbare Beteiligungen sind keine Beteiligungen im Sinne dieser Vorschrift.
FGO § 122 Abs. 1; DBA-Niederlande Art. 13; Schlußprotokoll zum DBA-Niederlande Nr. 18.

Der Revisionsbeklagten (Klägerin), einer Kapitalgesellschaft mit Sitz im Königreich der Niederlande, stehen Geschäftsanteile an einer deutschen GmbH (GmbH) in Höhe von 23,5 v.H. des Stammkapitals zu. Weitere Geschäftsanteile der GmbH in Höhe von 24 v.H. gehören einer anderen Kapitalgesellschaft mit Sitz im Königreich der Niederlande, die gleichzeitig zu 100 v.H. an der Klägerin beteiligt ist (Obergesellschaft). Die GmbH hat für das Geschäftsjahr 1966 einen Gewinn von 128 287,24 DM an die Klägerin ausgeschüttet und dafür 25 v.H. Kapitalertragsteuer = 32 071,81 DM einbehalten und abgeführt. Am 2. Januar 1968 beantragte die Klägerin beim Revisionskläger (FA), ihr 2/5 der abgeführten Kapitalertragsteuer = 12 828,72 DM zu erstatten. Das FA lehnte diesen Antrag ab, da die Klägerin und ihre Obergesellschaft zusammen zu mehr als 25 v.H. an der GmbH beteiligt seien.
Die Sprungklage hatte Erfolg. Das FG hat den ablehnenden Bescheid des FA aufgehoben und entschieden, das FA sei verpflichtet, an die Klägerin 12 828,72 DM Kapitalertragsteuer zu erstatten. Zur Begründung hat das FG ausgeführt, der Gewinn, den die GmbH an die Klägerin ausgeschüttet habe, unterliege nach Art. 13 Abs. 3 DBA-Niederlande vom 16. Juni 1959 (BStBl I 1960, 382) dem allgemeinen Kapitalertragsteuer-Satz von 15 v.H. Denn der Klägerin gehörten weniger als 25 v.H. der Geschäftsanteile der GmbH.
Gegen dieses Urteil richtet sich die Revision des FA. Das FA rügt, das FG habe Art. 13 Abs. 4 DBA-Niederlande in Verbindung mit Nr. 18 Buchst. b des Schlußprotokolls unrichtig ausgelegt und insbesondere die mit Nr. 18 Buchst. b des Schlußprotokolls verfolgten Zielsetzungen verkannt.
Das FA beantragt, das Urteil des FG aufzuheben und die Klage abzuweisen.
Die Klägerin beantragt, die Revision zurückzuweisen.
Der BdF ist dem Verfahren beigetreten. Er führt aus:
1. Zivilrechtlich sei zwar die Klägerin Gläubigerin der Kapitalerträge. Steuerrechtlich würden aber die Gewinne nach § 27 der niederländischen Steuerverordnung vom Jahre 1940 der Obergesell-

1. Bundessteuerblatt 1973 - Teil II, Seite 57. (27. Januar 1973).

schaft zugerechnet. Die auf dieser Vorschrift beruhende fiskalische Einheit zwischen der Klägerin und ihrer Obergesellschaft habe zur Folge, daß der Obergesellschaft das Schachtelprivileg über die Grenze nach niederländischem Steuerrecht zustehe. Denn durch die Hinzurechnung der Geschäftsanteile der GmbH, die bürgerlich-rechtlich der Klägerin gehörten, habe die Obergesellschaft eine Beteiligung von 25 v.H. oder mehr an der GmbH. Bezieherin des Gewinns der GmbH im Sinn des DBA-Niederlande sei mithin nicht die Klägerin, sondern deren Obergesellschaft. Daher bestünden auch Zweifel an der Aktivlegitimation der Klägerin.

2. Aufgrund der fiskalischen Einheit zwischen der Klägerin und ihrer Obergesellschaft sei aus der Sicht der Obergesellschaft festzustellen, ob die Voraussetzungen für die Zuteilung des Besteuerungsrechts und die Begrenzung des Steuersatzes nach dem DBA-Niederlande gegeben seien. Unter Anteilen, die einer Kapitalgesellschaft gehören, seien die Beteiligungen zu verstehen, die dem bezogenen Gewinn zugrunde lägen. Der Ausdruck „gehören" bezeichne die Rechtsbeziehungen, die steuerrechtlich den Bezug der Gewinne begründeten.

3. Diese Auslegung entspreche auch dem Sinn und Zweck des Vertrags. Die Vollerhebung der deutschen Kapitalertragsteuer auf Schachtelgewinne, die in das Ausland gingen, diene der Gleichmäßigkeit der deutschen Besteuerung. In diesen Fällen werde vom ausländischen Staat in aller Regel das Schachtelprivileg über die Grenze gewährt. Deutsche Obergesellschaften mit Schachtelbeteiligungen mußten aber eine Nachsteuer von in der Regel 36 v.H. des ausgeschütteten Betrags zahlen. Damit sei die Vollerhebung der deutschen Kapitalertragsteuer an das Schachtelprivileg des niederländischen Steuerrechts gekoppelt. Ziel der Vertragsparteien sei es gewesen, die deutsche Kapitalertragsteuer immer dann voll aufrechtzuerhalten, wenn aufgrund des niederländischen Schachtelprivilegs über die Grenze die Gewinne steuerfrei seien.

4. Der BdF beanstandet schließlich, das FG habe den Sachverhalt nicht im Hinblick auf die Frage eines Rechtsmißbrauchs aufgeklärt.

Der BdF beantragt, das Urteil des FG aufzuheben und die Klage abzuweisen.

Aus den Gründen:

Die Revision ist nicht begründet.

I

Das FA, das den angefochtenen Bescheid erlassen hat, war im Verfahren vor dem FG der richtige Beklagte (§ 63 FGO). Nach § 122 Abs. 1 FGO ist beteiligt am Verfahren über die Revision, wer am Verfahren über die Klage beteiligt war. Danach war das FA auch im Revisionsverfahren der richtige Beklagte. Die Zuständigkeit für die Entlastung von deutschen Abzugsteuern (Erstattungen und Freistellungen) aufgrund von Abkommen zur Vermeidung der Doppelbesteuerung ist zwar am 1. Januar 1972 auf das Bundesamt für Finanzen übergegangen (§ 5 Abs. 1 Nr. 2 des Finanzverwaltungsgesetzes in der Fassung des Art. 5 des Finanzanpassungsgesetzes vom 30. August 1971, BStBl I 1971, 390).

Daraus kann aber nicht der Rechtssatz hergeleitet werden, daß das FA im Streitfall die nach früherem Recht begründete Zuständigkeit verloren habe und das Bundesamt für Finanzen entgegen der Vorschrift des § 122 Abs. 1 FGO Beteiligter am Verfahren über die Revision geworden sei.

II

Der Steuerabzug vom Kapitalertrag beträgt

im Streitfall 15 v.H. der ausgeschütteten Gewinne der GmbH, da der Klägerin nicht mindestens 25 v.H. der Geschäftsanteile der GmbH gehören (Art. 13 Abs. 2, 3, 4 DBA-Niederlande, Nr. 18 des Schlußprotokolls).

1. Die Klägerin unterliegt der deutschen beschränkten Steuerpflicht (§ 2 Abs. 1 KStG). Die Gewinne, die die GmbH an die Klägerin ausgeschüttet hat, zählen nach der hier gebotenen isolierenden Betrachtungsweise (Urteil des BFH I R 41/70 vom 7. Juli 1971, BFH 103, 153, BStBl II 1971, 771) zu den beschränkt steuerpflichtigen Einkünften aus Kapitalvermögen (§ 6 Abs. 1 Satz 1 KStG, § 49 Abs. 1 Nr. 5, § 20 Abs. 1 EStG). Die Steuer wird durch Abzug vom Kapitalertrag erhoben (§ 6 Abs. 1 Satz 1 KStG, § 43 Abs. 1 Nr. 1 EStG). Steuerschuldner ist der Gläubiger der Kapitalerträge (§ 6 Abs. 1 Satz 1 KStG, § 44 Abs. 5 Satz 1 EStG). Das war im Streitfall die Klägerin in ihrer Eigenschaft als Gesellschafterin der GmbH (§ 29 GmbHG).

2. Die beschränkte Steuerpflicht der Klägerin für die Gewinne aus der Beteiligung an der GmbH hat das DBA-Niederlande grundsätzlich aufrechterhalten. Nach Art. 13 Abs. 1 DBA-Niederlande hat der Wohnsitzstaat das Besteuerungsrecht für Dividenden, zu denen auch die Einkünfte aus Anteilen an einer GmbH zählen (Nr. 10 des Schlußprotokolls). Nach Art. 13 Abs. 2 DBA-Niederlande bleibt jedoch das Recht des anderen Vertragstaats zur Vornahme des Steuerabzugs vom Kapitalertrag unberührt. Der Steuerabzug darf allerdings im Normalfall 15 v.H. der Dividenden nicht übersteigen (Art. 13 Abs. 3 DBA-Niederlande). Er darf 10 v.H. der Dividenden nicht übersteigen, „wenn die Dividenden von einer Kapitalgesellschaft mit Wohnsitz in einem der Vertragstaaten an eine Kapitalgesellschaft mit Wohnsitz in dem anderen Staate gezahlt werden, der mindestens 25 v.H. der stimmberechtigten Anteile der erstgenannten Gesellschaft gehören" (Art. 13 Abs. 4 DBA-Niederlande). Der Satz erhöht sich wiederum, solange in der BRD der Satz der Körperschaftsteuer für ausgeschüttete Gewinne niedriger ist als der Steuersatz für nichtausgeschüttete Gewinne, auf 15 v.H. bei einem Unterschied von 10 v.H. oder mehr und auf 25 v.H. bei einem Unterschied von 20 v.H. oder mehr — Nr. 18 des Schlußprotokolls zum DBA-Niederlande —.

3. Art. 13 DBA-Niederlande und Nr. 18 des Schlußprotokolls ändern somit den Steuersatz für den Steuerabzug vom Kapitalertrag, lassen aber im übrigen die Anwendbarkeit der deutschen Vorschriften über die beschränkte Steuerpflicht unberührt. Unverändert bleibt insbesondere die Zurechnung der Einkünfte an die Gläubigerin der Kapitalerträge (§ 44 Abs. 5 Satz 1 EStG). Auf dieser rechtlichen Beurteilung beruht auch Nr. 2 des Merkblatts des BdF über die Erstattung der deutschen Kapitalertragsteuer und die Steuerbefreiung für Lizenzgebühren vom 30. September 1961, IV B/5-S 1301-Niederlande-40/61 *. Dort wird festgestellt, daß „ein Gläubiger von Dividenden und Zinsen" nach Art. 13 DBA-Niederlande einen Erstattungsanspruch habe. Die Ansicht des BdF, Bezieherin der Kapitalerträge im Sinne des Art. 13 DBA-Niederlande sei die Obergesellschaft, weil diese die Erträge nach holländischem Steuerrecht zu versteuern habe, findet im DBA-Niederlande keine Stütze. Sollten hier das deutsche Recht und das holländische Recht in der Frage der

* BStBl I 1961, 691.

Zurechnung der Einkünfte aus Kapitalvermögen verschiedene Wege gehen, so berechtigt diese unterschiedliche Zurechnung nicht dazu, das deutsche Recht ohne ausdrückliche Vorschrift im Abkommen beiseite zu schieben (vgl. BFH-Urteil I 216/64 vom 29. November 1966, BFH 88, 370, BStBl III 1967, 392).

Aus diesen Gründen war die Klägerin in ihrer Eigenschaft als Gläubigerin der Kapitalerträge zur Stellung des Antrags auf Erstattung der Kapitalertragsteuer und zur Erhebung der Klage berechtigt.

4. Im Streitfall beträgt der Steuersatz nach Art. 13 Abs. 3 DBA-Niederlande 15 v.H., da die Voraussetzungen der Ausnahmeregeln des Art. 13 Abs. 4 DBA-Niederlande und der Nr. 18 des Schlußprotokolls nicht erfüllt sind. Der Klägerin gehören nicht mindestens 25 v.H., sondern nur 23,5 v.H. der stimmberechtigten Anteile der GmbH. Das FA und der BdF wollen die Ausnahmeregel der Nr. 18 des Schlußprotokolls zum DBA-Niederlande anwenden, weil der Obergesellschaft der Klägerin unmittelbar 24 v.H. und mittelbar über die Klägerin weitere 23,5 v.H. der Geschäftsanteile der GmbH gehörten. Dagegen spricht einmal, daß es nach den Ausführungen des Senats unter Nr. 3 allein darauf ankommt, ob der Gläubigerin der Kapitalerträge — der Klägerin also — mindestens 25 v.H. der Anteile der GmbH gehören. Außerdem stellt der Ausdruck „gehören", der im Art. 13 Abs. 4 DBA-Niederlande verwandt wird, nach allgemeinem Sprachgebrauch auf die Rechtszuständigkeit ab, bei Anteilen einer Kapitalgesellschaft auf die Mitgliedschaft (BFH-Urteil I R 8/69 vom 17. Februar 1971, BFH 102, 41, BStBl II 1971, 535). Die Rechtszuständigkeit für die 23,5 v.H. der Geschäftsanteile der GmbH liegt bei der Klägerin und nicht bei deren Obergesellschaft. Hinzu kommt, daß das Gesetz, wenn es von Beteiligungen spricht, in der Regel unmittelbare Beteiligungen meint (BFH-Urteil I 85/64 vom 11. Oktober 1966, BFH 87, 78, BStBl III 1967, 32). Wäre mit dem Ausdruck „gehören" in Art. 13 Abs. 4 DBA-Niederlande auch eine mittelbare Beteiligung gemeint, so würde das Schachtelprivileg über die Grenze, das deutschen Obergesellschaften durch Art. 20 Abs. 2 Satz 3 DBA-Niederlande gewährt wird, auch den Obergesellschaften zustehen, die an niederländischen Untergesellschaften nur mittelbar mit mindestens 25 v.H. beteiligt sind. Denn nach Art. 20 Abs. 2 Satz 3 DBA-Niederlande werden die „unter Art. 13 Abs. 4 fallenden Dividenden" aus der Bemessungsgrundlage ausgenommen. Darin liegt eine klare Verweisung auf den Begriff der Schachtelbeteiligung, wie er in Art. 13 Abs. 4 DBA-Niederlande bestimmt ist.

Diese Folgerung scheinen das FA und der BdF nicht ziehen zu wollen. Sie meinen aber, Nr. 18 des Schlußprotokolls zum DBA-Niederlande sei aus sich selbst auszulegen und gehe von einem Begriff der Schachtelbeteiligung aus, der die mittelbare Beteiligung mitumfasse. Dieser Auffassung kann der Senat nicht folgen. Die Grenzen des Steuerabzugs von 15 v.H. und 25 v.H. der Dividenden werden in Nr. 10 des Schlußprotokolls zum DBA-Niederlande vorgeschrieben „für Beteiligungen im Sinne des Art. 13 Abs. 4". Deutlicher kann kaum gesagt werden, daß auch hier der Begriff der Schachtelbeteiligung maßgebend sein soll, wie er in Art. 13 Abs. 4 DBA-Niederlande bestimmt ist. Abgesehen davon wäre es ein ungewöhnliches Ergebnis, daß die Schachtelbeteiligung, soweit das Abkommen an sie Vorteile knüpft (Art. 13 Abs. 4, Art. 20 Abs. 2 Satz 3 DBA-Niederlande), auf die unmittelbare

Beteiligung beschränkt sein sollte, soweit dagegen das Abkommen Nachteile an sie knüpft (Nr. 18 des Schlüßprotokolls), auch die mittelbare Beteiligung umfassen sollte.

5. Die Beschränkung des Begriffs der Schachtelbeteiligung auf die unmittelbare Beteiligung durch Art. 13 Abs. 4 DBA-Niederlande und die Geltung dieses Begriffs für Nr. 18 des Schlußprotokolls können auch nicht durch Erwägungen aus dem Vortragszweck beseitigt werden.

Der Grund für die Ausnahmevorschrift der Nr. 18 des Schlußprotokolls liegt darin, daß die ausgeschütteten Gewinne der deutschen Untergesellschaften bei diesen dem ermäßigten Steuersatz von 15 v.H. unterliegen (§ 19 Abs. 1 Nr. 1 KStG) und deutsche Obergesellschaften bei Vorliegen von Schachtelbeteiligungen eine Nachsteuer zu entrichten haben (§ 9 Abs. 3 KStG). Diese Nachsteuer beruht auf der Überlegung, daß bei der Obergesellschaft, die eine Schachtelbeteiligung hält, die auf diese Beteiligung entfallenden Gewinne steuerfrei sind (§ 9 KStG) und damit die doppelte Besteuerung der Gewinne, die durch den gespaltenen Körperschaftsteuer-Satz gemildert werden soll, gar nicht eintritt. Sie stellt sich damit als eine Ergänzung der Körperschaftsteuer der Untergesellschaft dar (BFH-Urteil I 276/61 S vom 3. Juli 1963, BFH 77, 394, BStBl III 1963, 464; I R 22/68 vom 3. Februar 1971, BFH 101, 364, BStBl II 1971, 406). Die Erhöhung des Steuerabzugs vom Kapitalertrag nach Nr. 18 des Schlußprotokolls zum DBA-Niederlande soll offenbar einen gewissen Ersatz für die Nachsteuer nach § 9 Abs. 3 KStG darstellen. Sie müßte danach — so meinen wohl das FA und der BdF — immer stattfinden, wenn die Gewinne der deutschen Untergesellschaft im Königreich der Niederlande aufgrund eines dort gewährten Schachtelprivilegs über die Grenze von Steuern befreit sind.

Diese Überlegungen haben aber im Abkommen keinen Ausdruck gefunden und sind daher für die Beteiligten nicht verbindlich. Dabei ist im Streitfall noch folgendes zu beachten. Die Besteuerung der Dividenden, wie sie im DBA-Niederlande — ähnlich wie in manchen anderen DBA — geregelt ist, stellt einen Kompromiß dar zwischen Wohnsitzprinzip und Prinzip des Ursprungsstaats, unter Einbeziehung des internationalen Schachtelprivilegs und des gespaltenen Körperschaftsteuer-Satzes in Deutschland (vgl. Bühler, Prinzipien des internationalen Steuerrechts, 120 ff.). Die vielfältigen Überlegungen, die dabei eine Rolle spielen, lassen ebenso vielfältige Regelungen denkbar erscheinen, bei denen die widerstrebenden Belange der Vertragsteile nicht vollständig gewahrt werden können. Wenn die Absicht bestand, den deutschen Steuerabzug vom Kapitalertrag bei Schachtelbeteiligungen immer dann zu erhöhen, wenn die Gewinne der deutschen Untergesellschaften im Ausland das Schachtelprivileg über die Grenze genießen, so hätte das in dieser Form im Abkommen gesagt werden müssen. Dazu bestand um so mehr Anlaß, als die Steuerbefreiung aufgrund eines DBA nicht davon abhängt, ob der andere Staat von seinem Besteuerungsrecht Gebrauch macht; Ausnahmen bedürfen der besonderen vertraglichen Regelung (Urteil des RFH III 206/39 vom 29. Februar 1940, RFH 48, 191, RStBl 1940, 532). Hier liegt der Fall ähnlich. Denn das FA und der BdF wollen eine Erhöhung des Steuerabzugs vom Kapitalertrag daraus herleiten, daß das Königreich der Niederlande für die ausgeschütteten Gewinne der GmbH das Schachtelprivileg über die Grenze unter gewissen Vorausset-

zungen auch bei einer mittelbaren Beteiligung gewährt.

6. Der Streitfall gibt keinen Anlaß, af die Frage des Rechtsmißbrauchs einzugehen. Die Beteiligten können grundsätzlich ihre Verhältnisse so gestalten, wie sie ihnen, auch steuerrechtlich, am günstigsten erscheinen (BFH-Urteil I 216/64, a. a. O.).

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NARCISO AMOROS RICA *:

SOME REFLECTIONS ON PERMANENT TRIBUTARY REFORM

PRESENTATION OF A THESIS

It is my purpose to offer for consideration in this article, some personal reflections on a theme, which is always current, more so in a time in which State action or intervention is ever increasing, by its own decision and by the acceptance, more or less forced, of the collectivity which constitutes its foundation. This theme is that of Tributary Reform. Expressed in this way, a first impression could interpret the classical content referring to any number of the habitual problems born of a whole list of the many aspects of taxation, of the defects of a tax system, of the fight against evasion, etc. However, this is not our purpose, as it would add little to the much said, very well at times, by doctrinaires and practitioners, legislators and judges. Our purpose is very specific, limited only to placing emphasis on something which underlies the theory and the reality of the numerous fiscal reforms produced throughout history. And although it is possible that as the purpose is initially revealed, its very reasoning is broken, if you will permit me, I will describe the theme more precisely referring to it as the "Permanent Tributary Reform". But as always when the final conclusion or thesis is placed before the considerations or premises which justify it, its meaning will not be complete without knowing the details and without having demonstrated the road which led to it.

Tributary reform has been defined as the renovation of legislation, confronted in sufficient depth to eliminate in effect, the general defects of the taxation system. Thus appears the classical concept of reform, based on the existence of a rule of supreme hierarchy which pretends to succeed at making, on an exact date, the established taxes or those to be established, comply with the objectives foreseen. Only a critical explanation of this concept suggests a series of ideas with sufficient depth to give content to other contributions as extensive as this, but our pretentions are more limited, since we are only trying to demonstrate that a fiscal reform requires a daily continuity which is not achieved only through the Laws which are passed, but also as the result of lesser dispositions, such as orders, instructions and notices, within the operative legality. We assert that it is in this daily balance which must be achieved by the Ministry of the Treasury each day, where the real reform exists, and if in its account of Losses and Gains it is the accrediting balance which predominates, then the fiscal reform may be considered successful. This requirement of continuity in reform is also a warning that cannot be postponed or forgotten. There is a tendency to maintain privileges or special tributary regimes to provide stability and duration of the regulation. But fiscal reform such as we know it, must be a question of daily consideration, as are many others, avoiding its postpone-

* Director General of Taxation, Madrid. This article is based on the speech pronounced at the opening session of the XXVIth Congress of the International Fiscal Association (September 1972).

ment or its being forgotten which could cause a technical degeneration of the system in effect. An example of this preoccupation could be summed up in a technical measure like one which could accompany the annual budget bill with a statement presenting the yield that would be obtained from taxes if exemptions were totally omitted. In another statistical table these exemptions would be detailed with an evaluation of the loss in income each of them would create. In this way, the legislative body would be able to confirm annually, with full responsibility, the exonerations which they deem useful and important. This measure, with obvious difficulties more easily overcome in an automated service, is cited as a sample of this permanent vigil necessary to avoid fiscal inaction.

PRESENT TRIBUTARY REFORMS

The arguments which justify the thesis presented could be deduced, with ease, from an examination of the tributary reforms which have been effected in various countries. But this is materially and temporarily impossible, and as an apodictic statement of conclusions does not respond to my character, I will begin by referring to an authoritative argument, as for example, several paragraphs of an official publication of the French Ministry of Economy and Treasury in September of 1970, reproduced in the Bulletin for International Fiscal Documentation, of November 1970. It says:

"In fiscal matters, as in other domains of political activity, it is necessary to emphasize the favourable consequences which governmental stability engenders. Previously, with only a few months of gestation, a government did almost not have time to present a hurried project modifying certain dispositions of the General Code of taxation, project which was immediately called a fiscal reform. Today, sure of the continuity of its work, the Government should define the permanent orientation of its policy. And it is therefore, important in this light, to rectify an inexactness and dissipate an illusion. The inexactness is the confusion of the fiscal structure and the weight of the tax. Reform of the system of taxation is action on the first point, modification of the tax itself is not a fiscal reform, it is an act of political opportunity. Thus when the United States had to massively reduce its taxes, and West Germany recently announced that theirs would be raised, these measures were not presented as a fiscal reform. The illusion which must be dissipated is the belief that during the night of August 4, the fiscal system could be shaken up and down. The modification of the fiscal system signifies not only the editing of new texts, which can in fact be done rapidly, but also an administrative action and change in conduct, and above all the evolution in the French attitude toward the tax, which is what has been necessary for a long time. So today's intervention has as its object the examination of the permanent orientation of the Government's fiscal policy. It is desirable that a collective reflection on this orientation be committed".

In the paragraphs above it could be deduced that the use of the adjective "permanent" which describes the tributary reform to be realized, is expressive of the acceptability of our thesis, and, possibly, if it has any merit, it is that of making this stand out in the foreground. The point is not to create or give life to a new concept of tributary reforms. We are only trying

to show, or more precisely and more modestly, to emphasize, that the specific regulation in which a tributary reform is manifested should be the result of an uninterrupted process, of a constant preoccupation, which, keeping in mind the variations in initial facts and hypotheses, was constructed and is being constructed from day to day.

This view of currency is complicated by the fact that in the past, the retouching of tributary ordinances has been used and abused. These have formed tracts without system, many times produced from mere collection requirements, or forgotten in the fundamental lines of economic and social evolution of the country. These tributary patches form an obstacle to this concept of a constant tributary reform or plan. Possibly, it is in the fiscal reforms or in the fiscal policy where the present preoccupation for planning was generated. Long before economic plans existed through ambitiously conceived fiscal reforms from a rational and real point of view, the economic activity of the country was sought to be ordered or oriented.

When a productive, redistributing, or functional treasury, or the social well being was discussed, whatever the theoretical or practical justification of such fiscal policy, the object was to plan and to equate the fiscal and tributary instruments to that rational preoccupation. It seems unjustifiable, that if this is true, tributary reforms are still conceived as something revolutionary, something which must drastically change the economic and social situation. We forget that this is better achieved through the permanence of an organizing tributary reform, within its own sector, or by preventing fiscal instruments from interfering in economic and social growth or development.

If today's presence of the State is constant and daily, and ceases to be exceptional or complementary, we will be obliged to forget the classical tributary establishment and be convinced that we are entering in an expressly new stage, and we say "expressly" because we believe that this permanent or constant tributary reform, in a larval and implicit manner, has always existed in essence, but must now be clearly underlined, because if this concept, by reason of its intrinsic truth, is sufficiently rooted in the collective conscience, it will create a receptive mentality which will require the constance of a permanent and renewing financial activity, which is what is or should be the goal of any tributary reform. It must be noted that when the phenomena or symptoms are continuously repeated, independent of their results, the social body is more likely to accommodate itself to them, or not give them tragic importance, above all because they are slowly, and inexorably manifested, they get to be like second nature.

This concept will require, therefore, tributary reforms which are not placed in effect at a certain hour on a certain day, but rather are dependent or related to a well thought out schedule which permits consultation and even admits the appropriate social reactions, whose winning will assure greater effectiveness of the innovations in which this permanent tributary reform may have crystallized. If this light, simple sketch is converted in reality, we would also have a silent tributary reform which, although it would not satisfy the emotional charge surging around it, would in fact be the most desirable one in an honest and technical political behavior. This in the future could be the only tributary reform possible in a logical and orderly concept.

In Spain, and in the perspective of 125 years, perhaps it was the Mon reform (1845) which really merits being qualified as such, since even the Villaverde Reform (1900) is partial, limited to the preoccupation of making taxes in some partial sector of our system effective, and later complemented with the introduction by Carner (1932) of the General Tax on Income of Physical Persons. Thus even today, our tributary system lives on, at least with respect to direct taxes, as the structure organized in the reform of 1845. The Larraz reform (1940) is the first Spanish attempt to systematize the taxation of expenses and consumption. In this sense, it is praiseworthy even though it did not reach its objectives, primarily because it was based on a concept of taxes on specific consumption, which has already been discussed. However, perhaps it was a necessary stage in our tributary evolution. The second drawback to this reform is that its author, as is the case frequently, could not execute it. Without the clarity which ample historical perspective could give us, in our judgement, it could well be the 1964 reform which establishes new channels for the Spanish fiscal system. But even without that historical perspective, it is not ambitious, because it may have been only the organization of a system according to what was possible at that moment, and the center of gravity of this system is still the taxation of products, now listed on account, and the ordering of taxes on consumption is conservative. This is not cited as a defect, but is used to prove that the reforms which have arisen throughout our evolution are only guided by collection requirements, to satisfy political needs or, simply, to calm down the ever present petition for a tributary reform. It is thrown in the country's face as the answer to a sector of the collectivity or its representative sectors to make it think or believe that this reform will change or improve all kinds of structures. The permanent and proposed, planned and organized tributary reform of the future, as we think it ought to be in the present, in the light of all the work being done in the economic and social spheres, does not exist.

MOTIVES DEFINING PERMANENT TRIBUTARY REFORM

The present fiscal system is clearly a result of undisputable causes, appropriate within each historical period, and which are the same as those which influence any other state activity. So all tributary reform must take these into consideration and adapt to their inconsistencies. In order to do this it needs methods of successive approximation and obligatory connection with the whole of the sectors or elements which touch or are integrated in it.

The causes which we find in a general overview, could be classified as those which are foreign or external to the fiscal system, and those internal or inherent in it. Among the first group is clearly the economic motivation or requirement and the sociopolitical context which acts as a channel or motive, necessitating these changes or reforms. Among the second group are the realities of the Administration, which must enable the reform to be well executed, and perhaps the importance of the psychological factor which the reforms carry or should carry within them ought to be pointed out. All these budgets presuppose the idea of change, of transformation, but the coordination among them requires that this transformation be evolutionary.

Let us think for a moment about the evolution of any fiscal system, whereby according to Colm and Helzern, three stages may be distinguished which depend on the process of economic development. Thus such evolution may be founded on investment, on consumption or on the desire to reach a certain standard of living above the vital minimum, and we can see that, in spite of the difference in motivation of the three phases indicated, all of them are related, and it is through a permanent evolutionary action that these become fiscal systems so different from each other when examined individually, as are those based on taxation of products and consumption, on progressive taxes on income, or on the improvement of the system and its use as a means of intervening in the economy. With the exception of the drawbacks which excessive generalization must necessarily include, the dynamics of the reform of the fiscal system imply consciousness of the economic evolution, of the requirements of this evolution in the field of the fiscal system and a knowledge of the economic mechanism, and such an evolution is slow, and above all continuous, in a structural sense.

If we examine the sociopolitical context, we come to the same conclusion. The greater the political stability of a country, the more difficult it is to conceive a drastic and instant tributary reform, which is only possible in the temporary opportunity provided by a substantial or revolutionary political change. It should not be forgotten that demagoguery is always present in the fiscal system, and that this is attenuated or mitigated when the continuity of polical concepts make it contradictory to its own essence. On the other hand, it is the lack of political stability, although not revolutionary, which necessitates a coalition of individual interests representative of opposing political tendencies which normally degenerate into a paralysis of the fiscal system. Now, it is necessary to point out that paralysis is also produced in the hypothetical political stability which is not oxygenated with preoccupations of the present or with planning for the future. But in all these cases, the sociopolitical context obliges, on one hand an activity to satisfy it, while its own effectiveness also requires it to keep acting permanently, in the operation of the objectives which this context must decide and politically indicate. Compared to the aseptic or neutral reality of economic necessity, the factor we are now examining has the fundamental role of establishing directives and setting the pace according to the potential which the other motives permit.

The other cause may not be disputed either, since nobody forgets the importance that the tributary Administration has when the success of the tributary reform hangs in the balance. They are in agreement with emphasizing the transcendence which the remodeling and improvement of the financial administration has and, further, personally, we consider this to be of top priority and a condition of any reform. The most that can be admitted is possible simultaneity if it is previously planned and carried out decisively within a temporary plan common to or synchronized with the tributary reform, but the real structural changes cannot be achieved simply by ordering them, whatever the legal rank of these orders. A permanent and continuous labor must exist, the preoccupation must be present at all times and in every action. This administrative reform must not be one of organization, but one which organizes. This is not just a play on words. This is a motive which requires ideas con-

taining within them an internal germ or impulsive attitude, sufficient to improve, maintain and advance the organization achieved or planned in an automatic and inevitable manner. And this can only be done through continuity.

Finally, the psychological motivation, the consequence of the demands of economic development and social progress, oblige the consideration of the individual contributor, and although he doubtlessly seems to form part of a collectivity, a correct presentation, from the psychological point of view, would influence or alter the hostile or reserved behavior of the contributors, gaining their acceptance of the reform, which is aligned with the preoccupations of growth, obliging them to act by persuasion. When the fight against fiscal fraud constitutes one of the determining factors ever present in fiscal concepts, the procedure for their execution, along with all the measures which could derive from it, also requires a perseverance which is planned into the future, not as a moment in time, but as a cycle. For example, a change in the fiscal conscience concerning the subject of evasion can only be achieved by a daily labor whose results will only be felt after a long time, and even the acceleration of this change of conscience using the technological means which cybernetics put at our disposition, can only be effective in a permanent manner if the contributor, conscious or not, is convinced, that independently of his declaration, the administration knows the data necessary to put it into effect.

THE TECHNIQUE OF THE PERMANENT TRIBUTARY REFORM

The role of time in financial activity has not been the object of grouped systematic studies. Only in those studies conducted on financial budgets and plans is the time factor emphasized, forgetting that specific consideration in this field could have prodigious results. It is possible that permanent rhythm and dynamics are not an adequate atmosphere for endowing a cycle of permanent tributary reform with a suitable structure capable of achieving success and acceptance. Once more it should be affirmed that, with this, the rhythm and logical, obligatory dynamics of economic and social planning are not intended to be lessened or slowed. We limit ourselves to emphasizing that a tributary reform does not begin, nor did it begin, on a particular day, but must have a past and be assured of a lapse of time in the future. But what we wish to emphasize at this time is how the time factor can be technically employed to transform that permanent reform into reality. If we think about it, we find previous reports which formed a preparatory phase indicating the way the tributary reform considered necessary would have to be undertaken.

In a Spanish study commenting on Carter's report, a very substantial and suggestive presentation of the tactics and strategy of a radical fiscal reform that the author even calls a "fiscal revolution" is put forth. In it, the characteristic most emphasized in Carter's report, is the at least apparent slowness of its preparation. "The Canadian Privy Council agrees to the appointment of the Commission in 1962, and the report is presented in 1966". He emphasizes, and we are in agreement with him, that "technically, the modifications in a taxation system can only be accepted in a long, calm and public foundation of arguments. It is becoming more and more necessary to program a slow and deliberate evolution for a fiscal system with its variations at sche-

duled points in time, like temporal landmarks which must be reached neither with haste nor delay. Technically, a tributary reform should be an evolution timed to the fiscal flow, without ruptures or concussions, presenting the fiscal theme for what it is: the construction of an instrument of justice in the relationship between Society and the State, in which the members of the first are integrated, each of them being wholly committed to it for a more just future. Definitively, the technique of a fiscal reform requires the desire, scientific prestige, technical rigor and, above all, patience and hard work".

These considerations on the technique of the permanent tributary reform are shared and are emphasized, because our work, our labor, is not to discover unknown horizons, but simply to make something latent and scattered through the construction of authors and legislators stand out.

But, in order to prove such a concept viable, it is necessary to propose formulae establishing logical channels for it. These are purely technical formulae which have nothing to do with the substantive content which they may have and are exhibited solely as an example, even taken from foreign concepts as a future demonstration of the existence of a thought on this permanent tributary reform.

Firstly, legislative fiscal activity would be divided into five year periods. An order approved by the legislative body in one of these periods would not enter into force until the five year period had begun. It would permit the logical exceptions brought about by emergency or public or political necessity. This measure would assure, therefore, the stability of the legislation during a period of five years, and would permit reflection on the adequacy of the fiscal system in contrast to the technical degeneration to which we referred before. This measure could be clearly included within techniques for obtaining the permanent tributary reform.

Secondly, partial operation of the reform to a calendar previously established would be submitted dating the various measures which the permanent tributary reform established, or the coordination of aspects considered necessary. This would prolong the establishment of a reform, and if you like, assure, within the calendar, its enforcement, apart from legal formulae which could impede what could possibly be called a defect, as it should not be forgotten that a suspension signifies a rejection of the measures projected by the social body, but the failure of these is preferable to the danger of an active refusal or a passive dismissal which could convert it into dead letter.

Thirdly, to avoid the possibility of the permanent tributary reform being called too slow and of having as its fundamental preoccupation structural changes when what is needed is a belligerent fiscal policy, it is supported by the doctrine that along with so called tributary planning, which means the study of alternative methods to obtain the increases in collected taxes and the anticipated decision on which of them are more acceptable, the authorities in charge would have to maintain a series of concrete plans in order to obtain, in moments of crisis, immediate increases in collected taxes, or influence the conditions of the moment. Faced with the variability of international prices or the changes in monetary exchange rates in periods of inflation or recession, for example, the Administration must have completely foreseen all these contingencies, formulating plans studied with the time and with the means to insure their success.

Experience shows that all these situations are attacked with improvised fiscal measures that cannot take advantage as they should of all the tributary potential of the country. Fourthly, the master lines and directives of the tributary system designed must be clearly established for the legislative body along with the options possible and their advantages and disadvantages, so that it would be the collectivity which, understanding the causes perfectly elected and decided, safeguards their logical domain.

It should be evident from what has been said up to this point that permanent tributary reform is a mission pertaining properly to the Ministry of the Treasury, in the sense that it is this organism which should conceive it, organize it and place it into effect. We emphasize this fact so it will be completely clear that if the nerve center of all these measures is to be the tributary Administration, the concurrence and help of all those other organisms not connected with the Administration will be necessary, uniting and coordinating intellectual rigor or common sense with political ideology, etc. This task of coordination and cristalization would also properly belong to the Administration, as it would be thus served, as has been said, by intellectual integrity and technical honesty.

SPANISH ACTION IN THIS RESPECT

Finally, we will indicate some of the measures taken recently by the Spanish Ministry of the Treasury.

PREOCCUPATION WITH THE TRIBUTARY ADMINISTRATION

New structural organization. For fairly logical causes and imperatives which I will not relate, the organization of the Spanish fiscal Administration was originally conceived as a vertical structure composed of each individual tax. The Decree of 11 March, 1971, changes this traditional orientation to a horizontal one based on the various activities which coincide and are reiterated in the various taxes. In this first phase, the reform is articulated in the managerial and inspection functions. This, with realism and logic, considers the situation in the Spanish Tributary Administration, which is based on the existence of a special, reduced and select corps, initially conceived for tributary inspection, but which, because of its preparation and suitability, and because of the pure horror of a vacuum, filled and fills other functions which truly influence the activity of the Spanish Ministry of the Treasury. The objectives of its administrative reform are to clarify the functions which, although different, appeared obscured, because they were carried out by the same organism, and even by the same clerk, but this is done with realistic and effective criteria which admit the possibility that these functions be executed by the special corps, but avoiding their repetition. Now, a reform with such pretensions is not achieved by a single order and therefore, after this date, the Ministry of the Treasury published various development orders, and with constant vigilance permanently pushed this reorganization, the key to the success of the projected tributary reform, since its objectives, as the organizing order says, will not be achieved without efficient structuring of our Public Treasury, since any program of income and expenses requires a financial administration adequate to convert it into reality.

Data Processing Center. (D.P.C.) In order to make the managerial function more

efficient, data processing equipment now forms a part of the General Tax Authority, even though its purpose is not exclusively tributary, says the Decree. This year, there has been a total reorganization of material, personnel and objectives to establish a framework for the future reform. This implies the improvement of work techniques, especially through the use of data processing equipment. A Decree of April 21 1972 organizes the Subauthority of Automated Equipment as a bureau of the General Tax Authority, thereby establishing an integrated system of fiscal information which makes optimum use of the possibilities offered by the high grade of development of electronic equipment and techniques and permitting the consolidation of data and the availability of information under adequate circumstances of time and place, thus achieving with the automation of the activities of the Public Treasury better quality and maximum utilization of the information which, at the same time, would support decisions in the fiscal policy. This subauthority of Automated Equipment is extraordinarily magnified by integrating into it technical, data exploitation, application, and standardization of processes and studies divisions. Each of these sections' very identification is expressive of the ambitious concept of this organization, an indispensable support of a tributary reform.

Fiscal Support of Investment. In order to encourage the process of expansion in the Spanish economy, it was decided to stimulate private investment, anticipating a response suitable to increase the productive capacity. This measure can be identified with the emergency plans referred to in the description of the technical formulation of a permanent tributary reform. According to a Law passed on December 1, 1971, a deduction is to be made from amounts collected for corporate profit of up to 7% for investments effectively made. The development of this Law has been generous, and has greatly influenced the success of reactivation measures. Just to give an indication of this success, the investment brought about by these profits has been 2,400 million dollars, or a fiscal credit of 168 million dollars. But this specific measure, as we have said, is truly an emergency plan, and has had special treatment throughout this year by the Spanish Ministry of the Treasury. Two hundred and four consultations have been resolved for corporations entering this plan and, it is further intended to take advantage of it for an economic study whose objectives will be the following:

1. Calculate the investment in fixed capital by branch, sector and economic activity, and by province.
2. Calculate the sale of investment assets by branch, sector and economic activity.
3. Calculate the amount of decrease to be conceded from 1972 to 1976, for taxes (Corporate Tax or Industrial tax on Profit Quotas), by province and by economic sectors of the investing corporations.
4. Make up an input-output table which shows the interdependence of the economic sectors affected by the decrease in tax.
5. Calculate the possible multiplier effect on income.
6. Compare the decrease in public income in the next five years as a consequence of the tax decrease with the possible increase in income and therefore, in the collection of taxes which affect that income.
7. Calculate the imports produced as a result of the decrease in tax by receptive sector.

These steps taken by the Spanish Ministry

of the Treasury, in conclusion of this contribution, show that our concept of a permanent tributary reform can be and is in fact a reality. I have tried to offer you the objectives of and decisions taken by our Ministry to parallel the fiscal systems of other countries in the western world, where, by necessity and choice, it is being integrated.

H. W. T. PEPPER:

TAXING POLLUTION

Pollution affects governments and peoples in several ways; the living conditions and amenities of the population of industrialized countries may be worsened by the wastes which their industrial activities produce. Countries which depend on the beauty of their beaches and countryside for their tourist industry may suffer, e.g. from oil-slicks drifting in from outside, and from "self-inflicted" damage to amenities from people strewing debris on beach and mountainside.

Obviously, most state action to reduce pollution must be of a direct kind, such as the making of laws penalising the dumping or scattering of rubbish and limiting or abolishing emissions of smoke and other effluents. These laws may be enforced by officials of Government Departments and by the State's police force.

Action of a preventive kind may include the banning or taxing of imports, e.g. of non-returnable containers for soft and other beverages likely to be consumed on picnics at beauty spots. Norway has pioneered the levying of a special tax on non-returnable containers, as potential pollution material, while countries recently proposing to ban their use include Jersey and the Seychelles. One tax and tourist haven (the Isle of Man) has recently (January 1972) decided to prohibit the building of an oil-refinery at one end of the island to avoid the risk of atmospheric and marine pollution. Some very small islands and enclaves have forbidden the use of motor cars, and this type of prohibition, which eliminates pollution from exhaust fumes, is now increasingly encountered in central shopping areas and areas of historical interest in the heart of towns and cities where the authorties are alive to the potential gains from such restrictions and are sufficiently powerful to introduce them.

Some countries meet the problem of the discardable container (any container may, of course, be discarded even if it is theoretically returnable) by banning the non-returnable and arranging for deposit systems on the returnable. Malta, for example, has for many years charged deposits on milk bottles and, more recently, has encouraged bottlers and distributors to introduce deposits on bottles containing other beverages, thus effectively reducing the pollution that occurs by the scattering of such containers.

SANCTIONS ON POLLUTERS

Most countries set up standards regarding the content of emissions and effluents and prohibit any falling short of those standdards. The sanctions to enforce such standards normally include monetary penalties and Court orders to desist which may involve the closing down of the offending plant if the order is not carried out. In general, the levying of a *tax* on pollution such as the putting out of emissions or effluents which are below the standard demanded by the "clean air" or "clean river" laws, is undesirable because it seems to be equivalent to selling (for the amount of the tax) a 'license to pollute'!

If a business is able to afford the cost of converting or adapting its plant to bring it up to standard it should be compelled to do so. If it is unable to afford conversion costs, it is certain that an additional

tax upon the business will not improve its financial capabilities and thus its ability to meet the cost of conversion and this applies even where the firm has sufficient funds but is dragging its feet in meeting its obligations. In the latter case, however, the mere threat of a monetary penalty may be enough to cause the delinquent to conform.

Where there is genuine hardship for a firm in having to find the cost of adapting plant and machinery, the best solution is for the government to set up a scheme of grants or loans to help meet the cost of modification. The main function of an anti-pollution tax would be to impose a monetary penalty, adjusted according to the quantity of pollution so that a firm, in a case where it was cheaper to carry on business without bothering about controlling pollution, could obtain an unfair advantage by delaying corrective endeavours compared with rival firms.

TAX IN TRANSITIONAL PERIOD

Where it is physically impossible for all firms to convert at once to non-pollution standards and conversion has been statutorily scheduled over a period of years, a tax or levy may again be appropriate on a temporary basis during the period of transition, so as to equate financially the position of the converted and unconverted.

It is worthy of note in passing that in the U.S. a proposal was recently made by the President (8th February 1972), for an anti-pollution tax on sulphur dioxide emissions, with effect from 1976, (thus giving reasonable notice to the industries concerned) the tax to be charged at 20 cents per pound on the sulphur content in oil, coal and other such raw materials.

"POLLUTION" BY MINING AND OTHER OPERATIONS

The word "pollution" is nowadays defined very widely so as to cover almost any human activity which would adversely affect the environment. For example, the felling of virgin forests without any provision for regeneration of new trees or other vegetation to bind the soil, and without proper care to make access roads with due regard to contours in hilly land, might cause pollution. This type of unheeding exploitation has led in some countries to a wholesale erosion of previously-wooded territory with the result that the top soil has been swept away to choke waterways with silt and mud, ruining the natural drainage of the land and leading to further damage by flood.

Mining of minerals other than oil may be of three kinds, alluvial, open-cast and lode. In the first case proper attention has to be paid to water control for the purpose of running the mine itself, which consists of "washing" the mineral loose from the other material, using the fact that the respective densities are different. In addition, however, it is necessary to have settlement areas surrounded by bunds or dams where the non-mineral matter suspended in the water from which the mineral has been extracted may be allowed to settle out as sediment so that a clear effluent can be discharged into rivers or canals, thus avoiding pollution downstream.

In open-cast mines, if care is not taken to arrange to stack the top soil separately from the other material excavated, the land from which the mineral is extracted may become a desert after mineral operations have ceased, i.e., if the excavations are merely abandoned or if the extracted non-mineral matter is merely pushed indiscri-

minately back into the hole with the top soil lost underneath and worthless, easily-leached, material on top. In the case of lode mines, the main problem arises from the need to stack up the useless material extracted from the shafts during the life of the mine. When the mine working has completely finished, which may not occur until several decades have passed, it may be possible to put some of the material back underground in the old workings. In the meantime — which may be a very long time — the main aim nowadays is to "landscape" the spoil heaps and perhaps plant them with grass or trees, paying due regard to water drainage problems.

A recent example of co-operation between miners and governments was given by the china clay industry in Devon, England. It has been agreed that in future the hills of white china clay waste are to be beautified. The slopes will be made gentler and the hills will be terraced, covered with grass and planted with trees and shrubs. In addition, long-term plans have been made for the creation of an artificial lake of more than a thousand acres in extent which will be created by the end of the period of china clay extraction over a period of some 50 years at the expense of the mining concern.

While at the exploratory stage the derricks and equipment involved in searching for oil are necessarily above ground, once the wells have been established it is fairly common now for the pumps and other plant to be placed below ground, the superstructures being removed when exploration and drilling have been completed.

In the case of sand and gravel workings which, for the most part, are extracted from deposits lying at ground level, if the operations of the extractor are left untrammelled the area concerned may end up as a series of irregular holes of varying depths involving perhaps swamps and dangerous pools. With some forethought, however, it is often possible to arrange matters so that some of the land may be reclaimed by dumping or "filling" of refuse by local authorities and subsequently re-used, while other areas may be suitable for making some form of inland lake or waterway capable of use by sailing boats and pleasure craft.

Even quarries, which are often regarded as marring a landscape, may be planned in such a way that they fit in with the contours of the area in which the valuable stone or other material is situated, with suitable filling operations done in areas where there would otherwise be dangerous or useless holes in the ground.

In all the above cases, a result not inimical to the preservation of an attractive environment may often be attained by due attention, before any mineral or forestry operation is commenced, to the drafting of suitable terms in mineral leases. It may be desirable to seek deposits or bonds from the operators as well as to insert clauses in the agreements establishing suitable monetary or other penalties to ensure that the work of restoring the land goes hand in hand with the exploitation of the natural wealth.

Agreements, particularly for all kinds of mineral workings, are now commonly made on a comprehensive basis to include detailed requirements regarding the physical operation of exploration and exploitation as well as incorporating provisions regarding royalty and tax liability.

The problem of oil pollution has been spotlighted by such dramatic events as the wreck of the Torrey Canyon and the oil leaks off Santa Barbara on the Californian coast. There have been proposals by the

Pacem in Maribus organisation to set up an ocean development tax which would be payable in respect of various kinds of exploitation of the sea bed for the extraction of minerals and catching of fish, and for the use of the sea by oceanic shipping operators. One of the points of detail is a proposition that the amount of a country's contribution would vary with the extent of its claim for territorial limits — the greater the claim the higher the amount of tax.

On the subject of oil pollution alone, international action has reached a fairly advanced stage with the drafting of the 1969 Civil Liability Convention in Brussels and a further Convention in December 1971 which would provide compensation for pollution by persistent oil, to be financed by levies on countries which have oil tankers.

The oil industry, however, has meantime set an example to those responsible for other types of pollution (e.g. chemicals) by setting up voluntary funds financed by contributions from members to cover compensation costs arising out of pollution incidents. The first of these schemes known as T.O.V.A.L.O.P. is, more fully, the "Tanker Owners' Voluntary Agreement on Liability for Oil Pollution". This scheme provides insurance which a tanker owner can obtain by subscribing and which will cover claims by governments or shipping owners up to a maximum of $100 per gross ton or $10m. per incident, whichever is less. A further scheme is known as C.R.I.S.T.A.L., an abbreviation for the „Contract Regarding an Interim Supplement to Tanker Liability". Under this scheme a sum of $30m. would be paid out if the shipowner concerned was a member of T.O.V.A.L.O.P. and the cargo was owned by a member of C.R.I.S.T.A.L.

T.O.V.A.L.O.P. and C.R.I.S.T.A.L. are already functioning but are likely to terminate when the I.M.C.O. (Inter-governmental Maritime Consultative Organisation) Convention comes fully into force.

Other initiatives by the oil industry include the running of "schools" for oil-drillers by the major oil companies. This move is of importance because it is during drilling operations that an unskilled operator could easily cause serious accidental pollution. The smaller oil companies often pay for their trainee drillers to attend the courses run by the large company. It has been suggested by U.N. experts that there should be international control such that there should be minimum training requirements before any drilling operative is allowed to commence work anywhere in the world.

An institution in the Hague, Holland, known as STICHTING CONCAWE (set up by most of the major oil companies which operate in Western Europe) has as its main purpose the making of technical and scientific studies on air and water pollution and noise problems in Western Europe as far as the oil industry is concerned. The results of the studies are published and made available for public use.

Several countries have introduced special tax reliefs to encourage the installation of pollution prevention devices. In Canada, accelerated depreciation allowances on a straight line basis may be claimed at rates up to 50% per annum in respect of machinery and equipment used to prevent water pollution and there are similar provisons in the U.S.A. Japan brings plant and equipment used for anti-pollution measures within the scope of its special depreciation allowances, whereby depreciation is granted at higher than normal rates by means of an initial allowance of one-third

of the cost of new plant or equipment. On the other hand, it is perhaps necessary to say a word about the undesirability of allowing extreme environmentalists to prevent altogether certain types of exploitation of natural assets which would bring wealth to the country without causing any *permanent* damage. Although, for example, open-cast mineral workings may be an eyesore while the work is actually taking place, in most cases complete restoration, and even improvement of the environment, can follow the conclusion of the operations and a temporary loss of amenity may be a price which is well worth paying for the total benefit received. Another example of a case where the environmental "backlash" seems to the layman to be overdone is in the objections to the laying of a pipeline from the new Alaskan oilfields across tundra and largely barren wastes. The conservationist argument seems to include the point that the moose and caribou herds might be split by the north-south pipeline just as the North American buffalo herds were split after 1869 by the east-west transcontinental railroad, an argument which the wags have reduced to the proposition that the moose might not, unaided, be able to jump over the pipes. If this were a serious difficulty it could, of course, be overcome by providing in wayleave agreements for the establishment of crossing places, just as river works which include dams and weirs have to provide special access for fish to the upper reaches of the river during the spawning season!

"OCEAN DEVELOPMENT TAX"

A fairly recent development has been the mooting by the Pacem in Maribus organisation of an "ocean development tax" which, broadly speaking, is a concept for a 1% tax "on ocean produce anywhere in the oceans regardless of boundaries." The subject matter for taxation would include minerals, including oil, extracted from the sea bed, fish caught in the sea and shipping traffic across the oceans, and the making of a levy on pollution of the ocean has also been considered. The general idea would be that the countries with sea coasts would levy the tax as trustees for the world as a whole and that the revenues would be available for development in general as well as the control of pollution. Another project which has reached an advanced stage is that proposed by I.M.C.O. (the Inter-Governmental Maritime Consulting Organisation) which has designed a small levy on oil refineries with the object of building up an international fund of several million dollars which will be available to help countries, whose shores have been polluted by oil, to repair the damage where they are not able to obtain adequate compensation by ordinary civil action.

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UNITED KINGDOM

Proposals for a tax credit system

This is the fourth Chapter of the "green paper" concerning the proposed tax credit system in the United Kingdom[1]. The first two Chapters appeared in the February issue and Chapter 3 in the March issue of the Bulletin.

Chapter 4

Some questions raised by the scheme

73. This chapter considers three important issues raised by the tax-credit scheme:

the treatment of married women's earnings;

whether the child credits should be payable wholly to the father with his pay or whether they should be paid at least in part direct to the mother;

the limitations on the coverage of the scheme.

MARRIED WOMEN'S EARNINGS

74. The question of the treatment of married women for tax purposes is of crucial importance in relation to the tax-credit system. It has been a lively issue of debate at least since 1920. It is sufficient for the present purpose to say that both for tax and social security purposes a lower level of combined allowance has been considered appropriate for the married couple than for two single persons. The illustrative level of tax credits, namely £ 6 for the married couple and £ 4 for the single person, would broadly follow this pattern.

75. An exception to this general rule has since 1920 been the tax treatment of the married woman at work. In such cases an additional allowance — the wife's earned income relief — can be claimed. Originally this was equal to the difference between the married allowance and two single allowances and it was designed to ensure that where both husband and wife were working they were no worse off so far as the starting point of tax liability was concerned than if they were not married. In 1942 the allowance was increased to the same amount as the single allowance and in 1948 because of the exigencies of PAYE the reduced rate relief was extended to the married woman at work. In 1970, the reduced rate relief was in effect "merged" in the personal allowances and the wife's earned income relief was similarly increased in line with the increased single allowance.

76. The Royal Commission on the Taxation of Profits and Income, in their Second

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(Interim) Report in 1954 (Cmd 9105) said that the wife's earned income relief was based on a mixture of incentive and administrative convenience. They felt that the differential in favour of the married woman at work was too big and they recommended that it should be reduced. Instead the effect of changes in recent years has been to tip the balance even more in favour of the married couple where the wife goes out to work.

77. It can be argued that two people should not be treated differently for tax purposes because they are married. To a degree this argument has been accepted in the 1971 Finance Act which allows a married couple to opt to be treated as two separate individuals for tax purposes in respect of their earned income. In the context of a tax-credit system, this argument would point to fixing the married credit at twice the single credit. It would follow from this that the wife's earned income relief would disappear: if in effect the wife enjoyed the same credit as a single woman, there would be no case for giving her an additional allowance as well if she went out to work. The real problem, however, is that such a change would result in a dramatic change in the relative position of the married couple where the wife was working as compared with the married couple where the wife was at home. The former might not in fact lose; indeed, under the illustrative figures used in the Green Paper, a working couple where the wife earned enough to use the whole of the present wife's earned income relief would just about break even. But as against this the married couple where the wife was at home would show a large relative gain.

78. Whatever the theoretical arguments in favour of treating the married couple as equal to two single individuals and apart from any question of cost, the Government doubt whether such a radical reassessment of the relative position of married couples where the wife was working as compared with married couples where the wife was at home would be acceptable to public opinion. Nevertheless there is a strong case for saying that the balance has been tipped too much against the married couple where the wife is at home. The constraints under the present PAYE system which have required the wife's earned income relief to be fixed at the same figure as the single allowance would no longer exist under the tax-credit system. It would be possible, therefore, for the amount of the allowance to be determined on its merits rather than by reference to other factors.

79. Apart from the limitations imposed by a desire not to upset existing relativities too drastically there are two arguments in favour of the retention of some kind of wife's earned income relief. First, incentive: the needs of the economy require the continued employment of large numbers of married women and the system must be such that they feel it is worth their while going to work. Second, the additional expenses involved: where both husband and wife work additional expense is often incurred, *e.g.* on domestic duties otherwise undertaken by the wife, and it is fair to regard their taxable capacity as being less than that of the couple with the same total income which is earned entirely by the husband.

80. The proposals put forward in the next chapter, for a married credit of £ 6 compared with a single credit of £ 4 with the retention of some form of wife's earned income relief, would enable a reasonable balance to be struck. As compared with the

present system, the married credit represents an improvement for the married couple in relation to the single person. This improvement would go to the married couple both of whom are working as well as to the married couple where the wife is at home. The retention in principle of wife's earned income relief would recognise the two arguments of incentives and additional expenses. There remains the question of the amount of the relief.

81. The more favourable the treatment of the working wife, the greater the burden that must fall on other taxpayers, including married couples where the wife is unable to work because there are young children. These tend to be less affluent than married couples both of whom are able to work. Taking all these factors into account, the fairest course would seem to be to hold the wife's earned income relief at its present level. This would mean that married couples both of whom were working would enjoy precisely the same extra benefit from the scheme — namely the increased value of the married credit in relation to the present tax allowances — as the married couple where the wife was at home: but not a second and additional benefit which would come if the wife's earned income relief were increased in line with the single credit.

PAYMENT OF CHILD CREDITS TO FATHER OR MOTHER

82. The question whether the child credits should be paid to the father or to the mother, or whether payment should be split between them where there is more than one child, is one of the more important issues raised by the scheme. This involves major considerations, not only of administration, but also of social and economic policy. The advice of a Select Committee on this question would be of very great importance.

83. Although the Government regard the issue as entirely open (see paragraph 91) is has been assumed so far in this Green Paper, for illustrative purposes, that the recipient of tax credits would be the father. This is only because, so far as the tax structure is concerned, the child credit would replace child tax allowances and because this is the simplest form of the scheme to describe. It has also been assumed that in any event there would have to be special arrangements to safeguard the position of the parent who, though not in the ordinary way entitled to child credits, effectively had care of the children. These special arrangements would have to take account of other arrangements for maintenance, which are currently under review as part of the task of the Finer Committee on one-parent families and which will require detailed consideration.

84. In de ordinary case in which the children are living with both the parents there are in fact three broad methods of payment.

85. *Payment wholly to father.* There are four main arguments in favour of paying the child credits to the father. First, this would be in line with his national insurance and supplementary benefit entitlement, which is paid to him and which includes sums in respect of his wife and children. Second, under the present system the father in fact receives the major part of the benefits and allowances combined. For the one-child family the whole of the entitlement goes to the father; for the two-child family he receives up to three-quarters of the total benefit; only in the really large family does he get less than

half the total benefit. Thirdly, to pay any credits other than with the main source of family income would be administratively costly. Payment to the mother would mean retaining similar arrangements to those used for paying family allowances and for encashing them at the post office; this in turn would mean forgoing administrative savings. Finally, whereas, as explained in Chapter 6, an increase in the value of credits could be put into effect within a few weeks if payment were made through employers, it would not be possible to adjust so quickly the millions of instruments of payment which had been issued to wives.

86. *Split between father and mother.* Instead of paying all credits to the father it would be possible to pay the first credit to the father and second and subsequent credits to the mother. This would most nearly reproduce the structure of the present system. It would mean a substantial improvement in the mother's position, as she would receive credits of £ 2 for each child (beyond the first) instead of the present family allowance of 90 p for the second child and £ 1 each for the third and subsequent children. The effect of this arrangement would be that the value of the tax allowance for the second and subsequent children would be transferred from the father to the mother.

87. A possible alternative split between father and mother would be the payment of the credits for the first two children to the father and the rest to the mother: for larger families this would more closely reproduce the present division of benefits and allowances. Thus in the three-child family, for example, the mother would get £ 2 compared with the present family allowance of £ 1.90.

88. There are two main arguments in favour of maintaining some payment to mothers. First, there is a strong feeling on social grounds that the payment of family allowances direct to the mother, who is generally in charge of the family housekeeping, is a valuable arrangement, the benefit of which should not be lost in the new system. Secondly, it would help particularly in those cases where the wife already has difficulty in obtaining an adequate housekeeping allowance from her husband. Even though her existing family allowances are far from sufficient by themselves to enable her to manage, their disappearance would make her more dependent on her husband — and would increase her difficulties if he was unwilling to make better provision for her and the children out of his increased take-home pay. Women in this situation, even if relatively few in number, would be significantly helped by a system of payment which brought child credits, like family allowances, directly to them.

89. *Payment wholly to mother.* Payment of all the child credits to the mother would be administratively the most expensive, because it would involve arrangements for all child credits to be encashable at the post office. Under the existing family allowance system, no such arrangements are necessary in respect of the one-child family because there is no entitlement to family allowance. Of much greater importance than these administrative consequences is the fact that the father of every family with two or more children would find that his take-home pay was reduced below its present level. On the other hand, the social arguments set out in the preceding paragraph would be recognised even more fully than if the credits were split between father and mother.

90. The table on the next page sets out the

BENEFITS FROM CHILD TAX ALLOWANCES, FAMILY ALLOWANCES AND CHILD CREDITS *

1. *Under Unified Tax System Operative from 6 April 1973*

£

	Father	Mother	Total for family	Father's tax threshold (weekly earnings)
Number of children:				
1	1.15–1.53†	0	1.15–1.53	18.75–20
2	1.69–2.44†	0.90	2.59–3.34	20.54–23.04
3	2.20–3.32†	1.90	4.10–5.22	22.34–26.09
4	2.71–4.20†	2.90	5.61–7.10	23.93–28.93

2. *Under Tax-Credit System*

£

	Father	Mother	Total for family	Father's tax threshold (weekly earnings)
(a) All child credits to father				
Number of children:				
1	2	0	2	26.67
2	4	0	4	33.33
3	6	0	6	40.00
4	8	0	8	46.67
(b) First child credit to father, rest to mother				
Number of children:				
1	2	0	2	26.67
2	2	2	4	26.67
3	2	4	6	26.67
4	2	6	8	26.67
(c) First two child credits to father, rest to mother				
Number of children:				
1	2	0	2	26.67
2	4	0	4	33.33
3	4	2	6	33.33
4	4	4	8	33.33
(d) All child credits to mother				
Number of children:				
1	0	2	2	20
2	0	4	4	20
3	0	6	6	20
4	0	8	8	20

* Assuming that the father is liable to tax on his earnings at the basic rate of 30 per cent.
† The tax allowance to the father varies with the age of the child and takes account of tax on the family allowance and the "clawback".

distribution between father and mother of the total benefit represented by the tax child allowance and the family allowance, in comparison with the possible methods for the tax-credit scheme. The table also shows the effects of the various proposals on the father's tax position.

91. Although, for reasons already explained, the description of the scheme in this Green Paper has assumed for illustrative purposes that child credits would be received by the father in all cases, the Government regard this issue as entirely open. The choice of the method of payment will be made in the light of public discussion and the findings of a Select Committee.

LIMITATIONS ON COVERAGE

92. On the basis of the coverage outlined in paragraphs 13 to 24 the tax-credit scheme would apply to nine out of every ten people in the country. The new arrangements are not intended, however, to extend to people (other than pensioners) who are right outside the field of employment or whose earnings are regularly below the qualifying level at which the new system will operate. Tax credits have not been designed with the intention of guaranteeing in every case that a family with no further help from the State would have enough to live on. To achieve that would put the cost of a practical scheme far beyond what is supportable. It would require a very substantial increase in taxation to finance it. In any case, for those in greatest need help must be related to the particular circumstances of each individual family, its needs and its resources, and the system must be capable of responding quickly and effectively to changing requirements. Help of this kind cannot be given satisfactorily on a universal basis. If, therefore, the family breadwinner is neither eligible for a national insurance benefit or occupational pension nor able to command regular earnings of at least a minimum amount — which it is suggested might be £ 8 a week in current terms — it would be no solution to meet only part of the family's needs through the tax-credit system, when help can be more satisfactorily provided through the machinery for payment of supplementary benefit.

93. Different considerations apply in the case of the self-employed. The essence of the tax-credit system is that the individual should be able to set his tax credits week by week against the income tax payable on his earnings or his pension, with only the balance of his credits being given as an addition to his pay. A person who derives his income from self-employment, on the other hand, is not taxed currently but pays income tax on his profits in half yearly instalments some considerable time after the profits have arisen. Credits could not be set regularly against a weekly tax liability and to pay them in full nonetheless would simply result in an increase in the tax that he would be called upon to pay when his profits eventually came to be assessed. Far from simplifying the present arrangements, this would be a further complication and would add to the work of the Inland Revenue in assessing and collecting tax from people engaged in business. This would be an unwelcome result and would be contrary to the aim of simplification which the new system seeks to secure.

94. However, since the value of the income tax personal allowances for those outside the tax-credit system would be made to correspond with the value of the tax credits, both the self-employed and people outside the employment field would

share in the reductions in personal taxation that could be expected to accompany the introduction of the scheme. For those who had dependent children and whose incomes were below the tax threshold, the Government's intention would be that a system of family support on the lines of the present family income supplement scheme should be available on a scale comparable to the benefits provided under the tax-credit system.

95. Assuming the tax-credit system receives general approval, it would be the Government's intention to keep under review the categories excluded from it, in the hope that ways might be found eventually of associating some of them more closely with the new arrangements.

FRANCE

Loi No. 72 - 1147 du 23 décembre 1972

«Collectif budgétaire»

La Loi de Finances Rectificative du 23 décembre 1972 introduit des modifications importantes de la législation fiscale en vigueur. Ces modifications, contenues dans les articles 2 et 6 de la Loi de Finances Rectificative pour 1972, portent successivement sur le régime fiscal des Sociétés Civiles de moyens, et sur le régime des implantations d'entreprises françaises à l'étranger.

I — LE RÉGIME DES IMPLANTATIONS D'ENTREPRISES FRANÇAISES À L'ÉTRANGER

Les modifications apportées par l'article 6 de la Loi de Finances Rectificative pour 1972, portent à la fois sur la nature et le caractère des provisions que les entreprises françaises investissant à l'étranger peuvent constituer pour déduire de leurs résultats imposables en France, ainsi que les procédures à suivre pour bénéficier de ces dispositions.

1) *Nature et caractère des provisions déductibles*

(a) *Nature:*

Le régime actuel, contenu dans l'article 39 Octies du C.G.I. prévoit que les dépenses et les charges encourues lors de la création à l'étranger par une entreprise française d'un établissement de vente, d'un bureau d'études ou d'information peuvent être déduites des bénéfices imposables en France. Concernant les dépenses visées par l'article 39 Octies du C.G.I. il s'agit principalement des dépenses d'études et de prospection et des charges de fonctionnement.

Le nouveau régime établit, quant aux déductions permises, une distinction selon la nature de l'investissement:

Si l'investissement est commercial, c'est-à-dire s'il s'agit de la création d'un établissement de vente, d'un bureau d'études ou d'un bureau de renseignements, les sommes déductibles peuvent être soit les pertes subies à l'occasion de la création de cet établissement ou de ce bureau, soit le capital investi.

Si l'investissement est industriel, les sommes déductibles seront le capital investi.

(b) *Caractère des déductions*

Selon l'article 39 Octies du C.G.I. les provisions ainsi constituées peuvent avoir un caractère de déduction provisoire ou définitive.

La règle générale est qu'elles sont provisoires. Ainsi peuvent être déduites les dépenses et les charges subies au cours des 3 premières années d'exploitation de l'établissement ou du bureau créé à l'étranger. Parce que provisoires, elles doivent être rapportées par fraction égales, aux résultats des cinq exercices consécutifs à partir du quatrième exercice suivant celui de la création de l'établissement concerné.

Pour être définitive, ces déductions doivent avoir fait l'objet d'une demande auprès du Ministère de l'Economie et des Finances, et avoir eu l'agrément de ce dernier (Procédure d'agrément).

La modification apportée par le nouveau régime fait que désormais toutes les dé-

ductions prévues ont un caractère provisoire.

Ainsi, pour un investissement commercial, les pertes subies au cours des 5 premières années d'exploitation du bureau ou de l'établissement peuvent être déduites. Le montant de ces pertes peut être égal aux sommes investies au cours de ces cinq premières années. De même, toujours pour un investissement commercial, la totalité du capital investi au cours des 5 premières années d'exploitation du bureau ou de l'établissement peut être déduite.

Si l'investissement est industriel, le tiers des sommes investies en capital au cours des cinq premières années de l'exploitation peut être déduit.

Mais, étant donné la nature désormais provisoire de ces déductions, ces sommes doivent être rapportées par fractions égales, aux bénéfices imposables des cinq exercices consécutifs à partir du sixième suivant celui du premier investissement.

2) *Procédurs à suivre pour bénéficier de ces dispositions*

Selon l'article 39 Octies du C.G.I., ou bien un agrément du Ministère de l'Economie et des Finances est intervenu qui donne un caractère définitif aux déductions, ou bien aucune procédure d'agrément n'est suivie et les déductions, bien que permises, n'ont qu'un caractère provisoire.

Désormais, le nouveau régime établit la distinction suivante:

Si l'investissement est commercial, la provision déductible peut être constituée par les pertes subies et aucune procédure d'agrément n'est requise. Il suffit pour les entreprises intéressées de faire une simple déclaration auprès du Ministère de l'Economie et des Finances. Si la provision déductible est constituée par le capital investi, la procédure d'agrément n'est pas nécessaire, mais pour que cette déduction soit permise, il faut que le pays vers lequel est fait l'investissement figure sur une liste établie par le Ministère.

Si l'investissement est industriel, une procédure d'agrément est alors nécessaire. Pour que la déduction du tiers du capital investi soit permise il faut que le pays où est constitué l'investissement figure sur une liste établie par le Ministère de l'Economie et des Finances.

Conclusion:

Le nouveau régime prévu par l'article 6 de la Loi de Finances Rectificative pour 1972 se substituera au régime contenu dans l'article 39 Octies du C.G.I. actuellement en vigueur, à compter du 1er avril 1973. Toutefois, le régime actuel continuera de s'appliquer aux établissements et bureaux créés avant cette date.

II — LES SOCIÉTÉS CIVILES DE MOYENS

I. *Introduction:*

Jusqu'à une période récente la plupart des professions libérales ne pouvaient être exercées en France qu'à titre individuel. Les membres de ces professions pouvaient tout au plus avoir recours, pour l'exercice de leur profession à des services communs (personnel commun, moyens matériels communs) cette forme juridique de groupement pouvant prendre le cadre juridique d'une société notamment à forme coopérative. Mais dans ce dernier cas le groupement était en tout état de cause passible de l'impôt sur les Sociétés.

C'est la raison pour laquelle le législateur est intervenu afin de normaliser le cadre juridique des membres des sociétés libérales désirant exercer en groupe. C'est ainsi que la loi no 66-879 du 29 novembre 1966 a mis sur pied deux structures juridiques.

La première (art. 1 à 35) concerne les Sociétés civiles professionnelles. On peut définir ces dernières comme des entités juridiques jouissant de la personnalité morale, ayant pour objet l'exercice en commun d'une seule profession (celle de leurs membres). Mais elles peuvent également, sous certaines conditions, être constituées avec des personnes exerçant d'autres professions libérales.

Les sociétés civiles professionnelles sont constituées entre des personnes physiques exerçant une même profession libérale soumise à un statut législatif ou réglementaire dont le titre est protégé. En outre et ceci est très important, une société civile professionnelle ne peut être créée que pour autant qu'à été publié un règlement d'Administration publique pris en Conseil d'Etat, et concernant une profession déterminée.

A l'heure actuelle les professions pouvant être exercées sous forme de sociétés civiles professionnelles sont les suivantes:

— Avocats (Décr. 72-669 du 13.7.72, JO 18.12.72)
— Commissaires aux comptes (D. 69-810 du 12.8.69, JO 29.8.69)
— Commissaires priseurs (D. 69-763 du 25.7.69, JO 31.7.69)
— Conseils juridiques (D. 72-798 du 26.7.72, JO 30.7.72)
— Greffiers des Tribunaux de Commerce (D. 71-688 du 11.8.71, JO 24.8.71)
— Huissiers de justice (D. 69-1274 du 31.12.69, JO 11.1.70)
— Notaires (D. 67-868 modifié par D. 71-943 du 26.11.71, JO du 3.12.71).

Il apparait donc que toutes les professions libérales ne peuvent se constituer en sociétés civiles professionnelles notamment les professions médicales, celles d'architectes, de géomètres etc., d'où le recours à la société civile de moyens.

La Société Civile de moyens, dont le statut juridique avait été défini par la loi précitée no 66-879 dans son article 36, pouvait au contraire des sociétés civiles professionnelles, être librement constituée entre membres de professions libérales.

La société de moyens, a en effet pour seul objet de faciliter à chacun de ses membres l'exercice de sa profession sans qu'elle puisse en aucun cas se substituer a eux dans l'exercice de celle-ci.

Si le cadre juridique de ces sociétés avait été tracé par le législateur, le statut fiscal par contre n'avait pas été réglé par la loi du 26 novembre 1968. L'Administration avait bien indiqué dans une instruction du 29 octobre 1971 que leur régime fiscal était le régime de droit commun. Mais certaines corrections ont dû être apportées à ce régime par le législateur. Elles font l'objet de l'article 2 de la Loi de Finances rectificative pour 1972. On envisagera donc successivement les principes posés par ces différents textes.

II. *Régime fiscal de sociétés civiles de moyens*

A. *L'instruction du 29 octobre 1971*

Conformément aux dispositions de l'article 2062 du Code Général des Impôts, les sociétés civiles de moyens sont taxées selon la *forme sociale* adoptée et la nature des opérations effectuées.

1) *La société est à forme civile et a un objet purement civil*

Les règles d'impositions prévues sont celles concernant les sociétés de personnes (article 8 C.G.I.).

Chaque associé est personnellement assujetti à l'impôt sur le revenu pour la quote-part du bénéfice social correspondant à ses droits dans la société:

— soit au titre des revenus fonciers, si la société civile est propriétaire de locaux donnés en location, non munis de matériel ou de mobilier nécessaires à leur fonctionnement.
— soit au titre des bénéfices non commerciaux lorsque la société est seulement propriétaire des locaux qu'elle sous loue.

2) *La Société est à forme civile mais n'a pas un objet purement civil*

C'est le cas lorsque la société met à la disposition de ses membres tous les moyens en immeubles, matériel et personnel, accessoires à l'exercice de la profession.

Dans cette hypothèse elle est réputée exercer une activité commerciale et est imposable dans tous les cas à l'impôt sur les sociétés.

3) *La société a adopté la forme d'une société coopérative*

En vertu de l'article 206-C.G.I. elle est quelque soit son objet passible de l'impôt sur les sociétés.

4) *Régime des plus values*

Lorsque'un contribuable exerçant à titre individuel apporte à une société civile de moyens des biens affectés à l'exercice de sa profession, la plus value constatée à cette occasion est passible de l'impôt sur le revenu au titre des bénéfices non commerciaux, selon des modalités qui diffèrent suivant que la cession est considérée comme réalisée en cours ou en fin d'exploitation.

B) *La Loi de Finances Rectificative pour 1972*

Dans le régime exposé ci-dessus — régime de droit commun — on a vu dans les paragraphes 2 et 3 que les sociétés civiles de moyens pouvaient être imposables à l'impôt sur les sociétés.

L'article 2 de la Loi de Finances Rectificative pose en principe dans son paragraphe 1. que les sociétés de moyens échappent en toute hypothèse à l'impôt sur les sociétés *même lorsqu'elles ont adopté la forme de coopérative.*

En définitive l'objet de l'article 2 n'a de raison d'être qu'en ce qui concerne les sociétés civiles qui mettent à la disposition de leurs membres l'ensemble des moyens matériels et de personnel nécessaires à l'exercice de leur profession.

Elles entrent donc dans ce cas dans le champ d'application des bénéfices industriels et commerciaux.

Par voie de conséquence, la société est redevable:

— de la patente
— de la taxe sur la valeur ajoutée
— des taxes assises sur les salaires à l'exception de la taxe sur les salaires (taxe d'apprentissage, 1% construction etc.....)

Bien entendu, le résultat fiscal, déterminé au niveau de la société, est réparti entre ses membres au prorata de leurs droits.

Les sociétés de moyens sons soumises aux mêmes obligations et modalités de contrôle que les sociétés en nom collectif.

Cependant, dans son paragraphe II, l'article 2 de la loi de Finances Rectificative introduit une dérogation au régime général d'imposition des sociétés de moyens. C'est ce régime spécial qui va être envisagé ci-après.

Le Régime spécial d'imposition des sociétés civiles de moyens:

I. ECONOMIE DU REGIME

Il est caractérisé par le fait que les sociétés de moyens sont réputées ne pas avoir de

personnalité distincte de celle de leurs membres pour l'application de l'impôt sur le revenu. C'est donc un régime de transparence fiscale qui est institué par le nouveau régime. Elle est par ailleurs exonérée de la T.V.A.

Il s'ensuit les conséquences suivantes:

1) la société reste passible de la patente
2) la société reste passible des taxes assises sur les salaires mais est exonérée de T.V.A.
3) aucun résultat n'est déterminé à son niveau. En effet ses frais généraux doivent être exactement remboursés par les membres participants.
4) elle ne peut pratiquer aucun amortissement puisqu'en vertu de la transparence, elle n'est propriétaire ni de locaux, ni de matériel par elle même. Chacun des associés est réputé propriétaire de la quote-part des biens mis en commun correspondant à ses droits. Il doit donc procéder lui-même à l'amortissement de la quote-part d'actif correspondante.

II. CONDITIONS D'APPLICATION

Le principe est que le régime spécial est seulement applicable aux sociétés civiles de moyens constituées entre membres d'une profession libérale dont l'exercice est réservé aux personnes physiques et pour lesquelles aucun règlement d'administration publique n'est intervenu.

Ceci se justifie par le fait que l'organisation de la profession en société civile professionnelle rend moins aigu le problème des sociétés de moyens.

En outre, les conditions suivantes doivent être réalisées:

1) Il doit y avoir un nombre maximum de participants. Un décret à intervenir doit fixer le chiffre. Dans le projet gouvernemental le chiffre de dix avait été retenu.
2) La société ne doit recevoir que le strict remboursement de ses dépenses sociales, ce qui sous entend que chaque co-participant doit verser exactement à la société le montant de sa quote-part de frais communs.
3) La société doit enfin opter pour le régime spécial avant le 1er mars 1973 pour les sociétés existantes et dans les 15 jours du début des opérations pour les sociétés nouvellement créées.

Cette option ne parait pas être irrévocable.

— Au cas où un règlement d'administration publique interviendrait permettant la constitution de sociétés civiles professionnelles au sein d'une profession déterminée, il est prévu (II 2 de l'article 2) que les sociétés de moyens qui auront opté pour le régime spécial avant l'intervention dudit règlement conserveront le bénéfice de ce régime.

Les modalités d'application de ces mesures consistent en:

— La souscription d'une déclaration spéciale annuelle comportant la répartition des résultats.
— La tenue d'une comptabilité sommaire des frais exposés, appuyée de toutes les justifications jugées utiles.

III. ENTRÉE EN VIGUEUR DU RÉGIME SPÉCIAL

La date d'entrée en vigueur de ces dispositions n'est pas prévue par le texte légal, mais s'agissant d'une Loi de Finances Rectificative, il est permis de penser que les nouvelles dispositions trouveront leur application à compter du 1er janvier 1973.

En conclusion, on peut se demander tout d'abord si cette construction juridique de

la société civile de moyens était bien utile alors qu'il existe déjà un cadre juridique identique, à savoir, le groupement d'intérêt économique, qui ressemble à s'y méprendre à la société de moyens bénéficiant d'un régime spécial. Pour les sociétés de moyens ne remplissant pas les conditions d'accès au régime spécial, il ne restait qu'à écarter le principe de la transparence et ses conséquences, notamment la déclaration unique au nom de l'associé-membre et l'imposition à la T.V.A.

Quoi qu'il en soit, il semble que cette formule soit appelée à un certain développement, bien que l'imposition des plus values constatées lors de l'apport des locaux ou du matériel, puisse constituer dans certains cas une entrave à la constitution de ces sociétés. Il semble que le législateur aurait pu étendre à cet effet les dispositions de l'article 93-4 du C.G.I. qui prévoit que l'imposition de la plus value constatée lors de l'apport par un associé à une société civile professionnelle des éléments d'actif affectés à l'exercice de sa profession est reportée au moment où s'opèrera la transmission ou le rachat des droits sociaux de cet associé.

INTERNATIONAL FISCAL ASSOCIATION

The Thiel College of Greenville, Pa, USA, conferred the Honorary Degree of Doctor of Laws to Dr. Mitchell B. Carroll in November 1972.

The former chairman of the German Branch, Dr. h.c. F. Silcher, was awarded "das Grosse Verdienstkreuz des Verdienstordens der Bundesrepublik Deutschland" in March 1973.

NATIONAL BRANCHES

During the 26th IFA Congress held in Madrid in September 1972 two new national branches were officially admitted, one in Canada and one in Central America (including members from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua), which brings the total number of branches up to 24.

Canada

Chairman is Mr. Philip F. Vineberg of Montreal; Secretary Mr. M. Leduc also from Montreal; Treasurer is Mr. R. M. Anson-Cartwright of Toronto. The Branch has approximately 345 members. In May 1972, a seminar was organized on the changes in the Canadian tax law (Canadian Tax Reform Act.) Ten papers were delivered which were published in a volume edited by the Canadian Branch.

In February 1973, a joint meeting was held in New York City by the Canadian and American Branches. An all day session attended by 200 participants analyzed the issues involved in the Canada/USA Income Tax Convention being negotiated by the two Governments, primarily from the viewpoint of the problems created by the substantial changes recently made in the tax regime of Canada. Mr. John M. Henessy, Assistant Secretary of the Treasury for International Affairs delivered the luncheon address. The issues studied were:

1. US parent with a Canadian subsidiary which owns a third country sub-subsidiary.
2. Corporate reorganizations ("rollovers").
3. Estates and trusts and cross-border gifts.
4. US citizens resident in Canada, including executive compensation, US citizen, married to Canadian resident and conflicts in respect of current income and the departure tax.
5. The permanent establishment with particular emphasis on national resource activity.

The papers delivered may be published by the Canadian Branch in one volume; meanwhile, separate papers will be published in forthcoming issues of the Bulletin by the Bureau of International Fiscal Documentation.

Central America

Chairman is Doctor José Antonio Rivera of El Salvador; secretary Lic. Sergio García Granados of Guatemala; co-secretary Lic. Humberto Pacheco of Costa Rica; Treasurer Lic. Tuncho Granados of Guatemala.

The new branch held its first General Assembly in February 1972; in February 1973, the second meeting was held. National reporters were nominated for the 1974 Congress for the two subjects to be discussed. At the 1973 Congress, Don Andrés Liano of Guatemala delivered a national report.

Belgium

In December 1972, the Belgian Branch

nominated Mr. Edgar Schreuder Honorary President; Mr. Ignace Claeys-Bouuaert of Ghent was nominated Chairman of the Branch to replace Mr. Ch. Cardyn, for a period of three years. Mr. Jean van Bastelaer of Brussels is Chairman of the Scientific Committee. The Branch will be represented on the General Council of IFA by Mr. Ch. Cardyn and Me P. Sibille for the period 1973/1974.

Finland

In Finland, the secretariat of the national branch was taken over from Mr. M. Turunen by Messrs. Atte Järvilehto and Henrik Lax, also of Kansallis-Osake-Pankki in Helsinki.

USA

In the U.S.A., Mr. Harold S. Sommers was replaced as secretary of the branch by Mr. Richard C. Pugh of New York.

ACTIVITIES NATIONAL BRANCHES

France

Approximately 100 members attended a "Soirée d'Etudes" held in Paris in June 1972. The following subject was discussed: "L'évaluation des apports en nature et de l'actif net de la société bénéficiaire de l'apport, en cas d'apports en nature ordinaires de fusions ou d'opérations assimilées". Three reporters gave their view on the subject: Professor Goré of the Faculty of Law and Economic Science of the University of Paris dealt with the juridical aspects; Mr. Puyraveau of the "Société Juridique et Fiscale de France" with the fiscal aspects, whereas the technical aspects were dealt with by Mr. Reydel, "Président Honoraire de l'Ordre des Experts Comptables".

Later in the year, the General Assembly of the French Branch discussed the draft national reports to be submitted for the 1973 IFA Congress.

Germany

The General Assembly of the German Branch met in November 1972 in Munich. There was an attendance of 62 members. In the chair was Dr. Helmut Fabricius who took over from Dr. h.c. F. Silcher in the course of 1971.

For those members who did not attend the 26th Congress in Madrid, Mr. R. Charlier and Prof. Dr. Horst Vogel had made a review of the discussions on the two congress subjects which were made available to all members together with the final German versions of the resolutions.

The draft national reports to be submitted for the 27th Congress in Lausanne were also made available and a very lively discussion was devoted to both subjects. Several aspects of the subject "Partnerships and joint enterprises in international tax law" were selected which would be studied in detail by a special working session to be organised by the German Branch following the 1973 Congress.

Israel

The Israeli Branch organised four meetings; 3 in 1972 and one in 1973 in which the following subjects were studied:

1. Taxes, devaluation and the taxation of linkage differences.
2. Taxation of small and medium-sized undertakings and verification of income according to global criteria (takshivim).
3. Taxation of company profits.
4. Extension of book-keeping duties for taxation purposes.

The proceedings were that a lecture was held, followed by a panel discussion.

Netherlands
On December 16th 1972 a General Assembly was organized where the national reports for the 1973 Congress were discussed.

United Kingdom
The British Branch organized several meetings which as a rule commenced at 6 p.m. and ended at 7.30 p.m. In October 1972, the draft national reports for the 1973 Congress were discussed. Other topics to which either meetings, tax workshops or a seminar were devoted are as follows:
November 7th: The effect of Canada's new tax legislation on UK trade investments in Canada, their reorganization, and the repatriation of their profits.
November 28th: Corporation tax reform.
December 8th: Anglo/Dutch meeting in Amsterdam on V.A.T.
December 12th: The D.I.S.C. legislation in the USA — an overview; speaker: Mr. R. M. Hammer of Price Waterhouse New York.
January 23rd, 1973: Value Added Tax.
February 7th, 1973: Tax Workshop; subject Taxation of capital on death: a possible inheritance tax in place of estate duty.
February 27th, 1973: (1) International tax planning; (2) Capitalization of loans — capital gains implications.
March 14th, 1973: Analyses of a topical tax case.
April 6th, 1973: Annual dinner.
May 4th and 5th, 1973: Anglo-Belgian Seminar in London.
Topics:
1. The relevance to the EEC of the new U.K. corporation tax system and the comparison with the Belgian and Luxembourg company tax systems.
2. Problems raised in the provision of services across frontiers by the introduction of value-added taxes in the U.K., Belgium and Luxembourg.
3. The tax problems of inward and outward investment in the three countries.

May 15th, 1973: Annual general meeting.

Switzerland
On the 3rd November 1972 a General Assembly was held in Bern. Topics were the introduction of V.A.T. in Switzerland and the national reports to be submitted to the 1973 Congress.
The Swiss Branch will be the host of the 27th Congress to be held in Lausanne from 7th—8th October, 1973. The full Congress programme will be mailed to all members early May. Secretary of the congress organizing committee is Me J.-M. Rivier of Lausanne.

Composition Swiss Executive Committee
Chairman: Dr. P. Gmuer, Zürich
Secretary: Mr. E. Isler, Basle
Treasurer: Prof. Dr. Kurt Amonn, Bern.

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Dr. W. Studer, Basle.
Address General Secretariat of the Congress:
Rue Pichard 13
1003 Lausanne
Tel. (021) 20 74 51
Telex: 25148.

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CUMULATIVE INDEX 1973

Nos. 1, 2, 3 and 4

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II. DEVELOPMENTS IN INTERNATIONAL TAX LAW

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DAOOD H. HAMDANI *:

FISCAL MEASURES AGAINST INFLATION AND UNEMPLOYMENT IN CANADA: 1973 BUDGET AND OTHER DEVELOPMENTS

At the end of the third quarter of 1972 it had become obvious that the Government's forecast of 6 to 6.5 per cent increase in the output of goods and services would not be realized. At the same time the behaviour of unemployment and inflation was defying expectations. In addition, there was an air of uncertainty, created by the general election of October 1972 which wiped out the absolute majority of the ruling party, about the proposals made in last year's budget but not yet legislated. Urged by the economic situation, the Government presented its 1973 budget earlier than usual, on February 19. Prior to the budget, however, a number of anti-inflationary steps and employment incentives had been announced or expanded. In December 1972, for example, much-awaited details of the method to calculate manufacturing and processing profits qualifying for reduced corporation income tax were announced and in January of this year a committee was established to study food prices. This paper is concerned with the measures which come into force in 1973, most of these are contained in the 1973 budget but some were announced just before it. This leaves the boldest and the most innovative provision of the 1973 budget, namely indexing the personal income tax [1] which will be enforced in 1974, out of discussion.

This study is arranged as follows. Section I provides a brief discussion of the inflation-unemployment dilemma. It is followed by a review of the attempts made to control inflation in Section II. Government's position on prices and incomes policy, increases in pensions and reduction in import duties form the core of this part. Section III deals with measures designed to achieve the twin objectives of reducing inflation and unemployment. The specific topics discussed here are cuts in personal income tax and federal sales tax and their comparative effectiveness. Section IV is devoted to a discussion of reduction in the corporation income tax and expansion of job-creating plans — the measures specifically meant to alleviate unemployment.

I. INFLATION — UNEMPLOYMENT DILEMMA

According to economic theory, prices and wages rise rapidly when the rate of unemployment is low and increase slowly when unemployment is high. The Canadian case has not conformed to this pattern and both inflation and unemployment have been high. It means that trade-off between unemployment rate and rate of inflation

* Economist, Ministry of Treasury, Economics and Intergovernmental Affairs, Toronto. This paper was prepared as a matter of the author's personal interest and, therefore, he alone is responsible for its contents and views.

1. This measure is designed to ensure that the government does not derive revenue from increases in personal income which are purely due to inflation. For detail, see *Budget Speech*, February 19, 1973, pp. 17-18.

has worsened indicating an upward shift in the Phillips curve. [2]

In his budget of May 1972 the Minister of Finance noted that the rate of unemployment had been on a downward trend since September 1971. He, nevertheless, stressed that he was not complacent about it and that unemployment remained a serious problem and the first priority. But the fast increase in labour force did not augur well and the reading that unemployment was heading downwards did not turn out to be accurate. The measures which were proposed in thad budget were not expected, nor were they designed, to relieve unemployment immediately because of their long-term nature.

The rate of unemployment expressed in relation to the labour force, which had fallen from 6.9 per cent in September 1971 to 5.8 per cent in April 1972, began to rise steadily and rather rapidly. It climaxed at 6.9 per cent in September 1972 and after declining in the following two months rose again in December to 6.7 per cent. Although economy grew at a considerable pace in 1972 with the exception of the third quarter and more jobs were created than in the previous year, this was not enough to match the growth in the labour force. Consequently, the rate of unemployment at 6.3 per cent for the year as a whole marked little improvement over the 1971 performance.

The national rate conceals the widely divergent incidence of unemployment among regions. The regions experience widely varying unemployment rates and when the national rate declines it does not necessarily mean that all regions will follow suit. Unemployment in Atlantic provinces (Newfoundland, Prince Edward Island, New Brunswick and Nova Scotia) is nearly twice as high as in the Prairies (Alberta, Saskatchewan and Manitoba) and one and a half times as much as the national average. When the national rate declined between October and November 1972 it worsened in the Atlantic provinces and Quebec, showed no improvement in Ontario and the Prairie region, and only British Columbia made gains.

At the same time, contrary to what one would expect in the light of economic theory, inflation continued to rise. In 1972 the consumer price index went up by 4.7 per cent. [3] This increase is primarily due to food prices. The major increase in food prices occurred in July 1972 and continued, at a somewhat slower pace, until September. After some respite in October and November the food prices shot up by 1.4 per cent in December and 2.0 per cent in the following January. The signs of a rise

2. The Phillips curve, known after its originator, A. W. Phillips, depicts the relationship between the rate of inflation and the rate of unemployment. The rate of inflation is measured along the vertical axis and the rate of unemployment along the horizontal axis. The shape of the curve, sloping downward to the right, shows that higher unemployment is accompanied by slow increase in inflation and low unemployment by high rate of inflation. If, between two periods of time, the curve shifts to the northeast of the original one, it means that with a given rate of unemployment the economy is experiencing a higher rate of inflation than before, i.e., the trade-off between unemployment and inflation has deteriorated. The trade-off becomes favourable if the shift is to the southwest, associating a given rate of unemployment with lower inflation than before.

3. All figures relating to price inflation are, unless otherwise specified, calculated from the annual averages. If increase in consumer price index is computed from December 1971 to December 1972, it comes to 5.1 per cent. It was 5.7 per cent between January 1972 and January 1973.

in the consumer price index were quite clear in November when the wholesale index for vegetable products and animal products continued to climb at a faster rate than the general wholesale price index. However, food prices are not entirely to blame. The consumer price index excluding food rose 3.7 per cent in 1972 compared with 3.5 per cent in 1971. Prices may be expected to grow somewhat slowly in 1973 but inflation is likely to be more widespread as the tempo of the economy quickens.

The outlook for Canadian prices, especially those of food, depends, to a large degree, on developments in the United States. The prices of feed, for example, which constitutes nearly two-thirds of the cost of producing livestock, are directly tied to those in the United States. Beef prices are likely to stay high in 1973 because exports to U.S.A. are expected to rise as a result of high prices there and suspension of quota on the import of meat. Hog prices may show some moderation in 1973 because of the anticipated large production in U.S.A. On the other hand, United States is going to intensify its efforts to stabilize food prices. In 1972 the farm prices rose at a drastically higher rate than in the previous year and this trend appears to be continuing. Early in 1972, in Chicago, the world's largest commodity exchange, wheat was selling at $1.48 per bushel for deliveries in March and in December the traders were paying $2.69 per bushel. This situation is causing concern in the United States and the Secretary of Treasury has stated that food prices are the major economic problem.

On the wage front also some hectic and hard bargaining is imminent in 1973 as a large number of contracts comes up for re-negotiation. More than three hundred contracts covering some one million workers, mostly in public service and manufacturing industries, will be negotiated. The labour leaders are already saying that in the year ended September 1972, average increase in the base rate under all major agreements, after discounting for price increases, was a meagre 1.1 per cent. They are asserting that new contracts will have to consider not only inflation but also higher standard of living and higher expectations. These demands will be buttressed by high profits made in 1972.

II. ANTI-INFLATIONARY STEPS

The Government has rejected wage and price controls as neither warranted nor workable. It has, instead, employed tax policies such as cut in personal income tax and federal sales tax, discussed in Section III, and reduction in import duties to control inflation. At the same time people with fixed incomes are being compensated in the form of pension increases.

A. *Attitude towards Prices and Incomes Policy*

The Government's position is that inflation has not reached the crisis level that would call for controls. Moreover, food prices are the most troublesome component of the consumer price index and they are the most cumbersome to control. [4] This argument derives strength from the experience of the United States where farm prices were left uncontrolled partly because of the practical difficulties of administering

4. *Notes for an address by Finance Minister John N. Turner to the Second Annual Canadian Institutional Investors' Conference,* Toronto, November 16, 1972, Department of Finance Release No. 72-141, p. 5.

and enforcing controls and partly because of the fear that shortages might result. The Secretary of Treasury has conceded that the U.S. has had a very difficult experience in the area of food prices and has to think hard about them. At this stage, the U.S. Government, instead of resorting to price restrictions, is trying to control food supply by such measures as lifting import quotas on meat, increasing farm land under production, changing grazing land regulations and sale of government food stocks on open market. However, few will disagree that, in general, wages and price controls have kept inflation down in the United States.

It is also maintained that wage and price controls are not the most efficient way of containing inflation. They have to be supported by appropriate fiscal and monetary policies. [5] This is demonstrated by the case of Britain where wage-price freeze was followed by some tightening of monetary policies. Further, since the second World War, controls have been imposed in Britain four times, in 1948, 1957, 1961-62 and 1967 and every time when controls were lifted inflation rose sharply.

The Minister of Finance has stated that although contingency plans have been prepared, controls are not being contemplated. [6]

B. *Committee to Study Food Prices*

A Committee of the House of Commons has been appointed to study food prices. It will submit an interim report around the end of March. It is pertinent to recall, at this stage, the experience of two earlier attempts made to examine the causes and sources of inflation. The Croll-Basford Committee, a joint Committee of the Senate and the House of Commons on food prices, concluded in 1966 that price controls were not only unworkable and unrealistic but also the federal government did not have the constitutional power to enter that field. After studying price increases introduced by four major food processing firms in Canada, the Prices and Incomes Commission of 1969 stated that these companies took a cut in their profits and passed only 79 per cent of the increases in cost to consumers.

The rising food prices were attributed to labour costs — wages, salaries and fringe benefits — and packaging costs. Lest the readers should get any misleading impression, it must be noted that the Prices and Incomes Commission did recommend controls. [7]

There appears to be a general agreement that increases in grocery prices are largely due to processing costs, and the magnitude of this increase depends upon the degree of processing involved. In this respect, much useful information will be forthcoming from a practice adopted by the Government of Manitoba whereby prices

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5. *ibid,* p. 6.
6. *ibid,* p. 6.
7. One of the background studies prepared for the Commission rejected direct controls: "However, since the price system does appear to serve an allocative function, in all probability it produces a much more efficient allocation of resources than would be possible under any rigid system of direct controls . . . no voluntary policy or short-term system of direct controls can possibly be successful without proper demand management, with all the problems of timing and forecasting that it entails. Indeed, the primary weapons for the control of inflation in Canada are, and should be, policies for the management of aggregate demand." B. D. Scarfe, *Price Determination and the Process of Inflation in Canada,* a study prepared for the Prices and Incomes Commission, (Ottawa: Information Canada, 1972) pp. 39, 55.

paid to farmers and prices paid by consumers in supermarkets will be regularly released.

The establishment of the Commons Committee to study food prices may, by itself, have some effect on inflation. The Committee might also help the consumer by just focusing on the fact that grocery bills can be kept down by purchasing food in less fancy containers, etc.

Apropos the issue of whether or not the federal government has the constitutional power to impose wage and price controls, legal studies indicate that no problems would arise if the Government decided to adopt such a policy. [8] However, there are some areas pertaining to controls where the provincial governments are so closely involved that their co-operation would be essential. For example, if wage controls were universally applied, they would affect provincial governments' collective bargaining with employees in public service. In the area of price controls, there are the provincial marketing boards for farm produce who will find themselves in a position where they have to follow the guidelines set by the federal government.

C. *Tariff Cuts*

Although tariff cuts may not strictly fall within the scope of this paper which is concerned with fiscal measures, it will not be out of place to comment briefly on them because they have been introduced in the 1973 budget as an anti-inflationary device. The choice of commodities and the size of tariff reductions quite clearly indicate that the primary aim is to reduce food prices. The average cut in import duties works out to be 5 percentage points. [9] This measure comes into effect immediately and expires after one year.

The price effect of this provision should show up not only in a drop in the prices of imported commodities but also the domestically produced import-competing goods. Its effectiveness would be eroded by the recent appreciation of the currencies of some of Canada's trading partners. For example, in the wake of 10 per cent devaluation of the U.S. dollar, the Canadian dollar has declined by an equal amount whereas the Japanese yen has appreciated by 17 per cent. However, 60 per cent of the imports affected by tariff reductions escape the effect of currency revaluations. Inspite of this, it is doubtful whether this provision is strong enough to make any dent in the consumer price index. Although imports covered by curtailed tariff duties (assuming that changes in exchange rates do not enter the picture) constitute about one half of the total imported consumer goods, they are only 2 per cent of the total consumer spending.

D. *Pension Increases*

The persons hit hardest by inflation are those whose income is fixed. While their income does not increase, prices continue to rise, leaving them worse-off every year. One such group is that of pensioners. The budget makes provision to compensate fixed-income groups by raising old age security pensions and the war veterans' allowance and the civilian war allowance. These increases will benefit 1.9 million recipients of pensions.

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8. Dominique Clift, "Quebec may forget fears, accept wage-price curbs", *The Montreal Star,* reprinted in *Toronto Star,* February 9, 1973.

9. Department of Finance, *Supplementary Information on the Budget,* February 19, 1973, p. 6. For more detail see Department of Finance, *Notices of Ways and Means Motions: Budget Measures,* February 19, 1973, pp. 35-77.

The old age security pension which is $ 82.88 per month at present will be raised to $ 100.00 effective April 1, 1973. However, the effective increase is not equal to the difference between the present amount and the proposed amount because, due to the built-in cost-of-living escalation clause introduced in 1972, the pension would automatically rise to $ 86.61 in April 1973. Thus the proposed monthly increase comes to $ 13.39. Coupled with the minimum guaranteed income supplement, the minimum income for a single person above 65 years of age will now be $ 170 per month and for a married couple $ 325 per month. This means a total increase, including automatic cost-of-living escalation, of $ 20 per person per month.

The war veterans' allowances and the civilian war allowances have also been raised by the same amount to $ 151 per month and $ 257 per month for single persons and married couples respectively. The rates for persons above 65 years of age will be $ 206 for single persons and $ 357 for married couples.

The inflationary escalation clause was built into the old age security plan and the guaranteed income supplement in January 1968 but the increase was then limited to a maximum of 2 per cent per annum, although the rate of inflation has been much higher. It was only in January 1972 that the automatic annual percentage increase was fixed at a rate equal to the percentage increase in the consumer price index, where increase is measured from one fiscal year to the other. Since escalator clauses have become a permanent feature of the pension plans it is necessary to conduct research into the spending patterns of retired persons. The relative importance of various items of expenditure is likely to be quite different for this age group for at least two reasons. First, income declines sharply at retirement. Consequently, goods and services which have high income-elasticity will decline in importance. Second, expenditure on some items is related to age. We may, therefore, expect to find an increase in expenditure on food consumed at home and medical care and a decrease in spending on home furnishings, apparel, transportation and recreation.

III. MEASURES AGAINST INFLATION AND UNEMPLOYMENT

Two policy instruments, personal income tax and federal sales tax, are discussed in this section. Both of these instruments stimulate consumer demand — one by increasing disposable personal income and the other by decreasing prices. Both check inflation — one by aiming at wages and the other at prices. Both have been used in the budget, although personal income tax is employed to control both inflation and unemployment and the federal sales tax is only relied on to check inflation. [11]

The burden of personal income tax has been reduced by increasing exemptions and decreasing tax rates. Effective January 1, 1973, (a) the basic personal exemption has been raised from $ 1,500 to $ 1,600; (b) basic federal tax rate is reduced by 5 per cent subject to a minimum of $ 100 and maximum of $ 500; (c) these measures have no termination date.

Federal sales tax which is levied at the rate of 12 per cent on manufacturer's selling

10. Some work along these lines is being done in the United States. See Janet L. Norwood, "Cost-of-Living Escalation of Pensions", *Monthly Labor Review,* June 1972, pp. 21-24.

11. *Budget Speech,* February 19, 1973, pp. 15, 11, 13.

price or duty-paid value of imports has been abolished on fruit drinks, confectioneries and soft drinks, making all food tax-free. It has also been removed from children's clothing and footwear. In last year's budget, goods produced by the blind and the deaf and dumb were exempted from federal sales tax. This concession has now been extended to goods produced by persons with mental and physical handicaps in institutions. Further, municipalities will not have to pay federal sales tax on some waste disposal and anti-pollution equipments and materials. These changes are effective immediately, i.e., February 19.

Some of the antecendents of tax changes are traced below.

A. *Buoyancy of Revenues and Slow Growth in Job Opportunities*

The Government's tendency to lower taxes had become visible by mid-November 1972. Until October there was little indication that even the 3 per cent reduction in personal income tax, due to expire at the end of 1972, would be extended. In November 1972, in reply to a question, the Minister of Finance said, "If the revenues and expenditures and the underlying economic situation warranted it, I would certainly contemplate it (tax reduction), but we have taken no firm decision." [12]

One could, of course, foresee that both the situations were changing. The revenues were buoyant and the economy was slow. The real output of goods and services declined in the third quarter, though this was largely due to temporary and uncontrollable factors, and the rate of unemployment averaged 6.6 per cent — the highest since the third quarter of 1961.

In the May 1972 budget, the Government forecast a budgetary deficit of $ 450 million. By the end of the first half of the fiscal year 1972-73 it appeared that the gap between budgetary revenue and budgetary expenditure might have been over-estimated. The revenue was increasing at the rate of 14.7 per cent as against 10.7 per cent forecast. This buoyancy was primarily due to personal income tax revenue which was growing at more than one and a half times the anticipated rate. There appeared little doubt that by the end of the fiscal year the actual revenue would well exceed anticipations, principally because high inflation was pushing personal incomes into higher tax rate brackets. At the same time the prospects of a rich yield from tax on capital gains were bright because the stock market had been good in 1972.

On the non-budgetary side of transactions, it was estimated in the 1972 budget that the Government would need $ 1.55 billion to meet its obligations. This requirement was more than satisfied by the sale of the Canada Savings Bonds which had reached $ 1.74 billion by the end of November 1972. Another amount of $ 300 million had been brought in by the weekly auctions of treasury bills. The cash position was further strengthened when in November the Government drew down its foreign exchange reserves by $ 180 million in an attempt to support the external value of the Canadian dollar. This strong financial position was also reflected in the fact that when a new bond issue was announced in November 1972 to redeem the bonds maturing on December 15, 1972, it was no more than $ 225 million, just equal to the amount of loan falling due.

It was thus evident by the end of November 1972, that the Government had more than enough finances to satisfy budgetary

12. cited in *Toronto Star*, Toronto, December 7, 1972.

and non-budgetary financial requirements of $ 1,976 million, including foreign exchange transactions, forecast in May 1972. Indeed, some critics believed that even after having taken account of the additional funds allocated to winter works programme the federal treasury was flush enough to afford to give away $1.00 billion.

Economic situation had also changed. After strong growth in the second quarter of 1972, the economy slowed down in the third quarter and the real output dropped by one-seventh of one per cent. This put an end to any possibility that the Government's expectation of 6.0 to 6.5 per cent growth rate [13] would be realized. The growth rate of 6.5 per cent would materialize only if the output, seasonally adjusted at annual rates, grew by 8.1 per cent in the fourth quarter of 1972 — a feat which the Canadian economy has never accomplished, not even in the booming 1960's. On the contrary, it appeared that consumer demand was past its peak growth rate. The index of consumer buying intentions was a full 10 percentage points lower in September 1972 than its previous high level of March 1972. [14] Economic forecasts concurred that the real growth for 1972 would be no more than 5.5 per cent, though 5.3 per cent would be a more realistic figure. [15]

B. *Personal Income Tax versus Federal Sales Tax*

The effect of a reduction in personal income tax on unemployment is quite straightforward but that on inflation is not so clear. While decrease in personal income tax has no direct stabilizing influence on the price level, it will contribute to inflation, in the process of creating more jobs, through pressure on real aggregate demand. However, it can have salutory effect on wages because it is believed that increase in personal income tax obligations, resulting from changes in tax law or inflation, is an important determinant of the size of increases demanded in wage rates. But stabilizing tendencies in wage demands can be produced only if the reduction in income tax is large enough to have a perceptible effect on disposable personal income. The behaviour of wage demands this year will assume particular significance because of the large number of contracts coming up for re-negotiations. This is recognized and the Minister of Finance states that one of the reasons to lower personal income tax is "to encourage restraint in wage demands". According to the budget, for a person with a wife and two children and earning $ 5,000 per year, the tax reduction is equivalent of 3.6% wage increase; if his income is $ 8,000 his saving would be tantamount to 2.4% wage increase. [16]

It appears, however, that these calculations are based on the assumption that the 3 per cent cut in income tax, which was in force up to the end of 1972, does not exist. To the taxpayer who has been used to the tax reduction, the new concession would mean less than is suggested by the calculations.

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13. *Budget Speech,* May 8, 1972, p. 22.
14. *Financial Post,* Toronto, November 11, 1972.
15. After this paper had been committed for publication, the Statistics Canada announced that the real growth in gross national product was 5.5 per cent in 1972 and that the rate for the third quarter of 1972 was not a decrease of 0.7 per cent as stated earlier but an increase of 0.3 per cent. If the growth rate for 1972 is calculated on the basis of the unrevised figure for the third quarter, it comes to 5.3 per cent.
16. *Budget Speech,* February 19, 1973, p. 16.

The use of personal income tax as an instrument of policy has some unwanted implications for income redistribution among persons as well as provinces. These unintended effects emanate from the fact that personal income tax cut usually takes the form of an across-the-board reduction in rates and its benefits, whether resulting from lower rates or increased exemptions, are not universal in the sense that they accrue only to taxpayers. The rate schedule of personal income tax is based on the principle of progression, i.e., people in higher income classes pay progressively, not proportionately, more tax. When an across-the-board reduction is applied to progressive tax rates, it results in progressively more benefit to people in high income classes. Consequently, income distribution is distorted and tilted against low income classes. The maldistribution is exacerbated because the advantages of the tax cut only accrue to persons who are on tax rolls. The persons in the lowest income classes who pay no tax are penalized.

Secondly, the benefits of a cut in personal income tax are very unevenly distributed among provinces because the extent of the benefits depends upon the scale of income distribution. The provinces with low per capita personal income, in general, have high concentration of lower-income groups and thin density of upper income brackets. The evidence of this is provided by Table I where the shares of non-taxable personal income tax returns and taxable returns with income above $ 25,000 in the total returns filed in a province are used as measures of income distribution in that province. The two poorest provinces, Newfoundland and Prince Edward Island, have twice as many non-taxable returns in relation to total returns as the two richest provinces, Ontario and British Columbia. On the other end of the scale, the same two poorest provinces have hardly half as many returns with income above $ 25,000 as the two richest. Thus the regional distribution of the benefits of a personal income tax reduction takes place according to the regional income under across-the-board tax decrease or exemption increase.

To recapitulate, an across-the-board reduction in tax rate or increase in exemptions (a) leads to a distribution of income in favour of high income classes and richer provinces and (b) discriminates against those who are not on tax rolls. The income tax cut proposed in the 1973 budget overcomes the undesirable income redistribution effect by providing for a floor of $ 100 and ceiling of $ 500 which has the effect of increasing the progressiveness of tax schedule. Consequently, the higher income groups and the richer provinces will not gain in relation to their incomes. Had those limits on the amount of tax cut not been imposed, the introduction of higher basic exemption would have aggravated income redistributive effect. However, this tax measure does not come to grips with the discriminatory treatment of persons not on tax rolls. In the taxation year 1970, the most recent year for which statistics is available, 1.5 million tax returns out of a total of 9.2 million filed were non-taxable.[17] The number of persons not paying income tax will be considerably higher in 1973 and subsequent taxation years because of the increase in the amount of personal and dependents' exemptions under the tax reforms implemented in 1972.

The effectiveness of federal sales tax in reducing unemployment and controlling in-

17. Department of National Revenue, *Taxation Statistics, 1972 edition,* (Ottawa: Information Canada, 1972), Table I.

TABLE I

Concentration of Low and High Income Groups in Canadian Provinces in 1970 (Percentage Shares)

	Non-taxable Returns	*Taxable Returns with Income above $ 25,000*
	as percentage of total returns	
Newfoundland	26.88	0.45
Prince Edward Island	28.90	0.39
Nova Scotia	21.39	0.56
New Brunswick	24.64	0.41
Quebec	16.44	0.85
Ontario	14.24	1.06
Manitoba	19.56	0.67
Saskatchewan	26.12	0.41
Alberta	18.94	0.80
British Columbia	14.43	0.86

Source: Calculated from Department of National Revenue, *Taxation Statistics, 1972 edition* (Ottawa: Information Canada, 1972), Tables 1 and 8.

flation has been known theoretically and established empirically. Its efficiency in terms of income redistribution effect stems from its universality and regressive nature. Unlike personal income tax, a reduction in the rate of federal sales tax penalizes none, and benefits all income groups because of its universality and especially low-income classes because of its regressiveness. The direct effect of federal sales tax on inflation is quite obvious. Empirical studies have shown that incidence of sales tax is shifted to the consumer in full in the form of price increase. It is then to be expected that the consumer will receive some, if not all, of the benefit of tax reduction. Its indirect effect, like that of the personal income tax, will be to contribute to inflation because lower tax rate will increase aggregate demand and hence put pressure on prices. The net influence on prices will depend upon the relative strengths of direct anti-inflationary and indirect pro-inflationary forces. But it is extremely unlikely that indirect effect will outweigh or even balance the direct effect. Simulations with economy-wide econometric models show that federal sales tax is superior to personal income tax in achieving the twin objectives of reducing inflation and unemployment. If both are reduced so as to yield the same loss in revenue, sales tax creates nearly twice as much employment as income tax. [18] But a great deal of caution is warranted before this result is related to our discussion of the relative effectiveness of the two tax

18. Gregory V. Jump and Thomas A. Wilson, "Tax Policy Options for Increasing Employment Without Inflation", *Canadian Tax Journal*, March-April 1972, pp. 150-151.

systems. As stated earlier, it is quite explicit from the budget that sales tax is primarily, if not solely, used to check inflation. In order to accomplish this, the commodities chosen for exemptions from sales tax as well as excise tax are those which weigh heavily in the consumer budget. Hence the purpose is to provide relief to lower income families, mostly with income below $ 7,500 per annum whose spending pattern forms the basis of the consumer price index. As to why sales tax is not used to stimulate employment, this point must be discussed in the broader context of all other proposals, some of which are the subject of next section. Suffice here to say that 1972 and 1973 budgets are complementary, as the Minister of Finance has noted that this budget "reinforces and builds upon the budget which I put before the House last May." [19]

IV. INCENTIVES FOR EMPLOYMENT

The Government expects that the various stimuli provided to the consumer and business sectors will help create 300,000 new jobs this year, compared with 250,000 in 1972. In addition to the proposals introduced in the 1973 budget and discussed in the preceding paragraphs, there are two other incentives which merit attention; reduction in corporation income tax and winter works programme. The former is a longer term measure and the latter a temporary one.

A. *Reduction in Corporation Income Tax*

Effective January 1, 1973 the corporation income tax rate for manufacturing and processing operations carried out in Canada has been reduced to 40 per cent from 49 per cent. The rate for small business firms [20] is cut from 25 per cent to 20 per cent. This measure, along with the provision for accelerated depreciation allowing a complete write-off, in two years, of machinery and equipment including used acquired in arm's length transaction) employed in manufacturing and processing industries which came into effect in May, 1972, [21] was announced in the 1972 budget but neither of them has been enacted yet. However, the Minister of Finance has repeatedly stated that the Government is committed to legislate these proposals.

Two features of the corporation income tax cut warrant attention. First, only that portion of income qualifies for reduced tax rates which is derived from manufacturing and processing operations. If a manufacturing firm also engages in other profit-making activities it will have to identify its manufacturing income. Second, manufacturing income only from operations in Canada is eligible for tax concessions. Thus a multi-national firm will have to calculate Canadian manufacturing and processing in-

19. *Budget Speech,* February 19, 1973, p. 1.

20. A small corporation for tax purposes is a Canadian-controlled private corporation and is taxed at the rate of 25 per cent on the first $ 50,000 of net profit and 49 per cent on income in excess of $ 50,000. Once a small firm accumulates taxable income in the amount of $ 400,000 it ceases to enjoy the benefit of the special lower rate. In contrast, the general corporation income tax rate is 21 per cent on the first $ 35,000 of taxable income and 49 per cent on profits above that. For detail, see Honourable E. J. Benson. *Summary of 1971 Tax Reform Legislation* (Ottawa: Department of Finance, n. d.) pp. 37-39.

21. The details of accelerated depreciation are given in Department of Finance, *Income Tax Regulations, Release 72-91* (Ottawa, July 28, 1972) pp. 2-5. See also *Budget Speech,* February 19, 1973, pp. 4-5.

come in order to take advantage of this incentive.

Since this proposal was announced there had been considerable uncertainty among business community as to (1) what is a manufacturing and processing firm and (2) how is the income from manufacturing and processing operations to be separated from other income within a corporation. Answers to these questions have now been provided.

The Government has not provided a list or definition of manufacturing and processing firms for that is an extremely difficult and tedious task. Whether a corporation is manufacturing or not will be decided in the light of common knowledge and experience and court decisions. In marginal and uncertain cases, advanced rulings can be obtained from the Department of National Revenue. However, the operations which do not qualify for tax incentives are stated explicitly. They include farming, fishing, logging, construction, extracting minerals and operating oil or gas wells, producing electrical energy or steam for sale and processing gas for sale or distribution. As a general rule, a corporation which does not derive more than 10 per cent of its gross revenue from manufacturing and processing operations is not eligible for tax incentive. [22]

As regards the second question, all of the corporations will not have to go through the process of calculating profits from manufacturing and processing operations. A company satisfying the following four criteria will be deemed to have earned all its profits from manufacturing and processing activities:

1. it does not carry on any foreign active business;
2. it does not engage in any activities especially excluded from manufacturing and processing (such activities are mentioned in the preceding paragraph);
3. its gross revenue from the sale of goods manufactured or processed in Canada does not exceed 75 per cent of its total gross revenue and
4. its active business income including that of any other Canadian corporation with which it is associated does not exceed $ 50,000.

Considering that 80 per cent of the members of the Canadian Manufacturers' Association employ less than 100 persons [23] and, therefore, may be classified as small to medium firms, nearly three-fourths of the corporations can be expected to meet these criteria.

Other corporations will have to identify their profit from manufacturing and processing. The method can be formulated in algebraic terms as follows:

$$QP = \left(\frac{(ML + 25/75\ ML) + (MC + 15/85\ MC)}{TL + TC} \right) ABI$$

where

QP = income qualifying for the reduced tax rate;
ML = manufacturing wage bill;
MC = value of capital employed in manufacturing and processing operations;
TL = total wage bill;
TC = total capital employed;
ABI = active business income earned in Canada.

The terms used in the formula are explained below.

22. *Ibid*, p. 6.

23. Eric G. Owen, *The Incentive Measures of the Federal Budget, presented on May 8, 1972*, a paper presented to the Canadian Tax Foundation, Toronto, November 1972, p. 12.

1. *Manufacturing Wage Bill (ML)*
This item comprises wages and salaries paid to employees for the portion of time spent directly on carrying out manufacturing and processing activities. Specific activities that may be included are production assembly, inspection, handling, packing, line supervision, repair and maintenance of production facilities, control of pollution and product design and research. Since some essential ancillary services such as administration, purchasing and selling, shipping, data processing, etc. are excluded, the company will be allowed to increase its manufacturing and processing cost by one-third to account for these activities.

2. *Manufacturing Capital (MC)*
Before this item can be ascertained it is necessary to compute the annual value of the total fixed capital assets of the corporation. This annual value will then be apportioned to manufacturing and processing activities and other operations according to the guidelines provided for distributing the wage bill. The Government suggests that 'a reasonable basis' should be used to split the annual cost. The ancillary services will be valued at $ 15 for every $ 85 of the capital cost of manufacturing and processing goods.

3. *Total Wage Bill (TL)*
The total labour cost will not include such forms of remuneration as board and lodging, fees paid to independent salesmen and contributions to retirement plans.

4. *Total Capital Cost (TC)*
The annual value of the capital assets will be equal to the annual rent of the rented assets plus 10 per cent of the original cost of the assets owned. Only those assets will enter calculations which are used in active business during the taxation year and are on hand at the end of the year.

5. *Active Business Income (ABI)*
Active business income has the same meaning as in the Income Tax Act except that charitable donations and loss carry-overs will not be allowed as deductions. Investment income and dividend income will be excluded as will income from natural resources against which depletion allowance is available.
This formula has been adopted after consultations with the Canadian Manufacturers' Association and will, therefore, be generally acceptable. There were two other possibilities; divisional accounting and some formula based on federal sales tax. A method of allocation based on divisional accounting or profit-centre accounting could not receive broad application for a number of reasons. This method is practised only by large business firms. Secondly, cost allocation requires some arbitrariness and hence inconsistency is likely to occur between taxpayers in reporting taxable income. Thirdly, there is the major difficulty of establishing transfer price as a commodity moves from one phase of company's operation to another. Fourthly, it is cumbersome to enforce.
The federal sales tax approach also poses serious difficulties. There is no consistency in determining the sales tax value between industries. In addition, some of the manufactured goods like food, drugs and publications are exempt from sales tax.
The tax concession to the manufacturing and processing industries reflects concern about this sector's weakening position in the international markets, and this concern is well founded in view of the fact that not only do the manufacturing industries employ two-fifths of all the working Ca-

nadians they also possess the best potential for expanding employment opportunities. A number of developments, at home and abroad, have marred their efficiency and export capabilities.

Unit labour cost in the manufacturing sector rose by about 5.0 per cent in 1972 compared with 3.7 per cent in 1971, whereas the increase in the United States, Canada's largest trading partner, was only half as much. [24] At the same time wage settlements do not seem to indicate any appreciable moderating trend. The average increase in base wage rate for all collective agreements covering negotiating units of 500 or more employees in manufacturing industries was 8.8 per cent in 1972 compared with 7.6 per cent in 1971, and 1973 promises to be a hectic year for wage agreements. More than 10 per cent of all the employees in the manufacturing industries will be negotiating their wage contracts this year. Secondly, since May 1970 the Canadian dollar has appreciated by 9 per cent, making Canadian exports more expensive. To top it, the United States introduced its programme of Domestic International Sales Corporation which adversely affects both the international competitive position of the Canadian industries and the job opportunities, though its effect is believed to have been small so far. The tax concession made to the manufacturing and processing industries will help offset these disadvantages and bring Canadian tax rates in line with those prevailing in Japan, West Germany and the United States.

In the heat of the debate over the adequacy and appropriateness of this tax incentive, its tax reform aspect has not drawn enough attention. That reduction in corporation income tax represents a step towards tax reform was stated in the 1972 budget speech and later reiterated by the Minister of Finance. [25] This aspect manifests itself in the fact that when income tax is declining for manufacturing and processing industries from 46.5 per cent in 1972 to 40.0 per cent in 1973, it is going up for other industries from 46.5 per cent to 49.0 per cent. [26]

B. *Winter Job Expansion Plan*

Concerned about the slow decline in the rate of unemployment, drop in the real output of goods and services in the third quarter of 1972 and imminent seasonal increase in the number of jobless persons in winter, the Government boosted its winter expenditure programme. On December 6, 1972, the day after the Statistics Canada released statistics showing that in mid-November the number of jobless persons seeking employment had gone well above half a million, seasonally unadjusted, it announced an addition of $ 200 million to its winter works programme to relieve the severity of seasonal unemployment. The proposed measures according to Go-

24. The points raised in this paragraph are discussed in some detail in D. H. Hamdani, "Investment Incentives in the Canadian Budget", *Bulletin for International Fiscal Documentation,* September 1972 and November 1972.

25. Department of Finance, *Text of an Address by Finance Minister John N. Turner to the 24th Tax Conference of the Canadian Tax Foundation,* Toronto, November 28, 1972, Release 72-145, pp. 4-5.

26. Under the tax reform, the rate of corporation income tax was set at 50 per cent for 1972, to be reduced by 1 percentage point annually to reach 46 per cent in 1976. But the prevailing rate in 1972 was 46.5 per cent because of a tax incentive of 7 per cent. This incentive expired at the end of 1972 and, according to tax reform, the effective rate for 1973 is 49 per cent.

vernment's estimate, will create 140,000 new jobs in the winter of 1972-73 ending May 31, 1973.

The winter job expansion plan envisages a total expenditure of $ 375 million between December 1972 and May 1973 compared with $ 300 million last year. This amount is the sum of $ 125 million announced initially, $ 50 million carried over from Employment Loans Program and $ 200 million announced in December 1972 under the following four programmes.

1. *Local Initiatives Programme*

An amount of $ 80 million has been allocated to this plan bringing the total sum to be spent under this scheme in the winter of 1972-73 to $ 165 million. The Government anticipates that this outlay will help to create 95,000 jobs. This programme was first announced in October, 1971 when the number of unemployed, unadjusted for seasonal variations, increased to 447,000 from 419,000 in October, 1970 and 314,000 in October, 1969. The Local Initiatives Programme provides grants to municipalities and non-profit groups performing useful social or cultural functions.

At the time of announcing additional funds, it was emphasized that in hiring people, preference would be given to those who are receiving unemployment insurance or welfare. This emphasis has been interpreted to mean that a person who refuses an opportunity offered under this programme will face the possibility of being struck off the Unemployment insurance records. Although 80 per cent of the employees last year were registered unemployed, the emphasis is a reflection of the concern about large payments out of the unemployment insurance fund which are partly due to the higher than expected unemployment but largely due to the revision in unemployment insurance act whereby (a) effective June 27, 1971, maximum weekly benefit was raised from $ 58 to $ 100 and (b) unemployment insurance coverage was extended to all salary levels from the previous ceiling of $ 7,800 per annum.

2. *Training on-the-job Programme*

The budget for this programme has been raised from $ 40 million to $ 50 million. It aims at relieving the employer of a major portion of the labour cost and inducing him to channel his funds to the expansion of his business. The programme provides for 75 per cent of the trainee wage cost during the first half of the training period and 50 per cent of the wage cost during the second half up to a maximum of $ 118 per trainee per week. A participating employer can claim reimbursement only in respect of those employees who begin their training before March 31, 1973.

Training on-the-job programme has two special features designed to help business firms overcome skill shortages and to help disadvantaged workers who cannot keep a steady job.

The skill-shortage programme will be applicable when a vacancy remains unfilled for one month. The trainee must be at least one year older than school-leaving age and must not replace a regular employee. The programme covers training period ranging from 6 weeks to one year and pays 50 per cent of the basic wage in the first half of the training period and 25 per cent in the second half up to a maximum of $ 118 per trainee per week.

The other aspect pertaining to the disadvantaged workers refers to the hard-core unemployed and covers persons with physical and mental handicaps, personal and

health problems, insufficient skill and experience and learning difficulties, etc. The benefits offered to employers are more generous in this case. The Government undertakes to defray all of the trainee wages in the first four weeks, 90 per cent in the following 24 weeks and 60 per cent in the remaining 24 weeks up to a maximum of $ 118 per trainee per week. In return, the trainees must be provided continuous work, must not be substituted for regular employees and must not be dismissed without consulting the Canada Manpower Centre. Training on-the-job Programme created 42,000 jobs last year and more than two-thirds of the trainees were able to get permanent jobs. The Government estimates that 40,000 jobs will be created this year.

3. *Federal Labour-intensive Projects*

The third programme of combating winter unemployment involves an allotment of $ 60 million to the departments of federal government. The projects under review include airport runway construction and improvement, canal repairs, harbour and wharf improvements, school construction and northern housing, etc. The projects with a high labour content will receive preference and particular care will be taken to concentrate work in the regions which are hit hardest by seasonal unemployment.

4. *Winter Capital Projects Fund*

The Government has established a Capital Projects Fund of $ 350 million to be used over a period of two and a half years ending in May, 1975. This fund will provide loans and grants to provincial and municipal governments to finance capital projects of the social infrastructure nature. The programme focuses on unemployment in general and seasonal unemployment in particular by providing that (a) one-half of the on-site labour cost of the project will be forgiven from the loan and (b) entire on-site labour cost will be forgiven if it is incurred during winter, December 1 to May 31.

The total capital fund is distributed among provinces and territories according to population, level of unemployment and the degree of seasonality in unemployment. Their shares are as follows:

	($ Million)
Newfoundland	12.0
Prince Edward Island	3.0
Nova Scotia	14.0
New Brunswick	13.8
Quebec	113.9
Ontario	106.4
Manitoba	13.4
Saskatchewan	13.1
Alberta	22.2
British Columbia	37.3
Yukon	0.3
Northwest Territories	0.6
	350.0

The provincial government has the option of administering and apportioning the fund between municipalities and itself, and among municipalities. It will, however, not be required to guarantee repayment of loans advanced to municipalities.

The provinces welcomed the Federal Government's decision to step up the winter works plan but stated that its effectiveness could have been enhanced by making the announcement earlier. The provincial governments had urged upon the Federal Government in the summer of 1972 to make its plans known by the first week of September at the latest. At the end of November, announcing his own plan to spend $ 50 million to relieve seasonal unemploy-

ment in winter, the Treasurer and Minister of Economics and Intergovernmental Affairs of Ontario criticized the Federal Government. "This year, despite the prospect of continuing high unemployment, no comprehensive federal program has been announced, . . ." [27]. In addition to the time required for planning and implementing a project, there is the delay caused by the lag between expending money and its impact on the economy. Experience suggests that this lag may be three to six months long.

However, the Federal Government is counting on the fact that its own departments (in the case of Federal Labour-intensive Projects Plan) and provincial and municipal governments (in the case of Winter Capital Projects Fund) will not have to prepare new projects but simply to advance the implementation dates of the ones already planned. It is perhaps, primarily, because of this that projects qualifying under both of these programmes are of the nature of social infrastructure.

This year's winter plan supplements the make-shift arrangements with a systematic and longer-term attack on the problem of seasonal unemployment. The availability of finances over longer-run through the Winter Capital Projects Fund will save the provincial governments surmising about the intentions of the federal government every year and make planning for winter unemployment easier and more effective. According to Government's estimate, the Winter Job Expansion Plan, totalling an outlay of $ 375 million in the winter of 1972-73, will directly create 140,000 new jobs. [28] The two programmes administered by the Department of Manpower and Immigration, Local Initiatives Programme and Training on-the-job Programme which together account for $ 210 million or 56 per cent of the total, are expected to provide 135,000 new jobs.[29] It follows that the remaining $ 165 million or 46 per cent of the total, will generate only 5,000 new jobs. It appears that either the total number of jobs has been under-estimated or the effectiveness of Local Initiative and Training Programmes, which is no doubt likely to be higher than that of the other two programmes in the winter plan, has been overstated.

The manpower training programmes, in general, have been criticized as a legacy of the mid-1950's when vast changes in technology and production processes are said to have rendered many skills obsolete. It has been argued that even at that time retraining programmes as a solution of unemployment were wrong-headed because unemployment was not due to structural or technological changes but to deficient aggregate demand.

It is also contended that emphasis on training programmes presupposes that incidence of unemployment is highest among the unskilled workers. Since research reveals that unskilled workers belong to the secondary labour market which is highly seasonal and low-paying and offers little opportunity for advancement, training programmes may not be the answer.

Most of the criticism of training programmes has, however, been aimed at institutional training, and increase in the size of the

27. cited in *Globe and Mail*, Toronto, December 1, 1972.

28. Department of Finance, *Release 72-155*, December 6, 1972, p. 2.

29. Office of the Minister, Manpower and Immigration, *Release 72-33*, December 6, 1972, p. 1 of Notes for a Press Conference.

on-the-job training programmes reflects progress in the right direction.

V. CONCLUDING REMARKS

The classification of measures according to objectives is somewhat arbitrary. This compartmentalization loses sight of the interrelationships of the instruments of policy. This is especially true of the provisions discussed in Sections II and III and is illustrated by two examples. When reduction in personal income tax is studied in conjunction with increases in pensions, the criticism that the former discriminates against those who are not on tax rolls loses some of its sting. Similarly, the combined stabilizing effect of tariff cut and sales tax reduction on prices is much higher than the separate discussion of each of them would suggest. It should be remembered that net outcome of these various proposals can only be studied in the context of a model that specifies all interrelationships.

S. ROLAND DAHLMAN *:

JOINT ESTABLISHMENTS IN SWEDEN

The tendency towards co-operation with respect to real estate has recently become more and more pronounced. This applies particularly to real property located in cities and other agglomerations with densely built-up areas. This tendency is caused by today's needs of economization and a rational utilization of available land.

Real estate co-operation is not a new phenomenon. It is certainly a long-established fact. The main reasons for creating this special kind of joint establishment according to the Law on certain joint establishments (LJE), (Lag om vissa gemensamhetsanläggningar (SFS 1966: 700)) are new technical standards of town planning, e.g. row-style houses and so-called group buildings. Since the municipalities have a legal obligation to provide for public streets and public water- and outflow installations, some problems arise for this new kind of housing. They are often very densely built-up and the areas often contain private water- and outflow installations, roads and other establishments. Earlier regulations were incomplete and not designed for the special joint establishment introduced by the LJE.

The economic, but not the practical, significance of joint establishments has up to now been somewhat limited. The potential economic significance of joint establishments may very well be of considerable interest since lately e.g. corporations have formed joint establishments of 1 - 2 millions Swedish Kronor (approximately US $ 220,000 - 440,000) value.

Generally speaking, the Swedish laws offer two ways of establishing and maintaining co-operation with respect to real properties. One way requires a decision of an official organ and may involve, to a greater or lesser extent, a certain degree of compulsion. Examples are joint interests in accordance with the law on land partition, fishing- and game reserves and jointly-owned roads. The other way is founded on optional agreements: easements, site leasehold rights, other usufructuary rights, corporations and enterprises.

THE CIVIL LAW BACKGROUND

A Swedish Governmental Official Committee was in 1957 assigned to inquire into joint establishments and published a report in 1963. This report also presented a proposal of a law on joint establishments in respect of civil law. The final law (LJE) was enacted on January 1, 1967.

LJE applies to establishments, buildings and plant that are jointly-owned by two or more real estates. Its purpose is to regulate issues of co-operation concerning construction, maintenance and running of establishments which are of *permanent significance* to the real estates. Examples are parking lots, roads, pipes, heating- and laundry plants. After a change in the law in 1970, LJE also applies to water- and outflow installations and to leasehold sites. LJE regularizes co-operation between real

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properties, represented by their owners, respectively holders of leasehold sites and the like. Primarily the law is based on optional agreements. If real property is situated within a so-called town- or housing plan it is possible for a neighbour to force the owner of the real property to join a joint establishment if the establishment is of substantial value for the appropriate utilization for each of the real properties (2 § LJE). In practice this has very seldom happened.

The properties which are going to cooperate must form an administrative association (5 § LJE). The owners of the real properties may either form the administration of the association without an administrative board (22 §, para. 1, LJE), in which case the association is not a legal entity, or with an administrative board (22 §, para. 2, LJE) in which case the association is a legal entity. If it is a legal entity the association can own the joint establishment, if it is not a legal entity the establishment belongs to the real estates as usual.

LJE specially points out (5 § LJE) that the rights of the real properties to the establishment, including the right to the association shall belong to the real properties. It is therefore not possible to exclude the participation when selling a real property. Further it is not possible to exclusively purchase the participation in the association or the establishment. Thus a very strong right *in rem* exists.

The cost of building, maintenance and running of the joint establishment is divided between the owners of the real properties on a *pro rata* basis (7 § LJE). The criterion for the distribution of the costs is a "portion-figure" which is determined at the official proceedings preceding the set up of a joint establishment.

JOINT ESTABLISHMENTS AND THE VALUATION OF REAL PROPERTY

The concept of real property has for a long time been a considerable problem in Sweden. Generally speaking the civil law concept of immovable property is more extensive than the tax concept. The definitions themselves are not hard to make, but the concept is different from civil law, insurance law, income tax law, and TVA law points of view and further also when deciding the tax assessment value and when giving credit on real property. Thus there are six different concepts of real property in Sweden. This has naturally raised several practical problems.

The same Official Committee, which has submitted the recent report on joint establishments, presented a report on the concept of real estate from the taxation point of view on November 1, 1971 (Ds Fi 1971: 15). The report concludes — as a consequence of special regards to buildings owned by corporations — with a proposal of a concept of real estate which further removes this concept from the civil law one. According to Swedish law, business buildings, both industrial and commercial, are depreciable. This applies also to buildings, e.g. ordinary blocks of flats owned by individuals. One- and two-family dwellings are assessed on the basis of "presumed income" and are therefore *ex definitione* not depreciable. [1]

1. For purposes of both the national and local income taxes, the owner of a one- and two-family dwelling does not need to report any actual income he may receive from the property. Instead the owner must report the presumed income from the dwelling in an amount ranging from 2 per cent to 8 per cent of the assessed value of the property. This amount is not the tax due on the property, it is merely the amount of the income, presumed to have arisen from the

However, various Swedish institutions to which the proposed measure was referred for consideration have been somewhat critical, so the outcome of this proposal is not yet certain.

Taxpayers are annually assessed for both the Swedish national and local income taxes on the basis of net income, derived from employment, capital, business, real property etc. earned in the previous year. The tax assessment values of real properties are, however, generally determined every five years, the next valuation will take place in 1975. This is called the General Valuation of Real Property (Allmän fastighetstaxering). A report on the outlines of the 1975 valuation has recently been issued in the Swedish Government Official Reports (SOU) 1973: 4.

property, that must be included in the taxpayer's income subject to income taxation at ordinary rates. The 2 per cent figure applies only to houses with an assessed value of Swedish Kronor 150,000 or less. For houses with higher assessed values, the presumed income amount is 2 per cent of the first Swedish Kronor 150,000 of assessed value, 4 per cent of the portion of the value between Swedish Kronor 150,000 and Swedish Kronor 225,000, and 8 per cent of any portion of the assessed value in excess of Swedish Kronor 225,000. This "standard method" of calculating presumed income from the ownership of one- and two-family dwellings must be used whether the owner himself occupies the house in whole or part, or whether he rents it to others, in the latter case, as noted, he does not report his actual income from the house, whether it is higher or lower than the presumed income. No deduction from the presumed income figure is allowed for repairs or other expenses, but interest paid on the amount invested in the house may be claimed as a deduction. The foregoing rules apply to houses intended permanently for use as one- or two family dwellings, they also apply to summer houses, unless the latter are regularly rented to others. In that case, the owner must report his actual income from the property.

The principal issue when deciding the tax assessment value of a joint establishment is whether the establishment itself should be valued (appraisal of the establishment) or if the values of the portions of the establishment should be added to the assessment values of the participating properties (appraisal of the participants).

The outlook on this problem has changed over the years, but now appears to be settled. Both the Royal Fiscal Court of Appeal (Kgl. Kammarrätten) and the committee on joint establishments hold the opinion that the assessment value should be added to the values of the participating properties. The principal reason for this decision is that hardly any separate value can be attributed to the joint establishment because of the strong attachment of the rights *in rem* of every participating property.

THE TAX ASSESSMENT OF JOINT ESTABLISHMENTS

At present there are no regulations of the tax treatment of joint establishments in Sweden since LJE was not followed by corresponding fiscal regulations. In advance tax rulings by the former National Tax Board and the National Tax Bureau (Riksskatteverket) some general ways of looking at the matter have been outlined. These are primarily based on whether the administrating association is a legal entity or not. If the association is a legal entity it is charged on its net income. The National Tax Bureau is of the opinion that the contributions from the owners of the real properties which shall cover the maintenance and running costs of the joint establishment are to be looked upon as income for the association. A heating plant could also for instance serve external real

properties. The compensation for this, naturally, is income too.

If the association is not a legal entity, a kind of participant assessment is made. In the report submitted (Ds Fi 1972: 11) it is suggested that the assessment technique should not vary with regard to different legal designs of joint establishments. A proposal is brought up to treat joint establishments approximately as partnerships (handelsbolag). A Swedish partnership, whether limited or general, is not a taxable entity and is not subject to income taxation as such. Instead the partners are subject to the individual income tax on their aliquot shares of the partnership's income, whether distributed or not. Two interesting deviations from these general rules are suggested, interesting since they deviate from some principal rules in Swedish tax laws.

(1) The participants are charged to tax according to the rules of *their* source of income (real property, agricultural property, business).
(2) The participants are entitled to depreciation deductions with respect to machinery and equipment, buildings and land even if it is the association which owns the assets.

Swedish law provides that income derived through a partnership should in principle be assessed as business income. Further, it provides that the owner of a depreciated asset should be entitled to the deduction.

These deviations are based on a practical approach and specially regarding one- and two-family dwellings. These properties are at present the most common participants of a joint establishment. They are, as indicated above, assessed on the basis of "presumed income", not like e.g. the US local property tax or "rates" in England. This means that if the proposal is realized, no charging on joint establishments for one- and two-family dwellings will be made.

Corporations have recently formed joint establishments in Sweden. Parking lots, "joint communication plants" (roads), buildings with banking offices and restaurants etc. have primarily been established. When the future law on the fiscal treatment of joint establishments is enacted it can be assumed that this tendency will be increased since the fiscal situation will be clarified.

The forming of water- and air-purification plants as joint establishments appears to be most suitable, and this possibility has attracted some attention in Sweden. The participants could be not only corporations but also the public, such as in Sweden, the municipalities.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM

Proposals for a tax credit system

This is the fifth chapter of the "green paper" concerning the proposed tax credit system in the United Kingdom. The first two chapters appeared in the February issue, Chapter 3 in the March issue and Chapter 4 in the May issue of the Bulletin. [1]

Chapter 5

Social impact of the scheme

LEVELS OF CREDIT

96. The tax credit rates set out in the following paragraphs are purely illustrative. Nevertheless they have been chosen as figures which, at 1972 levels, would achieve the main objectives of the scheme — that is, they would allow for the replacement of the main personal tax allowances, family allowances, family income supplement, and the children's increases payable with short-term national insurance benefits.

97. The single person's credit would have to be set at £ 3.43 a week if it was to replace exactly the corresponding income tax allowance. An increase to £ 3.60 would be necessary in order to cover the £ 30 expenses allowance which would be incorporated in the single and married credit. If the figure was raised to £ 4 this increase would have important social advantages, as it would make the tax credits more effective as a means of improving the position of people of limited means and in particular of reducing the dependence of pensioners on supplementary benefit.

98. The shild credit has to take the place of child tax allowances and family allowances which, if both are available at their maximum rate in respect of any child, are together worth £ 1.88 a week to a standard rate taxpayer. This figure takes account of the taxation of family allowances and of "clawback." It has however recently been overtaken by the increases for children paid with the main national insurance benefits: these now stand at £ 2.10 a week (including family allowances, where payable). A child credit intended to replace such increases would therefore have to be at least £ 2.10, but for the purposes of simpler illustration the figure of £ 2 has been taken instead. Increases for the children of widows and invalidity pensioners, which are currently payable at the rate of £ 3.30 a week, would be only partially replaced by the child credit. The balance would be given as a taxable benefit under the national insurance scheme. Similarly, the-age-related rates for children would remain under the supplementary benefit scheme.

99. If the single rate of credit is taken as

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£ 4, £ 6 would become the minimum level for the married credit. Together with child credits of £ 2, the figure of £ 6 would provide at least as much as the present family income supplement (FIS) scheme at every point on the income scale (and would provide substantially more than FIS for the majority of claimants). [2] There would therefore be no need to continue FIS except for the self-employed and others who, for one reason or another, were outside the tax-credit scheme.

100. Tax credits of this order have important implications for the social effects of the scheme, and for its total cost. The following paragraphs discuss and give some examples of the social effects — further examples are in the Appendix. The cost is examined in the next chapter.

EXAMPLES OF INCOME SUPPORT

(1) *Low Earners with Families*

101. The proposals would be of particular help to low earners with family responsibilities, including not only those who at present pay no tax (and who are in general eligible for FIS) but also people with earnings some way above the present tax thresholds. Thus a married man with three children earning £ 20 a week would pay £ 6 tax on his £ 20 but would qualify for £ 12 in credits: his income after tax would therefore become £ 26. At present he pays no tax; there are family allowances of £ 1.90 and FIS entitlement of about another £ 1. The family's position would therefore improve, under the tax-credit scheme, by about £ 3 a week. Moreover the improvement would be automatic and would not require, as does FIS, an application for benefit under a special scheme. There would thus be no problem of take-up. Its ability to channel help automatically to hard-pressed families of this kind, who at present cannot make full use of their tax allowances, would be one of the most valuable features of the new scheme.

(2) *Families with Average Earnings and Above*

102. If, in the example given above, earnings were £ 30 a week the £ 12 credit for a three-child family would still exceed the £ 9 tax which would be payable, giving income after tax of £ 33. At present a family with earnings at this level is not eligible for FIS: they would receive the family allowance of £ 1.90 but, as against that, there would be a tax liability of just over £ 2 a week. [3] The tax-credit scheme would thus increase their income after tax from around £ 30 to £ 33 a week — again a net improvement of about £ 3 a week. At earnings of £ 40 a week the credits for a three-child family would exactly equal their tax liability. At present the corresponding break-even point (where the tax payable by the father of such a family exactly equals their family allowance entitlement of £ 1.90 a week) comes at a much lower earnings level — a little over £ 29 a week. Further examples of break-even points

2. This comparison can be seen most clearly in the case of the one-child family, who can receive the maximum (£ 5 a week) rate of FIS on top of earnings of up to £ 10. At the £ 10 level, earnings plus FIS provide a total income of £ 15. Under the tax-credit scheme earnings of £ 10 would mean payment of £ 3 tax, but the addition of £ 8 credits (£ 6 "family" credit, plus £ 2 for the child) would produce the same net income of £ 15. But where the family had more than one child the tax-credit scheme would provide an extra £ 2 per child, which is higher than the addition now available from family allowances and FIS together.

3. This example assumes that one of the children is aged 11 to 16 and the other two are younger.

under the present scheme and under the new proposals are given in the appendix to this Green Paper. Above the break-even point the family would be net taxpayers and the effect of the new scheme would be that of a straightforward increase in tax allowances.

(3) *Unemployment and Sickness Beneficiaries*

103. The new scheme would alter the position of people qualifying for national insurance unemployment or sickness benefit in that they would qualify for tax credits whether they were at work or on benefit, and their benefits would no longer be free of tax. This would substantially reduce the anomalies which can arise at present when tax free benefits approach the level of the taxable earnings which they replace, and would remove the financial disincentive that a return to work may at present involve at such levels of earnings. This would come about because the improvement in take-home pay which the new scheme would bring to many people at work would generally be greater than any rise in the income available while on benefit.

104. The tax credits payable during the first fortnight of unemployment or sickness would generally be substantially higher than the tax deducted from flat-rate national insurance benefit: this would offer particular help to those people who do not qualify for occupational sick pay and have to rely on the benefit alone. Where a family breadwinner had been unemployed or sick for more than a fortnight and was receiving an earnings-related supplement as well as flat-rate national insurance benefit the deduction of tax and the award of credit would still result in an improvement in his income if his previous earnings, and therefore his benefit, were relatively low. Thus a married man, whose earnings had averaged £ 20 a week during the relevant income tax year, would draw benefit of £ 14.85 a week for himself and his wife. Tax at 30 per cent on this benefit would amount to £ 4.45, but this would be offset by the £ 6 married credit, giving him a net addition of just over £ 1.50 a week from the new arrangements while he was on benefit. The person whose previous earnings were higher would not benefit to the same extent; if his previous earnings had been £ 30 a week or more he would more or less break even, as with benefit of £ 17.90 a week the £ 6 married credit would leave only a small margin over the tax of £ 5.37 which would be payable on his benefit. Since any child credits for which he qualified would be at broadly the same level as the combination of national insurance dependency increases and family allowances which they were replacing, the net result would be to leave his weekly income at close to its present level. But to the extent that his tax credits were already in use to offset the tax payable on some other source of income (for example, the continuing earnings which might be available under a sick pay scheme) they would not also be available against the tax on the national insurance benefit.

105. The increases in current income which people in receipt of benefit derived form the tax-credit scheme would represent permanent additional help for those among them who had incomes below the tax threshold. Those who were net taxpayers, on the other hand, would lose their entitlement to the tax rebates which they can obtain at present as a by-product of their national insurance benefits being free of tax. Once a recipient of unemployment or sickness benefit ceases to receive taxable

earnings which absorb his tax allowances, the present cumulative PAYE system permits these allowances to run against the tax which he has paid earlier in the financial year, with the result that some or all of this tax becomes repayable. Because of the way the PAYE system works, these refunds vary according to the incidence of unemployment or sickness during the financial year, producing haphazard results in terms of family support. Under the tax-credit system the continuance of both tax liability and entitlement to tax credits during a spell of unemployment or sickness would end this situation.

106. If unemployment or sickness is prolonged, entitlement to earnings-related supplement ends after six months and benefit continues at a flat rate. Sickness benefit is converted to invalidity pension and (again, apart from cases where there is other taxable income) the income from benefit and tax credit combined would generally produce a more favourable situation than at present. Similarly the tax credit available to a person receiving flat-rate unemployment benefit would substantially outweigh the tax payable on his benefit, and his financial position would be improved.

(4) *National Insurance Pensioners*

107. Credits at the levels proposed in this Green Paper would significantly improve the position of people drawing long-term national insurance benefits as invalidity, retirement or widow pensioners. A single pensioner whose only income was the new standard rate pension of £ 6.75 a week would pay £ 2.02 tax on this, but would have this tax offset by a credit of £ 4. The net result would be to increase his income by £ 1.98, so that the amound paid to him each week would be £ 8.73. The married rate of £ 10.90 would, after the operation of tax and credits, become £ 13.63. A widow with two children, whose combined national insurance and family allowance entitlement was £ 13.35, would receive a net income of £ 16.55 from the combined effect of benefit, tax and credits. These improvements would be of particular value to that group of pensioners and widows (estimated at about a third of the total) who at present neither pay tax nor are eligible for supplementary benefit. Among those who at present receive supplementary benefit, the effect in some cases would be to replace part of the means-tested benefit by a contractual one, but in others dependence on the supplementary benefit scheme would be ended entirely.

(5) *Single Parent Families*

108. It is proposed that a parent who has single-handed responsibility for a child and who is within the scheme should receive the same rate of credit as a married couple with the same family responsibilities. This arrangement would be particularly helpful to women who go out to work to support themselves and their children. Thus a woman with three children who was in this situation would qualify for a credit of £ 12 a week; the effect of this, less the 30 per cent tax which she would pay on her earnings, would be to raise her income by £ 8.40 if her weekly earnings were £ 12, or by £ 7.50 if she were earning £ 15. (At present her earnings would be supplemented by family allowances of £ 1.90 a week and she would also be entitled to FIS of £ 5 in the first case or £ 3.60 in the second.) Such increased help would be available to many, although not all, of the people whose circumstances are being considered by the Finer Committee on One Parent Families.

REDUCED NEED FOR SUPPLEMENTARY BENEFIT

109. One of the objects of the Government's pension proposals as set out in the White Paper "Strategy for Pensions", is to reduce the numbers of retirement pensioners who have to rely upon supplementary benefit. The improvement of the financial position of pensioners with low incomes is an objective common to all political parties. There is general agreement also that the number of people dependent on the supplementary benefit scheme should be reduced rather than increased. If the tax-credit scheme were to remove a substantial number of people from dependence upon supplementary benefit this would not only be widely welcomed in itself, but would also ease the present pressure on the supplementary benefit scheme and create opportunities for improving the service provided for those who remain within it and for whom it can best cater.

110. It is not now possible however to predict what effect the tax-credit scheme might have in reducing the numbers on supplementary benefit. Much depends not only on the movement in supplementary benefit rates between now and the inception of the tax-credit scheme, and on the levels of credits which are then selected, but also on other factors, such as changes in rents in particular. However, it can be estimated that if the scheme were introduced now with credits at the illustrative levels given in this Green Paper and in conjunction with current levels of supplementary benefit, something like a million national insurance beneficiaries, most of them retirement pensioners, might have their incomes raised above supplementary benefit levels. This would reduce the numbers drawing a supplementary pension by over a third.

111. These figures show the position as it might be at one point of time, but cannot fully reflect the reduction which might be achieved over a period in the numbers of people needing to claim supplementary benefits. Many such claims are for quite short periods; and the fact that they were no longer needed could both save the people concerned from going through the relatively complicated procedures for establishing title to a means-tested benefit and would mean a corresponding reduction in the work of administering the scheme.

112. The need for supplementary benefit would continue under the new arrangements if, because of a high rent or other special circumstances, a family were unable to meet their assessed needs from the combination of national insurance benefits and tax credits. At present, however, if the level at which a family's needs are assessed is relatively high as compared with the father's previous take-home pay, their supplementary benefit will be restricted to the level of his previous income from full-time work, under the rule known as the "Wage Stop". The improvement which the tax-credit scheme would make in the take-home pay of low earners means that this rule would need to be invoked more rarely. The FIS scheme has already resulted in an appreciable fall in the number of wage stop cases. Tax credits would take this process further.

OTHER MEANS-TESTED BENEFITS

113. For members of the tax-credit scheme the need for family income supplement would disappear. And by increasing their incomes the scheme would reduce the numbers needing means-tested benefits of other kinds. It would not be possible — at least at the outset — to try to integrate

these benefits, which are intended for many different purposes, into the tax-credit scheme. Nor would it be practicable to set the level of the new credits so high that these benefits became unnecessary: to do so would mean paying to taxpayers, at all income levels, credits which were prohibitively costly. Moreover, the poorest families would get only limited value from such higher credits because they would replace existing sources of help, yet better-off taxpayers would get the full benefit from the increases.

114. These other social benefits would therefore continue as separate forms of income support alongside the tax-credit scheme. However the general improvement in income levels which tax credits would bring about should mean some lessening in the use made of them. And since the net benefit which a family derived from the tax-credit scheme would be reduced by only 30 p for any extra £ of earnings (as compared with 50 p under the FIS scheme, or 80 p in the rare case where FIS entitlement and current tax liability overlap) a larger proportion of increased earnings would be retained than is sometimes the case at present.

SUMMARY

115. The tax-credit scheme cannot of itself offer a complete solution to all the problems of poverty. But to those within it, and this includes the great majority of people at work and everyone in receipt of the main national insurance benefits, it offers the prospect of a system of family support which would be easier to understand than the present one, which would provide its benefit largely automatically and which, being integrated with the tax system, would extend the benefit of tax allowances to people who have insufficient income to pay tax. By doing so it would relieve hundreds of thousands of pensioners from the need to claim supplementary benefit. It would also bring significant increases in income to a further three or four million pensioners who already have some margin, but not a great one, above the supplementary benefit level, and would similarly prove of great help to hard-pressed families of working age — especially those with children — many of whom cannot be helped effectively through FIS and other means-tested schemes. Some means-testing — and the flexibility which only means-testing can secure — would remain, but its role in the social services as a whole would be reduced. These are substantial gains, for which the Government hope the tax-credit scheme will be widely seen as a welcome new departure.

MALAYSIA

Extract from the 1973 Budget Speech delivered on December 6, 1972 by the Finance Minister Tun Tan Siew Sin to Parliament with respect to taxation:

Revenue Measures

Before outlining the actual proposals, I should make it clear that unless otherwise stated, every revenue yield figure that I give is the estimated additional revenue for a full year. This is to avoid the monotony of repeating the words "per annum" every time I give figures of additional revenue expected. The proposed measures are expected to provide a total of about $ 53 million of additional revenue in a full year. I shall deal first with indirect taxes.

Stamp Duties

It is proposed to increase the rates of stamp duties on certain instruments relating to the sale of property including shares, stocks and marketable securities.

Charges or Mortgages, Agreements for a Charge or Mortgage, Bonds, Covenants, Debentures, etc.

At present the amount of stamp duty payable on charges or mortgages, agreements for a charge or mortgage, bonds, covenants and others as specified under item 27 (a) of the First Schedule to the Stamp Duty (Special Provisions) (Malaysia) Act, 1967 depends on the value of the instrument. The rate is now $ 1 where the only or principal security for the payment or repayment of money does not exceed $ 1,000 and $ 2 for each additional $ 500. It is now proposed to increase these rates to $ 2 and $ 2.50 respectively.

Contract Notes

According to its present rate structure, a contract note for shares, stocks or marketable securities in companies incorporated in Malaysia attracts a flat rate of 50 cents if the value does not exceed $ 1,000 and $ 1 for others. The corresponding rates for such documents in regard to companies incorporated elsewhere are $ 1.50 and $ 3 respectively. The following features of the present rate structure may be noted. Firstly, it makes a distinction between shares, stocks or marketable securities in companies incorporated in Malaysia and those in companies incorporated outside Malaysia. Secondly, the rates are specific and not related to value at all. It is considered that the existing rate structure is not realistic and should be replaced by one which is closely related to the values involved. The duty is therefore to be changed to $ 1 for every $ 1,000 of the value of any shares, stocks or marketable securities in companies, regardless of whether their place of incorporation is in Malaysia or outside it.

Conveyances, Agreements, Transfers or Absolute Bills of Sale

On a sale of property other than shares, stocks or marketable securities, the existing duty is $ 1 for every $ 100 of the money value of the consideration or the market value of the property, whichever is the higher. The duty is now to be revised as follows:

(a) For the first $ 100,000 of the money value of the consideration or the market value of the property, whichever is the greater, the duty will remain unchanged at $ 1 for every $ 100;

(b) For any amount in excess of $ 100,000, the duty will be $ 2 for every $ 100.

As Hon'ble Members will have noted, those who can only afford to buy property with a value of $ 100,000 or less need not worry about the proposed change, but for those who buy property with a value of, say, $ 150,000, the duty will now be slightly more and I think Hon'ble Members will agree with me that those who can afford to pay that much should also be prepared to pay a little more to the Government.

Share Certificates

The existing duty is 20 cents for every share certificate irrespective of the value of the shares. This duty is very low and is now to be increased to $ 1.

Other Instruments

The opportunity is also taken to increase the existing rate of duty of 50 cents to $ 1 for every fire policy, third party policy or comprehensive policy.

It is estimated that all these stamp duty changes will bring in about $ 4.5 million of additional revenue. This additional duty will be borne by those classes of people who in our opinion are best able to do so. This is in fact one area where we can justify increasing the duty rates, especially in the light of the considerable rise in the value of properties and the highly speculative dealings which are now taking place in the share market in increasing quantity.

Abatement of Income Tax in East Malaysia

Hon'ble Members will recall that when Malaysia was formed, an individual taxpayer in East Malaysia with a chargeable income of not more than $ 50,000 per annum would pay 40% less income tax than an individual taxpayer in West Malaysia with the same amount of chargeable income. Today, this figure stands at 20%, but in 1973, it is proposed to reduce this figure to 10%. This would mean that 10 years after Malaysia, individual taypayers in East Malaysia would still pay 10% less income tax than residents in West Malaysia in the $ 50,000 or less income group. We feel that this is not unreasonable, and is in accord with our undertaking that the level of taxation in East Malaysia would be brought up to West Malaysian levels in graduated stages.

Income Tax - Scope of Charge

Before I outline the tax incentives which we intend to offer, I wish to announce one very important change to be made to our income tax law.

As hon'ble Members are no doubt fully aware, our income tax law provides that not only income derived in Malaysia, but also from outside Malaysia whether or not it is remitted here, is liable to income tax. This basis of taxation is commonly known as the "world income scope".

This scope of charge was introduced in 1968 when the new unified Income Tax Act, 1967 replaced the three income tax laws of West Malaysia, Sabah and Sarawak. Under the old income tax law, the charge to tax was mainly based on income accruing in, derived from or received in Malaysia so that any income arising outside Malaysia was not taxable unless it was remitted to or received in Malaysia. This scope of charge to tax is usually referred to as the "derivation scope".

The Government's decision to switch from the derivation scope to the world income scope in the new income tax law was based upon a number of considerations, mainly

fiscal and that based on equity. It was felt that the world income scope would widen the tax base thereby bringing in more revenue to the Government. From the equity point of view, it was considered that a resident should be taxed on his total income wherever derived so that the tax burden would be equal. It was also felt that the world income scope would discourage our people from investing abroad. The Government has for quite some time now been examining critically again the merits of retaining this basis of taxation. From the revenue point of view, the world income scope has not been particularly successful in widening the tax base and thereby increasing revenue owing to difficulties in enforcement. Indeed, the world income scope legislation is much more complex, and this coupled with the need for multiple double taxation agreements tend to affect adversely the quality of the work of the assessment section of the Inland Revenue staff with consequential effects on revenue yield. In regard to the objective of making it less attractive for Malaysian residents to invest abroad, it is doubtful if this objective can be attained since investments are more often than not made abroad regardless of tax considerations provided that the net returns are attractive enough.

On the contrary, the shift to the world income scope of charge has been counter-productive in this respect. Many of our larger companies have surplus funds and it is customary for such companies to invest a certain proportion of such funds overseas. This is nothing unusual because all over the world the large multi-national corporations diversify their investments, both structurally and geographically.

This is a worldwide and accepted practice. In the case of Malaysian companies they have only to form subsidiary companies in Singapore and we would be deprived of both income tax and development tax which but for this would have accrued to Malaysia. It will be seen that because of our world income scope Malaysian companies siting their subsidiaries in Singapore would also stand to benefit by avoiding the higher rate of Malaysian tax. This is perfectly legal, in fact is done openly, and is reported in the annual directors' reports and accounts issued by such companies, and we have reason to believe that the tax lost in this way is far greater than the additional tax which we have obtained by the world income scope. In fact, the additional revenue gained by the change to world income scope has been of the order of only about $ 3 million annually, which is clearly only a small portion of what we should have got had we been able to enforce this provision of the law properly. It is easy to understand why it is difficult to enforce this provision adequately because the Government clearly is in no position to check tax evasion practised outside Malaysia.

In any case, even the merits of this objective need closer examination now. Diversification of investments abroad by both Malaysians and foreigners resident in Malaysia is perhaps not an undesirable objective in itself in present circumstances. We should not discourage it if our aim is to make Kuala Lumpur a major investment centre, in which case we will have to allow a two-way flow of investment. If we can maintain political and economic stability, there is no reason why such a policy should not result in a net gain for us in this field.

Indeed, the world income scope could inhibit to some extent the acceleration of Malaysia's industrialization and develop-

ment programme by acting as an impediment to a greater inflow of capital, skilled personnel and expertise. It is well for us to remember that we should not only aim at attracting investments in manufacturing and extractive industries, we should also aim to attract service industries like consultancy services and, even more important, increase the importance of Kuala Lumpur as a major financial centre for this region as well. For the latter purpose, confining the scope of income tax to the derivation scope would undoubtedly become a factor in our favour when an international institution has to choose between Malaysia or some other country in this region. It is imperative that we should do all we can to make the Malaysian investment climate as attractive as possible, particularly when there are other developing countries nearby competing for foreign capital and expertise. In particular, we must remember that Singapore is on our doorstep. Indeed, it is less than 2 miles from Johore Bahru. Under such circumstances, it would always appear more attractive, bearing in mind that companies there do not have to pay development tax, while the company rate in Singapore is no higher than that in Malaysia. This is a fact of life with which we have to live.

On balance therefore the Government has decided to abolish the world income scope of charge to tax in the Income Tax Act, 1967 and to replace it by the derivation scope, and this is to be made effective from year of assessment 1974. It is not possible to effect the change in 1973 for administrative reasons.

Tax Incentives

I now come to the area where the Government will sacrifice revenue in order to provide a greater impetus to economic development.

Development Tax

The amount of development tax chargeable for a year of assessment on a person having a development source is an amount calculated at the rate of 5% of every dollar of his development income except that in the case of a company, a minimum development tax of $ 500 is payable. In the case of companies which do not or are not likely to have a substantial paid up capital and in the event that there is little or no development income for any year of assessment, payment of the minimum development tax of $ 500 could be a serious strain on the financial resources of such a company. This is particularly true of many Malay companies. It should also be noted that individuals who are partners in partnership businesses are no longer subject to the minimum development tax of $ 100. With a view to providing some relief for the small Malay companies, and generally to encourage the formation of even small companies, it is now proposed to reduce the existing minimum development tax of $ 500

(a) to $ 100, where the paid up capital as at the end of the basis period of the company liable to the tax was not more than $ 50,000; and
(b) to $ 250, where the paid up capital as at the end of the basis period was not more than $ 100,000.

The revenue loss is estimated at about $ 200,000 for 1973.

Tax on Interest Derived by Non-Residents

Hon'ble Members will recall that in my last Budget speech, I announced a reduction in the tax payable on interest paid to a non-resident person from 40% to 15%

on the gross amount of the interest, provided that the loan or indebtedness giving rise to the interest is made or incurred for development purposes or for capital equipment required for development projects in Malaysia, and also provided that such loan or indebtedness is approved by the Treasury. As I explained then, this move was designed to make foreign borrowing cheaper. It is now proposed to go a step further in this direction by removing completely this rate of 15%. In respect of other loans, that is, loans which do not qualify for the complete tax exemption, the tax on interest payable to non-resident persons on such loans will be reduced from the present rate of 40% to 15%, but on the basis of the gross amount. These changes will take effect from 1st January, 1973 and will apply to any loan incurred on or after that date.

Tax Incentives for Exports

Industrialization in Malaysia has now reached the stage where greater efforts must be made to export our manufactured goods. This is obvious when we have gone as far as we are likely to go in the matter of import substitution. In order to accelerate the development of export-orientated industries the existing export incentives provided in the Investment Incentives Act, 1968 have been reviewed and a more generous and effective scheme of export incentives will be introduced.

Export Allowance

The present export allowance provided under the Investment Incentives Act is to be made more liberal. The proposed export allowance is by way of a deduction from gross income in arriving at adjusted or taxable income. The amount of the allowance is 5 cents for every dollar of the increase in the export sales of a taxpayer, such increase being the excess of his total export sales of the year in question over his average annual export sales of the 5 immediately preceding years, except that

(a) where there were export sales in only 4 immediately preceding years, the average annual export sales will be the average of those 4 years; and
(b) where there were export sales in only 1, 2 or 3 immediately preceding years, the average annual export sales will be one-third of the total export sales of that 1 year or of those 2 or 3 years, as the case may be.

Where there were no export sales in the immediately preceding years (i.e. where the taxpayer first commenced to export only during the year in question), the export allowance will be 5 cents for every dollar of his total export sales for that year. To encourage the greater use of domestic materials or components, it is also proposed to increase the allowance to 8 cents for every dollar in respect of exports of products incorporating not less than 50% of domestic materials or components. This concession is to apply to all industrial products, including products which have been processed further than necessary for purposes of transport. The export of primary products will not therefore qualify for the proposed allowance and these include tin in the form of ore, ingots or slabs, natural rubber (crude and processed), crude palm oil, palm kernel oil and palm kernel, crude coconut oil, copra and coconuts, logs, sawn timber and wood chips, mineral ores and refined metal, precious metal and precious stones (unmounted), crude petroleum and petroleum products, marine products not further processed than necessary for transportation, tea leaf and tea dust, spices (raw and unpro-

cessed), raw hides and skins and tapioca roots and chips. A pioneer company, after the expiry of its tax relief period, will also be eligible to qualify for this proposed export allowance. It is intended that this new scheme of export incentives will be reviewed after it has been in operation for 3 years, or earlier if necessary.

Income Tax (Promotion of Export) Rules, 1968

To achieve our objectives, it will also be necessary to liberalise the Income Tax (Promotion of Export) Rules, 1968 accordingly. The proposed changes will become effective from year of assessment 1973.

Licensed Manufacturing Warehouses

It is also proposed to offer further customs facilities to promote export-orientated industries. The introduction of the Free Trade Zones Act, 1971 enabled the Government to establish free trade zones. A company setting up a factory in such an area can obtain exemption from customs and excise duties and sales tax on all goods brought into the area except those goods which are specifically and absolutely prohibited by any written law. In addition, the movement of goods is subject to the minimum of customs procedures and supervision. All these facilities are designed to assist exporters of industrial products to be more competitive in the world market. Recently, interest has been shown by a number of companies in establishing factories for the manufacture of products mainly for export in areas where the setting up of a free trade zone is neither practical nor desirable. To enable such companies to do this, it is now proposed to amend the Customs Act, 1967 to enable the establishment of licensed manufacturing warehouses.

At present, section 65 of the Customs Act already provides for warehousing facilities. All goods imported into such licensed warehouses are not subject to customs duties until they are released from bond. The proposal now is to allow manufacturing activities to be carried on as well. To this extent, customs facilities to be made available in such warehouses will be comparable to those obtainable in a free trade zone. The proposed customs facility will not only provide a further incentive to the growth of export-orientated industries, it will also encourage the dispersal of industries away from the major urban areas, thereby bringing employment opportunities to our people in the smaller towns and the rural areas.

BELGIQUE

Conséquences fiscales de la cession, par une personne physique, d'actions ou parts d'une société assujettie à l'I. Soc.

Circulaire du 6 décembre 1972 (Rh. 421/261-252)

En présence des hésitations qui ont surgi ces derniers temps, quant au régime applicable matière d'Impôt sur les revenus au produit de l'aliénation, par une personne physique, d'actions ou parts d'une société assujettie à l'I.Soc., l'Administration estime opportun de donner, au sujet de ce problème, les précisions qui suivent.

Dans l'état actuel de la législation, une telle opération — qu'elle ait trait à des titres cotés en bourse ou non — doit être considérée comme ressortissant a priori à la gestion du patrimoine privé du cédant. Dans le chef de celui-ci, la taxation du profit réalisé à l'occasion de la cession de titres peut toutefois être envisagée quand:

— il s'agit d'un ensemble d'opérations suffissamment fréquentes et liées entre elles pour constituer une activité continue et habituelle, qui doit être considérée comme une occupation lucrative au sens de l'art. 20, 3° C.I.R. (cf arrêt de la Cour de Cassation du 6-5-1969, en cause GRAZIA Jacques et Baron Guy de MESMAY, B.C. n° 475, page 1043);

— l'opération, effectuée au dehors des bourses de valeurs (cf. Com.I.R., 67/7, e), a un caractère spéculatif — par exemple cession d'actions précédée d'un achat d'une partie de ces titres au moyen de fonds empruntés (voir par analogie arrêt de la Cour d'appel de Liège du 1-9-1971, en cause ONCLIN Henri, B.C. n° 500 page 1570) — auquel cas le profit en résultant doit être taxé comme un revenu divers visé à l'art. 67, 1° C.I.R.

L'attention est attirée au surplus sur le fait que l'aliénation d'une participation assurant le contrôle effectif d'une société peut, dans certaines circonstances, s'analyser — pour une quotité plus ou moins importante du prix obtenu — en une distribution déguisée de dividendes.

En effet, par arrêt du 5-6-1970 en cause S.A. «Laiterie de la Wiltz», la Cour d'appel de Liège a décidé que lorsqu'il apparaît que le changement de forme juridique, l'augmentation du capital de la société née de la transformation, la cession par les actionnaires de leurs titres et les autres conventions intervenues, n'ont eu d'autre but que de permettre la distribution, sous le couvert d'une majoration du prix des titres cédés, du produit de la cession des éléments immatériels de la société, la différence entre le prix de vente des susdits titres et la valeur de l'avoir social doit être considérée comme un dividende dissimulé et attribué aux actionnaires (cf. B.C. n° 488, page 1501). Une sentence analogue avait déjà été prononcée par la Cour d'appel de Gand dans son arrêt du 26-6-1962 en cause S.A. «Chicorée Jacobs» (cf. B.C. n° 396, page 859).

La jurisprudence visée à l'alinéa précédent trouve son application dans les cas de cession de titres (en règle générale, non cotés en bourse) où, compte tenu des clauses mêmes de la convention éventuellement avenue entre les parties et/ou des éléments

de fait qui se rattachent à cette cession, les services de taxation sont fondés à conclure qu'une personne (ou un groupe de personnes agissant en accord étroit) a — par le biais d'une vente d'actions ou parts émises par une société commerciale — abusivement réalisé tout ou partie des éléments immatériels (fonds de commerce, clientèle, marque de fabrique et autres droits incorporels) compris dans le patrimoine de l'être juridique.

Dans cette éventualité, on doit considérer que le ou les cédants ont fait usage de la position de force qu'ils ont au sein de la société émettrice des titres vendus pour faire disparaître du patrimoine de celle-ci les éléments immatériels dont il s'agit, avec comme conséquence que ces derniers ne seront plus susceptibles de donner lieu ultérieurement à constatation de revenus taxables dans le chef de ladite société, soit en cours d'exploitation, soit lors de sa liquidation.

Tel est le cas notamment dans les sociétés de famille quand:

— la cession des actions a pour effet que, à plus ou moins bref délai, la société dont les titres ont été vendus réduit ou cesse totalement ou partiellement son activité ou en modifie fondamentalement la nature;

— le ou les cédants se sont personnellement engagés à renoncer à l'exercice d'une ou de plusieurs activités sans lesquelles la société n'est pas à même de réaliser son objet social.

Il importe peu, en l'occurrence, que les acquéreurs des actions soient des personnes physiques ou des personnes morales.

Le montant du dividende occulte à prendre en considération peut être évalué par titre, sauf preuve contraire à fournir par le contribuable, à la différence entre le prix unitaire obtenu et la quotité que ce titre représente par rapport à la valeur réelle de l'avoir social net qui est censé subsister apprès l'opération de cession.

Les services de taxation des sociétés devront faire preuve, à la fois, d'initiative et de discernement dans la recherche et l'examen des circonstances et conséquences inhérentes aux cessions de participations majoritaires dans des sociétés commerciales belges, afin que la jurisprudence prérappelée soit judicieusement appliquée.

Les contrôleurs en chef des personnes physiques qui ont connaissance de transactions de l'espèce, doivent en informer leurs collègues des sociétés et s'enquérir si, et éventuellement dans quelle mesure, il y a matière à taxation des cédants sur la base de cette jurisprudence.

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KAZUO KINOSHITA *:

THE USE OF TAX INCENTIVES FOR EXPORT BY DEVELOPED COUNTRIES — THE JAPANESE CASE**

I. DEVELOPMENT OF THE TAX MEASURES FOR EXPORT-PROMOTION

1. *Background of the Problem*

(1) The rapid growth of Japanese economy during postwar period, especially after 1955, was mainly led by the high business equipment investment motivated by the introduction of the technological innovation. Contributed for the economic growth are the peculiarity of Japanese social and economic conditions, such as the existence of abundant supply of labour with high quality, suitable level of the social overhead capital corresponding with private economic activities, special financial system to supply ample funds to private business coupled with the cheap money policy.

In addition, it should also be pointed out that the restrictions on imports, capital movements and foreign exchange transactions severed Japan to a semi-closed economy for a considerably long time.

One of the fundamentally important factors which characterize Japanese economy is that it is largely dependent on the imports of raw materials and fuels. As a result, to maintain a steady economic growth in parallel with other advanced-industrialized countries, necessarily requires the augmentation in exports which should balance with the imports growing at approximately the same rate with GNP.

For about ten years since 1955, however, deficits in the balance of payments were the impediment to the economic growth. There had repeatedly been vicious circles in the sense that a domestic economic boom caused the balance of payments deficit, which in turn led to monetary and fiscal retrenchments to correct excessive activities, thus retarding into a recession.

(2) In the latter half of the sixties, Japanese economy underwent substantial structural changes. In the first place, the gap in the technology and productivities between large-scale enterprises and small- and medium-sized ones has been widened. Secondly, excess capacity has loomed in the investment goods sectors, and insufficient supply capacity in the consumer-goods sector has appeared. These two factors brought about a continuous rise in the consumers prices. Thirdly, the lag in the social overhead capital as against rapid increase in the private capital formation gave rise to worsening of ecological environment and deterioration in the investment efficiency. Fourthly, imbalances in the economic development among various local areas came out, and finally, the financial conditions of the business were aggravated and their turnover ratio of total liabilities and net worth has deteriorated.

The balance of payments, however, has turned to show a continuous surplus trend

* Professor, Department of Economics OSAKA University, Member of the Advisory Board of the International Bureau of Fiscal Documentation.

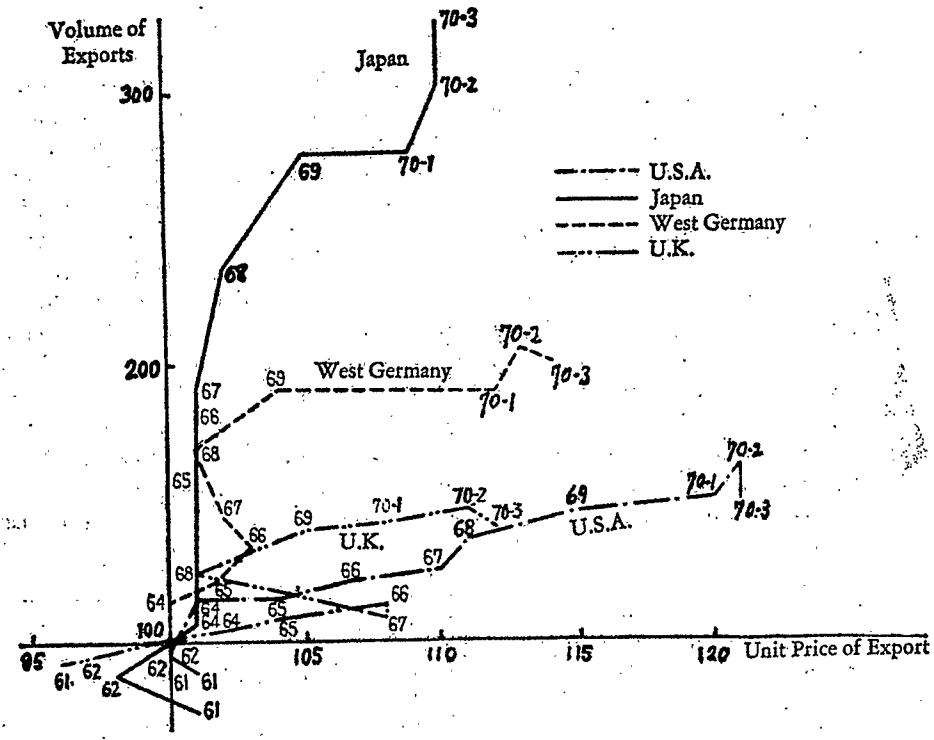
** Paper presented at the XXV Congress of the International Fiscal Association in Washington D.C. in October 1971 in the Seminar on Export Incentives.

on account of the expansion of the trade surplus (Table 1-1). These developments required to explore new policy measures to attain both internal and international balances in a quite different way as compared with those in the past. The theoretical reasoning of the economic growth consistent with the surplus trend of the balance of payments differs from economist to economist. Our own opinion in this respect is that, in the case of the Japanese economy, exports have been shifted to those commodities with high elasticity of demand and their average prices have relatively declined in the course of the economic growth, and that the increase in price elasticities of demand for imported good strengthened the possibility for import-substitution. [1]

For these twenty-five years, the high rate of capital formation, which enabled to achieve the innovations of technology, has worked as a main driving force to the economic growth. The export structure has also changed to rely heavily on heavy and chemical industries, which are well adaptable to meet the growing import demands of the rest of the world. Thus, to have

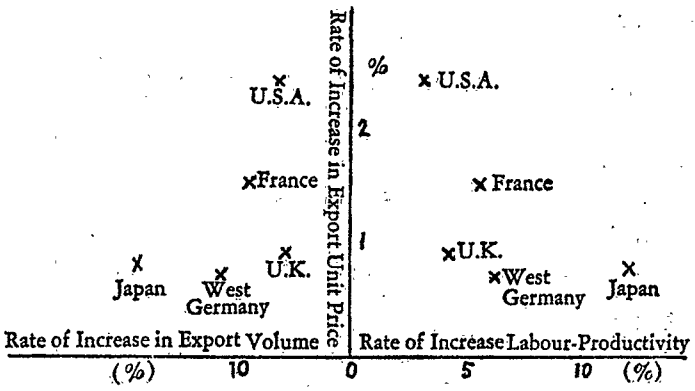
1. Cf. H. G. Johnson, "Fiscal Policy and Balance of Payments" in *Readings on Taxation in Developing Countries,* R. M. Bird and O. Oldman, (eds.), 2nd ed., Baltimore, 1967, p. 53ff.

Figure 1-1. *Changes in the Unit Price and Volume of Exports of Selected Countries*



(Note) 1963 = 100
(Source) IMF — IFS

Figure 1-2. *Unit Price and Volume of Exports and Productivity of Selected Countries*



(Note) Rates of Increase show the average of 64~69.
(Sources) UN — NBS, ILO-Labor Statistics, IMF — IFS

built up a condition where the so-called "Leontief Paradox" can be applied was considered one of the most fundamental factors for export-promotion. Extension of the commodities which have comparative advantage has been associated with the general decline of prices including those of export goods, and this was caused by the reduction of cost which was enabled by the continuous increase in productivity as well as the moderate rate of the rise in wages (Fig. 1-1, 1-2; Table 1-2). [2]
This justifies the explanation that the comparative advantage in exports was brought about primarily by and in the course of the process of economic growth. [3] In addition, it should be pointed out that the restrictions on imports, capital movements and foreign exchange transactions, as mentioned above, formed an institutional framework which played an important role for the growth.

2. *History of Tax Incentive Measures for Export Promotion*

(1) Tax incentive measures for export-promotion were originally introduced in 1953. These measures were composed of:

(i) Export Income Deduction: Income deduction of either 3% of export revenue or 50% of the income from export, whichever the lower.

(ii) Reserve for Losses from Exports: In order to recover losses arising from exports, the accumulation of certain percentage of the export amount is allowed as a non-taxable reserve.

In 1957 and 1961, measures such as raising the rate of income deduction were taken as part of the comprehensive policy

2. T. Negishi and F. Watanabe, *Nippon no Boeki (Japanese Foreign Trade)*, Tokyo, 1971, pp 4-9.
3. H. Kanamori remarked that if the term "export-led growth", as in C. P. Kindleberger's *Foreign Trade and the National Economy*, New Haven, 1962, means that the domestic economic development was stimulated from abroad and the resulting rapid increase in exports, this is not the case for Japan (H. Kanamori, "Economic Growth and Export", *Nippon no Keizai Seicho (Japanese Economic Growth)*, Tokyo, 1967, pp. 294-5).

Table 1-1. *Balance of Payments*

(U.S. $ million)

Item / Year	Current Balance	Trade Balance	Exports	Imports	Services	Transfers	Long-Term Capital	Balance Basic	Short-Term Capital	Errors & Omissions	Overall Balance	Gold & Foreign Exchange Reserve
1961	△ 982	△ 558	4,149	4,707	△ 383	△ 41	△ 11	△ 993	21	20	△ 952	△ 338
62	△ 48	401	4,861	4,460	△ 420	△ 29	172	124	107	6	237	355
63	△ 780	△ 166	5,391	5,557	△ 569	△ 45	467	△ 313	107	45	△ 161	37
64	△ 480	377	6,704	6,327	△ 784	△ 73	107	△ 373	234	10	△ 129	121
65	932	1,901	8,332	6,431	△ 884	△ 85	△ 415	517	△ 61	△ 51	405	108
66	1,254	2,275	9,641	7,366	△ 886	△ 135	△ 808	446	△ 64	△ 45	337	△ 33
67	△ 190	1,160	10,231	9,071	△1,172	△ 178	△ 812	△1,002	506	△ 75	△ 571	△ 69
68	1,048	2,529	12,751	10,222	△1,306	△ 175	△ 239	809	209	84	1,102	886
69	2,119	3,699	15,679	11,980	△1,399	△ 181	△ 155	1,964	178	141	2,283	605
70	1,970	3,963	18,969	15,006	△1,785	△ 208	△1,591	379	724	271	1,374	903

(Source) Bank of Japan, Monthly Report.

Table 1-2. *Changes in Comparative Advantage*

With: \ Items		Equipment Investment	Labor Productivity	Export Prices	Exports	G N P	Rate of Change in Comparative Advantage	Equipment Investment (A)	Labor Productivity (B)	Export Prices (C)	Exports (D)	G N P (E)	Elasticity (B)/(A)	(C)/(A)	(D)/(C)	(E)/(A)
	51	0.80	0.81	1.35	0.56	0.53	51~54	1.7	4.4	△ 5.8	6.2	14.7	2.6	△ 3.4	△ 1.1	8.6
							54~62	14.5	2.1	△ 2.2	9.7	6.6	0.1	△ 0.2	△ 4.4	0.5
U.S.A.	58	1.00	1.00	1.00	1.00	1.00	62~65	2.5	3.8	△ 2.1	10.8	3.2	1.5	△ 0.8	△ 5.1	1.3
	67	2.34	1.50	0.17	2.06	1.69	65~67	15.9	10.1	△ 1.1	3.5	7.6	0.7	△ 0.1	△ 3.2	0.5
	51	0.65	0.69	1.41	0.58	0.53	51~54	4.0	10.2	△ 6.8	5.8	14.2	2.6	△ 1.7	△ 0.9	3.6
							54~62	10.6	3.8	△ 2.3	9.7	7.2	0.4	△ 0.2	△ 4.2	0.7
U.K.	58	1.00	1.00	1.00	1.00	1.00	62~65	0.2	2.1	△ 3.3	12.6	4.2	10.5	△16.5	△ 3.8	21.0
	67	1.99	1.46	0.84	2.41	1.90	65~67	9.8	10.8	△ 1.1	8.8	10.4	1.1	△ 0.1	△ 8.0	1.1
	51	0.87	0.70	1.54	0.59	0.60	51~54	0	3.7	△ 5.5	5.6	13.7	—	—	△ 1.0	—
							54~62	7.8	4.2	△ 5.0	6.9	4.8	0.5	△ 0.6	△ 1.4	0.6
France	58	1.00	1.00	1.00	1.00	1.00	62~65	0.4	3.0	△ 3.2	8.0	3.3	△ 7.5	8.0	△ 2.3	△ 8.3
	67	1.79	1.35	0.80	1.63	1.63	65~67	5.8	7.0	1.3	4.5	7.6	1.2	0.2	3.5	1.3
West	51	1.00	0.93	1.35	1.21	0.79	51~54	△ 1.4	2.5	△ 6.9	△ 7.7	8.9	△ 1.8	1.1	1.1	△ 6.4
							54~62	4.6	△ 0.5	△ 1.7	2.2	2.6	△ 0.1	△ 1.3	△ 1.3	0.6
Germany	58	1.00	1.00	1.00	1.00	1.00	62~65	0.5	0.3	△ 1.8	8.4	3.1	0.6	△ 4.7	△ 4.7	0.2
	67	1.95	1.12	1.05	1.47	1.68	65~67	18.0	7.5	1.7	0.9	10.7	0.4	0.5	0.5	0.6
	51	0.80	0.94	1.03	0.74	0.65	51~54	1.7	2.4	△ 1.6	6.5	11.3	1.4	△ 0.9	△ 4.1	6.6
							54~62	6.7	△ 0.3	0.7	0.7	3.9	△ 0.0	0.1	1.0	0.6
Italy	58	1.00	1.00	1.00	1.00	1.00	62~65	10.0	△ 1.0	1.7	3.7	4.2	0.1	1.7	2.2	0.4
	67	2.14	1.08	1.05	1.08	1.56	65~67	6.4	6.1	2.5	1.1	6.4	1.0	0.4	0.4	1.0
Five	51	0.66	0.75	1.35	0.65	0.55	51~54	3.4	5.9	△ 5.7	4.0	14.2	1.7	△ 1.7	△ 0.7	4.2
							54~62	11.1	2.4	△ 2.3	7.4	6.1	0.2	△ 0.2	△ 5.2	0.5
Countries	58	1.00	1.00	1.00	1.00	1.00	62~65	1.4	1.5	△ 2.2	9.4	3.2	1.1	△ 1.6	△ 4.3	2.3
	67	2.17	1.35	0.87	2.02	1.69	65~67	11.0	9.3	△ 0.6	3.8	8.0	0.8	△ 0.1	△ 6.3	0.7

measures to improve balance of payments.
(2) In April 1964, when Japan accepted the Declaration for the Total Abolishment of Subsidies for Secondary Products, the past measures were suspended and the following three measures were newly introduced.

(i) Special Depreciation for Exports
(ii) Reserve for Overseas Market Development
(iii) Special Deduction for Income from Overseas Transaction of Technology, etc.

(3) These measures were essentially the deferment of taxation and are considered to help promoting the international competitive power by indirectly giving credit to the business, and, therefore, in a way to let them enjoy direct subsidies for exports. [4]

Special Depreciation for Exports is to allow an accelerated depreciation for improvement of equipment. The Reserve for Overseas Market Development is the accumulation of reserve for the expenses required to develop overseas markets, and the Special Deduction of Income from Overseas Transaction of Technology, etc. is designed for the promotion of science and technology and for the encouragement of international agricultural products.

(4) In 1958 there were expansion of special depreciation and reserves for enterprises contributing to export-promotion. In the tax reform of 1971, however, these three measures were substantially curtailed, in light of the recent balance of payments situation.

3. *Present State of Tax Measures for Export-Promotion*

(1) Accelerated Depreciation

Special depreciation on the fixed assets owned by a corporation deriving income wholly or partly from specified "overseas transactions" or "overseas transactions of technical services".

In this case, depreciation allowance may be increased until March 31, 1974 by an amount calculated in the following formula:

$$\text{Ordinary depreciation allowance} \times \frac{\text{proceeds from specified "transactions" in the preceding accounting period}^{5}}{\text{total revenue in the preceding accounting period}^{5}} \times \frac{80}{100}$$

(2) Reserve for Overseas Market Development

Provision for the cost of overseas market development may be deducted as expenses until March 31, 1974, if a corporation derives income wholly or partly from "overseas transactions".

The main items of "overseas transactions" are as follows:

(a) Export of goods or sale of goods to an exporter;
(b) Processing of goods by the order of an exporter;
(c) Large-scale repairing of ships paid, directly or indirectly, in foreign currencies.

The maximum amount deductible is the following percentage of the proceeds from such overseas transaction in the preceding accounting period (the second preceding accounting period in the case of a corporation with an accounting period of less than a year).

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4. Income deduction as a kind of tax exemption is also partly granted, but it is all concerned with the export of techniques and primary products, not with secondary products.
5. In the case of a corporation with an accounting period shorter than a year, the second preceding period.

(a) In the case of export of merchandise purchased from others.
  (i) For corporations with a capital of not more than 100 million yen . . . 1.7%
  (ii) For corporations with a capital of not more than 1,000 million yen . . . 1.0%
  (iii) For corporations with a capital of over 1,000 million yen . . . 0.5%
(b) In the case of export transactions other than those mentioned in (a) above.
  (i) For corporations with a capital of not more than 100 million yen . . . 2.3%
  (ii) For corporations with a capital of over 100 million yen . . . 1.5%

One fifth of the amount credited to the Reserve in one accounting period must be added back successively to income in five succeeding years.

(3) Overseas Technical Service Transactions

If a corporation has derived income wholly or partly from "overseas transactions of technical services" in an accounting period beginning on or before March 31, 1974, a special deduction from taxable income is allowed. The "overseas transactions of technical services" consist of the transactions of the following items:

(a) Patent, know-how, etc. resulting from the research work in the corporation concerned, which is alienated or offered in exchange, directly or indirectly, for foreign currency or its equivalent.
(b) Copyrights sold or offered in exchange, directly or indirectly, for foreign currency or its equivalent.
(c) Such technical services as planning, consulting, supervising, etc. related to the construction or production of plant or equipment, or specified technical services for agriculture or fishery, and surveying offered in exchange for foreign currency or its equivalent; on condition that the compensation for such services is 2,000,000 yen or more per contract.
(d) The right to use cinematograph works (including cinematograph works produced in Japan which are shown in theatres in foreign countries insofar as the films remain under the direct control of the producing company) sold or offered in exchange, directly or indirectly, for foreign currency or its equivalent.
(e) Transportation of export goods by a vessel on foreign routes or other shipping services, excluding transportation of import goods, offered in exchange for foreign currency or its equivalent.
(f) Mending, processing or construction services paid, directly or indirectly, in foreign currency or its equivalent.
(g) Tourist services offered in exchange for foreign currency.
(h) Export of primary goods such as agricultural, foresting, fishing or mining products, or sale of such goods to exporters.
(i) Intermediary foreign channel trade [6] in specified primary products offered in exchange for foreign currency.

6. "Channel trade" means an intermediary trade, i.e., that Japanese purchase primary products from a developing country with a constantly unfavorable trade balance with regard to Japan and, instead of importing to Japan, sell them to a third party country.
This transaction is considered to help for improving the developing countries' payments position, and, hence, encourage their imports from Japan.

The amount deductible is 70% in case (a) above, 30% in case (b), 20% in case (c), 15% in case (d) and 1.5% in cases (e) to (i) of the proceeds from such "overseas transactions of technical services". The deduction, however, shall not exceed 50% of the total ordinary income in cases (a) to (c) and 40% of the ordinary income arising from the transactions concerned in cases (d) to (i).

II. EFFECTIVENESS OF THE TAX INCENTIVE MEASURES FOR EXPORT AND THE RELATIONSHIPS WITH THE JAPANESE TRADE

1. *Effect of tax incentives for export-promotion from 1953 to 1963*

(1) As the result of the conclusion of the Peace Treaty in 1952, Japan has come back again to join the world economy. However, it did not have the same competitive power in world trade as that of other countries, and in addition, the economy of Japan has had to depend on the import of natural resources, various intermediate or finished products from many foreign countries in order to maintain its economic activities. Reflecting this condition, the main part of the trade policies at that time were the measures for export-promotion and import-control. Achievement of the favourable balance of payments has been made through the recovery and expansion of domestic economy not through the special tax measures. Of course, there was no question that the recovery and expansion of economic activities has been achieved by the enactment of the laws for foreign investment and foreign exchange control. However, the other measures of export-promotion had more important meanings to Japan, that is, the various export insurance systems such as Loan system for export in 1955, Quata system for Foreign Exchange in 1953 and the establishment of the Japan Export and Import Bank in 1952. Therefore, during this period, the tax incentive measures for export-promotion had only an auxiliary character. The application of the tax rebate or the compensation for indirect tax of the export-goods, which are admitted under the rule of GATT, were narrowly limited. As to the indirect tax system at that time in Japan when it did not have the general sales tax, the established commodity tax covered only 69 items of goods and other indirect taxes only certain goods such as liquor, gasoline, sugar and playing cards.

Taking into account this condition of the not-well adjusted indirect tax system, there was no other favourable treatment in the tax system for the export industries or for companies engaged in foreign trade other than the incentive measures, especially, as regards the corporation income tax.

(2) Even if it is assumed that there were a general sales tax in Japan with which the border tax adjustment is applicable, it might not be expected that such adjustment would play an important role as export-promotion measure. There was some opinion that the border tax adjustment would work well under the value added tax, since the rate of the tax rebate or compensation under the cumulative sales or transaction tax had been maintained relatively lower in the developed European countries. However, the switch to the value added tax is not always effective in accomplishing the desired objectives.

Firstly, even if a value added tax is introduced which will raise an equal amount of tax revenue as the sales tax of the cascade type, the actual tax amount paid by each

enterprises will be increased or decreased as compared with those under the former system depending on the particular condition of each enterprise. Further, the part of increased amount of tax will be shifted forward, but the decreased part may not contribute to reduce the prices. If this is true, there may be a possibility of raising the price level as a whole.

Secondly, a shift from the sales tax into the value added tax will require a lot of transitional measures. That is, it takes a long term that the deduction for the investment goods will be fully conducted, and the border tax adjustment is not immediately fully workable. Besides there is a case where the refund of the tax paid under the sales tax of cascade type for inventories and investment goods will not be fully made because of the reason of government revenue side. Therefore, it is considered that introduction of the value added tax would not be so much effective for making the balance of payment favourable, because of the complex relationships of various factors mentioned above.

Under the value added tax which will allow the deduction of investment goods, there would be the view that a long-run possibility favours the comparative advantage, which would emphasize tax incentives for plant and equipment investment. This effectiveness, however, depends on the kind of old tax to be replaced by the value added tax. Some opinion will support that this advantage will be strengthened largely when the tax replaced is the corporation income tax. As to this opinion, there is pros and cons mainly according to the appreciation of the reverse-shift effect of the corporation income tax, and even if we take the affirmative position to this, the favourable effect might be operative only once.

Generally speaking, it may not be persuasive in actual aspect to say that the rebate system of the domestic commodity tax on export goods will have large export-promotion effect. On the other hand, there will be an opinion against this switch from income tax to the value added tax from the point of view of inequitable tax system as a whole in a country.

It will be very difficult to assess the effectiveness of the value added tax from the actual figures of their export in European countries. All the more, supposing that the value added tax has an important role in expansion of export, the introduction of this tax may be more effective according to the extent the tax is not shifted forward and the wider scope of the rebate, since that the replacement of the sales tax of cascade type by the value added tax will be accompanied usually by the enlargement of items of goods to which the tax is imposed and increasing of the tax rates.

(3) In Japan, it was expected that the exemption of export income introduced in 1953 through 1963 should contribute directly to the promotion of export under the circumstances mentioned above. This system has similar character such as the special deduction system applied to the Western Hemisphere Corporation, Chinese Corporations or the Export Trade Corporation in the United States, but this Japanese system covers wider in the number of company. It will rather be said that this system had more similar character as the system introduced in New Zealand in 1963.

Even though there was the limitation to the rate of exemption in Japan, no one could deny that the export industries had enjoyed this exemption and could find some price-effect through this relief. Downward

movement of the price level of export goods will be determined by the reverse-shift effect of the corporation income tax, however, it was impossible to appreciate the correct effectiveness of the measures.

The effect might be appeared by the actual trend of wholesale prices during 1953 to 1962. During that period, the whole-sale price index showed a slight increasing trend as a whole, however, the whole-sale prices of the manufacturing goods were decreased by about 0.3% on an average.

It may not be denied that there was some difference between the domestic and export prices. However, there were other important factors which contributed more to the general trend of decreasing export prices during this period (Fig. 2-1).

Up to 1962, the prices of raw materials including foods had shown decreasing trend worldly, and as to the domestic circumstances, the productivity of labour exceeded the increasing ratio of labour cost in the area of modernized industries (Fig. 2-2).

These factors mentioned above made the export prices comparatively lower and became the main factors for the export-expansion. The most important factor for expansion of Japanese export should be the expansion of the world trade itself (Table 2-1), but it may also be said that the export-income deduction contributed directly to make lower or to stop of the increasing of sales prices. However, it is impossible to make it clear the degree of such contribution.

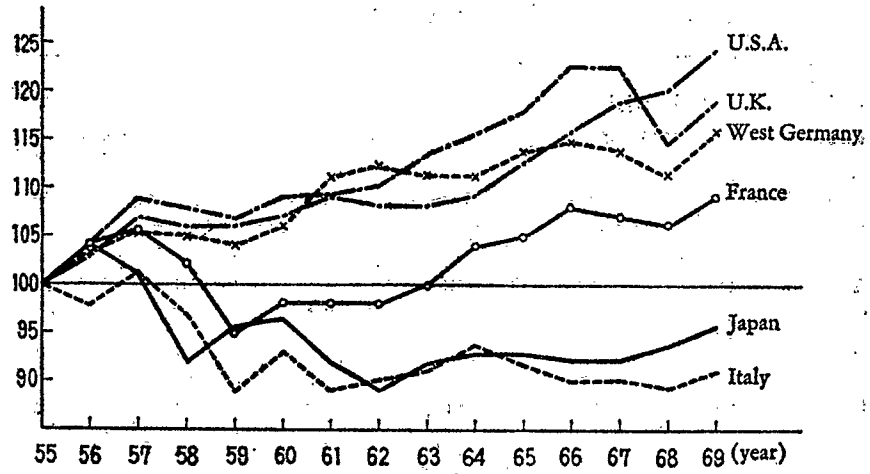
(4) The effect of the export-income deduction will appear as the form of increasing of undistributed profits and/or dividend payments. The ratio of dividend payments of most of the Japanese enterprises is inclined to be equal to each other within the same industries and at the same time it begins to have an upward rigidity. In this case, therefore the incomes-effect of the tax measures will be appeared as an increase of undistributed profit. From 1950's to 1960's the rate of undistributed profits in the own capital of enterprises shows only a slight deviation from average 5 per cent whether they belong to export industries or not. Therefore, if the undistributed profits were increased because of the export-income deduction measures, it may safely be said that such profits will contribute to the decreasing of the prices both of domestic and export goods through increasing of the productivities caused by the expansion of capital investment. However, we could not find such results. We might point out that an increase of the profits after deduction of tax caused by the export-income exemption measures would have been one of the inducements to modernize and expand the plants and equipments useful to raise the productivity through the exclusion of various difficulties for loan. This understanding is supported by the materials which show the money supply intensified on export industries (Table 2-2). This relates with the capital-allocation problems.

Table 2-1. *Japanese export and world trade* (average annual rate of increase)

	1951~65	1965~69
World (A)	5.9	9.4
Japan (B)	16.9	17.3
(B) / (A)	2.9	1.8

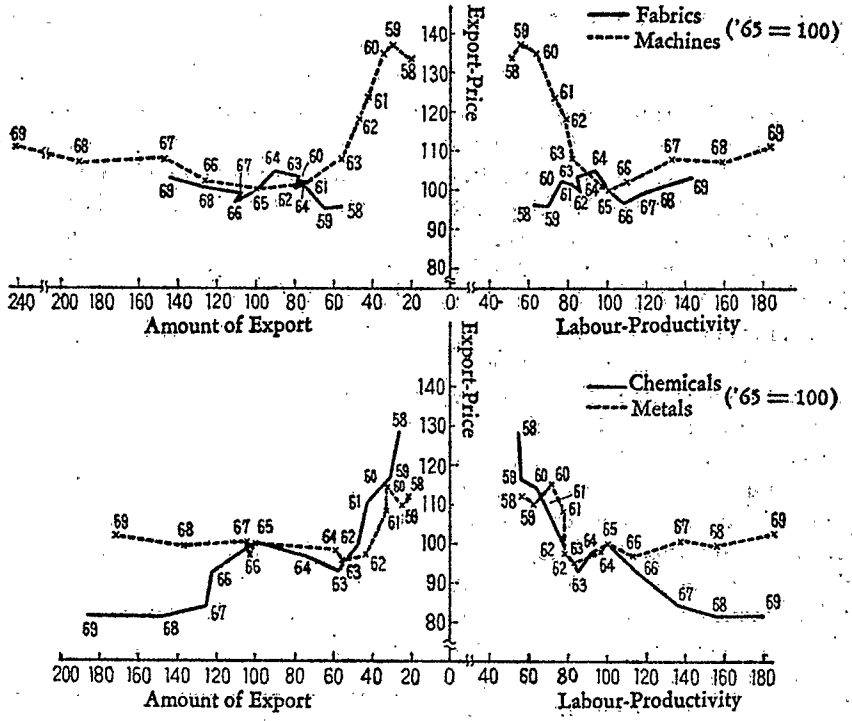
(Sources) UN-Year Book of National Accounts Statistics
MOF-Trade Statistics

Fig 2-1. *Export-Price index in major countries*



(Source) IMF — IFS

Fig 2-2. *Relations between Labour-Productivity, Export-Price and Amount of Export*



(Note) labour productivity : production index / employees index
(Sources) Summary Report of Trade, etc.

Table 2-2. *Industrial Investment, Domestic Demand, and Export*
(average annual rate of increase from 1955 to 1964)

Groups of companies by rate of export increase	Industrial Investment		Domestic Demand		Export	
	1955~60	1960~64	1955~60	1960~64	1955~60	1960~64
	%	%	%	%	%	%
A	41	20	30	17	61	26
B	36	15	24	12	27	19
C	41	8	14	13	15	17
D	27	8	13	16	12	5
E	17	12	11	9	5	3

(Sources) MOF-Japan's Exports and Imports
MITI-Sensus of Manufactures

2. *Incentives for Export-Promotion Since 1964*

(1) The new tax measures inaugurated in fiscal 1964 consisted mainly of the Accelerated Depreciations for Exports, the Reserve for Overseas Market Development and the special deduction for Overseas Technical Service Transactions.[7] Accelerated Depreciation for Exports is equivalent to the special export depreciation formerly adopted in France. The Reserve for Overseas Market Development is similar to the non-taxable reserve adopted in Spain. Further it should be added that such export incentive measures as the special deduction of expenses incurred in development of overseas market for exporters adopted by Australia or the deduction for export market development adopted by New Zealand, aimed at reducing income taxes, and that they should be considered as the special deduction of export-income. Japan does not adopt such measures as preferential treatment for sociétés conventionnées in France and payroll tax refund of Australia.

The amount of revenue loss caused by such three measures in Japan hardly changed from 1964 to 1967, and tended to increase steadily on and after 1968. But, the ratio of such revenue reduction to the corporation income tax revenue has not changed so widely and is fairly small (Table 2-3).

Further it is to be noted that the Accelerated Depreciation for Export and the Reserve for Overseas Market Development have a different nature from the special deduction for Overseas Technical Service Transactions, because the Accelerated Depreciation for Export only lets businesses entitle to special premium in addition to ordinary depreciation, and, therefore, it is literally a kind of acceleration in depreciation. Whether such a benefit can be en-

7. The special deduction for Overseas Technical Service Transactions was established in 1959 and expanded in 1964 F.Y.

joyed or not depends mainly on the assets composition and investment behavior of taxpayers; namely, the larger depreciate assets are or the larger export-income is, the more the merit is. The Reserve for Overseas Market Development allows firms to deduct amounts equal to a certain percentage of total revenue from overseas transactions as non-taxable reserve, but this reserve is to be put down in an equal amount in the ensuing five years. Therefore the net increase in this reserve will be corresponding to the growth of export and, in the short run, the reserve will reduce tax burden or businesses. Thus, those measures are only the deferral of tax, with the reservation that, if the reserve continues to be applied for a long time, its benefits might be maintained as export grows.

On the other hand, income deduction on technical services permits tax payers to deduct certain amount directly from their income related to overseas transactions. This is different in kind from the rest of tax incentives for export in the sense that the amount regarded as expenses is irretrievably exempt from taxation. However, this does not aim directly at improvement of the balance of payments, especially at promotion of export. The application of this is limited to the occasion where techniques or services are exported in exchange for certain foreign currencies. Therefore, it will be seen that this is directed toward reduction in the deficit of invisible trade balance.

(2) Thus, it should be understood that tax measures to promote export adopted in Japan on and after Fiscal 1964 are not different from the similar incentives taken by other developed countries, and that the effect of Japanese tax measures was to have given to her export industries some favour through reduction or deferral of the corporation income tax. It is difficult, however, to measure exactly how much they affected directly on reduction of export-prices or how much they resisted the upward trend of relative export-prices. When talking about the international competitive power, there are more aspects than is understood by the term "comparative advantage" which means the efficiency of the domestic factor-allocation and the relatively low production-cost resulting from the former. That is to say, the concept of the international competitive power relates also to differences in the quality, design and brand of goods, the after-care services, the network of sales organization and the finance-availability. One can not explain export incentive effects referring only to the comparative advantage in this context. One should rather say that the non-price factors have so much influence on the export-incentive effects. [8] Considering in this way, it can be said that the use of tax incentives for export during the abovementioned period had favourable effects both to the export prices and to the various non-price sales-points. It is, however, almost impossible to evaluate separately the effects on each element.

3. *Price Factor vs. Non-Price Factor*

(1) When studing the factors contributing to export-expansion, such factors will be found as the enlargement of the world-wide demand, the advantageous position in market orientation and in composition of goods and the reinforcement of international competitive power. International com-

8. T. Negishi and F. Watanabe, *op. cit.*, p. 8.

Table 2-3. *Corporation Income Tax Revenue Reduction Caused by Several Tax Measures*

(100 million yen)

Measures \ Fiscal year	1964	1965	1966	1967	1968	1969	1970	1971
1. Accelerated depreciation for export	117	115	156	165	252	362	548	515
2. Reserve for overseas market development	7	11	26	28	43	40	61	57
3. Special deduction for overseas transactions of technical services	114	120	79	65	80	101	150	138
Total (A)	238	246	261	258	375	503	759	710
Corporation Income Tax Revenue (B)	10,150	10,357	8,947	11,790	14,765	18,580	24,203	28,715
(A) / (B)	2.3	2.4	2.9	2.2	2.5	2.7	3.1	2.5

(Sources) Tax Bureau, Ministry of Finance

petitive power must be examined from the price as well as the non-price side. Looking at the rate of contribution to the export augmentation by each of these factors through 1960's (Table 2-4), it will be seen that during the latter half of 1960's, the largest contributing factor to export development was the worldwide demand and next comes the international competitive power, especially non-price factors. The other data for longer period shows that the export of Japan has so increased as 15.8 per cent per year. The elasticity of Japanese export to the global importation stood at a very high level of 1.62. But the export elasticity to the relative export prices is only 0.71. Making use of these elasticities to separate the annual rates of export expansion, 15.8 per cent, into those caused by the market factor and by the price factor, it can be seen that the part ascribed to the market factor is 11.1 per cent and the rest caused by the price factor is 4.7 per cent. That is to say, about 70 per cent of the rise in export has been led by the expansion of the foreign market and the remainder by the price competitive power and the internal supply and demand. Also, among the remainder are included the adaptability elements in the sense that Japan adequately have changed the export structure corresponding to the change in the global import structure. Seeing the above-mentioned tendency in time-series, it

is understood that the incidence of the price element or the internal supply and demand element has been decreasing, while the market factor has been gaining. [9]

Since 1963, the export price has been rising a little in Japan. In the other developed countries, rising tendency is generally recorded except in Italy (Fig. 2-1). The Japanese investment for plants and equipments has sharply increased; 11.6 per cent annually during 1960~65 and 18.8 per cent during 1965~68.

The hectic investment for plants and equipments mainly attributable to the technical advance, improved the productivity very much, which in turn reinforced the price competitive power. The export augmentation would have had the fear to bring about the aggravation of the relative trade prices. In the early 1960's, the import price stopped falling and thereafter began to rise. On the other hand, the export price continued to fall. Therefore the terms of trade were certainly becoming to be unfavourable for Japan. But since the latter half of the 1960's, the export price did not fall any more. After 1966, it turned upward. The export price continued to rise slightly and scarcely rose during 1967-69. Consequently, the favourable position in the terms of trade continued until 1969 (Fig. 2-3). Since the latter half of the 1960's, the wage rise has been accelerated. In such industries as steel, electric machine and chemicals where the progress of the labour-productivity surpassed that of wage, the export price has fallen. On the contrary, in such industries as food, ceramics, and sundries where the increase in the labour-productivity is small and the rise in labour-cost is large, the export price has risen. But, for the aggregate trade, the terms of trade which showed the downward trend until 1966, has become to be favourable after 1967.

(2) Generally speaking, developing countries have to compete with developed countries in the export trade of manufactured goods by setting their export prices lower than the domestic prices of developed countries in the process of intensifying their position in the international trade, all the more because hardly have they any non-price devices available for that purpose. That is to say, it is the price factor that is strategically most important. As the export of manufactured goods increases as the result of low export prices, non-rice factors become important. In the case of Japan, although at present the export of goods such as chemicals is still increasing at their low prices, there appears such goods as machineries and metals which we must depend on non-price factors to increase their exports (Fig. 2-2). The export of Japan as a whole, it seems, has come to a stage where non-price factors are important.

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9. The commodity export function in the econometric model which this calculation is based on is an endogenous variable obtained in other sectors of the model like Pec, and includes inventory/output ratio $(Kjp/Y)_{-1}$ as a domestic demand factor in addition to the regular log Ej = f (log Twm, log Pec/Pw_{ei}) where Ej is Japanese commodity export, Twm is world imports excluding Japan and Pec/Pw_{ei} is relative export price.
Effects of export competitive power which is affected by demand and supply factors and capital accumulation are taken into consideration indirectly through commodity export prices, since they introduce product inventory ratio of the secondary industry and private equipment investment of the secondary industry of the seven period before aside from costs for wages and raw materials. In addition to these three explanatory variables, a dummy variable of Vietnam Special Order, etc, are used.
(Source) EPA-Economic Research Institute

As non-price factors become dominant also in making trade policies, it is necessary to adapt the export structure effectively and immediately to the changes of demand structure in the world trade, and one must always be ready to expand the production capacity in the long-term. And efforts should be taken to replete sales network, after-services, selling activities (such as, advertisement) and to improve the quality, performance, design of export goods. In addition one must bear in mind the development of new markets and inquiry of import demands in the world by active international market survey. When taking a look at the changes in the composition of major export goods of Japan since 1936, it will be understood how Japan has made great efforts to adapt to the changes of world market and how efficiently it has worked (Table 2-5). For a long period after the war, Japan has primarily attached importance on setting export prices lower as a developing country. It may be said that measures adopted in financial, insurance and tax system for export-promotion had their main object in it. But because these measures are associated with each other, it is not possible to assess the effect of each of them separately. It can be said that these measures have as a whole made contributions to promote the growth of export industries and to strengthen those industries in international competition of the world trade. At the same time, it should be noted that the process of rapid economic growth itself has made possible the adaptation of the export structure to the change of the world market, by shifting main export goods to the products of capital intensive or highly technical process. The fact is that the increase of exports of Japan was, not the cause of, but the result, among many, of rapid economic growth. And here can be applied the proposition of Linder-Kindleberger that no country exports finished manufactured-goods until at least it establishes the lowest level of domestic market.

(3) In the tax reforms for the fiscal 1971, the following reforms were made with respect to the special tax measures for export-promotion; abolition of premium depreciation granted to a corporation designated as contributing to the development of export and reduction of the rate of special depreciation to a corporation deriving income wholly or partly from specified "overseas transactions etc."; abolition of special addition system to the reserve for overseas market development to a corporation designated as contributing to the development of export; reduction of the amount of a special deduction from taxable income of a corporation deriving income wholly or partly from "overseas transactions of technical services".

From August, 1971 the financial system for export promotion was revised, the main point of which was raising of export-related interest rates.

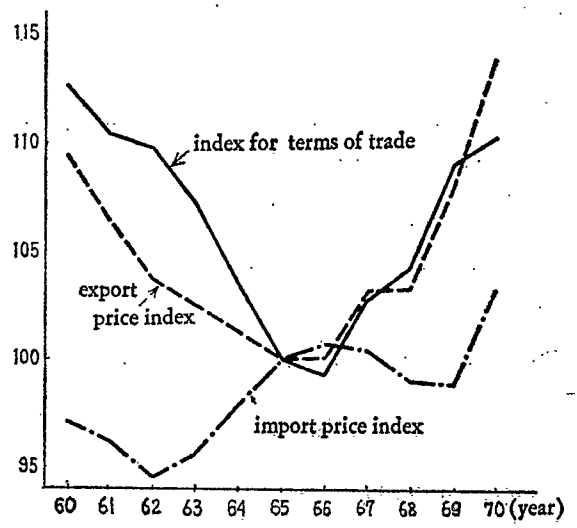
Fundamental reform or abolition of existing special tax measures for export-promotion is now under consideration. Regardless of this, however, it would be doubtful if the abolition of those tax measures should immediately cause the increasing export to decline. If, in the future, there should arise the balance of trade deficit in Japan, it would be the result of changes of circumstances other than tax measures.

Recent extraordinary increase of export or balance of trade surplus in Japan seems to have been brought about by the considerable strengthening of its basic competitive power in the world trade as the result of

both world-wide inflation since 1969 and stagnation of domestic economic activities since autumn in 1970. Besides, the effects of acceleration of increase of export caused by poor domestic demand are shown in the export for U.S. market and not shown in the export for West Germany with stagnant economic activities and for South-East Asian countries with poor foreign reserves. But, from the more long-term point of view, as it will be increasingly difficult to maintain export prices to relatively low level, Japan will have to hereafter strengthen its position in the world trade by such trade policies as are centered on non-price factors.

Fig. 2-3. *Transition of the trade price index*

(1965 = 100)



(Note) index for terms of trade: export price index / import price index x 100
(Source) MOF-Trade Statistics

Table 2-4. *Factor analysis of export expansion — Total amount of export —*

	Increase in export	Caused by the increase in worldwide demand	Caused by the advantages in the market orientation	Caused by the advantages in the composition of goods	Caused by the reinforcement of the international competitive power		
						Price competitive power	Non-price competitive power
60~64	2,619	1,504	△ 280	△ 137	1,532	1,058	474
64~68	6,298	2,993	682	204	2,419	238	2,181
60~68	8,917	4,497	402	67	3,951	1,296	2,655

	Rate of contribution to the increase (%)					
	Caused by the increase in worldwide demand	Caused by the advantages in the market orientation	Caused by the advantages in the composition of goods	Caused by the reinforcement of the international competitive power	Price competitive power	Non-price competitive power
60~64	57.4	△ 10.7	△ 5.2	58.5	40.4	18.1
64~68	47.6	10.8	3.2	38.4	3.8	34.6
60~68	50.4	4.5	0.8	44.3	14.5	29.8

	Breakdown of the factors of the international competitive power (%)	Price competitive power	Non-price competitive power
60~64	100	69.1	30.9
64~68	100	9.8	90.2
60~68	100	32.8	67.2

(Note)

1. The calculation method for the factor analysis of the export augmentation is as follows:

(i) The part caused by the increasing of the world-wide demand

Xj x rw — Xj

Xj: Amount of export of the country j in the base year

rw: Increase in world-wide trade (Increase in the export of OECD countries)

(ii) The part caused by the advantageous position in the market structure

Σ (Xja x ra) — Xj x rw

Xja: Amount of export from the country j to the area a in the base year

ra: Increase in import in the area a

(iii) The part caused by the advantageous position in the composition of goods

Σ (Xija x rai) — Σ (Xja x ra)

Xija: Amount of export of the article i from country j to the area a in the base year

rai: Increase in import of the article i in the area a

(iv) The part caused by the reinforcement of the international competitive power

Xtj — Σ (Xija x rai)

Xtj: Amount of export of the country j at the time to compare

2. In this case, the market orientation relates to the share of export to Europe, North-America, Latin-America, Oceania, Africa, Asia and the Soviet bloc.

3. In this case, the composition of goods means the nine classifications of SITC 0, 1, 2, 3, 4, 5, 6, 7, 8.

4. As for the factor of the price competitive power and that of the non-price competitive

power, the former is got by the following trial formula which explains the proportion of the augmented amount caused by the reinforcement of the international competitive power against the amount of export in the eleven major countries, by the rate of change of the relative price (the ratio against the average export price in the industrial countries). The latter means the difference between the real amount of augmentation and the theoretical value.

1960~64 $Y = -3.311X + 3.350$ ($r = 0.80$)

1964~68 $Y = -1.088X + 1.103$ ($r = 0.80$)

Y: the proportion of the augmented amount caused by the reinforcement of the international competitive power during the concerned period against the amount of export in the base year

X: the rate of change of the relative price in each country during the concerned period against the export price of the eleven major countries

(Sources) OECD — statistics; IMF — IFS

Table 2-5. *Major Articles of Exports of Japan*

(U.S. $ million)

year / order	1936-38		1950		1960		1965		1970	
1	Cotton Fabrics	182	Cotton Fabrics	207	Iron & Steel Products	388	Iron & Steel Products	1,290	Iron & Steel Products	2,844
2	Raw Silk	123	Iron & Steel Products	72	Cotton Fabrics	352	Vessels	713	Vessels	1,410
3	Fish & Shellfish	83	Rayon Fabrics	38	Vessels	288	Cotton Fabrics	303	Motor Vehicles	1,337
4	Rayon Fabrics	48	Copper	36	Clothes	218	Clothes	287	Radio Receivers	695
5	Iron & Steel Products	43	Clothes	30	Radio Receivers	145	Motor Vehicles	237	Synthetic Fabrics	626
6	Silk Fabrics	25	Vessels	26	Staple Fabrics	118	Fish & Shellfish	231	Scientific & Optical Equipment	498
7	Woolen Fabrics	17	Silk Fabrics	22	Motor Vehicles	96	Scientific & Optical Equipment	217	Clothes	463
8	China Wares	14	Toys	12	Toys	90	Radio Receivers	216	Tape Recorders	451
9	Cotton Yarns	12	Staple Fabrics	11	Footwears	73	Synthetic Fabrics	186	Synthetic Plastics	427
10	Toys	10	Textile Machines	10	China Wares	68	Toys	98	T.V. Receivers	384
Export Total		932		820		4,055		8,452		19,318

(Source) MOF-Trade Statistics

WOLFE D. GOODMAN, Q.C. *

DEEMED REALIZATIONS UNDER THE CANADIAN INCOME TAX ACT**

A. DEEMED REALIZATIONS ON DEATH

It has for many years been a criticism of the U.S. tax system that, although capital gains realized by an individual during his lifetime are subject to tax, gains which are accrued but unrealized at the date of his death completely escape capital gains tax. Even though the persons who inherit the appreciated property are treated as though they acquired it at its fair market value at the date of his death, the deceased individual or his estate is not treated as having disposed of it at that figure. During President Kennedy's administration, a concerted but unsuccessful effort was made by the U.S. Treasury to amend the Internal Revenue Code in order to provide for deemed realization of capital gains at death and I understand that the Treasury campaign for this amendment has continued to the present time.

In view of the well-known criticism of the present state of the U.S. law on this subject, it is not surprising that when the United Kingdom adopted its long-term capital gains tax in 1965, provision was made for deemed realization of gains at death. Similarly, the 1967 Report of the Canadian Royal Commission on Taxation (The Carter Commission), which recommended a complete revision of the Canadian tax system, proposed deemed realization at death. The Carter Commission, however, also proposed that special taxation of gifts and estates be abolished and replaced by taxation of income calculated on a comprehensive tax base, similar to a proposal which has frequently been advocated in the United States and generally attributed to Professors Haig and Simons. In 1969, when the Canadian government issued its White Paper on Taxation Policy, it rejected the Carter Commission's proposal for a comprehensive tax base and, instead, proposed continuation of gift and estate taxation in their traditional forms. This White Paper specifically recognized that the combined impact of estate taxes and income taxes on accrued capital gains at death would create very severe problems of liquidity for many estates. Accordingly, it proposed a carry-over of cost basis, so that the heirs were treated as having received their inherited property at a cost equal to its cost to the deceased plus an adjustment in respect of the death taxes on the increment in value over the deceased's cost. This formula was designed in such fashion as to produce substantially the same tax result whether the appreciated property was disposed of immediately before the deceased's death or immediately thereafter. Of course, it involved an obvious tax deferral advantage in respect of assets which were retained by the heirs, rather than being disposed of.

The White Paper of 1969 also proposed a five year revaluation rule in connection with shares of widely-held Canadian corporations, that is, marketable Canadian stocks. This proposal was bitterly attacked, inter alia, on the basis that it discriminated against the holders of large and relatively illiquid blocks of stock in Canadian public

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** Paper submitted on February 2, 1973 at the Conference of the International Fiscal Association on the Canadian-USA tax treaty (New York City).

companies and that it had a particularly harsh effect on the foreign parent companies of Canadian subsidiaries. The Canadian government had to concede this point and the five-year revaluation proposal was abandoned. However, at the same time, the Government was able to gain Parliamentary acceptance of the principle of deemed realization of capital property at death. The Government recognized that this rule would create serious problems for many taxpayers, particularly as a result of the combined impact of estate taxes and income taxes on accrued capital gains at death and it therefore decided to abandon the estate tax field as of the end of 1971. However, this has done nothing to relieve the problem of the combined impact of the new federal tax on accrued gains at death and provincial succession daties. In fact, this problem has been aggravated since six provinces, the four Atlantic provinces, Manitoba and Saskatchewan, have now joined the three provinces which imposed succession duties in 1971, Ontario, Quebec and British Columbia.

It is ironic that in the very year that Canada instituted income taxation of accrued capital gains at death, the United Kingdom repealed its similar legislation, in respect of deaths occurring after March 31, 1971. The application of the new Canadian rules to assets which are acquired by a taxpayer after the commencement of the new tax system is relatively straightforward. If he purchased a capital property in 1972 for $5,000. and if he dies in 1975 still owning this asset, at a time when it is worth $8,000., he will be deemed to have realized a capital gain of $3,000., one-half of which, or $1,500., will constitute a taxable capital gain and will have to be included in his income. For capital property which was owned by a taxpayer on Valuation Day, December 31, 1971, the transitional rules provide that for the purpose of computing liability for tax on the capital gain, the cost of the property to the taxpayer is deemed to be the amount which is neither the greatest nor the least of the actual cost, the fair market value on Valuation Day, and the fair market value at the date of death. This rule ensures that if the property has appreciated in value between the date of its purchase (prior to the commencement of the new tax system) and Valuation Day, only the increment in value between Valuation Day and the date of death will be taken into account, but if there has been a decrease in the value between the date of purchase and Valuation Day, tax will be levied only in respect of the realized increase in value over the actual cost. In the event that a deemed disposition at death produces a capital loss, rather than a capital gain, the allowable portion of the loss, 50%, is fully deductible from other income in the year of death. However, if the loss exceeds the deceased taxpayer's income for the year from all other sources, the net loss may be carried back only one year. There is no provision for carry-forward of these losses.

Circumstances may arise in which an asset is deemed to have been disposed of at fair market value at the date of death, but it is subsequently realized at a lower figure. Where in the course of administering an estate, the taxpayer's legal representatives have disposed of capital property within a twelve-month period following his death and have suffered a net allowable capital loss, the legal representatives may obtain tax credit for the amount by which the taxpayer's personal income taxes would have been reduced in his final tax return, had this loss been applied in that final return.

Special rules are provided in respect of depreciable property owned by a deceased taxpayer. If depreciable property were deemed to have been disposed of at its fair market value at the date of the taxpayer's death, this might give rise to recapture of very large amounts of capital cost allowances (depreciation) taken during the taxpayer's lifetime. Unlike capital gains, only one-half of which are included in income, recaptured capital cost allowances are fully includable in income. Accordingly, where depreciable property is owned by a taxpayer at the date of his death, the rule is that it is deemed to have been disposed of by him and acquired by his heirs at the average of its undepreciated capital cost (that is, its depreciated value) and its fair market value at the date of death. Where the fair market value at the date of death does not exceed the original cost of the property, this rule has the effect of requiring not more than one-half of the capital cost allowances taken during the deceased's lifetime to be included in computing his income at the date of death, a result which is roughly similar in effect to the rule adopted for capital property other than depreciable property. However, if the property is worth more at the date of death than its original cost, as is frequently the case with buildings, there may be elements of both recaptured capital cost allowances and capital gains realized at death. For example, if an item of depreciable property cost a taxpayer $800. in 1972 and if at the date of his death in 1975, it had an undepreciated capital cost of $500. and a fair market value of $1,200., it would be deemed to have been disposed of at the date of his death at the average of $500. and $1,200, that is, at $850. There would be full recapture of the $300. of capital cost allowances claimed during the deceased's lifetime and, in addition, $25., representing one-half of the capital gains over original cost, would also have to be included in computing his income.

There is a substantial element of retroactivity in the application of the new rules to depreciable property which was owned by the taxpayer on Valuation Day, in that individuals who claimed capital cost allowances prior to the commencement of the new tax system in respect of their depreciable property, under a system which did not involve recapture of capital cost allowances at death, now find that at death their estates may be subject to substantial burdens of taxation in respect of recaptured allowances. For example, if an individual purchased depreciable property in 1965 for $800. and on Valuation Day it had an undepreciated capital cost of $500. and a fair market value of $1,200 and if he died in 1973, when the undepreciated capital cost was $400. and the fair market value was $1,400., the property would be deemed to have been disposed of at his death for $900. Since this would be less than fair market value on Valuation Day, there would be no liability for tax on capital gains, but there would be liability for recapture of $400. in capital cost allowances, of which $300. was claimed prior to the commencement of the new tax system.

Special relief is provided where on the death of a taxpayer who is resident in Canada his property is transferred or distributed to his spouse also resident in Canada or to a resident trust created by the taxpayer's will under which his spouse is entitled to all of the income of the trust during the spouse's lifetime and no person except the spouse may before the spouse's death receive or otherwise obtain the use of any of the income or capital of the

trust. (This type of trust is frequently called a "spousal trust".) Where property of a deceased taxpayer has been transferred or distributed in this manner, neither capital gain nor loss is recognized by reason of the taxpayer's death and the spouse or the spousal trust is deemed to have acquired the property at a cost equal to the cost to the deceased taxpayer. Obviously, if the property has been left outright to the surviving spouse, unless the surviving spouse remarries and leaves the property by will to his or her new spouse, there will be a deemed realization at the second death if he or she continues to hold it until death. Where the property has been left to a spousal trust, the statute similarly provides for a deemed realization of the property at the second death. A similar rule applies in respect of depreciable property which is left by a taxpayer either outright to his surviving spouse or to a spousal trust. In this event, the property is deemed to have been disposed of by the deceased at his undepreciated capital cost and to have been acquired by the spouse or the spousal trust at the same figure.

Oddly enough, inventories held by a taxpayer at the date of his death, such as vacant land held for resale, are not dealt with under the legislation. Such inventories cannot constitute "capital property" and the deemed disposition provisions are therefore inapplicable. Nevertheless, Section 69 (1) (c) provides that a taxpayer who has acquired property by way of gift, bequest or inheritance is deemed to have acquired it at its fair market value. Accordingly, it would appear that any appreciation in the value of the taxpayer's inventories prior to his death will escape taxation at the date of his death. His estate or his beneficiaries will be entitled to treat the cost of these inventories in their hands as their fair market value at the date of his death. In addition, if his estate or his beneficiaries do no more than simply realize these inventories, they will probably be entitled to treat as a capital gain any profit realized on the disposal of such inventories at a price in excess of the fair market value at the date of his death. In these circumstances, one can foresee the possibility that an estate will argue strenuously with the taxing authorities that lands held by the deceased at the date of his death were trading assets, rather than capital property, an ironic reversal of the usual situation in Canada.

Where U.S. property belonging to a U.S. decedent is inherited by a Canadian resident, the beneficiary is treated as having acquired the property at its fair market value. The U.S. decedent and his estate are not subject to any tax in Canada or the United States in respect of the unrealized appreciation as of the date of death. The tax which is foregone is U.S. tax because the U.S. does not at present tax such unrealized capital gains.

Where a U.S. decedent leaves "taxable Canadian property" to a Canadian resident beneficiary the Income Tax Act provides for a deemed realization at death. However, it seems likely that this gain is presently exempt from tax under Article VIII of the Canada-U.S. Income Tax Convention. Some commentators have questioned whether Article VIII applies in these circumstances, since the Canadian tax is being levied on a deemed realization rather than on a gain on a "sale or exchange of capital assets". However, since Section 70 (5) (a) deems the taxpayer to have disposed of the property immediately before his death, it seems to me that the transaction is deemed to be a sale and that it is therefore exempt under Article VIII. This problem

does not arise at all in respect of Canadian property which is not "taxable Canadian property", for example, shares of Canadian public companies not representing a 25% or greater share interest. In these circumstances, Canada does not attempt to impose tax on capital gains realized on actual sales and a deemed realization is therefore exempt under the Act, apart entirely from Article VIII of the Convention.

B. DEEMED REALIZATIONS ON INTER VIVOS GIFTS

The treatment of inter vivos gifts of capital property other than depreciable property is similar to the treatment of such property owned by the taxpayer at the date of his death, but the treatment of inter vivos gifts of depreciable property is considerably less generous. Presumably, the Government felt that, since inter vivos gifts are voluntary dispositions, there can be no real hardship in applying a more onerous rule to them. Accordingly, the legislation provides that where a taxpayer has disposed of anything to any person by way of gift inter vivos, he is deemed to have received proceeds of disposition equal to the current fair market value and the person acquiring such property is deemed to have acquired it at the same figure. Since this rule is not restricted in its operation to capital property, it would apply equally to an inter vivos gift of an item of the donor's inventory. However, if capital property is transferred inter vivos to the donor's spouse or to a spousal trust, it is not deemed to have been disposed of at fair market value. Instead, it is deemed to have been disposed of by the donor and to have been acquired by the donee at the donor's cost, in the case of ordinary capital property, or at the donor's undepreciated capital cost, in the case of depreciable property. Once again, if the property has been given outright to the donor's spouse or to a spousal trust, there will be a deemed realization at the spouse's death.

Where a Canadian resident makes an inter vivos gift to a U.S. resident of appreciated property, wherever situate, the donor will be deemed for Canadian tax purposes to have realized income. However, under U.S. law the donee will be deemed to have acquired the shares at the donor's cost under I.R.C. Section 1015 (a). This is obviously a situation in which there is a serious risk of double taxation. It should not be too difficult to avoid this problem. A wash sale, that is, a sale of the appreciated property followed by an immediate repurchase, before the gift is made will create a tax liability for the Canadian resident on an actual sale, rather than on a deemed realization, but the tax will be no higher. The donee would then acquire the shares at the donor's stepped-up cost basis and the U.S. tax problem will be avoided. Alternatively, the property can be sold and cash can be given to the donee and the donee can repurchase the property on the market.

Where a U.S. resident makes a gift to another U.S. resident of taxable Canadian property which has appreciated in value, the donor will be deemed under the Canadian Income Tax Act to have realized income, but the donee will be deemed for U.S. tax purposes to have acquired the property at the donor's cost, a situation which would also give rise to double taxation. However, as I have mentioned, this situation appears to be within Article VIII of the Convention; if so there will be no Canadian tax levied on the U.S. resident donor, even though the subject matter of the gift is taxable Canadian

property. If the gift is of Canadian property which is not taxable Canadian property, no problem can arise, since even an actual sale by a non-resident of such property is exempt from Canadian tax.

C. TWENTY-ONE YEAR REVALUATION RULE FOR TRUSTS AND ESTATES

In order to block long-term or generation-skipping trusts which can hold assets for lengthy periods and thereby avoid the deemed realization of assets at death, Canadian tax law now provides for a revaluation every 21 years in respect of capital property owned by a trust, whether testamentary or inter vivos. This rule does not apply to a spousal trust as long as the spouse is alive, but every other trust is deemed to have disposed of all of its capital property other than depreciable property every 21 years for proceeds equal to its current fair market value and to have immediately reacquired the property at that value. In the case of trusts in existence on Valuation Day, the first revaluation will occur on January 1st, 1993. Deemed realization in respect of depreciable property takes place at the average of its undepreciated capital cost and its fair market value on the 21st anniversary.

The concept of taxing trusts in this manner was derived from the U.K. Finance Act, 1965, which provided for a deemed realization every 15 years; however, the U.K. provision was repealed by the Finance Act, 1971, in the same year that Canada enacted its legislation. No doubt, the British government recognized that it would be extremely onerous to impose taxation of this kind on a trust or estate whose main assets consisted of illiquid investments.

The severe impact of the 21-year revaluation rule may be avoided by providing in trust documents for distribution of the assets of the trust or, at least, of the appreciated assets, to capital beneficiaries before the expiry of the 21-year period, either on a mandatory or on a discretionary basis. In general, such capital distributions are deemed to take place at their cost, rather than at fair market value, and once the assets are in the hands of the beneficiaries, they will only have to be revalued upon the beneficiary's death or on actual sale or other realization. However, special rules apply where capital distributions take place to a non-resident beneficiary. One must first determine whether or not the property in question is "taxable Canadian property", a term which is defined so as to include an interest in Canadian real estate, an interest in an unincorporated Canadian business, shares of a Canadian private company, a 25% or greater share interest in a Canadian public company and a number of miscellaneous items. If the property is "taxable Canadian property", a non-resident is subject to Canadian income tax on any capital gain which he subsequently realizes on the sale of the property, in substantially the same manner as if he were a resident. Accordingly, when taxable Canadian property is distributed by a Canadian trust or estate to a non-resident beneficiary, it is not deemed to have been disposed of at fair market value. However, if a trust distributes property which is not taxable Canadian property, and which therefore will not give rise to Canadian tax liability when it is ultimately disposed of by the non-resident, the estate or trust is deemed to have disposed of the property at its fair market value at the time of distribution and the non-resident beneficiary acquires it at that price.

D. CANADIAN RENTAL REAL ESTATE

Until the recent decision of the Federal Court of Canada in *Bessemer Trust Co. v M.N.R.* it was not generally realized that where a U.S. resident who owned rental real estate in Canada had elected to pay Canadian income tax on his net income at ordinary Canadian rates, rather than paying 15% withholding tax on his gross income, the U.S.-Canada treaty protected him against Canadian tax liability in respect of recaptured capital cost allowances in the event of his sale of this real estate. This principle would apply to all types of dispositions and deemed dispositions and not merely to sales. As a result, the treaty appears to protect the U.S. resident-owner of Canadian rental real estate against liability for tax on recaptured capital cost allowances arising on the death or on the making of an inter vivos gift. This decision was actually reversed very recently by the Federal Court of Appeal, but only on the ground that the taxpayer had elected to pay Canadian tax on its net income for the year of sale and that it was therefore liable for tax on recaptured capital cost allowances. There is a clear implication in the Reasons for Judgment that if the taxpayer had elected to pay 15% withholding tax on its gross rental income in the year of sale, it could have avoided this tax liability.

* * *

When the U.S. and Canada renegotiate their treaty, both the general exemption in respect of capital gains and the special exemption for rental real estate will certainly be carefully reconsidered.

ERRATUM

The article on TAXING POLLUTION by Mr. H. T. W. Pepper in the May 1973 issue should be altered in the following manner. On page 192 the last paragraph of the first column and first five lines of the right column should read:

The oil industry, however, has meantime set an example to those responsible for other types of pollution (e.g. chemicals) by setting up voluntary funds financed by contributions from members to cover compensation costs arising out of pollution incidents. The first of these schemes known as T.O.V.A.L.O.P. is, more fully, the "Tanker Owners' Voluntary Agreement on Liability for Oil Pollution". This scheme provides measures which a tanker owner must take when subscribing and imposes levies which will cover claims by governments or shipping owners up to a maximum of $ 100 per gross registered ton or $ 10m. per incident, whichever is less. A further scheme is known as C.R.I.S.T.A.L., an abbreviation for the „Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution". Under this scheme funds are made available so as to provide that in respect of any oil spillage from a tanker, there will be available from a combination of T.O.V.A.L.O.P., an owner's liability under existing law regimes, and C.R.I.S.T.A.L., a total of $ 30m. to cover oil pollution damage resulting from the spillage.

T.O.V.A.L.O.P. and C.R.I.S.T.A.L. are already functioning but the need for such schemes may be lessened when the I.M.C.O. (Inter-governmental Maritime Consultative Organisation) Convention comes fully into force.

* * * IFA NEWS * * *

Special Seminar on International Investment and Taxation of International Income Flows

On May 12, 1972 the Canadian Branch of the International Fiscal Association organized a seminar on international investment and the taxation of international income flows. The texts of the seminar papers were published in a booklet (70 pages, publishing house Richard de Boo Limited, Toronto, Canada).

The following subjects were discussed.

1. Canada as a centre of multi-national operations by H. Arnold Sherman and James S. Peterson.
2. Canadian investment abroad by Sidney I. Roberts.
3. Canadian investment abroad under the 1971 tax reforms by John Lees.
4. International investment and taxation of international income flows by C. A. Poissant.
5. DISC - an overview by R. M. Hammer.
6. Withholding taxes by Neil F. Phillips.
7. Foreign investment in Canada by Heward Stikeman.
8. Taxpayers coming and going — the tax costs to leave Canada by R. D. Brown.

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Fiscal Documentation no. B 7156

LES SOCIETES DE PERSONNES A RESPONSABILITE LIMITEE,

by A. Tschoffen. Commentaire de la loi du 9 juillet 1935, suivi de formules d'actes. (With coop. of E. Moreau de Melen pref. by L. Metzler). Published by Emile Bruylant, rue de la Régence 67, Bruxelles, 1973. 313 pp.
Fifth edition of a work containing the annotated text of the legislation concerning the entity société de personnes à responsabilité limitée. Examples of documents of establishment, etc. of the entity concerned are appended.
Library International Bureau of
Fiscal Documentation no. B 7159

MANUEL DES SOCIETES ANONYMES SUIVI DE FORMULES D'ACTES EN FRANÇAIS ET EN NEERLANDAIS ET DES TEXTES LEGAUX,

by A. Grégoire. Published by Etablissements Emile Bruylant SA, rue de la Régence 67, 1000 Bruxelles, Belgium, 1973, 2nd. ed. 542 pp.
Handbook dealing with the legal aspects of the entity société anonyme. Appended is the relevant text of the legislation pertaining thereto as well as the text in French and Netherlands of documented examples concerning the establishment, mergers, reorganisations etc. of the corporation.
Library International Bureau of
Fiscal Documentation no. B 7158

BRAZIL

DIREITO TRIBUTARIO,

by H. Tilbery and I. G. da Silva Martins. Published by José Bushatsky, Editor, Rua Riachuelo, 195, São Paulo, 1972. 116 pp.
A collection of essays on matters related to Brazilian tax legislation, including a study by Dr. H. Tilbery on the merits of the annual inventory of property by individual taxpayers, a system which according to the author's opinion has proved its value in Brazil for the purpose of checking income tax returns; with two discussions by Prof. I. G. da Silva Martins, the first one examining the question up to which extent the legal successor of a business firm may be held responsible for the fiscal debts originated prior to the take-over, the second one on the problem if the winding-up of a holding company represents simply a restitution of capital or if it constitutes a taxable distribution of profits, being the latter the opinion of the local tax authorities, which the author does accept.
Library International Bureau of
Fiscal Documentation no. B 15.290

IMPOSTO SOBRE PRODUTOS INDUSTRIALIZADOS,

by A. Zurita Leao and G. Ferreira Lima. Published by José Bushatsky, Rua Riachuelo, 195, São Paulo, Brazil, 1973. 604 pp.
This book contains an up-to-date summary of the text of laws and recent regulations relating to the Brazilian "Tax on Manufactured Products" (Imposto sobre Produtos Industrializados), which is a Federal Tax on Value Added, including explanatory notes.
Library International Bureau of
Fiscal Documentation no. B 15.292

CANADA

LES AFFAIRES AU CANADA,

Un guide pour la constitution des sociétés et les impôts au Canada. Published by Canadian Im-

perial Bank of Commerce, Marketing Division, Head Office, 25 King Street, Toronto 1, Ontario, Canada. 66 pp.
Information guide for establishing a business and its taxation in Canada. English and Italian version of the same are available.

Library International Bureau of
Fiscal Documentation no. B 7183

THE NEW PROVINCIAL SUCCESSION DUTY SYSTEM: AN EXAMINATION OF THE SUCCESSION DUTY ACTS OF THE ATLANTIC PROVINCES, MANITOBA AND SASKATCHEWAN,

by W. D. Goodman. Canadia Tax Papers No. 56. Published by Canadian Tax Foundation, 100 University Avenue, Toronto, Ontario M5J 1V6, Canada, 1972. 49 pp.
Study of the events leading up to the enactment of the provincial succession duty acts and the major provisions thereto explained and analysed.

Library International Bureau of
Fiscal Documentation no. B 6975

COLOMBIA, ECUADOR, PERU, BOLIVIA, CHILE, VENEZUELA

REGIMEN DEL MERCADO ANDINE,

by J. Gomez Vanegas. Published by Legislación Económica Ltda., Apartado 6354, Caracas, Venezuela.
Loose-leaf in two volumes being a monograph attempting to illustrate the institutional aspects of the Andean group member countries.

Library International Bureau of
Fiscal Documentation no. B 15.293

DENMARK

INDKOMSTSKATTEN,

by R. Koch-Nielsen. Published by Berlingske Forlag AS, Pilestraede 52, 1112 København V, Denmark, 1970. 277 pp.
Introductory monograph designed to provide information on basic principles governing income taxation under Danish tax law.

Library International Bureau of
Fiscal Documentation no. B 7107

EEC

DIRECTE BELASTINGEN EN DE E.E.G.,

by J. H. Christiaanse. Published by Federatie voor de Nederlandse Export, Bezuidenhoutseweg 76a, Den Haag, 1970. 13 pp.
Lecture on direct taxes in the EEC, held before a conference convened by the Fenedex (Federation for Netherlands Export) on April 14, 1970 in Rotterdam.

Library International Bureau of
Fiscal Documentation no. B 7190

EEC/GERMANY

DIE HARMONISIERUNG DER KÖRPERSCHAFTSTEUER IN DER EEG UND DIE PLÄNE FÜR DIE KÖRPERSCHAFTSTEUERREFORM IN DER BUNDESREPUBLIK DEUTSCHLAND.

Memorandum. Deutsch-niederländische Handelskammer. 1972. Published by Raad van Nederlandse Werkgeversverbonden, P.O. Box 2110, Den Haag. 18 pp.
Memorandum of the Tax Committee of the German-Netherlands Commercial Chamber of December 4, 1972, on harmonization of the corporate income tax in the European Economic Community.

Library International Bureau of
Fiscal Documentation no. B 7191

EL SALVADOR

MEMORIA CORRESPONDIENTE AL EJERCICIO ANUAL 1971. XXVIII.

Published by Banco Central de Reserva de El Salvador, San Salvador, 7a Avenida Norte, 1972. 10 + 86 pp.
1971 annual book of the El Salvador Control Bank.

Library International Bureau of
Fiscal Documentation no. B 15.294

FRANCE

FRENCH-ENGLISH GLOSSARY OF FRENCH LEGAL TERMS IN EUROPEAN TREATIES.

Prepared by R. J. B. Anderson and R. J. Deckers. European Glossary of Legal and administrative Terminology, Vol. 12. Published by Sweet and Maxwell Ltd., 11 New Fetter Lane, London EC4P 4EE, 1972. 64 pp.

French legal and administrative terms explained in English.

Library International Bureau of
Fiscal Documentation no. B 7184

HWWA-STUDIEN ZUR EXPORTFÖRDERUNG. FRANKREICH,

by D. Stentzel. Published by Verlag Weltarchiv GmbH, 2000 Hamburg 36, Neuer Jungfernstieg 21, Germany, 1972. 159 pp.
This monograph in the study publication series concerning the measures to promote export, deals with the French case.

Library International Bureau of
Fiscal Documentation no. B 7079

GERMANY

DER WIRTSCHAFTSPRÜFER UND SEINE PFLICHTPRÜFUNGSMANDATE,

by L. Schruff. Eine Marktstrukturuntersuchung. Published by IdW-Verlag GmbH, Postfach 10226, 4000 Düsseldorf 30. Deutschland, 1973. 249 pp.
Study on marketing in the field of accounting services.

Library International Bureau of
Fiscal Documentation no. B 6980

EINKOMMENSTEUERGESETZ.

Band III, by W. Blümich, L. Falk, W. Steinbring and A. Uelner. 10th edition. Published by Verlag Franz Vahlen, 8 München 40, Wilhelmstr. 9, 1973. 333 pp.
Third volume of a work on income tax, containing the texts of relevant laws and an appendix.

Library International Bureau of
Fiscal Documentation no. B 7182

GRUND- UND BODEN-POLITIK UND STEUERN,

by M. Troll. Steuerrecht und Steuerpolitik, Heft 12. Published by Verlagsgesellschaft Recht und Wirtschaft mbH, 6900 Heidelberg, Häusserstrasse 14, Germany, 1972. 204 pp.
Publication providing information on the present and future trends in the taxation of real property.

Library International Bureau of
Fiscal Documentation no. B 7009

INVESTITIONSZULAGEN,

by H. Richter. Berlin-förderungsgesetz. Investitionszulagengesetz. Published by Verlag Neue Wirtschafts-Briefe, 469 Herne, Postfach 620, Germany, 1973. 258 pp.
Explanatory monograph on tax credits for investment and incentives in connection with the Berlin Aid Law, development areas or a limited range of fixed assets.

Library International Bureau of
Fiscal Documentation no. B 7187

KOMMENTAR ZUM AUSSENSTEUERGESETZ,

by H. Flick, F. Wassermeyer and H. Becker. Published by Otto Schmidt, Cologne, 1973. 14 + 390 pp.
Loose-leaf explaining the new Foreign Tax Law which affects the income taxation of Germans engaged in activities abroad as well as foreigners engaged in activities in Germany. The first delivery comments in length on sections 1 to 8 of the relevant law (e.g. allocation of income between members of a controlled group; citizens leaving Germany). Two additional supplements will complete this guide designed to provide information with respect to an unexplored area of German international tax law.

Library International Bureau of
Fiscal Documentation no. B 7234

STEUERRECHT. I,

by H. W. Kruse. Allgemeiner Teil. Ein Studienbuch. 3rd edition. Published by Verlag C. H. Beck. 8 München 23, Wilhelmstrasse 9, Germany, 1973. 20 + 396 pp.
The general part of a series entitled "Tax Law" deals with the principles governing tax law in Germany from interpretation to administration procedure etc.

Library International Bureau of
Fiscal Documentation no. B 7003

WER IST SOZIALVERSICHERUNGSPFLICHTIG?,

by R. Altmann and W. Mayer. Bücherei Betrieb + Personal. Band 5. Published by Wilhelm Stollfuss Verlag, 53 Bonn, Dechenstrasse 7-11, Germany, 1973. 132 pp.
Guide designed to explain with examples, the persons who are required to contribute social security payments. Text of the relevant laws thereto is appended.

Library International Bureau of
Fiscal Documentation no. B 7098

ZWEIGNIEDERLASSUNGEN ODER TOCHTERGESELLSCHAFTEN BEIM VERTRIEB IN DER BUNDESREPUBLIK DEUTSCHLAND.

Zaken doen met West-Duitsland, by L. Kulmsee. Published by Federatie voor de Nederlandse ex-

port, Bezuidenhoutseweg 76a, Den Haag, 1972. 22 pp.
The author considers the taxation aspects of a branch or a subsidiary in Germany.

Library International Bureau of
Fiscal Documentation no. B 6871

GERMANY/ DEVELOPING COUNTRIES

DIREKTINVESTITIONEN UND EXPORT,

by I. V. Jacobi. Deutsche Produktions- und Beteiligungsgesellschaften in Entwicklungsländern. Veröffentlichungen der HWWA - Institut für Wirtschaftsforschung. Published by Verlag Weltarchiv GmbH, 2000 Hamburg 36, Neuer Jungfernstieg 21, Germany, 1972. 213 pp.
Study on the relation between German investment (foreign production) in and export to developing countries.

Library International Bureau of
Fiscal Documentation no. B 6979

GERMANY/SWITZERLAND

AUSSENSTEUERGESETZ. KOMMENTAR,

by W. Wöhrle. Published by Schägger, 7000 Stuttgart 1, Hackländerstrasse 33, Germany, 1973. 278 pp.
Loose-leaf publication as an explanatory monograph concerning the new Foreign Tax Law in connection with the new double taxation treaty between Germany and Switzerland. The text of the relevant legislation is appended as well as a list of literature on the subject.

Library International Bureau of
Fiscal Documentation no. B 7189

GUATEMALA/ CENTRAL AMERICA

ANTEPROYECTO DE REGLAMENTO SOBRE IMPUESTOS SELECTIVOS AL CONSUMO Y GENERALES SOBRE VENTAS. SIECA/72/V-6/4.

Published by SIECA, Guatemala, 1972. 53 pp.
Law project for a common consumption and sales tax for the Central American Common Market.

Library International Bureau of
Fiscal Documentation no. B 15.271

GUATEMALA

ESTUDIO ECONOMICO Y MEMORIA DE LABORES ANO 1971.

Published by Banco de Guatemala, 7a. avenida 22-01, zona 1, ciudad de Guatemala, 1972. 34 + 276 pp.
Economic study and yearbook of the Bank of Guatemala.

Library International Bureau of
Fiscal Documentation no. B 15.295

INDONESIA

STATE TRADING CORPORATIONS IN DEVELOPING COUNTRIES - WITH SPECIAL REFERENCE TO INDONESIA AND SELECTED ASIAN COUNTRIES,

by J. Panglaykim and I. Palmer. Published by Academic Book Services Holland, P.O. Box 66, Groningen, the Netherlands, 1969. 199 pp.
Monograph illustrating and discussing the experience of the Indonesian state trading corporations since their inception in 1959.

Library International Bureau of
Fiscal Documentation no. B 7177

INTERNATIONAL

INCOME TAXES OUTSIDE THE UNITED KINGDOM 1971.

Compiled by the direction of the Board of Inland Revenue. Published by Her Majesty's Stationery Office, London, 1973. 8 vols.
Series containing summaries of the taxes on income which were in force as of December 31, 1971, in all the Commonwealth countries; in countries with which the United Kingdom has a comprehensive double taxation agreement, and in Spain. Administrative arrangements for assessment and collection of taxes are omitted.

Library International Bureau of
Fiscal Documentation no. B 6228

TAX TREATIES BETWEEN DEVELOPED AND DEVELOPING COUNTRIES.

Third report. Published by United Nations, Department of Economic and Social Affairs, New York, 1972. 4 + 147 pp.
Publication of a series of studies to assist the Ad Hoc Group of Experts at its third meeting and

the discussions thereto. The topics are such matters as the taxation of shipping profits, royalties, international income tax evasion, methods of elimination of double taxation and exchange of information.

Library International Bureau of
Fiscal Documentation no. B 6785

ZERO-BASE BUDGETING. A PRACTICAL MANAGEMENT TOOL FOR EVALUATING EXPENSES,

by P. A. Pyhrr. Wiley Series on systems and controls for financial management. Published by John Wiley & Sons, Baffins Lane, Chichester, Sussex, 1973. 18 + 231 pp.
Significant features of Zero-Base Budgeting as a new planning and budgeting technique explained.

Library International Bureau of
Fiscal Documentation no. B 7001

INTERNATIONAL/SPAIN

HACIENDA PUBLICA. ACTIVIDAD FINANCIERA, PRESUPUESTO Y GASTO PUBLICO,

by N. Amoros and M. Marin. Published by Editorial de Derecho Financiero, General Mola, 15, Madrid, 1973. 184 pp.
Scientific treatise on public finance.

Library International Bureau of
Fiscal Documentation no. B 7105

ISRAEL

TAXES AND PEOPLE IN ISRAEL,

by H. C. Wilkenfeld. Published by Harvard University Press, 79 Garden Street, Cambridge, Mass. 02138, U.S.A., 1973. 307 pp.
This book is a case study of how the Israelian tax system has developed.

Library International Bureau of
Fiscal Documentation no. B 7106

THE RESEARCH FOR BETTER SOLUTIONS.

Published by Institute of Certified Public Accountants in Israel, P.O. Box 29281, Tel-Aviv, Israel, 1971. 304 pp.
Proceedings of the Jerusalem Conference on Accountancy 1971, 25th-27th October, edited by E. Aharon.

Library International Bureau of
Fiscal Documentation no. B 7078

JAPAN

GUIDE TO THE CORPORATION TAX OF JAPAN 1972-73,

by T. Kobayashi and S. Ikeda. Published by Pacific Management Consultants Inc., Kyodo Bldg. 5-5, Uchikanda 2 chome, Chiyoda-ku, Tokyo, ca. 1972. 18 + 549 pp.
Guide designed to explain the corporation tax of Japan to aliens illustrated by examples and reference to the particular law sections.

Library International Bureau of
Fiscal Documentation no. B 7069

GUIDE TO THE INCOME TAX OF JAPAN 1972-73,

by T. Kobayashi and S. Ikeda. Published by Pacific Management Consultants Inc., Kyodo Bldg., 5-5, Uchikanda 2 chome, Chiyoda-ku, Tokyo, ca. 1972. 6 + 268 pp.
Guide designed to explain the individual income tax of Japan to aliens illustrated by examples and reference to the particular law sections.

Library International Bureau of
Fiscal Documentation no. B 7070

MALAYSIA

ALL ABOUT INVESTMENT INCENTIVES.

Published by Federal Industrial Development Authority, P.O. Box 618, Kuala Lumpur. 15 pp.
Brochure surveying Malaysia's investment incentives in the field of taxation. The following brochures provide other information relevant in connection to private investments: FIDA's registry of potential investors, incorporating a manufacturing company, banks and exchange control regulations, labor and wage rates, power, water and telephone rates for industry.

Library International Bureau of
Fiscal Documentation no. B 7145

INCORPORATING A MANUFACTURING COMPANY.

Published by Federal Industrial Development Authority, P.O. Box 618, Kuala Lumpur. 8 pp.

Library International Bureau of
Fiscal Documentation no. B 7148

NETHERLANDS

ADVIES OVER HET WETSONTWERP BEGELEIDING VAN SPAARLOON OP HET TERREIN VAN DE BELASTING EN PREMIEHEFFING.

Uitgave van de Sociaal-Economische Raad, No. 13, 1972. Published by Sociaal Economische Raad, Den Haag, 1972. 29 pp.
Advice by the Social Economic Council to the competent authorities with respect to the Bill to promote saving from wages through special measures in the field of tax and social security payments.

Library International Bureau of
Fiscal Documentation no. B 7110

DE RAAD VAN COMMISSARISSEN „NAAR BEHOREN" SAMENGESTELD. WAT HOUDT DAT IN?,

by H. Luijk. Published by Nederlands Centrum van Directeuren, 1973. 64 pp.
The new legal position of the Board of Directors of a company and related matters therewith considered.

Library International Bureau of
Fiscal Documentation no. B 7192

GERUISLOZE OMZETTING (INBRENG VAN EEN VOOR EIGEN REKENING GEDREVEN ONDERNEMING IN EEN NAAMLOZE VENNOOTSCHAP OF BESLOTEN VENNOOTSCHAP MET BEPERKTE AANSPRAKELIJKHEID ZONDER BELASTINGHEFFING OVER DE RESERVES),

by Th. S. IJsselmuiden. Published by FED, Polstraat 10, Deventer, 1973. 2nd edition. 64 pp.
A monograph dealing with the tax free transformation of a private business into a company.

Library International Bureau of
Fiscal Documentation no. B 7178

KLUWERS BELASTINGSCHIJF 1973 VOOR BELASTBARE JAARINKOMENS TOT *f* 80.000,

by J. Hartog and W. J. Keller. Published by Kluwer, Polstraat 10, Deventer, 1973. 4 pp.
Cardboard disc on which one can dial to find quickly the payable amount of individual income tax in 1973 for all taxpayers, having an income up to Hfl. 80.000.

Library International Bureau of
Fiscal Documentation no. B 7087

NOUVEAU CODE CIVIL NEERLANDAIS.

Livre I, by L. F. Ganshof and C. Petit. Droit des personnes et de la famille. Published by Kluwer, Polstraat 10, Deventer, Netherlands, 197. 123 pp.
Unofficial translation in French of the new civil code of the Netherlands; Book I concerns personal law and family law as of June 30, 1972.

Library International Bureau of
Fiscal Documentation no. B 7157

RAPPORT VAN DE COMMISSIE VENNOOTSCHAPSRECHT INZAKE HET VOORSTEL VOOR EEN DERDE RICHTLIJN VAN DE RAAD VAN DE EUROPESE GEMEENSCHAPPEN INZAKE FUSIES VAN NAAMLOZE VENNOOTSCHAPPEN.

(Voorz. W. C. L. van der Grinten). Published by Staatsuitgeverij, Christoffel Plantijnstraat, Den Haag, 1971. 18 pp.
Report by the Netherlands Corporation Law Commission expressing their view on the third EEC Directive proposals for mergers and takeovers.

Library International Bureau of
Fiscal Documentation no. B 7139

RECENT LEGISLATION ON COMPANY LAW IN THE NETHERLANDS,

by P. J. P. Verloop, F. H. J. Mijnssen and H. J. Pabbruwe. Published by Algemene Bank Nederland, Amsterdam, 1973. 23 pp.
Booklet dealing with the changes in the Netherlands company law, brought about by 1971 Acts.

Library International Bureau of
Fiscal Documentation no. B 7111

SCHEMATISCH OVERZICHT VAN DE NEDERLANDSE BELASTINGEN.

7de druk, by H. J. Doedens. Published by Kluwer, Polstraat 10, Deventer, 1973. 20 pp.
Seventh edition of scheduled survey of the Netherlands taxes as of January 1, 1973, providing taxpayer taxable base, rates of tax and method of payments.

Library International Bureau of
Fiscal Documentation no. B 7083

THE INFORMATION YOU NEED WHEN PLANNING A BUSINESS IN THE NETHERLANDS.

Published by Algemene Bank Nederland N.V., Business Development Group, Vijzelstraat 32, Amsterdam, Netherlands, 1973. 24 pp.
Booklet containing information for those contemplating a business in the Netherlands.

Library International Bureau of
Fiscal Documentation no. B 7186

NETHERLANDS/EEC

UITVOERING VAN HET GEMEENSCHAPSRECHT OP HET STUK VAN DOUANE EN ACCIJNZEN, BELASTINGHARMONISATIE EN AFGIFTE VAN CERTIFICATEN VAN OORSPRONG,

by H. A. H. Audretsch, P. van Dijk and J. P. G. W. Purnot. Series: De uitvoering van het gemeenschapsrecht in de Nederlandse rechtsorde, part I. Published by H. D. Tjeenk Willink BV, Postbus 58, Groningen, 1972. 8 + 143 pp.
Study of the impact of community law on the Netherlands legislation. The material is approached through three articles in the field of tax harmonization.

Library International Bureau of
Fiscal Documentation no. B 7166

NORWAY

SKATTELOVENE BIND III,

by K. L. Bugge and B. Skreiberg. Published by Sem & Stenersen A.S., Akersbakken 10, Oslo 1, Norway, 1972. 5th edition. 408 pp.
New revised and updated edition of volume III of a series of books containing the text and annotated comment thereto of various special laws connected to the Rural and Urban Tax Laws of 1911 as well as a survey of tax treaties concluded by Norway with Denmark and Sweden.

Library International Bureau of
Fiscal Documentation no. B 7007

SKATTELOV FOR BYENE AV 18. AUGUST 1911 MED TILLEGGS LOVER,

by J. E. Thomle. Ed. by K. L. Bugge and B. Skreiberg. Published by Sem & Stenersen A.S., Akersbakken 10, Oslo 1, Norway, 1972. 856 pp.
Amended text of the Urban Tax Law of 1911 with annotated comment thereto. The material of this 13th edition includes amending laws of December 17, 1971.

Library International Bureau of
Fiscal Documentation no. B 7008

SWITZERLAND

ANNUARIO STATISTICO DEL CANTONE TICINO 1972.

Published by Ufficio cantonale di statistica, Bellinzona (Ticino), Switzerland, 1973. 505 pp.
Annual statistical report for 1972 of the canton Ticino.

Library International Bureau of
Fiscal Documentation no. B 7006

DIE GERECHTE STEUERLAST. PRINZIPIEN DER STEUERVERTEILUNG UNTER STAATSPHILOSOPHISCHEM ASPEKT,

by K. H. Ossenbühl. Sammlung Politeia, Bd. XXVII. Veröffentlichungen des Internationalen Instituts für Sozialwissenschaft und Politik, Freiburg, Schweiz. Published by F. H. Kerle Verlag, Heidelberg, 1972. 184 pp.
Study on justice in taxation in a society in which private income and capital is allowed.

Library International Bureau of
Fiscal Documentation no. B 7170

SWITZERLAND/USA/INTERNATIONAL

BANKING SECRECY IN SWISS AND INTERNATIONAL TAXATION,

by W. Meier. Reprint from the International Lawyer, Vol. 6, No. 1, January 1973. Published by the American Bar Association, 1973. 29 pp.
Study on banking secrecy in Swiss and international taxation with emphasis to US relation.

Library International Bureau of
Fiscal Documentation no. B 7119

THAILAND

ECONOMIC DEVELOPMENT AND POLICIES. CASE STUDY OF THAILAND,

by G. A. Marzouk. Published by Academic Book Services Holland, P.O. Box 66, Groningen, Netherlands, 1972. 471 pp.
This study attempts to illustrate the structural changes that have occurred in the economy of Thailand and the policies that have generated them.

Library International Bureau of
Fiscal Documentation no. B 7176

UNITED KINGDOM

CASES AND MATERIALS IN REVENUE LAW,

by A. J. Easson. Published by Sweet & Maxwell Ltd., 11 New Fetter Lane, London EC4P 4EE,

1973. 30 + 544 pp.
Textbook in which, through collection of cases, the basic principles governing the nature of problems which the tax system attempts to solve as well as the basic philosophy upon which the preferred solution is founded is explained.

Library International Bureau of
Fiscal Documentation no. B 7154

SIMON'S TAXES.

Finance Bill 1973, Published by Butterworth & Co., 88 Kingsway, London, England, 1973. 99 pp.
The text of the Bill as first presented to Parliament and published on March 27, 1973, followed by explanatory reproduced.

Library International Bureau of
Fiscal Documentation no. B 7181

IFS CONFERENCE ON PROPOSALS FOR A TAX-CREDIT SYSTEM,

Publication No. 5. Published by Institute for Fiscal Studies, 1 Bell Yard, London WC2A 2JX, 1973. 6 + 85 pp.
Compilation of papers and discussion of the conference on the Tax Credit Scheme (negative income tax) held on December 18, 1972 in connection to the Green Paper thereto.

Library International Bureau of
Fiscal Documentation no. B 7137

LAW & PRACTICE OF SOCIAL SECURITY,

by A. Harding Boulton. Published by Jordan & Sons Ltd., P.O. Box 260, 15 Pembroke, Bristol B. 899 7DX, 1972. 285 pp.
This work aims to present in an easily readable form a picture of social security and welfare law and practice as it exists in the United Kingdom in the year 1972.

Library International Bureau of
Fiscal Documentation no. B 7109

TAXATION MANUAL. FINANCE ACT 1972 SUPPLEMENT. INCOME TAX AND SURTAX, LAW AND PRACTICE,

by P. F. Hughes and J. M. Cooper. Published by Taxation Publishing Company Ltd., 98 Park Street, London W1Y 4BR, 1972. 10 + 68 pp.

Library International Bureau of
Fiscal Documentation no. B 7061

USA

AMERICAN FEDERAL TAX REPORTS.

Second Series, Volume 30. Published by Prentice Hall, Inc., Englewood Cliffs, N.J. 07632 U.S.A., 1973.
Unabridged federal and state court decisions arising under the federal tax laws and reported in Prentice-Hall Federal Taxes during the second half of 1972.

Library International Bureau of
Fiscal Documentation no. B 7179

ESTATE PLANNING: QUICK REFERENCE OUTLINE,

by W. R. Spinney. 20th edition. Published by Commerce Clearing House, 4025 W. Peterson Ave., Chicago, Ill. 60646, 1973. 136 pp.
Quick reference outline designed as an aid to property owners and their advisors in both income tax and death tax planning with reference to the legislation and court decisions.

Library International Bureau of
Fiscal Documentation no. B 7095

FEDERAL ESTATE AND GIFT TAXES — CODE AND REGULATIONS — AS OF APRIL 1, 1973.

Published by Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Ill. 60646, U.S.A., 1973. 384 pp.
Full texts of the estate and gift tax provisions of the Internal Revenue Code and the corresponding official regulations.

Library International Bureau of
Fiscal Documentation no. B 7188

1973 U.S. EXCISE TAX GUIDE.

Published by Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago 60646, U.S.A., 1973. 456 pp.
Explanation to the excise taxes and all other laws enacted up to date of its publication including references to new regulations, importation rulings and court decisions. Dealth with in this volume is the interest equalization tax extension through June 30, 1974.

Library International Bureau of
Fiscal Documentation no. B 7185

STOCK VALUES AND DIVIDENDS FOR 1973 TAX PURPOSES. MARKETING VALUES, PAR VALUES AND DIVIDENDS OF LISTED OR REGULARLY QUOTED STOCKS FOR 1973 FEDERAL, STATE AND LOCAL TAX PURPOSES.

Published by Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago 60646, U.S.A., 1973. 190 pp.

This book presents stock values and dividends in use in the preparation of state and local personal property tax and federal and state income tax returns.

Library International Bureau of Fiscal Documentation no. B 6939

U.S.A./CANADA

DISC - LATEST DEVELOPMENTS.

Changes in U.K. and Canadian tax law; sec. 482; and foreign exchange. Vol. VII. Published by the International Tax Institute, Inc., 70 Pine Street, New York, N.Y. 10005, U.S.A., 1973. 182 pp. + appendix.
Compilation of papers of 1972 Public Technical Meetings of International Tax Institute on DISC and changes in English and Canadian Tax Law and other current tax problems.

Library International Bureau of Fiscal Documentation no. B 7100

U.S.S.R.

DIE ORGANISATIONSSTRUKTUR DER SOWJETISCHEN AUSSENWIRTSCHAFT,

by H. Clement. Veröffentlichungen des HWWA-Institut für Wissenschaftsforschung. Published by Verlag Weltarchiv, Neuer Jungfernstieg 21, 2000 Hamburg 36, 1973. 223 pp.
Monograph study on the structure of the organization of the foreign trade of Soviet Russia.

Library International Bureau of Fiscal Documentation no. B 7157

VENEZUELA

INFORME ECONOMICO CORRESPONDIENTE AL ANO 1971.

Published by Banco Central de Venezuela, Esquinaade las Carmelitas, Caracas, ca. 1972. ± 500 pp.
Economic report of the Central Bank of Venezuela for the year 1971.

Library International Bureau of Fiscal Documentation no. B 15.276

LOOSE-LEAF SERVICES

Releases from May 1 - May 31

AUSTRIA

KOMMENTAR ZUM GRUNDERWERBSTEUERGESETZ,

release 4
Wirtschaftsverlag Dr. Anton Orac, Wien

KOMMENTAR ZUM ZOLLGESETZ 1955,

release 8
Wirtschaftsverlag Dr. Anton Orac, Wien

DIE ÖSTERREICHISCHEN ABGABENGESETZE. TEXTAUSGABE,

releases 7-12
Wirtschaftsverlag Dr. Anton Orac, Wien

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LAWRENCE F. HEYDING *:

CORPORATE REORGANIZATIONS ("ROLLOVERS") IN CANADA**

The Canadian government has not, to my knowledge, altered its previously expressed intent to negotiate revisions to all of its international tax treaties so that Canada will be free to tax non-residents on certain capital gains and on certain notional realizations of increments in capital values.

There appears to be a fairly general acceptance of the view that a country in which there is a permanent establishment should have the first chance to tax the taxpayer on capital gains realized on dispositions of capital property that was related to the business of that permanent establishment. The Canadian government's objective reaches beyond that.

There is one observation I would like to make before being forced by time to pass rather lightly over serious questions of principle. Effort must be applied to make given tax systems work and reasonably mesh with one another. However, I believe that a number of the key rationalizations at play in the maintenance and evolution of tax systems are based on erroneous premises and unsound working assumptions. Innumerable myths are used as lances and others as shields in the rationalizations developed to support new taxes here or to restrain imposition there. I think we should all be alarmed by the multiplying power that we grant to these myths — by our failure to tear their masks away at every practical opportunity. There are a variety of vested interests in each rationalization — and a reluctance to let go of what has been found useful or even just tolerable. However, the underlying myths are seriously distorting economic judgment. They are also adding to the flames of narrow-minded nationalism. The balance of myths now weigh heavily against what is referred to as free enterprise. In my view, it is long past the stage where business is justified in thinking it can cope with certain unsound assumptions and, with respect, I think we are also past the point where government administrators can confine the influence of the myths to accomplishment of good for society.

In keeping with this admonition, I feel constrained to seriously make another stab at a mask — albeit not one of the most serious. The combination of a capital gains tax and continued inflation is, to that extent, not a tax on gains — it is a tax out of capital. There is a good argument that where a host country has allowed or suffered a material decrease in the purchasing power of its monetary unit of measure, it should not have the right to levy a tax on a resulting mythical gain. I know there are a number of suggested answers to this, including one that inflation is and will continue to be a general phenomenon throughout the world and there will be a rough balancing out — another, that inflation will surely be brought under control and will no longer have to be recognized as a

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** Paper submitted on February 2, 1973 in New York City at the Conference of the International Fiscal Association on the Canadian-USA tax treaty.

factor. That is to be hoped for. It seems to me it is more likely to nearly happen if we stop ignoring the effects of changing money values on measurements of so-called gains. I suggest that adjustments of capital gains to allow for the intervening fluctuation in the value of the currency should be seriously sought.

CAPITAL GAINS AND NON-RESIDENTS

The Canadian government bases its tax on the assumption that there should be primary taxation of capital gains in the country in which the capital assets *exist* (I am differentiating here from normal situs). Subject to any overriding treaty, the law applies capital gains tax to non-residents on transfers of real property existing in Canada (or an interest therein) whether it has any connection with any business or not. It applies the gains tax also to the following (that are directly relevant to corporate reorganizations):

- all shares of the capital stock of corporations created or resident in Canada except for the limitation that applies to the shares of a corporation that is, in Canada, a public corporation;
- where they are shares of capital stock of a corporation that is, in Canada, a public corporation, a transfer by a non-resident is brought under tax only if the transfer is of a block of shares that represents 25% or more of the class of the capital stock involved — or is a smaller transfer out of what was a 25% block. The block would be determined by reference to the holdings of the transferor and also to the holdings of all persons with whom the transferor did not deal at arm's length, and ultimately to the holdings at any time during the 5 years preceding the disposition (but without reference to any time prior to calendar year 1972). If the Canadian government has its avowed wish, the treaties would remove any present obstacles in that course;
- the foregoing, of course, are in addition to the taxation of gains or notional gains on transfers of capital property that had been used in carrying on business in Canada;
- but, further, where more than 50% of a partnership's property had been in Canadian assets (as defined), a non-resident who transfers an interest in that partnership is brought into tax on any capital gain or notional gain on that transfer;
- there are other assets existing in Canada brought under charge (apart from those related to foreign affiliates).

Scope of recognition of gains is wide. Money or the fair market value of what is received is generally recognized where there is a "disposition" — and that is widely defined. It includes e.g. redemption or cancellation of a share. Also important to the realm of corporate reorganizations is the far-reaching Canadian general tax provision that all transfers of property of a corporation to shareholders or to persons or entities not at arm's length

- give rise to deemed income or capital realization at least as great as the fair market value;
- cannot give the transferee a deductible cost or cost base greater than fair market value.

There are few exceptions. The avenue for tax-free rollovers is as a narrow tortuous chasm compared to an eight-lane highway for non-recognition of gains and losses for U.S. tax purposes. Not only is the chasm unaccommodating: the statutory provisions

determining what gives rise to a deemed realization of then fair market value reach far beyond what really constitutes economic realization.

It is to be recognized that the Minister of Finance who sponsored the tax reform did announce that the very narrow basis for tax-free rollovers of capital assets would be expanded after the administration becomes more familiar with the problems and the risks of the tax collector. Be that as it may, tax administrators in Canada have never been eager to give up any established provision that might prove useful to them. It seems to me that we must grapple with the thrust of the tax law as it now stands. It may be with us for a long time.

The new Canadian tax law has been greatly influenced by the contention that "delay" in the taxation of gains in the value of capital assets is an inequity — that the tax on increments should be levied as soon as the opportunity presents itself — and therefore tax-free rollovers are a concession to be grudgingly afforded.

In the realistic sense, there is a double tax when, due to a difference in timing, a tax paid in the host country is not the subject of a tax credit in the home country until many years later. This is in addition to the fact that an interim notional realization of a gain might prove to have flown in the face of an ultimate reality of a loss on the property.

The present Canada-U.S. Reciprocal Tax Convention is silent as to timing and, at least on the Canadian side of the border, the administration has been singularly unsympathetic to the position of taxpayers inequitably hurt by this fact. There appears to be a strong argument that Canada's new foreign tax credit carry-over provisions do not embrace foreign taxes on dispositions of capital property. I think there is a counter position that might well be taken, particularly with respect to dispositions of depreciable property, goodwill and resource property. (Actually, the latter two are excluded from the definition of "capital property".) [S. 126 (2) & (7) (a); S. 9 (3); S. 39 (1) (a)] As I understand it, the going interpretation in Canada of Article XV of the Tax Convention renders it virtually meaningless.

While we here are concerned primarily with treaty negotiations, we must bear in mind that some U.S. residents and enterprises are already exposed to Canadian capital gains tax due to the existence of a permanent establishment in that country. (Article VIII then being inoperative). The quantum of the gain recognized will be limited by the effect of the December 22nd or 31st 1971 values, but that rule does not apply to goodwill or to resource property. As to these two, the portion of actual or deemed proceeds that would come under tax automatically increases each year. As to other true capital property, some of the protection of the valuation day value may be sacrified if we negotiate that narrow chasm I alluded to. In any event, inflation continues to work its toll.

The main problem areas in corporate reorganizations appear to be

- notional gains
- differences in the timing of recognition of gains and losses on capital property — including goodwill and resource properties
- the effects of variable currency exchange rates and currency revaluations
- Canada's taxation of designated surpluses
- extremely narrow foreign tax credit carry-over provisions in Canada.

Even where the timing of a gain or loss is

the same on both sides of the border, there may be significant difference. Canada's capital gain and loss computations are based on a moving average cost, not a first-in first-out basis. The sole exception is that the FIFO method is applied to a separation between pre-1972 acquisition and all others.

I will comment briefly on the apparent Canadian tax treatment of various reorganizing transactions that might be accorded non-recognition for U.S. tax purposes.

TRANSFERS OF PROPERTY TO A NEW CORPORATION OR SUBSIDIARY

Transfers to a Canadian or quasi-Canadian corporation can be brought under Canada's alleviating rollover provisions, but only if (*immediately after* the transfer) the (*singular*) transferor taxpayer (e.g. individual, corporation or, in this case, a partnership [S. 85]) owns at least 80% of *each* class of the issued shares of the transferee corporation. Shares need not be the only consideration received by the transferor.

In most cases, a partnership is not likely to help a non-resident unless the assets and business are already therein and the partnership is wound up within 60 days of the transfer of the assets and business to the corporation.

Where the qualifications are met, the parties can *elect any* amount (within certain ranges) to be deemed to be the value (for tax purposes) at which *capital* property and *goodwill* were transferred to the corporation. In this way, there can be avoided direct recapture of capital cost allowances on depreciable property and taxable gains on goodwill. But here the differences in treatments multiply. Cash or property (excluding the transferee's shares) received by the taxpayer are not taken into gains or income in Canada except to the extent that the value received *excluding the shares* exceeds the adjusted cost basis of the property transferred to the corporation. In other words, the non-share property received is not taken off the top and immediately recognized as part of a gain.

The amount elected to be deemed the proceeds of disposition of property transferred to the subsidiary cannot exceed fair market value of that property, nor can the elected amounts aggregate less than the fair market value of any cash or property (other than shares) received by the taxpayer from the transferee corporation. If the aggregate fair market value of what the taxpayer transfers down to the corporation is less than the fair market value of what he receives from the corporation (other than shares) — his cost base in the property received is reduced accordingly (in such a situation, there probably would be other tax problems that must be passed over now). There are provisions intended to safeguard the tax collector from claims for terminal losses on depreciables.

The deemed cost of the shares received by the transferor is, of course, equal to the balancing figure.

Thus, both the capital assets in the subsidiary and the shares held by the parent might be carried for tax purposes at less than fair market value. Subsequent disposition of the shares by the parent would give rise to a greater taxable gain (or lesser loss) and (nonetheless) a subsequent disposition of any of the capital property in the corporation also would probably give rise to a higher tax.

EXCHANGE OF STOCK OR SECURITIES IN A CORPORATION

— *for stock or securities in that corpora-*

tion: There is a tax-free rollover for Canadian purposes *only*

- as to shares received as a result of exercise of a right of conversion existing in the surrendered shares or security [S. 51 - amendment forecast]
- in a statutory amalgamation meeting certain tests
- under a seemingly very narrow provision dealing with "disposition" of a share of a corporation and acquisition of the share by that corporation "in the course of reorganization of the capital" thereof — in exchange for shares or other consideration [S. 86; S. 54 (c)]

– *for stock or securities in another corporation:* This is a tax-free rollover for Canadian purposes *only*

- again, as permitted in a statutory amalgamation [which is not really "another" corporation but rather an expanded corporation] or
- by transfer of the stock or securities down to the 80% subsidiary as already outlined.

There is no provision for a tax-free rollover or "non-recognition" of gains or losses where, for example, the transferor company A that received the shares of the transferee corporation B then distributes the shares of B to A's numerous shareholders in exchange for their shares in A — whether as part of a plan of reorganization or otherwise.

If A and B are Canadian corporations, A would have to recognize any gain based on the full fair market value of the shares in B. A U.S. shareholder would suffer a 15% withholding tax (or something analogous to that) on a deemed dividend equal to the excess of the fair market value of B's shares over the par or paid-up capital of the A shares surrendered. Hopefully, his cost basis in B's shares would equal their fair market value at the time of receipt. I say hopefully, since as I presently read them, the provisions leave something to be desired.

Let's look for a moment at the other side: the shareholder in Canada. If A and B were U.S.A. corporations going through what is a reorganization for U.S. tax purposes, a Canadian shareholder would have (as I understand it) no gain or loss for U.S. tax purposes. I believe he would have a gain for Canadian tax purposes. If later he disposes of B's shares, he would have a low cost base for U.S. tax purposes and a high cost base for Canadian tax purposes — and probably no foreign tax carry-forward.

The results of a *split-up* would be along the same lines.

A *spin-off* without reduction of the paid-up capital of A probably would, I think, constitute a dividend for Canadian tax purposes whether or not a part of a reorganization.

The Canadian tax treatment of a shareholder who receives from a U.S.A. corporation in a reorganization a *split-off* of the shares of a subsidiary is not at all clear to me at this point. It may be that the fair market value of the shares of the once subsidiary B might be treated as proceeds of disposition of a part of the shares of the once parent A — with gains recognized and the cost base in the B shares being equal to their initial fair market value.

STATUTORY AMALGAMATIONS

Where appropriate, Canada's tax provisions dealing with "amalgamations" provide tax-free rollovers that under accommodating facts are the least murky and anoma-

lous of all.

The income tax acts specifically define "amalgamation" to be a merger of two or more Canadian (or quasi-Canadian) corporations *otherwise than by* a purchase of property of one by the other or by distribution of property upon winding-up of one into the other. The definition requires that the merger result in all of the property and all of the liabilities of the merging corporations becoming property and liabilities respectively of the continuing corporation. Further, all shareholders of the merging corporations must be shareholders of the continuing corporation — except of course for a merging corporation that had been a shareholder in another merging corporation.

Canadian corporate procedure does provide for a statutory amalgamation of two or more corporations that, as though tributaries of a river, flow together and continue as one. It is contended that none of the corporations go out of existence. Generally speaking, statutory amalgamations have been considered to be feasible only between corporations created under the same jurisdiction. This presents a decided limitation to the use of this form of reorganization, since there are eleven incorporating jurisdictions in Canada.

The tax acts start out by specifically deeming the merging companies to have ended their "last" taxation year just before the amalgamation (referring to these as "predecessors") and by deeming a "new" corporation to have come into being. They then set forth lengthy provisions designed to provide a flow-through of the tax position of the "predecessor" corporations — but with certain exceptions:

- loss carry-overs are forefeited
- sources of utilization of unamortized exploration and development expenditures become more confined.

However, there can be more tax cost than that. A surplus in a predecessor that had been "designated" vis-à-vis another predecessor corporation is taxed at 25% — except to the extent it could be and had been converted to Tax Paid Undistributed Surplus by payment of the special 15% tax prior to the amalgamation.

"Designated surpluses" vis-à-vis corporations remaining outside the amalgamation remain "designated" within the amalgamated company. A vertical amalgamation might also give rise to a notional post-1971 undistributed income on hand vulnerable to a new designation on a change of control.

There is a trap here that could be serious. Specific provisions are made to preserve within the amalgamated corporation any "designated surplus" not taxed upon amalgamation *but* there is no specific law to carry over the post-acquisition earnings that should be available for payment of dividends without penalty to corporate shareholders, i.e. the designated surplus may rise on top and become the first source of dividends and render these taxable against a "controlling" corporation.

As to the availability of a tax-free rollover in the shareholder's hands, there is a statutory test to apply to his shareholdings in each given predecessor corporation respectively. These tests do not appear to be extremely strict but, of course, must be applied in the facts of each case. Generally, the shareholder is entitled where

- the shareholders of a predecessor receive only shares of the amalgamated corporation *and*
- that is by way of conversion of preferred to substantially the same preferred,
- or, all of the common shareholders of the particular predecessor company (ex-

cluding another predecessor) viewed as one conglomerate group end up with at least the prescribed percentage of each class of the common[1] shares of the amalgamated company. In effect, this percentage is 25% of the percentage that the fair market value of the common shares held in the predecessor corporation by all shareholders other than another predecessor corporation bore to the fair market value of all the common shares outstanding before the amalgamation.

- or the shareholder concerned ends up holding 80% or more of each class of common shares of the amalgamated company.

Another anomaly is that the effects of the capital gains "tax-free zone" do not survive beyond their effect on the adjusted cost base that is carried over to the shares in the amalgamated company. Depending on evolving circumstances, this may work a disadvantage or conceivably an advantage to the shareholder.

REORGANIZATIONS, INTER-CORPORATE DIVIDENDS AND "DESIGNATED SURPLUSES"

Because most reorganizations in Canada involve actual or notional ("deemed") dividends, I should give a partial sketch of the general Canadian tax treatment of dividends.

A corporation resident in Canada still excludes from its taxable income dividends received from a Canadian or quasi-Canadian corporation — or from a corporation resident in Canada and controlled by the recipient or (crudely expressed) by its affiliates [S. 112 (1) & (6) (b)].

There are exceptions:

- a dividend deemed received out of designated surplus is taxed at 25% unless it is out of the "1971 undistributed income on hand" that has been converted to Tax Paid Undistributed Surplus by a 15% elective tax paid by the dividend paying corporation itself
- a special refundable dividend tax is payable on
  - dividends received from non-controlled Canadian or quasi-Canadian corporations
  - dividends from controlled private corporations out of the latter's investment income, where the dividend-paying corporation has received a refund of part of its normal corporate tax paid on such investment income or of its refundable tax paid on dividends received by it.

DESIGNATED SURPLUS

Any contemplated reorganization of a corporation resident in Canada requires detailed attention to the highly complex matters of "designated surplus" and potential designated surplus, "1971 capital surplus" (possibly post-1971 "capital dividend account") and any "refundable dividend tax on hand". The computations of "undistributed income on hand" in a Canadian corporation that affects a number of these matters, are likely to be quite different from the computations of earnings and profits. This is too large a subject for exposition within this paper. Suffice it to point out here that in many Canadian second tier sub-subsidiaries held under a first tier Canadian subsidiary, non-residents have a potential designated surplus problem. This applies even where all the Canadian companies became at their very inception

1. "Common" share means a share the holder of which is not precluded upon the reduction or redemption of the capital stock from participating in the assets of the corporation beyond the amount paid up thereon plus a fixed premium and a defined rate of dividend.

part of the related group of companies. Indeed, this area contains deep pitfalls.

WINDING-UP

Barring the effect of an overriding treaty, the distribution or appropriation of assets on winding-up or reorganization of the business of a corporation resident in Canada will give rise to a chain of tax effects — some of which may be quite sharp. The sole exception is where a Canadian or quasi-Canadian corporation is totally wound-up into a parent Canadian or quasi-Canadian corporation that owned 100% of *all* of the classes of shares outstanding immediately before the winding-up. Even then, designated surplus may present problems.

Except in the liquidation into a 100% parent, the distributing corporation is deemed to have realized fair market value for all of its assets appropriated [S. 69 (4) & (5)]. (A prior *sale* of receivables and *sale* of inventories might roll these over) [S. 23 & 24]. The liquidation would thus result in tax on deemed income, notably on recapture of capital cost allowances, realizations of goodwill and resource properties, and deemed capital gains. A loss value of one capital asset might not be offsettable against gains on the others [S. 40 (2) (e)].

The liquidation would result also in a deemed dividend to shareholders equal to the excess of the current fair market value of assets distributed over the paid-up capital of the shares surrendered — (or in excess of the total paid-up capital limit [2] of the corporation). Such deemed dividend flowing to a non-resident would be subject to the normal withholding tax (except to the extent it is "paid" out of tax paid surplus that the corporation created by the 15% elective tax or out of 1971 capital surplus and except Mutual Fund Corporation capital gain dividends and NRO Investment Corporation capital gain dividends).

The quantum of the deemed dividend is unaffected by the adjusted cost base of the shares to the shareholder. The deemed dividend generally does not reduce the adjusted cost base of the shares unless by election it has been made out of the corporation's tax paid surplus or its 1971 capital surplus. In any event, a "loss" on surrender of the shares might provide no tax benefit for a long time — if ever depending on the availability of other taxable capital gains in Canada.

CANADIAN/QUASI-CANADIAN CORPORATION WOUND UP INTO 100% PARENT THAT IS ALSO A CANADIAN/QUASI-CANADIAN CORPORATION

Treatment here is quite modified. This is by statutory provision with no alternative election. These rules apply where the corporation "has been wound up":

- income and capital gains tax is deferred until, if, as and when the parent disposes of (or is deemed to dispose of) the assets.
- the deemed dividend on wind-up is restricted to the excess of tax carrying value of net assets over the corporation's "paid-up capital limit". But, it is important that for this purpose these carrying values of non-depreciable capital assets owned at December 31, 1971 are affected by the valuation day values.

2. This is another complex tax animal — an extreme oversimplification is this: the paid-up capital available for return to shareholders as capital is reduced (down to the "paid-up capital limit") by any deficiency in the corporation's 1971 assets related to its then paid-up capital *and* its 1971 undistributed income on hand.

- where there is designated surplus, there might conceivably be a technical problem in effectively electing to pay special tax on this deemed dividend (since S. 88 does not repeat S. 84 (7)). Where there is such a problem, it might be avoided by paying a dividend first. If the dividend is in specie or arranged without great care, this exercise could be abortive ("immediately before the winding-up"). [S. 88]

CURRENCY VALUES

The Canadian acts provide that "where, by virtue of any fluctuation after 1971 in value of currencies of countries other than Canada relative to Canadian currency, a taxpayer has made a gain or sustained a loss", that "gain or loss" is to be recognized as a capital gain or loss to the extent that it does not enter into the computation of income from an office, business or property. [S. 39 (2)]

MISCELLANEOUS

Where the specific Canadian tax provisions are about to be involved to rollover inventory or receivables at agreed upon amounts different from fair market values, and one of the parties is a U.S.A. enterprise, it would be well to determine that the tax treatment of the two jurisdictions can be reasonably meshed. [S. 22, 23]

It should be noted here that there are specific Canadian tax provisions dealing with options to dispose and options to acquire that might give rise to tax (at least temporarily) at the time the option is granted. [S. 49]

Settlement of a debt at less than the principal amount is likely to give rise to an adjustment of loss carry-overs and cost bases.

SUGGESTION

It might well be that a taxpayer in his home country should be granted an elective right to accelerate timing of recognition of gains net of losses and to adjust his cost bases accordingly.

Brief mention is made to the special tax voluntarily paid by a Canadian corporation to reduce, defer or eliminate the tax otherwise payable by its shareholders who are resident individuals, or by the shareholders of its parent corporation who are resident individuals. The tax may also operate to reduce the Canadian tax otherwise payable by a non-resident shareholder. Presumably, it should be clear, or made clear, that in the shareholder's home country, this tax may be treated as a tax paid on the shareholder's behalf.

But more important — to me, it is quite clear that every effort must be made to convince the designers of tax laws and makers (including notably those in Canada) that many tax-free rollovers would *not* constitute concessions.

Quite the contrary. They are the alleviations that permit a tax (and in my own view an inherently bad tax) to function without effecting intolerable and needless hindrances to the operation of the economy.

Maybe in international negotiations some of the realities will be more fully perceived — with greater recognition of the undesirability of a capricious tax computed on fictional gains and unrealized gains — quite apart from the compounding effect of double taxation. The obvious compliance, management and professional costs will be less than a tip of the iceberg — the major costs will be in economic opportunities missed, with no offsetting benefit to the members of society.

DR. ERWIN SPIRO:

THE 1973 INCOME TAX CHANGES IN SOUTH AFRICA

I. INTRODUCTION

The aim of the 1973 Budget is, according to Dr. Diederich, the Minister of Finance, who is advised by the Standing Commission of Inquiry into Taxation Policy, to stimulate the growth of the economy without driving up costs and prices, investment rather than consumption receiving priority, at the same time relieving the burden on the underprivileged and the man in the street. Whether the Income Tax Act of 1973 achieves that aim, may be gathered from the main changes which will now be set out.

II. DEFINITION OF GROSS INCOME

1. *Insurance gains*

The Sixth Schedule to the Act, dealing with gains determined in respect of benefits payable under insurance policies as defined, that is broadly speaking life, endowment and sinking fund policies, and gains determined in respect of considerations derived from cessions of such policies, has been considerably amended (which is hardly surprising).

2. *Premiums for use*

Payments, whether of a capital nature or not, made by way of premium or like consideration for the use of films, video tapes or discs for use in connection with television or for the use of sound recordings or advertising matter connected therewith are now included in gross income. The words "property which, in the opinion of the Secretary (for Inland Revenue) is of a similar nature", contained in the provision requiring the inclusion in gross income of payments for their use have been substituted by the words "model, pattern, plan, formula or process or any other property or right of a similar nature". By way of a similar substitution, gross income now includes payments by way of consideration or payments of a like nature, whether of a capital nature or not, for scientific, technical, industrial or commercial knowledge or information, regardless of whether or not the knowledge or information is connected with any property such as a film, patent, etc.

3. *Balances of certain proceeds from disposal of mining assets*

Certain balances of the disposal of mining assets the cost of which qualified as capital expenditure are also included in gross income.

4. *Deemed source of know-how payments*

Royalty payments (as more fully described under 2 above) which relate to the use of films, patents etc. in the Republic and 'know-how' payments (as more fully described under 2 above) are deemed to be derived from sources within the Republic.

III. EXEMPTIONS

1. *Certain treasury bonds*

There is now also an exemption from normal tax in respect of the interest on 6 per cent Treasury Bonds (Conversion Issue) up to a maximum amount of R2 400 *per*

annum in the case of any taxpayer.

2. *Amounts relating to employee training schemes*

There are further exempt 50 per cent of amounts derived by an employer under an employee training scheme established under an industrial council agreement, where the employer has undertaken to train employees in skilled work and the amounts are derived in respect of such training.

3. *Capital element of purchased annuities*

In terms of the new section 10A, the capital element of annuities payable under an annuity contract, as defined, by an insurer to the purchaser of the annuity or to his spouse or surviving spouse in return for a lump sum cash consideration given by the purchaser is exempt from normal tax.

IV. ALLOWABLE DEDUCTIONS

1. *Contributions to pension funds, etc.*

The maximum amount allowed to be deducted from the income in respect of current contributions to a pension fund not established by law or for the benefit of employees of a local authority has been increased to R1 250 *per annum* and in respect of current contributions to a retirement annuity fund to R2 500 *per annum*.

2. *Exporters allowance*

The exporters allowance takes account of a wider range of expenditure.

3. *Machinery investment and building investment allowances*

The benefits under the machinery investment allowance and the building investment allowance have been enlarged.

4. *Assessed losses*

A person other than a company is no longer deprived of the benefit of setting off against income derived by him otherwise than from carrying on any trade any assessed loss incurred by him.

5. *Development allowance*

Mining undertakings are no longer excluded from receiving the development allowance, and the Minister of Finance has been empowered to establish categories of industrial undertakings which are or are not eligible for the development allowance in economic development areas in general or in any particular economic development area.

6. *Expenditure incurred by physically disabled persons*

The deduction in respect of expenditure incurred by physically disabled persons has been increased, and it is no longer a requisite that such expenditure relates to the carrying on of a trade.

7. *Long-term insurance business*

Business dealt with by the Registrar of Insurance as long-term insurance business, such as non-cancellable disability insurance, providing for benefits during periods of disablement, falls within the definition of 'long-term insurance business'.

8. *Royalties and 'know-how' payments*

Where royalties or 'know-how' payments as referred to above *sub* II 2 are derived by a person not ordinarily resident in the Republic or by a company not registered, managed or controlled in the Republic, such person or company is deemed to have derived a taxable income from such amounts equal to 30 per cent thereof, and the person who incurs a liability to pay

such amounts is required to pay tax in respect of such taxable income (at ordinary company rates applicable to non-mining income derived in the Republic, excluding any loan portion), which he is entitled to deduct or withhold from such amounts.

9. *Capital expenditure of mines*
In the interest of uniformity and in order to encourage mining development, future capital expenditure of all mines is allowed in full as a deduction in the year in which it is incurred.

V. NON-RESIDENT SHAREHOLDERS' TAX

1. *Withdrawal of an exemption*
The exemption from the non-resident shareholders' tax of dividends paid by South African insurance companies to foreign shareholders is withdrawn.

VI. UNDISTRIBUTED PROFITS TAX

1. *Dividends distributed - Discretionary powers of Secretary*
The Secretary for Inland Revenue is given a discretionary power to regard a dividend distributed out of profits during a year of assessment as having been made during the specified period in respect of such year.

2. *Distributable income - New or unused machinery allowance*
Any balance of the allowance in respect of new or unused machinery or plant not utilized to reduce the distributable income of the company concerned to the amount of the dividends distributed during the relevant specified period may be carried forward to the succeeding year of assessment if the company continues during the succeeding year to carry on the trade for the purposes of which the machinery or plant is to be or is brought into use.

3. *Exemption - Maximum amount of reserves R50 000*
The exemption of a company from undistributed profits tax if the sum of its reserves and the balance of its unappropriated profits at the end of the year of assessment does not exceed the sum of the dividends distributed by the company during the six months after the end of the year of assessment and taxes on income for the year of assessment by R20 000 or 40 per cent of the company's paid-up capital at the end of the year of assessment, whichever is higher, has been amended by increasing the said amount of R20 000 to R50 000.

VII. RATES

1. *Normal tax (income tax)*
(a) *Persons other than companies*
Persons other than companies are, in respect of the year of assessment ending the 28th February or 30th June, 1974, subject to the tax at the rates contained in the two tables annexed hereto. Provided the basic tax is R150 or more, there is added thereto a surcharge of 10 per cent (last year it was 20 per cent). In the case of a natural person who is over 60 years of age on the last day of the year of assessment and whose taxable income for that year is R5 000 or less the surcharge is not payable at all. The basic tax is calculated on the taxable amount, that is the amount remaining after deducting from taxable income the abatements provided for.
There is no loan levy.
Due regard being had to the surcharge, the maximum marginal rate is now sixty-six per cent.

(b) *Companies*

The rates for companies in respect of taxable income derived in the Republic and taxable income derived in South-West Africa, in respect of the year of assessment, that is the financial year ending during the twelve-month period from 1st April, 1973, to 31st March, 1974, are as follows:

(i) Taxable income derived otherwise than from mining — if derived in South-West Africa 35 cents per R1 and if derived elsewhere than in South-West Africa, that is in the Republic, 40 cents per R1. To the tax so determined is added a surcharge of 2½ per cent of such tax and a loan portion of 5 per cent of such tax. The effective rate is thus 37.625 cents and 43 cents in the rand respectively.

(ii) Taxable income derived from gold mining — on any mine other than a post 1966 gold mine an amount determined in accordance with one of the formulae provided for plus a surcharge (which is not payable in the case of certain assisted gold mines) equal to 5 per cent of the said amount and a loan portion equal to 5 per cent of the said amount; on a post 1966 gold mine an amount determined in accordance with one of the formulae provided for plus a surcharge of 5 per cent of the said amount and a loan portion of 5 per cent of the said amount.

(iii) Taxable income in the form of recoupments of capital expenditure accruing to companies which are or have been gold mining companies — the average rate of tax as determined in accordance with the Act or 35 cents per R1 whichever is higher.

(iv) Taxable income from diamond mining — a basic tax of 45 cents per R1 plus a surcharge equal to 10 per cent of the basic tax plus a loan portion equal to 10 per cent of the basic tax.

(v) Taxable income from mining operations (other than mining for gold, diamonds or natural oil) — where derived in South-West Africa 35 cents per R1 and where derived elsewhere than in South-West Africa, that is in the Republic, 40 cents per R1. To the tax so determined is added a surcharge of 2½ per cent of such tax and a loan portion of 5 per cent of such tax.

2. *Non-resident shareholders' tax*

15 per cent of the amount of the dividend or interim dividend in question.

3. *Undistributed profits tax*

25 cents on every rand of the amount by which the distributable income as defined exceeds the amount of the dividends distributed during the specified period as defined.

ANNEXURES

TABLE I

Taxable Amount	Rates of tax in respect of married persons
Where the taxable amount — does not exceed R1 000	
	9 per cent of each R1 of taxable amount;
exceeds R 1 000 but does not exceed R 2 000	
R 90 plus 10 per cent of the amount by which the taxable amount exceeds R 1 000;	

exceeds R 2 000 but does not exceed R 3 000

R 190 plus 10 per cent of the amount by which the taxable amount exceeds R 2 000; exceeds R 3 000 but does not exceed R 4 000

R 290 plus 11 per cent of the amount by which the taxable amount exceeds R 3 000; exceeds R 4 000 but does not exceed R 5 000

R 400 plus 12 per cent of the amount by which the taxable amount exceeds R 4 000; exceeds R 5 000 but does not exceed R 6 000

R 520 plus 14 per cent of the amount by which the taxable amount exceeds R 5 000; exceeds R 6 000 but does not exceed R 7 000

R 660 plus 16 per cent of the amount by which the taxable amount exceeds R 6 000; exceeds R 7 000 but does not exceed R 8 000

R 820 plus 18 per cent of the amount by which the taxable amount exceeds R 7 000; exceeds R 8 000 but does not exceed R 9 000

R1 000 plus 20 per cent of the amount by which the taxable amount exceeds R 8 000; exceeds R 9000 but does not exceed R10 000

R1 200 plus 22 per cent of the amount by which the taxable amount exceeds R 9 000; exceeds R10 000 but does not exceed R11 000

R1 420 plus 24 per cent of the amount by which the taxable amount exceeds R10 000; exceeds R11 000 but does not exceed R12 000

R1 660 plus 26 per cent of the amount by which the taxable amount exceeds R11 000; exceeds R12 000 but does not exceed R13 000

R1 920 plus 28 per cent of the amount by which the taxable amount exceeds R12 000; exceeds R13 000 but does not exceed R14 000

R2 200 plus 30 per cent of the amount by which the taxable amount exceeds R13 000; exceeds R14 000 but does not exceed R15 000

R2 500 plus 32 per cent of the amount by which the taxable amount exceeds R14 000; exceeds R15 000 but does not exceed R16 000

R2 820 plus 34 per cent of the amount by which the taxable amount exceeds R15 000; exceeds R16 000 but does not exceed R17 000

R3 160 plus 36 per cent of the amount by which the taxable amount exceeds R16 000; exceeds R17 000 but does not exceed R18 000

R3 520 plus 38 per cent of the amount by which the taxable amount exceeds R17 000; exceeds R18 000 but does not exceed R19 000

R3 900 plus 40 per cent of the amount by which the taxable amount exceeds R18 000; exceeds R19 000 but does not exceed R20 000

R4 300 plus 42 per cent of the amount by which the taxable amount exceeds R19 000; exceeds R20 000 but does not exceed R21 000

R4 720 plus 44 per cent of the amount by which the taxable amount exceeds R20 000; exceeds R21 000 but does not exceed R22 000

R5 160 plus 46 per cent of the amount by which the taxable amount exceeds R21 000; exceeds R22 000 but does not exceed R23 000

R5 620 plus 48 per cent of the amount by which the taxable amount exceeds R22 000; exceeds R23 000 but does not exceed R24 000

R6 100 plus 50 per cent of the amount by which the taxable amount exceeds R23 000;

exceeds R24 000 but does not exceed R25 000
R6 600 plus 52 per cent of the amount by which the taxable amount exceeds R24 000;
exceeds R25 000 but does not exceed R26 000
R7 120 plus 54 per cent of the amount by which the taxable amount exceeds R25 000;
exceeds R26 000 but does not exceed R27 000
R7 660 plus 56 per cent of the amount by which the taxable amount exceeds R26 000;
exceeds R27 000 but does not exceed R28 000
R8 220 plus 58 per cent of the amount by which the taxable amount exceeds R27 000;
exceeds R28 000
R8 800 plus 60 per cent of the amount by which the taxable amount exceeds R28 000;

TABLE II

Taxable Amount	Rates of tax in respect of persons who are not married persons

Where the taxable amount — does not exceed R1 000
12 per cent of each R1 of taxable amount;
exceeds R 1 000 but does not exceed R 2 000
R 120 plus 12 per cent of the amount by which the taxable amount exceeds R 1 000;
exceeds R 2 000 but does not exceed R 3 000
R 240 plus 13 per cent of the amount by which the taxable amount exceeds R 2 000;
exceeds R 3 000 but does not exceed R 4 000
R 370 plus 14 per cent of the amount by which the taxable amount exceeds R 3 000;
exceeds R 4 000 but does not exceed R 5 000
R 510 plus 17 per cent of the amount by which the taxable amount exceeds R 4 000;
exceeds R 5 000 but does not exceed R 6 000
R 680 plus 20 per cent of the amount by which the taxable amount exceeds R 5 000;
exceeds R 6 000 but does not exceed R 7 000
R 880 plus 23 per cent of the amount by which the taxable amount exceeds R 6 000;
exceeds R 7 000 but does not exceed R 8 000
R1 110 plus 26 per cent of the amount by which the taxable amount exceeds R 7 000;
exceeds R 8 000 but does not exceed R 9 000
R1 370 plus 28 per cent of the amount by which the taxable amount exceeds R 8 000;
exceeds R 9 000 but does not exceed R10 000
R1 650 plus 30 per cent of the amount by which the taxable amount exceeds R 9 000;
exceeds R10 000 but does not exceed R11 000
R1 950 plus 32 per cent of the amount by which the taxable amount exceeds R10 000;
exceeds R11 000 but does not exceed R12 000
R2 270 plus 34 per cent of the amount by which the taxable amount exceeds R11 000;
exceeds R12 000 but does not exceed R13 000
R2 610 plus 36 per cent of the amount by which the taxable amount exceeds R12 000;
exceeds R13 000 but does not exceed R14 000
R2 970 plus 38 per cent of the amount by which the taxable amount exceeds R13 000;

exceeds R14 000 but does not exceed R15 000

R3 350 plus 40 per cent of the amount by which the taxable amount exceeds R14 000; exceeds R15 000 but does not exceed R16 000

R3 750 plus 42 per cent of the amount by which the taxable amount exceeds R15 000; exceeds R16 000 but does not exceed R17 000

R4 170 plus 44 per cent of the amount by which the taxable amount exceeds R16 000; exceeds R17 000 but does not exceed R18 000

R4 610 plus 46 per cent of the amount by which the taxable amount exceeds R17 000; exceeds R18 000 but does not exceed R19 000

R5 070 plus 48 per cent of the amount by which the taxable amount exceeds R18 000; exceeds R19 000 but does not exceed R20 000

R5 550 plus 50 per cent of the amount by which the taxable amount exceeds R19 000; exceeds R20 000 but does not exceed R21 000

R6 050 plus 52 per cent of the amount by which the taxable amount exceeds R20 000; exceeds R21 000 but does not exceed R22 000

R6 570 plus 54 per cent of the amount by which the taxable amount exceeds R21 000; exceeds R22 000 but does not exceed R23 000

R7 110 plus 56 per cent of the amount by which the taxable amount exceeds R22 000; exceeds R23 000 but does not exceed R24 000

R7 670 plus 58 per cent of the amount by which the taxable amount exceeds R23 000; exceeds R24 000

R8 250 plus 60 per cent of the amount by which the taxable amount exceeds R24 000;

ERRATUM

The article, *"Fiscalité en matière de brevets d'invention"*, by Bert/Dekeravenant/Herrburger/Brochier, published in the August issue of the BULLETIN, p. 344, deals specifically with France. Mention of this was deleted in that issue.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

INDIA

Excerpts from the Finance Minister's Budget (1973-74) Speech

The Budget Speech of Mr. Y. B. Chavan delivered on February 28, 1973 contains the following important passages with respect to taxation:

Before describing the tax proposals in detail, I would like to share with honourable members the general considerations underlying these proposals. As I have already mentioned, in the prevailing inflationary conditions in the country it would not be prudent to have a large deficit in the budget. Moreover, there are the inevitable commitments arising out of the resource requirements for the fifth plan. If adequate resources are to be raised for financing the fifth plan, action has to begin in this very year. I have, therefore, no alternative but to propose some additions to the tax burden.

Both direct taxes and indirect taxes have to contribute to raising resources for our development. As honourable members are aware, the Direct Taxes Enquiry Committee under the chairmanship of Mr. K. N. Wanchoo, ex-chief justice of India, has made a number of proposals in the field of direct taxation. I have carefully examined these proposals and am submitting a separate bill to give effect to such of these recommendations as are acceptable to the government. Some of the recommendations which have a bearing on the raising of resources are being implemented through the present budget proposals. In making these proposals I have also taken account of the report of the committee on taxation of agricultural wealth and income headed by Dr. K. N. Raj.

In the present circumstances, there is no escape from using indirect taxes also to raise additional resources. However, I have taken care that in the process articles of mass consumption are left untouched. This will become evident as I unfold my proposals.

DIRECT TAXATION

As honourable members are no doubt aware, the committee on taxation of agricultural wealth and income has suggested several measures for mobilisation of resources from the agricultural sector. One of their principal recommendations is that agricultural income should be taken into account in determining the rate of tax applicable to non-agricultural income. This will help to reduce sharp disparities in the tax burden on persons with similar incomes. I consider this recommendation of the committee to be well-conceived, and am accepting it. I am, therefore, making provision in the budget for aggregation of both the agricultural and non-agricultural components of a taxpayer's income for purposes of determining the rate of income-tax that will apply to the non-agricultural portion in cases where the taxpayer has non-agricultural income exceeding the exemption limit. For the purpose of determining the rate of income-tax applicable to the non-agricultural portion of a taxpayer's income, the first 5,000 rupees of his non-agricultural income will be appropriated to the lowest slab, which is exempt from tax. The agricultural income will be appropriated to the middle slabs, and the balance of the non-agricultural income will be appropriated to the upper slabs of the

aggregated income. This scheme of partial integration will apply to the case of individuals, Hindu undivided families, unregistered firms, associations of persons, bodies of individuals, and artificial juridical persons.

It is generally recognised that the present system of tax treatment of Hindu undivided families has encouraged tax avoidance. It is my view that the unintended tax benefits currently available to Hindu undivided families should, to the extent possible, be neutralised. I, therefore, propose to provide separate rate schedules, in respect of both income-tax and wealth tax with higher rates applicable to Hindu undivided families having one or more members with independent income or wealth exceeding the exemption limit. This is one of the recommendations of the Direct Taxes Enquiry Committee. It is also proposed to bring the minimum exemption limit in the case of all Hindu undivided families to the uniform level of Rs. 5,000 applicable in the case of individuals.

Capitals gains tax can become a means of avoiding or reducing the burden of payment of income-tax. At present capital gains arising from the sale or transfer of capital assets held by a taxpayer for a period exceeding 24 months, are entitled to concessional tax treatment. I propose to extend this period to 60 months. As a result, only capital assets held by a taxpayer for a period exceeding 60 months will qualify for concessional tax treatment applicable in relation to long-term capital assets.

Where industrial undertakings are required to shift as a result of compulsory acquisition of land and buildings, I propose to exempt, as a measure of relief, capital gains arising from the assessment of compensation in such cases if the gains are reinvested for the acquisition of land and buildings for re-establishing the undertakings or starting new industrial ventures within a period of three years of the acquisition.

I also wish to encourage long-term savings through life insurance, and provident fund contributions. At present 100 per cent. of the first Rs. 1,000 of qualifying savings, plus 50 per cent. of the next Rs. 4,000, and 40 per cent. of the balance is allowed as deduction in computing taxable income. I propose to allow a deduction equal to 100 per cent. of the first Rs. 2,000 of the qualifying savings. The quantum of deduction in respect of next Rs. 3,000 will continue at the existing rate of 50 per cent. and in respect of the balance at the rate of 40 per cent.

Sports lovers will be glad that donations to approved sports institutions will qualify for tax-relief in the same manner as donations to charities. Is shall be happy if this leads to improvement in the facilities provided to young sportsmen.

It has been a basic policy of the government to encourage small and medium entrepreneurs with comparatively small resources to form public companies. Towards this objective, I propose to raise the limit up to which a concessional rate of income-tax is applicable in the case of widely-held companies from Rs. 50,000 at present to Rs. 1 lakh. Under the existing schedule of rates closely-held companies in the corporate sector pay income-tax at a concessional rate in the first Rs. 10 lakhs of their industrial profits. I propose to reduce the slab on which the concessional rate is applicable from Rs. 10 lakhs to Rs. 2 lakhs. It is hoped that this measure will encourage conversion of these companies into widely-held companies, and thereby broaden the base of the ownership of industry.

At present there is some doubt whether

management compensation in respect of business undertakings or other property the management of which is taken over by the government, is liable to tax. To set this matter beyond doubt, I intend to introduce a provision to treat such management compensation as income from business liable to tax. This will apply retrospectively from the assessment year 1972-73.

Under the existing law, income-tax is deductible at source from the payments made by government, statutory corporations, local authorities and companies to contractors in respect of works or labour contracts. I propose to include cooperative societies also in the category of taxpayers required to deduct tax at source from payments made by them to contractors.

The Credit Guarantee Corporation of India has been formed for the purposes of guaranteeing advances made by banking companies to the hitherto neglected sectors of the economy. This is a laudable purpose and I propose to exempt the income of this corporation from tax for a period of five years.

In my budget speech for 1971-72, I gave notice of Government's intention to withdraw the development rebate in respect of ships acquired or plant and machinery installed after May 31, 1974. In response to the demand that this should be substituted by other fiscal concessions to impart a continuing momentum to industrial growth in the country, I had indicated that I would come up with some specific proposals for encouraging industries in selected sectors and those in backward areas. In pursuance of this undertaking, I am giving an indication of certain measures which Government has in mind for this purpose, as also for promotion of research and development, and exports. I propose to bring necessary legislation in the course of the year to give effect to these proposals.

It is my intention to provide an initial depreciation allowance of 20 per cent of the cost of machinery and plant installed in selected industries after May 31, 1974. This would provide additional resources to the concerned enterprises in the early years of their development. A list of the industries to which this will apply is under consideration.

In order to provide a stimulus to investment in backward areas I intend to accord preferential tax treatment to industries to be set up in such areas after March 31, 1973. Specifically, the intention is to allow a deduction equal to 20 per cent of the profits derived by an industrial undertaking set up in the backward areas in computing its taxable profits. This concession will be available for a period of 10 years from the establishment of the industry. The ceiling on investment eligible for subsidy will also be raised from Rs. 50 lakhs to Rs. 1 crore, and the percentage of subsidy will be raised from 10 per cent to 15 per cent of the investment.

I feel it is important to enlarge the area of fiscal incentives for promoting research and development, particularly in the field of industry. I also feel that inadequate attention to this aspect is retarding the development of indigenous technology and therefore of self-reliance in industry. At the moment capital expenditure in regard to scientific research related to the business activity of the tax-payer during three years immediately preceding the commencement of business is allowed to be written off against the profits of the year in which the business is commenced. I propose to extend this concession, covering revenue expenditure, in regard to payment of salaries to research personnel, and on material inputs, during the pre-investment period. I

also propose to allow a weighted deduction equal to one and one-third the amount paid for sponsored research and development work, in approved laboratories.

Honourable Members will agree with me that it will be a paying proposition for sizeable development expenditure to be incurred in developing exports, particularly of non-traditional products. At present expenditure on export market development is deductible for tax purposes to the extent of 133.3 per cent of actual costs. In view of the great importance of promoting our exports, I propose to increase the weighted deduction to 150 per cent in the case of widely-held companies.

I am very conscious of the need to encourage the increase of employment in industry so that its growth may be oriented towards labour rather than capital intensive techniques. We are considering schemes which may serve this purpose.

The total additional revenue from various measures in the field of direct taxes, enumerated by me, will be Rs. 31 crores in a full year and Rs. 18.6 crores in the year 1973-74, of which the share of the Central government will be approximately Rs. 14 crores.

INDIRECT TAXES

Sir, in turning to indirect taxes, next, I intend to take up the Central excises ahead of the customs, in reversal of the normal order of precedence in deference to the former being the major contribution to our revenues.

In doing so, I would like first, to refer to the effort I propose to make for raising revenue on behalf of the states through additional duties of excises. Honourable members will recall that this is the third and final year for the fulfilment of our commitment to states to raise these duties *in lieu* of sales tax, leviable on three commodities, namely, sugar, tobacco and textiles, so as to achieve an overall incidence of 10.8 per cent. of the value of their clearances by the end of 1973-74. To reach this target, I shall have to raise about Rs. 25 crores in this budget. In carrying out this exercise, I have been faced with considerable difficulty because one of the commodities, sugar, is at the moment a somewhat sensitive item, and another, namely textiles, does not seem to offer much scope. That leaves me with no choice but to fall back on the "oil faithful," cigarettes, to help me out of the predicament. Tobacco has been a much-maligned commodity almost from the days of its discovery. While I would certainly refrain from adopting any attitude of castigation towards the numerous devotees of the tobacco leaf, I shall be content if those who take pleasure from the use of this weed, will contribute in some higher measure to the national exchequer.

Experience has shown that the existing slab system whereby cigarettes pay fixed percentages of *ad valorem* duties, depending on the ranges or slabs of value in which they fall, has been leading to the creation of dead areas, in which no brands of cigarettes can flourish.

By the very nature of the scheme, there is also an in-built temptation towards the artificial depression of the values of certain brands which I feel, will not only affect their quality but also, in the long-run, the revenue from cigarettes. I, therefore, propose to resort to a more progressive system by adopting the simple principle that the better a cigarette, the more it pays. Starting with an aggregate base of 100 per cent. *ad valorem* (for both basic and additional duties) at a value of ten rupees per thou-

sand, the levy will rise at a steady rate of 5 per cent. of every additional rupee or part thereof in value, till it reaches the present aggregate statutory ceiling of 300 per cent. which, if this is any consolation to smokers, I do not intend to revise upward. By suitable *inter se* adjustments in the basic and additional duties, I hope to raise Rs. 31 crores in a full year, of which the major share of Rs. 24 crores will go to the states by way of additional excise duties.

I am afraid I cannot, while coming down on the cigarette smoker make things easier for the pipe smoker or the person who rolls his own cigarettes. I, therefore, propose to levy a duty on manufactured smoking mixtures for pipes and cigarettes, which will yield about Rs. 80 lakhs, of which Rs. 22 lakhs will accrue to the states.

I have been concerned over the tendency of certain textile manufacturers to avoid payment of the legitimate duties on cotton and art silk fabrics by cutting up good fabrics into smaller pieces of fents and into pieces of cloth which are euphemistically called rags. I have, as the first step towards curbing this tendency, already revised the definitions of fents and rags by reducing their length criterion. As the second step I now propose to increase suitably the duties on fents and for the first time, prescribe duties for rags. If these measures do not have the desired effect, it might become necessary to consider more drastic steps.

There have been complaints that the duty incidence on certain blended fabrics manufactured with an ingredient of cotton is lower than on similar fabrics in which viscose is used in place of cotton. I propose to remove this disparity.

A situation has been created where, because of the total exemption enjoyed by artificial silk fabrics processed without the aid of power or steam, there is a growing tendency on the part of some art silk units to resort more and more to processing their fabrics with non-power operated machines. This cannot be allowed to continue. In making such fabrics also liable to duty now, I have, however, ensured, in the interests of equity, that the incidence on them is kept 40 per cent. lower than it would be had power been used.

The above measures on textiles are expected to yield Rs. 3.65 crores of which about Rs. 1 crore will accrue to the states by way of additional excise duties.

The combined effect of the proposals detailed so far will net for the states a total revenue of Rs. 25 crores in a full year.

With my commitment to the states by way of additional duties thus fulfilled, I must now, in my continuing search for extra resources, turn to another commodity that has often come to the help of the finance minister in the past. I am referring to motor spirit. Honourable members will recall that I had increased steeply the duty on motor spirit in 1971 with a view to curbing its consumption.

Since then, and as though to give me adequate justification for resorting again to the curbing mechanism, there has been a pronounced spurt in the use of petrol. I propose, therefore, to apply the curb and also raise some revenue by increasing the duty on motor spirit by Rs. 80 per kilolitre so as to yield Rs. 19.20 crores per year.

I also intend to take this opportunity for making a few modifications in regard to certain petroleum fractions, which are classifiable as motor spirit, particularly, raw naphtha, where there is need for economy in its consumption. However, in doing so, the existing concessions for the use of naphtha in the manufacture of fertilisers,

as also fuel in the manufacture of steel, will be left untouched. These minor modifications will net an additional revenue of Rs. 1.60 crores.

When the levy was first imposed on compounded and blended lubricating oils and greases I had granted relief to the smaller manufacturers by exempting such products manufactured without the aid of power from duty. I, however, find that even some of the bigger manufacturers have stepped into a territory not really meant for them, by changing their production to methods where power its not used so as to avoid paying duty. Honourable members will appreciate that I cannot allow such avoidance to go unquestioned. I, therefore, propose to withdraw the existing criterion and effectively confine the concession to the smaller manufacturers by prescribing it on a quantity-slab basis. I also propose to increase the effective rate of duty on such oils and greases from 13 per cent. to 15 per cent. These measures will yield Rs. 2.5 crores.

While on this subject of the ingenuity of manufacturers I would like to mention the parallel instance of nylon yarn spinners who have started adjusting the denierage of their yarn in a way that will enable them to pay lower duties taking advantage of the denierage grouping system on the basis of which the rates of duty are levied. To cite an instance, in the first group where the cat-off point is 30 deniers, production has shifted to yarn of 31 and 32 deniers, which therefore pays only a lower duty. I propose to rectify the situation by suitably readjusting the existing denier groups.

The next measure I propose is meant to facilitate the collections of duty on synthetic fibres and yarn.

This I intend doing by exempting the raw materials, such as polymer chips, used in such manufacture, from duty and suitably re-adjusting the duties on the finished nylon, acetate and polyester yarn and fibres. However, in doing so, I have ensured that the existing incidence of duty on nylon yarn, used in the manufacture of fishing nets and parachute cords, remains unaffected.

These measures relating to synthetic yarn and figures will result in an additional revenue of Rs. 7.85 crores for the current year.

Keeping in view the need for a higher degree of taxation on luxury articles used by the more affluent, I propose to increase the duties on a few selected items. Refrigerators and air-conditioners will pay 60 per cent. and their parts, including parts of their machinery, will pay 75 per cent. The proposed increase on refrigerators will not, however, affect those of a capacity not exceeding 165 litres which are used by the middle class consumer. Refrigerating and air-conditioning machinery for industrial undertakings and public-run hospitals are not being touched. The duty on domestic electrical appliances, as also on decorative plywood, will be raised to 25 per cent. However, commercial plywood will pay lower rates of 20 per cent. and 15 per cent. depending on the square area of such plywood. Plywood for tea-chests also remains unaffected. The rest of this list of items consists of motor vehicle parts, instant coffee, shaving cream and long playing records. The proposed duty on gramophone records will apply to the more expensive long-playing variety only.

These various measures in the aggregate will yield Rs. 8.33 crores.

My next proposal is for the addition of a few items to those already in the excise net, namely, caustic potash, carbon black,

carbide tool tips, wire ropes, and certain rubber chemicals. All these, (except carbide tool tips which will pay 20 per cent.), will bear a duty at the normal general rate of 10 per cent. that is levied on raw materials in the Central Excise tariff. Glycerine which has so long been paying specific duty will also join their number. These levies are expected to yield Rs. 3.60 crores.

I also propose to modify, enlarge, or rescind a number of concessions that exist at present. Without cataloguing them in detail, I shall mention a few of each variety. Some of the existing concessions given for paper mills some years back have been found to be out-dated. I propose to replace them with certain others aimed at benefiting future expansions of smaller paper mills and also attracting new capital investment to the industry. The scope of exemption fixed on a quantitative basis for paper mills having no bamboo plants attached to them will also be enlarged. The use of unconventional raw materials like bagasse, and cereal straw, will be further encouraged by liberalising the existing concession. Among the list of concessions that are being withdrawn are those relating to certain producers of rayon and to low-voltage electric motors, sheet glass and plate glass, and glass fibre and yarn. Acrylic sheets produced out of duty paid plastic materials, and p.v.c. films of specified thickness and layflat tubings produced by the small scale sector, will be exempted. These diverse measures will result in an additional revenue of Rs. 3.60 crores.

Before I go on to deal with customs duties, I would like to make a reference to a matter which concerns both kinds of duties. Honorable Members are aware that Parliament has been sanctioning enabling provisions for levy of regulatory duties of excise and customs on a year to year basis from 1963. Regulatory duties were intended as special fiscal measures to be resorted to only for certain purposes. I propose to replace them by new straightforward revenue raising provisions. For certain reasons it is not possible to incorporate the provisions in rate tariffs or make them part of taxation statutes and they would therefore have to be revived from year to year for the present. The new provisions now proposed levy auxiliary duties both on excisable goods and imported goods at an amount equal to 20 per cent. of the value of such goods. These levies have however been limited to a level needed to raise resources for the Centre by granting exemptions wherever and to the extent warranted, for which suitable provisions have been made in the relevant clauses of the Finance Bill.

I shall wind up my catalogue of excise proposals by referring to how I intend to resort to this provision on the excise side. In the case of aluminium, jute yarn and jute manufactures, other than hessian, copper and zinc, the auxiliary levies will continue at the same levels at which they were hitherto charged by way of regulatory duties. In the case of steel ingots and iron and steel products (other than skelp), however, the rate will be 75 per cent. of the effective basic duty as against 50 per cent. hitherto levied as regulatory duty. This measure in the case of iron and steel is necessary in order to bring about a further reduction in the gap between imported and indigenous prices.

In the case of steel as well as all other metals, the auxiliary duties will apply, however, only to indigenous production, and will not be attracted by way of countervailing duty on imports.

While on this subject I would also like to

mention a modification I propose to make in the exemption on steel products produced by electric furnaces. These secondary steel producing units which are srap-based are at present enjoying an exemption of the ingot-stage duty on the products made by them. The extent of such benefit, which was only 75 rupees per metric tonne prior to December 1971, has nearly doubled since then, and is likely to increase further with the modification now being made on iron and steel. In the circumstances I propose to impose on furnace steel a levy of Rs. 50 per metric tonne at the ingot stage. This will, of course, be subject to 75 per cent. of this basic duty as auxiliary duty, in the same way as other steel. I would not consider this impost in any way inequitable, for it still leaves a considerable advantage in favour of furnace steel as compared to what the major steel plants have to pay at the ingot stage.

These proposals after setting off the revenue that will be foregone by dropping regulatory duties, will yield Rs. 34.60 crores of which Rs. 29 crores will accrue to the Centre.

IMPORT DUTIES

It is time now to turn to customs duties where my proposals can be broadly categorised under three main heads.

The first relates to auxiliary duties, which I propose to apply on the Customs side by means of three differential rates of 20 per cent., 10 per cent. and 5 per cent. of the value of imported goods. All those paying an effective customs duty of 100 per cent. *ad valorem* or more, will pay 20 per cent. as auxiliary duties; those paying 60 per cent. *ad valorem* and more, but less than 100 per cent., will pay 10 per cent.; and the rest of the goods will pay 5 per cent. However, foodgrains, books, family planning appliances and a few other selected categories of goods, as well as three other items to which I shall presently refer, will be totally exempt from auxiliary duties of customs.

After making allowance for the revenue that will be foregone by dropping regulatory duties this measure is expected to bring in an additional revenue of Rs. 36.50 crores.

The second proposal is regarding the modification of the rates of duties presently bound under the General Agreement on Tariffs and Trade. Pending re-negotiations with the concerned contracting parties we have been permitted to modify the bound rates under the agreement to the extent necessary for the rationalisation of the tariff rates structure. Consequent on this I have decided to revise the rates of duty on a number of items which among them will include wood pulp, tallow and a few plastic materials. These revisions of rates are expected to yield an additional Rs. 18.70 crores in a full year.

My last proposal relating to customs is a selective revision of the existing rates of duty on a few items.

It is necessary to give a further impetus to import substitution and encourage more extensive manufacture of machinery in our country. I feel that a fiscal incentive is needed for this purpose which I propose to administer by making an across-the-board increase in the rate of duty on all machinery from the existing level of 30 per cent to 40 per cent. This will be applied also to certain allied items.

Raw cotton has been enjoying a privileged position for a long time with only a nominal concessional duty of 10 paise per kilogram. Since imported cotton is used mainly for the production of fine and su-

perfine fabrics and comparatively expensive varieties of blended fabrics which, in the nature of things, are expected to be used by the more affluent sections of society, I propose to withdraw this concessional rate and make raw cotton liable to its 40 per cent statutory rate, which is the normal level of taxation for raw materials in the customs tariff.

However, raw cotton along with two other items, namely, tallow and machinery, will not be subjected to auxiliary duties of customs.

Copper which has been paying a rate of duty at 30 per cent will pay 40 per cent which is the normale rate applicable to non-ferrous metals.

Since the margin of profit on stainless steel sheets is considerable, I propose to raise the rate of duty on them from 100 per cent to 200 per cent. However, the duty on stainless steel plates and strips will be fixed at a lower rate of 60 per cent.

As a measure of assistance to indigenous industry, the concessional rate of 60 per cent so far applicable to nylon yarn used in tyre manufacture is proposed to be withdrawn.

I also propose to raise the rate of duty on unexposed cinematograph films from 15 paise to 50 paise per liner metre.

These various measures relating to revisions of rates of customs duties are expected to yield Rs. 97.30 crores in a full year.

In addition to this, countervailing duties of customs which will automatically accrue because of the proposed changes in excise duties will account for an additional Rs. 3.50 crores.

To sum up, all the proposals regarding excise and customs duties that I have listed so far will yield about Rs. 274 crores. The measures relating to customs duties will yield about Rs. 156 crores, from the excise duties, which will be of the order of Rs. 118 crores, Rs. 38 crores will accrue to the states.

I may now briefly summarise the revenue implications of the various proposals that I have outlined earlier in my speech. The additional yield from direct taxes in 1973-74 will be Rs. 18.6 crores. Of this, Rs. 4.7 crores will accrue to the states, leaving Rs. 13.9 crores for the centre. The excise duty proposals will yield additional revenue worth Rs. 118 crores in 1973-74. Of this amount, nearly Rs. 38 crores will go to the states and the balance of Rs. 80 crores will accrue to the centre. The additional revenue from customs duties will amount to Rs. 156 crores. In all, the central revenues will benefit from the total package of my proposals to the extent of Rs. 250 crores. As a result, the initial deficit of Rs. 335 crores estimated at 1972-73 tax rates will be reduced to Rs. 85 crores. This, however, will be increased by the provision which will have to be made in connection with the report of the Pay Commission.

Sir, before concluding I would like to point out that this is the third regular budget that I have been privileged to present to this august house. During each of these budgets, I have had to come forward with proposals for significant amounts of additional taxation. This was not a pleasant task. It was, however, inevitable in the light of resources required to meet our basic commitments to the people and the unprecedented challenges of the difficult times we have lived through. The poverty and the associated inequalities in income and wealth that prevail in this country cannot be abolished over night. But there can never be any doubt about the direction in which the government is determined to move to sustain people's faith in our de-

mocratic policy as an effective vehicle of rapid social change. It is in this context of our firm commitment to socialism, rapid economic growth and a self-reliant economy that the budget proposals must be appraised. The building-up of a socialist society requires a sustained multi-dimensional effort to transform our social and economic structure. In an economy where a large number of people are ill-fed and ill-clothed we cannot afford the luxury of maintaining the status quo. Fiscal policy must assist in this process. This is the vision I have kept in mind in formulating this year's budget.

The increased provisions for employment programmes and the continuing emphasis on selected schemes of social welfare are part of an attempt to reduce the existing inequalities of income and consumption. The partial integration of agricultural and non-agricultural income, and the imposition of higher income-tax rates on Hindu undivided families, are designed to make our tax system more equitable and progressive. The pattern of proposed additions to indirect taxes will also serve the same purpose. I have made every effort to ensure that additional levies do not impose an undue burden on the common man. On the other hand, small savers will benefit positively by the proposed liberalisation of tax exemptions of contributions to provident funds and life insurance. The introduction of initial depreciation allowances for selected high priority industries after 31st May 1974 will strengthen this country's industrial structure and thereby help in the realisation of the goal of self-reliance. The enhancement of the weighted deduction presently allowed in respect of export market development must also be seen in the context of the nation's determination to move speedily towards self-reliance. Incentives for industrialisation of backward areas that I have indicated will help to reduce the existing regional inequalities in the level of development which are clearly inconsistent with the ideals of a socialist society. As I see it, the budget for 1973-74 represents another major effort on the part of this government to get the country moving towards the goal of an expanding self-reliant economy based on social justice.

* * * IFA NEWS * * *

NATIONAL BRANCHES

Australia

At an annual general meeting of the Australian Branch, held on July 23rd, 1973, the following persons were elected to office:

Chairman: Mr. Graham Herring, replacing Mr. R. E. O'Neill.

Secretary: Mr. Charles J. Berg O.B.E.

Treasurer: Mr. William J. Mulligan.

The Branch elected an activities committee and it is hoped that the members of this committee will be able to put forward suggestions for additional activities which will prove to be of benefit to existing members and serve to attract new members.

New address *Belgian Branch:* Rue Saint Bernard 98, 1060 Brussels; Secretary: Mr. Guy van Fraeyenhoven (Centre d'Etude de Droit Fiscal; Section Belgo-Luxembourgeoise de l'Association Internationale de Droit Financier et Fiscal).

Brazil

The Branch's name has been changed to "Associação Brasileira de Direito Financeiro (Filiada à I.F.A.). Members of the Board of Directors:

President: Dr. Gilberto de Ulhôa Canto.

Vice Presidents: Dr. Rubens Gomes de Sousa, Dr. Carlos Medeiros Silva, Dr. Condorcet Rezende, Dr. Erymá Carneiro, Dr. Carlos da Rocha Guimaraes.

Secretary: Dr. Mairo Caldeira de Andrade.

Treasurer: Dr. José Francisco de Araujo Lima Neto.

Programme: Dr. Jorge Hilário Gouvêa Vieira.

UK/Belgium/Luxembourg

On May 4th/5th, 1973, an Anglo/Belgian/Luxembourg seminar was held in London. It was attended by 80 participants; 27 from Belgium, one from Luxembourg and 52 British. A dinner was held in the Members' Dining Room of the House of Commons on Friday evening (4th May), sponsored by the Right Hon. Lord Beyers, O.B.E.; the Guest of Honor at the dinner was Mr. E. V. Symons, Deputy Chief Inspector of Taxes (Inland Revenue). Reports were delivered as follows:

Subject I:

The relevance to the EEC of the new UK Corporation Tax system and a comparison with the Belgian and Luxembourg tax systems.

Belgium: Mr. Jean Wilmart and Mr. Marc Baltus (Barristers).

UK: Mr. D. E. Evennett of British Petroleum Co. Ltd.

Luxembourg: M. J. Kauffman, State Counsellor.

Chairman was: Mr. Alun G. Davies, UK.

Subject II:

Problems raised in the provision of services across frontiers by the introduction of value added taxes in the UK, Belgium and Luxembourg.

Belgium: Mr. René Goffin, Professor, Ecole Supérieure des Sciences Fiscales.

UK: Mr. J. F. Avery Jones of Bircham & Cy.

Luxembourg: Mr. R. Gerbes; Fiduciaire Général de Luxembourg.

Chairman was Mr. I. Claeys Bouuart (Belgium).

Subject III:

The tax problems of inward and outward investments in the three countries.

Belgium: Mr. A. Buelinckx, Fiscal Consultant.

UK: Mr. M. Edwardes-Ker of J. F. Chown & Co. Ltd.
Luxembourg: No reporter.
Chairman was Mr. J. Kauffman (Luxembourg).

France

According to tradition, the French Branch organized a "Soirée d'Etudes" which was held on June 14th, 1973. The meeting was attended by approximately 80 persons; most of them attended the dinner which was also organized. The subject studied was "Les modalités d'évaluation des stocks et des travaux en cours" (The means of evaluation of inventory and work in progress):

1. les différents systèmes d'évaluation en droit français et en droit comparé (CEE notamment) — règles obligatoires — règles optionnelles.
2. incidences du changement de méthode sur le bénéfice imposable en droit français
— les infractions
— les changements d'option.

Three reporters delivered a document, as follows:
Juridical aspects: Prof. F. Goré, Faculté de Droit et des Sciences Economiques.
Fiscal aspects: Mr. J. Cornelis, Conseil Fiscal et Financier.
Accountancy aspects: Mr. Jean-Claude Cailliau, Expert Comptable.
In the opinion of the French Branch, the subject would be suitable to be studied by an IFA Congress.

Mexico/USA

Under the auspices of the USA and Mexican Branches, a joint meeting was held in Mexico-City on the 24/25th May, 1973. There was an attendance of 66 participants and there were also 27 accompanying persons of USA participants.

The programme was as follows:
Discussion of the 28th IFA Congress to be held in Mexico-City - Lic. Alfonso González R. (President-Academia Mexicana de Derecho Fiscal).
Transfer of Technology and use of patents and trademarks - Lic. Jorge Sáinz (Goodrich, Dalton, Little and Riquelme), C. P. Guillermo Preciado (Despacho Roberto Casas Alatriste) and Lic. Alfonso González R.
Bill to promote Mexican investments and regulate foreign investments - Lic. Carlos Doring (Goodrich, Dalton, Little & Riquelme).
Mexican taxation of alien individuals temporarily residing in Mexico - Sr. David García Fabregat (Despacho Roberto Casas Alatriste).
US foreign tax credit relative to Mexican taxes on income of US corporations - Messrs. Edward A. Massura and Gerald T. Ball (Arthur Andersen & Co.).
Congressional Study of the US Taxation of multinational corporations - Mr. Adrian A. Kragen (University of California, Law School, Berkeley).
Tax on value added - US study and possibilities and review of European experiences - Messrs. Paul Pommier and Wolfram Diehl (Peat, Marwick, Mitchell & Co.).
Intercompany allocations — arm's length dealing between US parent and Mexican subsidiary - Mr. Thomas E. Jenks (Lee, Toomey & Kent).

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Library International Bureau of
Fiscal Documentation no. B 7289

DIE VERANLAGUNG ZUR KÖRPERSCHAFTSTEUER FÜR 1972; KÖRPERSCHAFTSTEUERGESETZ UND KÖRPERSCHAFTSTEUER-DURCHFÜHRUNGSVERORDNUNG MIT KÖRPERSCHAFTSTEUER-RICHTLINIEN IN DEN FÜR 1972 GELTENDEN FASSUNGEN.

Published by IdW-Verlag, Düsseldorf, 1973. 14 + 560 pp., DM 19.—.
Guide containing information for filing 1972 corporate income tax returns. Text of the statute and relevant related implementary provisions, by-laws and case laws are appended.

Library International Bureau of
Fiscal Documentation no. B 7290

DIE VERANLAGUNG ZUR UMSATZSTEUER (MEHRWERTSTEUER) FÜR 1972; UMSATZSTEUERGESETZ VOM 18. OKTOBER 1967; VERORDNUNGEN ZUR DURCHFÜHRUNG DES UStG; ERLASSE; VERFÜGUNGEN; RECHTSPRECHUNG.

Published by IdW-Verlag, Düsseldorf, 1973. 30 + 880 pp., DM 35.—.
Guide containing information for filing 1972 turnover tax returns. Texts of statutes and related implementary provisions with reference to case law are appended. The material is updated as of January 1, 1973, and contains references to law and literature on the subject.

Library International Bureau of
Fiscal Documentation no. B 7291

HANDBUCH DER STEUERVERANLAGUNGEN; EINKOMMENSTEUER, KÖRPERSCHAFTSTEUER, GEWERBESTEUER, UMSATZSTEUER, 1972.

Schriften des Deutschen Wissenschaftlichen Steuerinstituts der Steuerbevollmächtigten. Published by C. H. Beck, Munich, 1973. 56 + 770 pp.
Handbook containing necessary information for filing 1972 tax returns with respect to individual income tax, corporate income tax, trade tax and turnover tax.

Library International Bureau of
Fiscal Documentation no. B 7204

HANDBUCH ZUR LOHNSTEUER 1973.

Schriften des Deutschen Wissenschaftlichen Steuerinstituts der Steuerbevollmächtigten e.V. Published by C. H. Beck, München, 1973. 32 + 615 pp., DM 25.80.
Handbook explaining the wage tax provisions,

up-dated as of May 1, 1973. The text of the statute, implementary provisions, by-laws and case-law are appended.

Library International Bureau of
Fiscal Documentation no. B 7261

INSOLVENZEN UND STEUERN; KONKURS, VERGLEICH, SANIERUNG IM STEUERRECHT. 2ND REVISED EDITION,

by G. Geist. Published by Verlag Neue Wirtschafts-Briefe, Herne, 1973. 192 pp. DM 30.—.
Monograph dealing with the taxation aspects of insolvency. Case law and literature is included, updated as of September, 1972.

Library International Bureau of
Fiscal Documentation no. B 7266

INVESTITIONSZULAGEN; BERLIN-FÖRDERUNGSGESETZ; INVESTITIONSZULAGENGESETZ,

by H. Richter. Published by Verlag Neue Wirtschafts-Briefe, Herne, 1973. 258 pp.
Monograph dealing with the laws designed to further economic development in Berlin, in the border areas and in the lesser developed areas in Germany.

Library International Bureau of
Fiscal Documentation no. 7266

KÖRPERSCHAFTSTEUERRECHTLICHE PROBLEME DER HOLDINGGESELLSCHAFT NACH DEM AUSSENSTEUERRECHT DER BUNDESREPUBLIK DEUTSCHLAND DARGESTELLT IM VERHÄLTNIS ZU AUSGEWÄHLTEN LÄNDERN UNTER BESONDERER BERÜCKSICHTIGUNG DER BASISGESELLSCHAFTEN,

by B. Wildenauer. Published in Würzburg, 1969. 14 + 258 pp.
Thesis on the corporate income tax problems arising from holding companies in German international tax law in comparison to selected countries with emphasis on the reckoning of base companies.

Library International Bureau of
Fiscal Documentation no. B 7250

REISEKOSTEN, AUSLÖSUNGEN, UMZUGSKOSTEN; LEITFADEN ZUR LOHNSTEUERLICHEN BEHANDLUNG AUF GRUND DER NEUREGELUNG

ab. 1. January 1972, by W. Herkendell. Bücherei Betrieb + Personal, Band 6. Published by Wilhelm Stolfuss, Bonn, 1972. 136 pp.
Guide with emphasis on the taxation of wage earners as of January, 1972.

Library International Bureau of
Fiscal Documentation no. B 7219

20 SCHAUBILDER ZUR BESTEUERUNG VON RENTEN UND RATEN; HEFT 8: OPTISCHES STEUERRECHT,

by G. R. Hansel. Published by Verlag Neue Wirtschafts-Briefe, Herne/Berlin, 1973, 2nd edition. 23 pp., DM 30.—.
Booklet 8 of the series entitled "Visual tax Law" uses charts to explain the taxation of annuities and installment payments.

Library International Bureau of
Fiscal Documentation no. B 7268

STEUERLICHE PROBLEME BEI ÄNDERUNG DER UNTERNEHMENSFORM; LÖSUNGSWEGE ANHAND PRAKTISCHER FÄLLE,

by F. Wrede. Published by Taylorix Fachverlag, Stuttgart, 1972. 136 pp.
Monograph on the tax problems arising from the change from one entity form into another, illustrated with examples.

Library International Bureau of
Fiscal Documentation no. B 7332

UMWANDLUNGS-STEUERGESETZ 1969, 2nd Ed. UMWANDLUNG/FUSION/EINBRINGUNG,

by G. Loos. Published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 1972. 521 pp., DM 69.—.
The basic loose-leaf volume including the fourth supplement brings the monograph on the legal and tax treatment of mergers and change from one entity form into another up-to-date as of July, 1972. Text of relevant statutes and list of tax literature is appended.

Library International Bureau of
Fiscal Documentation no. B 7334

GERMANY/SPAIN

ERLÄUTERUNGEN ZUM DEUTSCH-SPANISCHEN DOPPELBESTEUERUNGSABKOMMEN.

3rd Edition. Published by Deutsche Handelskammer für Spanien, Barcelona, 1973. 12 pp.
Third revised edition of brief survey explaining the Germany-Spain double taxation treaty as in effect on May, 1973.

Library International Bureau of
Fiscal Documentation no. B 7365

GERMANY/SWITZERLAND

LE CONTROLE DES ENTREPRISES COMMERCIALES EN ALLEMAGNE ET EN SUISSE,

by E. G. Snozzi. Cahiers de l'Institut des Experts

Comptables; No. 5. Published by I.F.E.C., Paris, 1973. 66 pp.
Monograph on the control of business enterprises in West Germany and Switzerland by chartered accountants and similar professions.

Library International Bureau of
Fiscal Documentation no. B 7303

INDIA

U.S. BUSINESS OPERATIONS IN INDIA,

by M. J. Kust. Published by the Tax Management, Inc., Washington, 1972. 12 + 175 pp.
General outline of income taxation and other tax matters which may be of importance to U.S. businesses when considering the establishment of a company or other business venture in India. The material is updated by pink supplement pages.

Library International Bureau of
Fiscal Documentations no. B 7349

INDONESIA

INDONESIA: BUSINESS DYNAMICS OF A NEW FRONTIER.

Published by Business International, Hong Kong, 1973. 6 + 76 pp.
Report intended as a practical guide for prospective investors contemplating investments in Indonesia or doing business there. It covers all the essential data including the investment permit procedure, the acquisition of land or premises for plant or office, financing, recruiting and training of labor, taxation, inefficient bureaucracy and other information untouched in any other publication.

Library International Bureau of
Fiscal Documentation no. B 7363

INTERNATIONAL

FUNDAMENTAL CHANGES IN MARKETABLE SHARE COMPANIES,

by A. F. Conard. Chapter 6 of volume XIII, 'Business and Private Organizations', in the series: 'International Encyclopedia of Comparative Law'. Edited by K. Zweigert and A. F. Conard. Published by J. C. B. Mohr, Tübingen, 1972. 121 pp.
Fundamental development changes in company regulations in various countries with emphasis on the USA and the United Kingdom. The material is up-dated as of January 1, 1968.

Library International Bureau of
Fiscal Documentation no. B 7255

GUIDELINES FOR INTERNATIONAL INVESTMENT;

Adopted unanimously by the Council of the ICC 120th Session 29 November, 1972. Edited by Der Deutsche Gruppe der Internationalen Handelskammer, Köln. Published by Verlag Deutscher Wirtschaftsdienst KG, Köln, 1973. 39 pp., DM 12.80.
Complete text in German and English of the guidelines for international private investment as adopted by the International Chamber of Commerce.

Library International Bureau of
Fiscal Documentation no. B 7327

TRADE AND INVESTMENT POLICIES FOR THE SEVENTIES; NEW CHALLENGES FOR THE ATLANTIC AREA AND JAPAN,

edited by P. Uri, foreword by E. Roll. Published by Praeger Publishers, New York, 1971. 18 + 286 pp.
Based on a conference held in 1971 in Tokyo, this publication contains considerations contributed by various experts on international trade and investment aspects such as the future of Japanese trading companies and Japan's industrial role, and the possibility of the decline in importance of multinational corporations.

Library International Bureau of
Fiscal Documentation no. B 7243

ITALY

DAS ITALIENISCHE MEHRWERTSTEUERGESETZ; VERORDNUNG DES PRÄSIDENTEN DER REPUBLIK N. 633 VOM 26. OKTOBER, 1972; EINEUHRUNG UND REGELUNG DES MEHRWERTSTEUER; ÜBERSETZT VON OLE NEUHAUS.

Published by Deutsch-Italienische Handelskammer, Milan, 1973. 95 pp.
Unofficial German translation of the text of the Italian value added tax.

Library International Bureau of
Fiscal Documentation no. B 7412

JAPAN

ASIAN TAXATION 1972,

edited by Hideyasu Iwasaki. Published by Japan Tax Association, Tokyo, 1973. 6 + 234 pp. Y 2,450.

Annual publication containing short surveys of the tax systems in various Asian countries, i.e. the Republic of China, India, Indonesia, Japan, Khmer, Korea, Malaysia, Pakistan, Philippines, Singapore and Thailand. Updated as of the end of 1972.

Library International Bureau of Fiscal Documentation no. B 7314

THE TURNING POINT IN ECONOMIC DEVELOPMENT: JAPAN'S EXPERIENCE,

by R. Minami. Economic research series, No. 14. Published by Kinokuniya Bookstore, Tokyo, 1973. 20 + 330 pp.

Empirical study on the turning point in economic developments with emphasis on the Japanese economy.

Library International Bureau of Fiscal Documentation no. B 7263

KOREA (SOUTH)

FOREIGN CAPITAL INDUCEMENT LAW (AS AMENDED).

Published by the Economic Planning Board, Seoul, 1973. 44 pp.

Unofficial English translation of the complete text of the Foreign Capital inducement law as amended, prepared for foreign investors.

Library International Bureau of Fiscal Documentation no. B 7257

INVESTMENT OPPORTUNITIES IN KOREA.

Published by the Economic Planning Board, Seoul, 1972. 6 + 78 pp.

Booklet designed to provide prospective foreign investors with a comprehensive introduction to the people, economy, investment opportunity and tax incentivies in Korea.

Library International Bureau of Fiscal Documentation no. B 7256

LIECHTENSTEIN

STEUER- UND ANLAGEPARADIES LIECHTENSTEIN; LEG DEIN GELD RICHTIG AN; HEFT 5.

by O. H. Harbeck. Published by Fritz Knapp Verlag, Frankfurt am Main, 1972. 4 + 82 pp., DM 15.—.

This book provides information with respect to legal entities and the tax system in Liechtenstein as well as its economic, financial and constitutional environment.

Library International Bureau of Fiscal Documentation no. B 7335

LUXEMBOURG

HOLDING COMPANIES IN THE GRAND DUCHY OF LUXEMBOURG, 1969 EDITION.

Published by the Banque Internationale, Luxembourg. 59 pp.

NETHERLANDS

DE STAMRECHTVRIJSTELING (ART. 19 IB '64), by G. G. Brouwer. Published by FED, Deventer, 1973. 42 pp.

Monograph on the income tax exemption in case of cessation of one's business as governed by the individual income tax provision.

Library International Bureau of Fiscal Documentation no. B 7318

ELSEVIER'S VENNOOTSCHAPSBELASTING UITGAVE 1973 VOOR DE AANGIFTE OVER 1972,

3rd edition, by E. N. Jonker, H. W. Buitendijk and A. C. de Groot. Published by Uitgeversmaatschappij Bonaventura, Amsterdam, 1973. 200 pp., *f* 22.50.

Guide for the filing of the 1972 corporate income tax return.

Library International Bureau of Fiscal Documentation no. B 7346

INTRODUCTION TO THE PRINCIPAL ACQUIREMENTS OF THE "PRIVATE COMPANIES" ACT.

Published by Peat, Marwick, Mitchell & Co., The Hague, 1971. 7 pp.

Library International Bureau of Fiscal Documentation no. B 5871

OMZETBELASTING.

Fiscale Studieserie no. 6, by J. Reugebrink. Published by FED, Deventer, 1973. 22 + 303 pp.

This work is designed as a textbook explaining the Netherlands tax on value added. List of relevant literature is appended.

Library International Bureau of Fiscal Documentation no. B 7269

RAPPORT BEDRIJFSECONOMISCHE NORMEN INZAKE DE CONTINUITEIT VAN ONDERNEMINGEN.

Published by Raad voor het Midden- en Kleinbedrijf, The Hague, 1973. 39 pp.

This publication studies the necessary reservations, which have to be made in connection with currency depreciation and inflationary pressures in order to maintain investments for the survival of the small business.

Library International Bureau of Fiscal Documentation no. B 7326

NETHERLANDS/ NETHERLANDS ANTILLES

CORPORATE LAW OF THE NETHERLANDS AND OF THE NETHERLANDS ANTILLES,

5th edition, by S. W. van der Meer. Published by Tjeenk Willink, Zwolle, 1973. 6 + 101 pp., Hfl. 12.50.
English translation of the text of the Netherlands corporate law and that of the Netherlands Antilles. A short introduction is included.

Library International Bureau of
Fiscal Documentation no. B 7282

NIGERIA

A GUIDE TO STAMP DUTIES IN NIGERIA,

Nigerian Practice notes, by P. G. Willoughby. Published by Sweet & Maxwell, London, 1967. 14 + 87 pp.
Textbook on Nigerian stamp duty law.

Library International Bureau of
Fiscal Documentation no. B 10.375

OECD/INTERNATIONAL

PROYECTO DE CONVENIO DE DOBLE IMPOSICION SOBRE LA RENTA Y EL PATRIMONIO.

Published by OECD, 1963. 194 pp.
Spanish translation of the draft double taxation convention on income and capital.

Library International Bureau of
Fiscal Documentation no. B 7329

SOUTH AFRICA

THE OLD MUTUAL INCOME TAX GUIDE 1972-1973; INCOME TAX ALLOWANCES, TAX FREE INCOME, TAX TABLES, CAPITAL PROFITS, ESTATE DUTY,

edited by A. S. Silke. Published by The Old Mutual, Capetown, 1972. 12 + 126 pp.
Quick reference and easy guide containing information on the income tax for the 1972 income tax return. The Law is stated as of October 15, 1972. An Afrikaans language edition is available.

Library International Bureau of
Fiscal Documentation no. B 7305

SWITZERLAND

DIE UMSATZSTEUER IM FISKALSYSTEM: ORIENTIERUNGEN DER SCHWEIZERISCHEN VOLKSBANK,

Nr. 57, by H. Gerber. Published by Schweizerischen Volksbank, Bern, 1973. 23 pp.
Analysis of the role of the turnover tax in the Swiss tax system.

Library International Bureau of
Fiscal Documentation no. B 7313

STEUERBELASTUNG IN DER SCHWEIZ/CHARGE FISCALE EN SUISSE, 1972 — BEARBEITET VON DER EIDGENÖSSISCHEN STEUERVERWALTUNG; ELABORE PAR L'ADMINISTRATION FEDERALE DES CONTRIBUTIONS.

Published by Eidgenössisches statistisches Amt, Heft 491, Bern, 1973. 89 pp.
Statistical survey of the taxes levied by the various cantons.

Library International Bureau of
Fiscal Documentation no. B 7316

UNITED KINGDOM

ESTATE DUTY IN ENGLAND AND WALES; ADAPTED FROM: "AN OUTLINE OF ESTATE DUTY IN SCOTLAND", BY G. H. BROWN AND J. M. HALLIDAY. CONCISE COLLEGE TEXTS,

by A. D. Lawton. Published by Sweet & Maxwell Ltd., London, 1970. 21 + 169 pp.
Monograph of a brief outline of estate duty; the law concerning estate duty is stated as of September 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 7352

GUIDE TO THE ESTATE DUTY STATUTES,

edited by Wheatcroft, G. S. A., 2nd Edition. Published by Sweet & Maxwell, London, 1972. 14 + 170 pp. £ 1.90.
Monograph re the annotated text of estate duty statutes.

Library International Bureau of
Fiscal Documentation no. B 7353

TAX AND THE FAMILY BUSINESS

4th Edition, by M. Grundy. Published by Sweet & Maxwell, London, 1970. 8 + 173 pp., £ 1.75.
General introductory text surveying the taxation of family business income as of August 1969.

Library International Bureau of
Fiscal Documentation no. B 7351

TAXATION KEY TO INCOME TAX AND SURTAX; BUDGET 1973 EDITION; FULL REFERENCE TO THE UNIFIED TAX,

edited by J. M. Cooper and P. F. Hughes, 57th edition. Published by Taxation Publishing Company, London, 1973. 247 pp., £ 2.—.

Library International Bureau of
Fiscal Documentation no. B 7309

THE LAW AND ADMINISTRATION RELATING TO PROTECTION OF THE ENVIRONMENT,

by D. A. Bigham. Published by Oyez, London, 1973. 36 + 359 pp., £ 3.00.

Monograph dealing with the administrative system controlling the environment, the legal remedies available for its defense and a discussion of the practical difficulties which arise in seeking to protect or improve it.

Library International Bureau of
Fiscal Documentation no. B 7321

U. S. A.

A REVIEW OF THE PROPERTY TAX AND IMPACT ON BUSINESS,

by R. R. Statham and C. P. Lehmann. Published by the Chamber of Commerce of the United States, Washington, 1973. 163 pp., $ 10.00.

Study prepared for use by the Taxation Committee of the Chamber of Commerce of the United States containing information about the property tax, its history, administration, exemptions and appeal procedures.

Library International Bureau of
Fiscal Documentation no. B 7392

FEDERAL GRANTS: THE NEED FOR REFORM,

edited by the Tax Foundation, Inc., Research Publ. No. 29, New York, 1973. 44 pp., $ 1.50.

Study providing background information with conclusions and proposals for the reform of the Federal grant-in-aid programs.

Library International Bureau of
Fiscal Documentation no. B 7366

GOVERNMENT FINANCE; ECONOMICS OF THE PUBLIC SECTOR. 5TH EDITION; THE IRWIN SERIES IN ECONOMICS,

by J. F. Due and A. F. Friedlaender. Published by Richard D. Irwin, Homewood, Ill., 1973. 16 + 704 pp.

Part I on the theory of governmental activities has been written primarily by professor Friedlaender. Part II, which is concerned with taxation, by professor Due.

Library International Bureau of
Fiscal Documentation no. B 7320

SPENDING CONTROL ISSUES AND THE U.S. BUDGET; GOVERNMENT FINANCE BRIEF NO. 22.

Published by the Tax Foundation, Inc., New York, 1973. 24 pp., $ 1.00.

Monograph analyzing recent Federal spending trends and current projections, the President's proposals for program reform and reduction, new spending initiatives and some future implications with respect to the fiscal 1974 budget.

Library International Bureau of
Fiscal Documentation no. B 7415

THE RAPE OF THE TAXPAYER,

by P. M. Stern. Published by Random House, New York, 1973. 18 + 483 pp.

This book deals exclusively with tax avoidance provided in the Internal Revenue Code. Illustrated for the layman with references to documents, it mentions names and tells how and just who gets what out of the tax law. Some titles of the chapters are: "The mightily privileged few; Your wife may be worth a million; 'Tax welfare' for the corporate giants; Old loopholes never die, they just get bigger; The world-game of 'beat the tax collector'; Why the wealthy few win out over the un-rich many."

Library International Bureau of
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LOOSE-LEAF SERVICES

AUSTRALIA

SALES TAX EXEMPTION AND CLASSIFICATIONS,
release 8
Commissioner of Taxation, Canberra, A.C.T. 2600, Australia

BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE,
release 58
C.E.D. Samson N.V., Brussels

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W./LE DOSSIER PERMANENT DE LA T.V.A.,
release 45
Editions Service, Brussels

FISCALE DOCUMENTATIE VANDEWINCKELE. BOEK DER BAREMA'S,
Tome IX, releases 50, 51, 52
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Tome XII, release 20
E. K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels

GUIDE FISCAL PERMANENT,
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CANADA

CANADA TAX LETTER,
releases 202, 203
Richard de Boo Ltd., Toronto

CANADIAN CURRENT TAX,
releases 26—29
Butterworth & Co., Toronto

DENMARK

SKATTEBESTEMMELSER,
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A.S. Skattekartoteket Informationskontor, Copenhagen

E. E. C.

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— Kommentaar op het E.E.G., Euratom en EGKOS Verdrag
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— Tarieflijsten,
release 124
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

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Ed. Législatives et Administratives, Paris

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Services Lamy, Paris

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Fachverlag für Wirtschafts- und Steuerrecht, Schaffer und Co., Stuttgart

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v. d. Linnepe Verlagsgesellschaft K.G., Hagen

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Hermann Luchterhand, Neuwied

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT,
release 162
Forkel Verlag, Stuttgart-Degerloch

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N. Samsom N.V., Alphen a.d. Rijn

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J. Noorduyn en Zn. N.V., Arnhem

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N.V. Uitgeverij Fed., Amsterdam

FED'S LOSBLADIG FISCAAL WEEKBLAD,
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releases 143, 144
Vuga- Boekerij, Den Haag

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S. Gouda Quint enz., Arnhem

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SWITZERLAND

DIE STEUERN DER SCHWEIZ - LES IMPOTS DE LA SUISSE,
release 28
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UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA,
release 45
Sweet & Maxwell, London

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release 12
Butterworth

U. S. A.

FEDERAL TAX GUIDE REPORTS,
releases 39—42
Commerce Clearing House, Inc., Chicago

FEDERAL TAXES REPORT BULLETIN,
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Prentice Hall, Inc., Englewood Cliffs

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release 12
Prentice Hall, Inc., Englewood Cliffs

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releases 11, 12
Prentice Hall, Inc., Englewood Cliffs

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ENRIQUE PIEDRABUENA RICHARD [1]:

TREATMENT OF ROYALTIES IN TAX CONVENTIONS BETWEEN DEVELOPED AND DEVELOPING COUNTRIES [2]

1. BACKGROUND [3]

In order to save time I have omitted a complete description of the most direct antecedents on the subject such as the OECD Draft Convention, the three papers delivered by the United Nations in relation to the Ad-Hoc Expert Group Meetings held in 1969, 1970 and 1971; the documents prepared by IFA secretariat; the conclusions of the VI Congress of the Latin American Tax Institute and the papers related to the developments originated under the Andean Pact, among others. Notwithstanding, I will refer to some of these antecedents during the course of this report, if necessary.

2. SCOPE OF THE ROYALTY CLAUSE

Article 12 of the Model Convention prepared by OECD fixes in part the scope of the term "royalties". [4]

From the wording of this article it may be inferred that:

i) It does not include royalties incoming from the operation of mines, quarries or from other natural resources. While I agree with this exclusion, I would rather have it expressed in a positive way, as stated in some treaties i.g. Greece-India (1965), Brazil-United States (1967), South Africa-United Kingdom (1968), Japan-The Republic of Korea (1970), Peru-Sweden (1966).

ii) It does include the royalties for the use, or for the right to use, cinematographic films. I think that these royalties

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1. Director of the Latin American Tax Institute. Professor of Taxation at the Catholic University of Chile. Partner of Price Waterhouse Peat & Co. Chile. The concepts explained in this paper are not necessarily those of such entities but pretend to be generally in line with those of the Latin American authors and experts. The contents of this report have been discussed with members of the Asociación Argentina de Derecho Fiscal, in August 1972.

2. Report prepared at the request of the International Fiscal Association in August 1972. Submitted to the Secretariat of the United Nations in New York for the attention of the Ad Hoc Group of Experts on Tax Treaties between developed and developing countries in exercise of consultative status granted to the International Fiscal Association.
The report reflects only the opinion of its author and can in no way be regarded as expressing the views of the International Fiscal Association.

3. Dr. Ramón Valdés Costa has brightly abridged and founded the development of the Latin American doctrine in his papers "Problemas tributarios entre paises desarrollados y paises en desarrollo" (August 1970) and "Latin American Position on the problem of Tax Agreements between developed and developing countries" the latter being published in August 1971, IFA Bulletin, page 283. See also "Comments on some of the Problems of Tax Treaties between developed and developing countries" submitted to the Expert Group in Geneva, in April 1970 by Milka Casanegra, a member from Chile; the report presented by the author to the Round Table Discussions in October 1968 during the

(continued on next page)

are more connected with the definition of business profits and/or of a permanent establishment and should be separated from this definition e.g. Philippines-Sweden (1966), Denmark-Philippines (1966), Brazil-United States (1967), France-United States (1967). On the other hand, film rentals could be assessed through a permanent establishment or through the application of a special formula or through the assumption of an income on the gross receipts, thus avoiding the problem related to the expenses involved. Technically these rentals divert greatly from the normal cases and do not have the same consideration as other royalties e.g. technical royalties.

iii) I agree with the exclusion which arises when the recipient has a permanent establishment in the source country and there is an effective connection with this concern. But, I would like to add the following:

a) I feel the absence of a more comprehensive clause including the royalties indirectly connected; e.g. negotiation on royalties held by representatives of the permanent establishment or supported by local financing or when some of the expenses are accounted for at the local branch.

b) Also I feel the absence of a clause dealing with parent companies and establishing reasonable rules for the allocation of the royalties or part thereof in the case of a local subsidiary; furthermore, if the royalties are treated as dividends in the country of origin.

iv) I agree with the regulations of royalties in case of related companies, a problem which is quite different from that of the allocation of royalties already analyzed. But I think that the use of more general terms is necessary such as those employed in Japan-Republic of Korea Treaty (1970) under which royalties in

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XXII Congress of IFA and published together with other reports and the minutes of the meeting; and "Bases para una política Latino Americana sobre Tratados Tributarios" by the author, presented to the VI Latin American Tax Institute Congress, and released in April 1971 by "Impuestos" of Buenos Aires, page 467.

4. "1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the recipient of the royalties being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provision of Article 7 shall apply.

4. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, the right or information for which they are paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention". (United Nations Secretariat ST/SG/AC. 8/R. 33, November 5, 1971, Annex V, page 4/5.

excess of a fair and reasonable consideration are separated from the general clause.

3. WHICH COUNTRY SHOULD TAX THE ROYALTIES AND HOW?

3.1. There is no doubt as to which country is the source country and which should be the rule if the principle of taxation at the source of income were universally followed.

In fact, all definitions coincide on the principle that in the matter of royalties the source is located where the intangible property is used or where the right to use it exists. Some marginal problems may arise concerning the source but these are of a minor importance.

3.2. Since practically all royalties paid in or by developing countries have these countries as their source and since in addition a deduction in the determination of the taxable income of the paying enterprises arises, this issue implies a double fiscal loss for these countries; first the reduction of the rate applicable to royalties and even non payment at the source claimed by some developed countries — and second, the decrease in revenue incurred in by the local companies.

The question that — on the contrary — the payee will compel an extra payment from the payer — represented by the tax collected by the developing country — is rather artificial and by no means of scientific nature.

In my personal opinion it is preferable to have royalty estimates with no exclusion of local taxation and reflecting the different licensor's attitudes since some of them would and some would not have a complete tax credit in the home country. In addition, it must be added that commercial factors such as competence may have an effect in the amounts involved.

Therefore, from both a theoretical and a practical point of view I have no doubt that royalties must be taxed in the country of their source.

3.3. Another problem is whether this taxation is the only one that may be collected or if the home country could at the same time apply its taxes on royalty payments.

The Brazil-Sweden Treaty (1965) prescribes that any royalty may be taxed in both countries but limiting the rate of the source country to 15% on the gross amount, a limitation which would apply in the case of Brazil three years after the ratification of the Agreement. It should be noted that this treaty contains the "tax sparing clause" for the avoidance of double taxation.

The projected Brazil-United States Treaty (1967) contained in general the same solution as the Brazil-Sweden Agreement. But it was built up under the device known as "investment credit" plus the additional tax credit so as to encourage investments and to avoid double taxation respectively.

A similar solution may be found in the Argentine-Federal Republic of Germany Treaty (1966) under the scheme of an exemption of income from Argentine sources and in other income items such as royalties, the application of a "tax sparing clause" for avoidance of double taxation.

Similar is the case of the Japan-Brazil Treaty (1967), under a pattern of a general "tax sparing" solution for income from Brazilian sources which also covers the reduction of the rate applicable to royalties.

So is the case of Peru-Sweden Agreement

(1966) under a scheme of exemption in Sweden of Peruvian source of income. [5]
In the case of the Brazil-France agreement (1972) royalties may be taxable in both countries with limitations on rates being the general rate, ceiling a 15% (Article 12a). In such a case, France will give a credit, but considering as having been paid a minimum 20% tax rate (Article 22 - 2 - d). I have not the slightest wish to discuss here the tax rates but I would prefer the solution of Peru-Sweden and France-Brazil Agreements.
3.4. But if something must be pointed out in matter or rates it is that it would not appear to be logical to make a general reduction. In fact, as far as the employment of some intangible assets becomes more useful for the progress of a developing country, a maximum reduction could be determined and on the contrary, the reduction should decrease gradually to the point where it would not be permitted at all. Therefore, royalties payable should be classified according to some priorities in order to apply a higher or lower reduction (under a pattern of exemption or a "tax sparing" scheme; otherwise, the sole beneficiary would be the Treasury of the developed country).

4. NEW REGULATIONS UNDER THE ANDEAN PACT

As known Bolivia, Colombia, Chile, Ecuador and Peru have signed the Andean Pact or Cartagena Agreement.
One of the Regimes created under this frame is the "Common rule of Treatment for Foreign Capital and for Trademarks, Patents, Licences and Royalties" which has been in force since July 1971.
Article 21 of this Regime prescribes:

"Intangible technological contributions shall grant the right to the payment of royalties, after authorization is given by the proper national organization, but they shall not be computed as capital contributions. When these contributions are furnished to a foreign company by its head office or by another affiliate of the same head office, the payment of royalties shall not be authorized and no deduction will be allowed for income tax purposes".

The concept "affiliate" has not been defined by the Agreement. In any case it should be understood to have a wider meaning than that of a branch of a foreign corporation. Every foreign enterprise should be considered an "affiliate" of the foreign entity when owning more than 50% of the capital of the enterprise, regardless whether it is constituted as a formal agency of the foreign major shareholder or as a separate entity in which the foreign investor is a partner or shareholder. However, these rulings have been interpreted in a very wide sense, e.g. if the percentage of foreign capital is in the hands of more than one outside investor, the local enterprise would be an affiliate of each and all of such investors.

5. The principle of the sole taxation at the source was ratified by the VI Congress of the Latin American Tax Institute held in Punta del Este in December 1970 and it was further introduced in the Tax Convention proposed in Decision No 40 of the Andean Pact approved in November 1971 to be applied by the Andean countries amongst them and also in the Tax Model Convention to be used in the agreements with third countries under the following clause: "Royalties derived in the territory of one of the Contracting (Member) countries, from the utilization of trademarks, patents, non patented technical knowledge or other intangible assets of similar nature, shall be taxed only in that Contracting (member) country."

We have already transcribed the article of the Tax Models Conventions under the Andean Pact concerning treatment of royalties only at the source (see point 3.3.).

While the tax models have not as yet been enacted by the member countries, the Regime for the treatment of foreign capitals is a law that binds Bolivia, Colombia, Chile, Ecuador and Peru in their external relationships in matters of royalties.

There is no need of comments upon these rules inasmuch as the provision is self explanatory; if no payments are permitted in case of "affiliates" obviously there are no taxes to be analyzed.

5. BORDERLINE PROBLEMS

5.1. *Technical assistance provided by companies versus royalties*

C. M. Giuliani Fonrouge is absolutely right in saying that the juridical characteristics of the technical advisory services and the royalties (he specially refers to know-how) are completely different. [6]

But practically technical fees are often collected through know-how installments, among other devices.

Therefore, although I theoretically agree with the before-mentioned separation of concepts, from a practical point of view I prefer a joint treatment.

Chilean law has adopted this kind of approach when it determines the basis of the withholding tax: "all amounts paid or credited with no deduction of any sort to persons not domiciled or resident in the country, for the use of trademarks, patents, formulae, technical assistance and other similar services, whether in the form of royalties, profit sharing or any other form or remuneration, excluding amounts representing capital or loan refunds, payments for physical assets brought into the country up to a cost generally accepted or income on which taxes have been paid in Chile".

In the heading I refer only to company services or technical assistance provided by capital concerns, not including personal and/or professional independent services performed by individuals or by partnerships.

No problem exists regarding personal independent services in the various treaties, as they give general recognition to the source — rule of taxation, this together with the exemption of the fees in the resident country under certain limitations.

5.2. *Leasing versus sale of intangibles*

In some instances, for tax purposes of the resident country, the intangibles are sold instead of being leased.

Although know-how, among others, is a fixed capital asset and therefore can be sold as such, it covers some technical assistance and as John Crystal comments, "it is the kind of intangible entity that can very easily change its category according to the use to which its owner himself decides to put it". [7]

Chilean law avoids this problem by excluding from the definition of royalty only the "payments for physical assets" as mentioned before, in 5.1. and, obviously know-how is not such kind of an asset.

In the case of El Mercurio v. Impuestos Internos the payment for the furnishing of cartoons from "Editors Press Service" and "The Hearst Corporation" were discussed.

The Chilean Supreme Court ruled on

6. Derecho Financiero, Vol. II, page 918.

7. See John Crystal. The Curious Nature of "know-how" - May 1968 IFA Bulletin Page 195 (commenting different Canadian cases).

August 12, 1970 that these cartoons were just only a way to render a journalistic service.

I agree with this jurisprudence and would add that if the sale or leasing of cartoons were forbidden, this property could not have been sold to El Mercurio notwithstanding the right of the licensee to use it.

5.3. *Leasing or sale of tangibles versus royalties*

The lease of an equipment may include the value of a technical assistance already rendered or to be performed in the future, specially in the near future. This is more apparent when the services are to be paid for in installments.

On the subject we can distinguish, among others, the following cases:

i) Technical assistance mixed with building, construction or assembly projects.

Tax treaties vary a great deal on this point qualifying a permanent establishment as such when no period of time or at least some time has elapsed as from the installation, the latter being the most common case. The O.E.C.D. Model fixed a limitation of 12 months but the Ad-Hoc Group of Experts proposed a 6 month period, i.e. up to 6 months it is not considered a permanent establishment in the country. Naturally the income involved in the value of the equipment is of foreign source but not the income related to the installation or the assembly. Any enterprise should fairly divide the respective values and the local authorities in consultation with the foreign authorities should control the reported values. The O.E.C.D. Model and the Ad-Hoc Group recommendations are more practical than theoretical. In addition it should be pointed out that technical assistance already rendered abroad prior to the operation in the local country is of foreign source.

ii) Technical services for the initial operation of equipment and the like when no installation is required.

Here the distribution should be the same as in case i) but it is very difficult to detect the services involved.

iii) Computers or similar equipment.

In general there are in this area heavy expenses in previous and future research. I would say that the selling price to third parties includes research expenses. The income included in the selling price is from foreign source but income rentals are from local source.

5.4. *Container shipments*

This subject is relatively new and has introduced a revolution in naval architecture, port facilities and connected services which exceeds the maritime traffic itself.

In IFA/PSC 1971/1972 November 30 document, the following question is formulated:

> "Should income from the leasing of containers be classified as rental income (usually taxed on a gross income basis); as industrial or commercial profits (not taxable in the absence of a permanent establishment among treaty countries); or as shipping income (taxable at the shipper's domicile)?"

The operations themselves are described in a German Decree [8] which assimilated these services to the international shipping clauses as included in Tax Treaties under reciprocity.

I am not against this solution for practical reasons, but I think that the question shoud be studied more carefully consider-

8. Published in IFA Bulletin, June 1969 - page 257.

ing the different stages as they are described in the German Decree:

1) The providing of containers and special transportation vehicles from the port of departure and during sea transportation.
2) Transfer of the container from the special transportation vehicle or freight car to the ship.
3) Transportation on the ship.
4) Unloading of the container at the port of arrival on special transportation vehicles or freight cars.
5) The providing of containers and special transportation vehicles for the inland consignee.

The operations described in numbers 4 and 5 take place in the destination territory. Operation No 4 is obviously a "connected service". In case of number 5 it should be noted that a provision of containers is permanently needed on site.

If the provision of containers is included in the freight charges, it seems they follow the same treatment as these; i.e. they would be external income in the case of imports and the contrary in the case of exports. Under this alternative and assumption, my opinion would be similar to the definition stated in the German document, reffered to above, which qualifies this income as a shipping income taxable in the domicile of the carrier. [9]

On the other hand, if the containers are rented separately from the shipping contract, even with a price fluctuation clause depending on the number of days of permanence on land, the rent may be considered as a commercial income received in the country, independent from the existence of a permanent establishment. Under this alternative, the income from "containers" would be qualified as income from local source and taxed on a net basis.

5.5. *Deduction of expenses*

I do not believe that the deduction of expenses is to be regulated through a reduction of tax rates. This is more than an artificial solution, considering the different amounts and kinds of expenses involved, it appears as a standard blanket allowance deduction.

In my opinion, this blanket allowance must not be applied either as a tax rate reduction or as an expense deduction. This is because expenses must generally be proved and usually withholding tax rates are lower than all taxes normally to be paid on net income.

Nevertheless the law could provide an exemption, giving discretionary faculties to the tax authorities in order to regulate yearly standard deductions by activities and/or kind of royalties.

5.6. *"Free of taxes in the country of the licensee" stipulation*

Technically in this case the licensor is obtaining two types of income:

i) The stipulated net royalty and ii) the payment of his tax by the licensee.

Therefore, a grossing up is in order to determine the total taxable income.

As mentioned before, this clause is not advisable for developing countries by a number of reasons and I feel there is no need to introduce a provision on the subject in the Tax Model of O.E.C.D.

6. CONCLUSIONS

a) Latin American doctrine with which I agree, is consistent when considering that

9. On the subject I have been in touch with Giuliani Fonrouge who in principle is of the same opinion.

royalties must only be taxed in the country where the technological contributions are used.

b) Nevertheless, it may be admitted that many aspects exist which would allow a practical approach in certain cases; e.g. treatment of containers.

c) The alternative of reducing the applicable rates is workable provided that:

— It should not be a general rule but special rules based on the qualification of the different needs of technological contributions in each country, and

— That the reduction of the rates should benefit the licensor — indirectly the licensee — and not the foreign treasury. This may be done through the exemption of this income in the resident country or applying the "tax sparing clause".

WOLFE D. GOODMAN, Q.C. *:

CANADA: THE EFFECT OF RECENT DEATH TAX LEGISLATION ON NON-CANADIANS**

Most estate planners are accustomed to meeting (and not always resolving) double taxation problems arising from the imposition of death taxes both in the jurisdiction in which property of a decedent is situated and in the jurisdiction of the decedent's domicile or citizenship. However, since the beginning of 1972, seven Canadian provinces, Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Saskatchewan and British Columbia, have adopted a new type of accessions tax which is levied on beneficiaries who are resident in the province and who inherit from any source property which is situated outside the province, a situation which will greatly increase the possibility of double taxation. In many cases, beneficiaries resident in these provinces will inherit property which was owned by a U.S. decedent and the fact that these beneficiaries will be subject to provincial taxation in Canada on their inheritances will present many new problems.

The pattern of death taxes in Canada at the end of 1971 was rather complex. In the four Atlantic provinces and in Manitoba, the federal government collected estate taxes on all estates at full rates but it remitted to the provincial government 75% of these revenues, retaining only 25% for itself. In Alberta and Saskatchewan, the federal government also collected estate taxes on all estates at full rates and remitted 75% of the revenues to the provincial government, but the provincial government rebated to the estate the province's entire share of these revenues if the decedent died domiciled in the province or if he had resided there for three years. In British Columbia, the federal government collected estate taxes on all estates, but at only 25% of the full rates, and the provincial government levied its own succession duties on estates and property in the province, under legislation which was by no means identical to the federal Estate Tax Act. In Ontario and Quebec, the federal government collected estate taxes on all estates, but at only 50% of the full rates, and it remitted 50% of these revenues to the provincial government. Both these provincial governments also levied their own succession duties under their own legislation.

The federal government of Canada decided to abandon completely the field of estate and gift taxation at the end of 1971, a situation which required immediate decisions to be made by those provinces which had shared estate tax revenues with the federal government. The provincial governments of the four Atlantic provinces and of Manitoba were not slow to indicate their desire to re-enter the succession duty field. Saskatchewan, which had a change of government since it had enacted its estate tax rebate legislation, moved in the same direction. Since these six provincial governments had not had any experience

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** Paper submitted on February 2, 1973 at the Conference of the International Fiscal Association on the Canadian-USA tax treaty (New York City).

for many years in imposing succession duties and since they lacked experienced staff with which to administer the new legislation, the federal government offered technical assistance and agreed to administer their succession duty laws for a period of three years. Alberta decided not to impose either succession duties or gift taxes. It therefore remains a tax-haven, together with the Yukon Territory and North West Territories, while the nine other provinces impose succession duties at rather high rates. However, the government of Prince Edward Island recently announced its intention of repealing its succession duty legislation retroactively to January 1st, 1972.

The basic structure of the new succession duty laws of the four Atlantic provinces, Manitoba and Saskatchewan differs substantially from that previously existing in Canada. This difference may have a marked effect on both Canadian estates and non-Canadian estates with Canadian interests or beneficiaries. The reason for the change is directly related to the constitutional limitations on the taxing powers of the provinces. Section 92(2) of Canada's Constitution, The British North America Act, limits the provinces to "direct taxation within the province". It is generally considered by constitutional lawyers that an estate tax, which is imposed on an estate, but the burden of which falls on the beneficiaries of the estate, is an indirect tax and that it cannot be validly imposed by a provincial government.

In order to ensure that the taxes which they imposed were constitutionally valid, Ontario, Quebec and British Columbia, the three provinces which imposed succession duties at the end of 1971, used a dual system of taxation. First, they taxed property situated in the province which passed on the death of a decedent, whether the decedent died domiciled in or outside the province. Secondly, they taxed "transmissions within the province", that is, the passing of personal property situated outside the province from a decedent who died domiciled in the province to a beneficiary who was either resident or domiciled in the province. There were two obvious gaps in the system of succession duties in these three provinces. First, real property situated outside the province was not taxed, even when it passed from a decedent who died domiciled in the province to a beneficiary who was resident or domiciled in the province. Secondly, where personal property situated in Province A passed from a decedent who died domiciled in Province B to a beneficiary who was resident or domiciled in Province C, neither Province B, nor Province C, attempted to levy tax.

The new system in the six provinces retains the first basis of taxation, on property situated in the province, although, for reasons which I shall mention later, its importance has been considerably diminished. The second basis of taxation, however, has been radically altered. Tax is now imposed on any beneficiary who is resident in the province and who inherits any property, real or personal, situated outside the province. By altering the tax basis in this manner, the two gaps mentioned above have now been closed. Foreign real property is now subject to tax and the fact that the decedent and the beneficiary are in different provinces is now irrelevant. Indeed, the domicile of the decedent is, in general, of no consequence for the purpose of determining liability for provincial succession duty in the six provinces.

Double taxation would, of course, occur even among the provinces of Canada, if one province were to tax on the basis of

the situs of the decedent's property in the province while another province taxed the beneficiary who was resident there. Four steps have been taken by the six provinces to eliminate such double taxation:

(1) These provinces have adopted, in a highly simplified form, one of the key principles of the O.E.C.D. Draft Convention on Estates and Inheritances, by agreeing among themselves that whenever any property, other than real property, situated in one "cooperating province" is inherited by a beneficiary who is resident in another cooperating province, the province of situs of the property will forego taxation and only the province of the beneficiary's residence will impose tax. For this purpose, each of the six has designated the other five as cooperating provinces.

(2) Wherever the first principle does not apply, the province of the beneficiary's residence will grant a tax credit against the beneficiary's tax liability equal to the lesser of the tax levied by the jurisdiction of situs of the property (whether within or outside Canada) and the tax levied by the province of the beneficiary's residence in respect of the same property. Credit is given both for U.S. federal and for state taxes. These tax credit provisions are unilateral and are not dependent upon reciprocal concessions by the jurisdiction of situs.

(3) There is a broad exemption for insurance policies and pensions payable in respect of decedents who are not domiciled in the province to beneficiaries who are outside the province.

(4) In Prince Edward Island and Newfoundland, where property of a deceased, other than real property, is situated within the province but the deceased at the time of his death and the successor to such property are both resident and domiciled outside Canada, the property is exempt from duty. In Nova Scotia and New Brunswick, Saskatchewan and Manitoba, this exemption is even broader, in that it applies even if the decedent and the successor were resident and domiciled in another province of Canada.

The impact of the new tax system of the six cooperating provinces on non-Canadian decedents who own property situated in one of these provinces has been considerably reduced by the last-mentioned exemption. In most cases, non-Canadian estates will have beneficiaries who are neither resident nor domiciled in Canada; in this event, only real property situated in the province will be subject to succession duty and it is to be hoped that U.S. foreign tax credits will eliminate any double taxation problems in respect of such property. However, where a non-Canadian estate has beneficiaries who are resident in one of the six cooperating provinces, an entirely new tax has been imposed on them in respect of their inheritance of property which is situated outside the province. If, for example, a decedent dies domiciled in Illinois, leaving property situated in Illinois and in New York to a daughter in Manitoba, Manitoba will now levy duty on the daughter. However, Manitoba will grant the daughter a tax credit equal to the lesser of the Manitoba duty and the amount of the estate, death, inheritance or succession tax or duty payable on that property under the laws of the jurisdiction in which the property was situated at the time of the death of the deceased. That is, credit will be given by Manitoba for both U.S. federal and Illinois taxes in respect of property situated in Illinois and for both U.S. federal and New York taxes in respect of property situated in New York.

While this credit will eliminate many

double taxation problems, there are a number of situations in which credit will not be given under the new provincial legislation and in which serious double taxation can occur. For example, if a decedend died domiciled in Illinois, leaving property situated in the United Kingdom to a beneficiary resident in Manitoba, Manitoba would grant credit only for U.K. taxes on such property and not for any U.S. federal or state taxes. If the property were situated in the Bahamas, which does not levy any death taxes, Manitoba would grant no credit at all, even though the United States and Illinois might both levy substantial taxes in respect of this property. The rationale for denial of a tax credit is, that while the jurisdiction in which the property is situated is acknowledged to have a prior claim to tax the property, no such priority is accorded to the jurisdiction of the decedent's domicile, as against the jurisdiction of the beneficiary's residence. Whatever the justification, the double taxation possibilities may be very serious.

Double taxation can also occur if a jurisdiction such as the United States imposes death taxes on the basis of citizenship without regard to domicile. If, for example, a U.S. citizen domiciled in the Bahamas dies, owning property both in the United States and the Bahamas, which is left to a beneficiary resident in Manitoba, Manitoba will grant a credit only for U.S. federal and state taxes imposed in respect of property situated in the United States and for the non-existent Bahamian taxes imposed in respect of property situated in the Bahamas; it will not grant any credit in respect of U.S. federal or state taxes on the Bahamian property.

These double taxation problems are particularly aggravated by the fact that when the federal government of Canada vacated the death tax field, the U.S.-Canada Death Tax Convention became ineffective. While it is unlikely that similar conventions will be negotiated in the near future between the United States and the provinces of Canada, it is to be hoped that the governments concerned will eventually realize the advisability of doing so. Some method will have to be found for avoiding double taxation resulting from the differing rules relating to the situs of intangible property, particularly corporate shares. In addition, it may be possible to avoid conflict between taxation on the basis of the decedent's domicile or citizenship and taxation on the basis of the beneficiary's residence, by a system of mutual tax abatements similar to those provided in Article V. (2) of the U.S.-Canada Death Tax Convention.

It should be noted that although Canada does not impose death taxes on the basis of citizenship, the accessions basis of taxation now adopted by seven provinces can be a very effective weapon against avoidance of duty by a wealthy individual who leaves Canada and establishes his domicile in some tax-haven jurisdiction. Even if such an individual transfers all his Canadian property to a holding company incorporated in a tax-haven jurisdiction, so that his property then consists of securities of this company, which are not regarded as property situated in Canada, if he leaves his property to beneficiaries who are resident in one of these provinces, they will still be subject to succession duty on his death.

British Columbia had its own succession duty legislation in 1971 which it continues to administer. This province has a long history of "going it alone" in the succession duty field, without regard to possible double taxation of estates. For example, Section 2 (2) (k) of its Succession Duty

Act, enacted in 1967, is unique in its imposition of succession duty on corporations which own property situated in British Columbia, in respect of the transmission of securities of such corporations by reason of the death of a decedent, even if the decedent and the beneficiary are both outside the province and even if the corporation has no connection with the province apart from the ownership of property there. British Columbia has now again demonstrated its fiscal independence by adding Section 6A to its Succession Duty Act: (Statutes of British Columbia, 1972, Chapter 59, Section 14). Section 6A imposes duty on all beneficiaries who are resident in British Columbia and who inherit property situated outside the province. While this accessions tax is expressed in terms which are very similar to those used by the other six provinces mentioned above, it may operate quite differently.

First, Sec. 9, which taxes transmissions, has not been repealed, though there is an obvious overlapping. All transmissions must necessarily also be taxable under Section 6A, although the converse is not necessarily true. It is even possible, although unlikely, that a beneficiary who is resident in British Columbia might be subject to tax under both sections, since there is no indication in the legislation that liability under Section 9 will preclude liability under Section 6A.

Secondly, while the 1972 amendments to the British Columbia Succession Duty Act contain new and somewhat broader tax credit provisions, credit is still to be given only for taxes levied by jurisdictions which are prescribed by regulation, with the result that credit will most probably still not be given for taxes paid to a non-Canadian jurisdiction in respect of property situated there. The introduction of Section 6A makes this particularly serious. For example, if a decedent dies domiciled in Illinois, leaving to his daugther, who is resident in British Columbia, property which is situated in Illinois and New York, serious double taxation will be inevitable, since British Columbia will probably not grant credit for U.S. federal, Illinois or New York taxes on the property inherited by the British Columbia beneficiary.

USHA JAIN*:

INDIA: A REVIEW OF WEALTH TAX

On the recommendation of Prof. N. Kaldor [1] the Wealth-Tax was introduced in India for the first time in 1957. [2] The Wealth-Tax Act 1957 imposes a tax on the net wealth of the assessee. Net wealth is the amount by which the aggregate value of all assets belonging to tax payer and assets which are required to be included in his wealth is in excess of the aggregate value of all the debts owned by him as on the valuation date. The assets held by the wife or minor children are also included provided they were transferred by him without adequate consideration. However, assets transferred before April 1, 1956, are not included. It appears that there is no justification for such a discrimination. This anomaly should be removed.

WHY TAXATION OF WEALTH?

Taxation of wealth is justified on several grounds. From the equity point of view, we find that income taken by itself is not an adequate yardstick of taxable capacity because "the ownership of property in the form of disposable assets endows the property owner with a taxable capacity as such, quite apart from the money income which that property yields." [3] If two persons have identical incomes but one has considerable accumulation of wealth he enjoys several advantages. Accumulation of wealth is a source of satisfaction in itself because wealth is a symbol of status and prestige in society. The man possessing wealth can maintain his level of living in case his income ceases and he is also not under compulsion to save. From the point of view of economic effects a great advantage in taxing wealth is that such a tax is neutral between all types of employment of capital and thus mitigates to some extent the evil effects of income tax which discriminates against the risky employment of capital. From the administrative point of view also this tax, together with income tax, is likely to check avoidance and evasion of income tax.

The question of imposition of an annual tax on wealth was examined by the Taxation Enquiry Commission which felt that "Theoretically, there is something to be said for an annual tax on total wealth at a low rate as a complement to the income tax (and estate duties). Such a scheme would have much to commend itself, as a better balance in the incidence of taxation among individuals would be secured by it than through taxation of income alone, particularly in view of the evasion in income tax .... The information collected regarding assets and liabilities of individuals would also be of material use as a check on the accuracy of income, inheritance and gifts reported by taxpayers." [4] The Commission, however, did not favour the imposition of the tax because of the practical administrative difficulties that would be involved in valuing the capital assets.

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1. *Indian Tax Reform, Report of a Survey,* 1956, pp. 19—28.
2. This tax was levied in Ceylon in 1959 and in Pakistan in 1963. Japan adopted this tax in 1950 but repealed it in 1953.
3. N. Kaldor, *Op. cit.,* p. 20.
4. *Report of the Taxation Enquiry Commission,* 1953-54, Vol. 1, p. 163.

DEVELOPMENTS IN WEALTH-TAX

When the tax was initially introduced in 1957/58 an exemption limit of Rs. 2 lakhs [5] was prescribed for individuals and Rs. 4 lakhs for the Hindu Undivided Families. The tax was levied on graduated basis, and the maximum rate of wealth tax of 1½ percent was attracted on the net wealth exceeding Rs. 22 lakhs for individuals and Rs. 23 lakhs for Hindu Undivided families. The wealth tax was also levied on companies at the rate of ½ percent on the net wealth exceeding Rs. 5 lakhs. However, corporations were accorded special treatment for losses and low profit margin and a limited form of relief from double taxation was granted to shareholders. If a company incurred a net loss in any year and did not declare any dividend on equity capital in respect of that year, it was exempt from the tax. The value of shares held by a company in another company was not subject to tax. The portion of the net wealth which was employed by a company in a new and a separate unit after the commencement of the wealth tax — Act was also exempt. Further, in case the profits of a company in any year were less than the amount of the tax payable by it, its liability was limited to the amount of such profit. Certain types of companies were altogether exempted from the wealth-tax. [6] The wealth tax on companies was, however, abolished with effect from the financial year 1960-61 following the reforms in company taxation in 1959-60.

From the assessment year 1959-60 the rates of wealth tax were increased by ½ percent in each slab. The Finance (No. 2) Act, 1962 abolished the exemption available in respect of shares held in new industrial companies and re-arranged the wealth tax slabs. The rates of tax on the two highest slabs were increased from 1.5 percent and 2 percent to 1.75 percent and 2.5 percent respectively.

The Finance Act 1964 reduced the exemption limit to Rs. 1 lakhs in the case of individuals and Rs. 2 lakhs in the case of Hindu undivided families. The slabs were rearranged and an initial wealth tax rate of 0.5 percent was introduced for the wealth up to Rs. 5 lakhs. The exemption in respect of a residential house situated in a place with a population below 10,000 was limited to a value of Rs. 1 lakhs by the Act.

The Finance Act 1965, left the rate schedule undisturbed but introduced two important changes in the wealth tax Act. One of them was intended to revive and encourage capital market in the private sector and the other to divert investments from speculative projects to projects having better claims for national development. The exemption from wealth tax in respect of investments in new equity shares was revived. This exemption was available in respect of capital which formed part of the initial issue of equity capital made by the company after February 28, 1965 and was available for five successive assessment years. As a measure of disincentive to discourage "excessive investment in urban property which has been rising rapidly in value due to variety of reasons", an additional wealth tax was imposed on a graduated basis on the value of lands and buildings and rights therein situated in areas with a population exceeding 1 lakh. Different exemption limits were prescribed for areas having different population. The initial exemption was Rs. 2 lakhs where the property was situated in an area having a popu-

5. Rs. 1 lakh = 100,000 Rs.

6. These companies included new industrial undertakings, banking companies, insurance companies, shipping companies, etc.

lation upto 4 lakhs, Rs. 3 lakhs where the population was above 4 lakhs but less than 8 lakhs, Rs. 4 lakhs where the population was above 8 lakhs but less than 16 lakhs and Rs. 5 lakhs where the population exceeded 16 lakhs. The rates of tax were on progressive basis and the highest rate of 4 percent was attracted on the value of property exceeding Rs. 17 lakhs in excess over the exemption limit prescribed. However, lands and buildings belonging to an individual or Hindu undivided family and used for the purposes of his or its business or profession were excluded from the levy of the additional wealth tax. From the financial year 1967-68, the rates of wealth tax came to be prescribed on a prospective basis as against the retrospective basis as applied formerly. In the financial year 1968-69 the rate of tax was rearranged over Rs. 10 lakhs by half percent. The initial wealth tax rate of 2½ percent was introduced on wealth between Rs. 10 lakhs and Rs. 20 lakhs and 3 percent on wealth above Rs. 20 lakhs.

A new future of the 1969-70 Budget was the reconnaissance mission to the rural economy through bringing in of agricultural wealth such as agricultural lands and buildings in the purview of wealth tax. The Finance Minister Mr. Desai in his Budget speech said, "I propose to provide in the wealth Tax Act for the levy of wealth tax on the value of agricultural land, including, buildings situated on or in the immediate vicinity of such land. Standing crops, tools, implements and equipment such as tractors will, however, be exempt. Agricultural wealth will be added to other wealth for the purposes of the tax at the existing rates with effect from the assessment year 1970-71." [7] The exemption limit for agricultural wealth was kept at Rs. 150,000. In order that "the objective of a ceiling on urban property is achieved, at least in part, within the framework of the powers already available to the Centre," [8] the rates of additional wealth tax on urban lands and buildings were increased on certain slabs. A tax of 5 percent on the value of urban lands and buildings in excess of Rs. 5 lakhs and at the rate of 7 percent on the value in excess of Rs. 10 lakhs was levied. The exemption on the basis of differences in population was abolished and the definition of the term 'urban area' was extended to cover areas within the limits of any municipality or other similar authority, having a population of 10,000 or more, with powers to cover by notification areas upto 8 kilometres outside such limits. The monetary limit of Rs. 1 lakh in respect of a residential house was now made available irrespective of the location of the residential house. Exemption was also much available in respect of the investments in specified financial assets [9] upto an aggregate value of Rs. 1.5 lakhs.

The Finance Act, 1971 has made certain changes with respect to the exemption limit and the rates of wealth-tax. Although

7. *Finance Minister's Budget Speech,* 1969-70.
8. *Finance Minister's Budget Speech,* 1970-71.
9. These assets include Government securities of the Central Government, fixed deposits with the Central Government or Post Offices, shares in Indian Companies, Units in the Unit Trust of India, deposits with banking companies etc. By the Finance Act, 1971 this list has been enlarged to include shares in a co-operative society and deposits made by a member of a co-operative society with the society. By the Finance Act, 1972 this list has further been enlarged so as to include the value of assets forming part of one industrial undertaking belonging to the assessee, as also the value of his interest in the assets forming part of an industrial undertaking belonging to a firm or an association of persons of which the taxpayer is a partner or a member.

the exemption limit continues to be Rs. 1 lakh in the case of individuals and Rs. 2 lakhs in the case of Hindu undivided families, such exemption is now available only where the net wealth is below this exemption limit. No exemption is available if the net wealth exceeds this limit even by a fraction. However, some marginal relief has been provided if the net wealth exceeds the exemption limit by a small margin. In such a case, the wealth tax payable is lower of: (a) tax at the rate of 1% on the amount of the net wealth; or (b) an amount equal to 10% of the amount by which the net wealth exceeds the exemption limit. The rate of wealth tax has also been increased drastically to 8 percent on the net wealth in the slab over Rs. 15 lakhs, as against 4 percent in the slab of Rs. 15 lakhs to Rs. 20 lakhs and 5 percent on net wealth over Rs. 20 lakhs formerly. The exemption in respect of one residential house upto a maximum value of Rs. 1 lakh has been liberalized to include cases where the house is not used by the assessee for his own residence but is let out on rent.

The wealth tax is today levied on the net wealth of the individuals and the Hindu undivided families. However, certain debts such as debts located outside India, debts secured on or incurred in relation to exempted assets and tax, penalty or interest payable under the Income-tax Act, Gift Tax Act etc., are not deducted while arriving at the net wealth.

Assets for wealth tax purposes include property of every description movable or immovable. But certain assets such as agricultural land and growing crops, grass or standing trees on such lands upto Rs. 150,000; animals; rights to annuities which are not commutable, interest in property in certain cases have been specifically excluded.

The Act grants exemption in respect of some assets. Important among these are; (i) Any property held under charitable or religious trust; (ii) The share in the coparcenary property of any Hindu undivided family; (iii) Any one house belonging to the assessee; (iv) Rights under any patent or copyright; (v) Furniture, household utensils, wearing apparel, provisions and other articles intended for personal or household use of the assessee;[10] (vi) Tools and implements used for raising agricultural produce and scientific research; (vii) Tools and instruments for carrying on profession, a vocation upto Rs. 20,000 in value; (viii) Drawings, paintings, prints and any other heirloom, not intended for sale; (ix) Certain types of deposits; (x) Amounts standing to the credit of a provident fund; (xi) Rights under any patent or copyright or the right to receive a pension in any policy of insurance, where policy money is not yet due; and (xii) shares in new industrial undertaking for five successive assessment years.

A reduction of 50% of the tax attributable to foreign net wealth is granted to citizens and Hindu undivided families who are ordinarily resident. The tax on the total net wealth, domestic and foreign, is computed at the coverage rate, and then reduced by an amount which bears the same propor-

10. Although exemption in respect of jewellery was withdrawn from April 1963, subject to a maximum of Rs. 25,000 in value, the interpretation given to the expression 'other articles intended for the personal or household use of the assessee' by the Supreme Court in the case of *C.I.T.* Vs. *Mrs. Arundhati Balkrishna,* so as to include jewellery within this term, led to complete exemption of personal jewellery from the purview of wealth tax. Therefore, the Finance Act, 1971 has specifically included jewellery in the net wealth of the assessee.

tion to it as 50 percent of the foreign net wealth bears to the total net wealth.

Since its introduction in 1957/58 the number of wealth tax assessees has continuously shown an upward trend. It is clear from table 1 that whereas the total number of wealth tax assessees on the General Index Register of the Income tax department stood at 28,270, on March 31, 1961, it increased to 173,255 on March 31, 1971, or about six times in 10 years. Together with the increase in the number of wealth-tax assessees, the revenue collected from wealth tax has broadly shown an upward trend which is clear from table 2. A comparison of table 1 and 2 reveals that where as the number of wealth-tax payers has grown about six times between 1961 and 1971, the yield from wealth tax has only doubled, inspite of the fact that the wealth tax rates have been made more progressive. The result has been that the proportionate share of wealth tax in total direct taxes revenue of the Union Government has gone down. Table 2 shows that where as the share of wealth tax in total direct taxes revenue stood at 3 percent in 1957/58, it went down to 1.7 percent in 1970-71. It is only for the last two years that this proportionate share has increased. This may be attributed partly to the levy of wealth tax on agricultural land, reduction in the exemption limit and an increase in the tax rates.

The reasons for the low revenue productivity of wealth tax may be attributed to the slow disposal of wealth tax cases and consequently to increasing arrears of assessments, arrears of collection and avoidance of wealth tax. Although the disposal of wealth tax cases has continuously shown an upward trend during the past ten years, the arrears of assessment have also increased (Table 3). Table 3 shows that the number of arrears of wealth tax assessments stood at 15,499 in 1961-62 which increased to 54,067 in 1965-66 and to 161,343 in 1970-71. Out of these 161,343 pending cases there are 9,241 cases which relate to 1965-66 and earlier years (Table 4). Table 4 gives a clear indication that the wealth tax assessments are not completed for a number of years and this delays the realisation of wealth-tax revenue. This table also shows that an amount of Rs. 14.25 crores was involved in 161,343 cases. The low yield from wealth tax is also due to the fact that even after the assessments are completed and wealth tax demand is raised, the amount is not realised and arrears of collection go on increasing. Arrears of collection stood at Rs. 12.01 crores in 68,173 cases at the end of 1970-71 which is clear from table 5. Out of these Rs. 12.01 crores, there is an amount of Rs. 1.42 crores which represents the demand for 1965-66 and earlier years. Avoidance of wealth-tax through a number of devices has also reduced the yield of the wealth tax. It is true that clause (V) of sub-section (i) of section (64) of the Income tax Act 1961 has been interpretated to mean that the income of the other person can be clubbed with the income of the individual only if it arises from assets transferred directly. [11] In view of this interpretation of the said clause, people have resorted to indirect transfers of assets, avoiding thereby wealth tax liability. Prior to the amendments made in the wealth tax Act 1957 by the Finance Act 1970 people have thrown their self acquired property into the common hotchpot of the Hindu undivided family and thus have avoided the payment of wealth tax. A number of

11. *Commissioner of Income-tax* Vs. *Framji. H. Commissariat* - (1967) 64 I.T.R. 588.

transfers of properties have also been made by parents-in-law or paternal grandparents directly or indirectly, otherwise than for adequate considerations, to the daughters-in-law or minor grand children, as the case may be for their immediate or deferred benefits.

Avoidance of wealth tax has also been practiced through the medium of limited companies. "The exemption of companies from the levy of the wealth tax has led persons to buy or construct immovable properties through the medium of closely held companies. The attraction for having immovable properties in the name of such companies is all the more in bigger cities, not only because these properties fetch substantial income due to scarcity of accommodation but also because these ecape proper wealth-tax liability." [12] There has also been considerable under-valuation of properties. Although certain rules have been laid down and there are some government approved valuers, yet it is a common knowledge that properties are considerably under valued, specially in the big cities. In a test check during 1970-71, the Audit found that there was incorrect valuation of property in 511 cases and there was a short levy of wealth tax of Rs. 6.26 lakhs in these cases. [13] The absence of proper valuation machinery in the Income-Tax-Department also helps in utilization of unaccounted money in investments. Properties have also been held in *benami* names to evade the payment of wealth-tax. This tendency of avoidance and evasion of wealth tax needs to be curbed to the maximum if the wealth tax is to be productive in revenue and the objective of the equality of income and wealth is to be achieved.

A number of steps have recently been taken to check avoidance and evasion of wealth-tax. Under the Finance Act 1968 the scale of penalty for concealment of wealth was increased from a minimum of 20 percent of the tax to 100 percent of the concealed wealth and a maximum of twice that amount. In order to check the tendency of converting separate property into the Hindu undivided family property, the Finance Act 1971 has provided that in a case where an individual converts a separate property into a joint family property of a Hindu undivided family of which he is a member, the share of the individual, his spouse or minor children (other than married daughters) will be included in the net wealth of the individual. The amendment further provides that "in the event of a partial or total partition in the Hindu undivided family, the shares allotted to the spouse or minor *children* in the converted property will also be similarly included in the net wealth of the individual." [14] However, there appears to be no reason why the share of wealth from such transferred assets attributable to the major sons is not included in their wealth as such share does not form a part of the major sons' wealth and thus escapes taxation. Further, this amendment does not apply in the case of transfer of properties to wife or minor children out of the Hindu undivided family properties. It is desirable that the legislation should be passed in this sphere also.

It is a common knowledge that large sums of unaccounted money are invested in the construction and acquisition of immovable

12. *Direct Taxes Enquiry Committee Final Report*, 1971, p. 85.

13. *Report of the Comptroller and Auditor General of India*, 1970-71, Union Government (Civil), Revenue Receipts, p. 74.

14. C.B.D.T., Ministry of Finance, *Explanatory Notes on The Provisions Relating to Direct Taxes* in Budget for 1971-72 and Finance No. (2) Act, 1971, p. 49.

properties. To tackle this problem the determination of the correct cost of land, expenses on the construction of the property, and the real price at which the transfer of property is effected, is necessary. To do this the Central Board of Direct Taxes should have the assistance of expert valuers and the government should have an option to purchase the property at declared value. [15] It is a happy augury that the Taxation laws (Amendment) Act 1972, with effect from November 15, 1972, provides that any immovable property, including agricultural land (whose fair market value exceeds Rs. 25,000) which is transferred on or after the date will be liable to acquisition by the Central Government if its fair market value exceeds the consideration declared in the transfer deed by more than 15 percent. [16] The amendment further provides that "no person will hereafter be entitled to institute any suit claiming ownership of any property held by him benami unless he discloses the income from the property or the property itself for purposes of income tax and wealth tax or gives notice of his claim to the property to the income tax authorities." [17] The Finance Act 1972 has also empowered the Central Government to enter into agreement with the government of a foreign country for enabling the exchange of information for the prevention of evasion or avoidance of wealth-tax and for recovery of such tax in the treaty countries. This is a step in the right direction.

Finally, it is very much desired the Valuation Cell of the Income Tax Department should be considerably strengthened by the appointment of more Executive Engineers, Appraisers and Overseers. At present there are only 8 Executive Engineers, 2 Appraisers and 16 Overseers in these valuation Cell. Their number should be considerably increased.

TABLE 1
Number of Wealth-tax Assessees

Year	Number of Assessees
As on 31st March 1961	28,270
" " " " 1962	30,827
" " " " 1963	31,779
" " " " 1964	32,876
" " " " 1965	67,059
" " " " 1966	83,022
" " " " 1967	89,399
" " " " 1968	94,511
" " " " 1969	105,925
" " " " 1970	138,635
" " " " 1971	173,255

TABLE 2
Net Collections from Wealth-Tax (1)

1	2	3	4
Year	Wealth-Tax (in crores (2) of Rupees)	Total Direct Taxes (in crores of Rupees	2 as percentage of 3
1957-58	7.04	229.18	3.0
1958-59	9.66	240.32	4.0
1959-60	12.11	272.02	4.5
1960-61	8.15	291.08	2.8
1961-62	8.26	336.16	2.5
1962-63	9.54	422.11	2.3
1963-64	10.50	549.28	2.0
1964-65	10.52	599.18	1.7
1965-66	12.06	598.05	2.0
1966-67	10.73	656.25	1.7
1967-68	10.67	653.53	1.6
1968-69	11.18	692.55	1.6
1969-70	15.55	811.43	1.9
1970-71	15.00	869.00	1.7
1971-72 (RE)	30.00	1,026.00	2.9
1972-73 (BE)	43.00	1,113.00	3.8

Source:
(1) Sources: Report on Direct Taxes 1969-1970 and Report on Currency and Finance, 1971-1972.
(2) Rs. one crore = 100 lakhs or 10 million Rs.

15. Anil Kumar Jain, The Problem of Income-Tax Evasion in India, *Bulletin for International Fiscal Documentation*, July 1972, p. 290.
16. *Reported in The Times of India*, Nov. 15, 1972.
17. *Ibid.*

TABLE 3

Assessments - Workload and Disposal-Wealth-Tax

Year	Workload	Disposal	Arrears
1961-62	52,156	36,657	15,499
1962-63	55,403	39,533	15,870
1963-64	56,662	38,105	18,557
1964-65	95,196	63,068	32,128
1965-66	134,800	80,733	54,067
1966-67	161,927	87,695	74,232
1967-68	185,148	92,764	92,384
1968-69	226,540	105,874	120,666
1969-70	321,444	186,206	135,240
1970-71	360,569	199,226	161,343

TABLE 4

Year-wise Break-up of Arrears of Wealth-Tax Assessments pending on March 31, 1971.

Year	Number of assessments pending	Approximate amount of tax involved (in crores of Rupees)
1965-66 and earlier years	9,241	1.35
1966-67	8,787	0.71
1967-68	12,341	1.10
1968-69	20,300	1.74
1969-70	34,402	2.75
1970-71	76,272	6.60
	161,343	14.25

TABLE 5

Year-wise Break-up of Arrears of Wealth-tax Demand on March 31, 1971.

Year	Amount (in crores of Rupees)	Number of cases
1965-66 and earlier years	1.42	3,777
1966-67	0.44	2,528
1967-68	0.69	3,852
1968-69	0.91	5,675
1969-70	2.71	15,428
1970-71	5.84	36,913
	12.01	68,173

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FISCAL MEASURES TO CREATE EMPLOYMENT: THE INDONESIAN CASE

ALAN PEACOCK AND G. K. SHAW *:

I. INTRODUCTION

In previous studies the authors developed an analytical framework which sought to offer guidance on the fiscal measures which would be most appropriate to use in trying to raise employment levels in developing countries experiencing rapid rates of population growth, but bedevilled by a low level and rate of capital formation. The authors recently had the opportunity [1] to review the applicability of their proposals to Indonesia, a country in which it is generally agreed that the unemployment problem is acute and is likely to worsen in the absence of positive measures by government.

The background to the Indonesian employment problem is sketched out in II below. Section III considers the relation between the present system of public finance in Indonesia and employment creation, and this is followed in section IV by an examination of possible ways of adapting the system. Section V suggests how one might fashion a strategy for fiscal-oriented employment policy and some concluding remarks are devoted to a brief review of the relative merits of fiscal as against other policy measures devoted to the same end.

II. THE BACKGROUND

The population of Indonesia is approximately 125 million (1973) and is currently estimated to be expanding at an annual rate of 2.8%. The net addition to the labor force is shortly expected to reach almost two million annually. As in many developing countries, rapid expansion in the labor force is likely to be accompanied by migration from rural to urban areas, for the sizable wage differential which exists between rural and urban areas provides the rationale for such migration despite the existence of substantial open urban unemployment. [2] A special feature of the Indonesian situation is that the growth of employment opportunities seems likely to be unevenly distributed with the rural areas suffering from the continuing decline in the relative importance of the traditional export crops, (rubber excepted), which

* Alan T. Peacock is Professor of Economics of the University of York and G. K. Shaw is Reader in Political Economy of the University of St. Andrews.

1. As consultants to the Harvard University Development Advisory Service in Indonesia during 1972-73. We would like to acknowledge the help of members of the Harvard Advisory Service including access to hitherto unpublished papers, and data sources. We are also grateful to members of the permanent staff of Bappenas and the Ministry of Finance for technical advice. Needless to add, the opinions expressed here are solely those of the authors.

2. We assume that urban migration is a positive function of the urban-rural wage differential and a negative function of the extent of the urban unemployment rate. Clearly, there will be some level of urban unemployment sufficient to cause all further urban migration to cease. (Harris and Todaro, 1970)

are labor intensive, and the comparative growth of capital intensive exports such as timber and petroleum. To date, the policy of "transmigration", by which it is hoped to transfer people from the densely populated Java to the outlying islands, has proved to be difficult to implement, and in any case could make no more than a marginal difference to the overall employment situation.

The process of urban drift has been accompanied by increasing social tensions as the cities especially Jakarta and Surabaya, have been unable to further develop essential services such as housing, sanitation, water supply in line with urban population pressure. In an effort to cope with such problems, Jakarta has been declared a closed city although enforcing such a decision is proving to be very difficult. [3] The urban employment situation is hardly helped by the tendency of capital-intensive firms, a substantial proportion of which are foreign-owned, to seek location in urban areas, particularly Jakarta. As such firms also compete with labor-intensive domestic industries, they make an already difficult situation worse.

The government is clearly aware of the need to provide greater employment opportunities but it also appreciates the nature of the constraints which may limit the scope of remedial action. It is fully recognized, for example, that employment creation is really an important means of effecting a more equitable distribution of income. It follows that the employment objective entails the creation of job opportunities and not simply an increase in the demand for more labor input which could be satisfied by reducing underemployment without increasing the *proportion* of the potential labor force in employment. It would clearly be in conflict with growth objectives if fiscal measures were used to promote methods of production which were patently inefficient and which, in the extreme case, operated more as a form of social security. Even if the promotion of labor intensive techniques did not reduce efficiency, the resultant redistribution of income towards wage earners might reduce the average savings ratio and thereby effect opportunities for employment in the future. The problem of trade-off is demonstrated in Indonesian discussion of the evaluation of the performance of public enterprises. The government as the predominant stockholder in such enterprises is in a strong position to enforce a policy of increasing labor-intensity, yet there are clear indications that the application of standard criteria of performance, including improvement in productivity, seem to point towards reducing the labor force employed in several major state enterprises.

A further conflict in policy aims is of particular importance in Indonesia where experience of one of the most dramatic inflations in the post-war world has left a legacy of suspicion of methods of creating employment by altering the level and composition of debt finance. Thus the need to preserve economic stability, interpreted to mean limiting the rate of growth in the price level within tolerable limits outlaws the use of Keynesian-oriented em

3. It is also interesting to note that Jakarta ha taken strong measures against the Becak (th bicycle taxi) by limiting its operation to certai areas away from the city centre. At first glance this appears to be discriminatory action agains labor intensive activity but the rationale woul appear to lie in making Jakarta less attractiv for the would-be immigrant who in the past ha always believed it possible to obtain work as becak driver.

ployment policies which, in an open economy of Indonesian type and dimensions, would produce large trade deficits. Since the price level in Indonesia is markedly influenced by world prices (after allowing for effective tariff rates), any devaluation of the rupiah brought about by prolonged trade deficits would bring in its trail widespread inflationary price rises and without any appreciable lags. In consequence, if the system of public finance is to be used as a method of creating employment, it must be subject to the constraint that budget deficits must be avoided. For example, a fiscal measure which encouraged employment by tax reduction, e.g. a labor subsidy, would, if introduced, have to be counterbalanced by some budgetary adjustment — an increase in tax yield or a reduction in expenditure or some combination of the two — which would restore budgetary balance.

III. EMPLOYMENT CREATION AND THE INDONESIAN SYSTEM OF PUBLIC FINANCE

Apart from the general constraints on the use of the budget to create employment, as outlined in II above, there are specific conditions which must be fulfilled, and which are associated with the ease or difficulty of altering the factor mix in both the private and public sectors.

The tax system may certainly influence entrepreneurial decisions so that changes in factor inputs can be produced. The obvious way of employing the system is to alter relative factor prices, but it is worth underlining two important conditions which must obtain if the desired effect is to be achieved. Firstly, the main influence on the decision to employ any factor input must be profitability. Second, in individual industries — manufacturing, agriculture, services etc. — the elasticity of substitution between labor and other inputs must be high. If the elasticity of substitution is low, then the tax system must be capable of discriminating in favor of those industries which are inherently labor-intensive. Regrettably, an examination of the Indonesian economy suggests that the present tax system is ill-adapted to the task of employment creation and also that where the first two conditions are likely to obtain, the penetration by the tax administration would be difficult to achieve.

Indonesia, in common with many developing countries, employs a tax system with a limited spread because of the administrative difficulties encountered in taxing small traders and the agricultural and rural sectors. The most important tax, measured by yield, is the corporation tax which represented 32.2 per cent of government domestic receipts in fiscal 1971/72. Over 80 per cent of the yield of corporation tax was paid by the oil industry in which the degree of technical substitution between capital and labor is low and which is capital intensive. The large part of the remaining yield of this tax is derived from public corporations, but the directives governing their operation thus far have not resulted in profit-taking being the major criterion of 'success' so that changes in relative prices of factor inputs by taxation would not have achieved the desired result.

The common method of circumventing the difficulties encountered in increasing the spread of direct taxation in developing countries has been to rely upon import duties. The combined import duties and sales tax on imports certainly contribute a major share of domestic revenue to the government, reaching 21.2 per cent in fis-

cal 1971/72, but, the failure to tax adequately imports of capital goods offers a strong incentive to industrial and commercial enterprises to favor capital intensive methods of production. The reverse side of the coin is that there are few strategic points in the agricultural sector where the existing taxes, even subject to adaptation to take into account the need to encourage employment, can have much impact, with the possible exception of export duties, which are considered later.

There is a fair prospect that the relative importance of the private modern sector will increase so that the spread of the tax system will become wider and the influence of profit-taking on entrepreneurial decisions concerning factor use will be extended. However, two qualifications are necessary. On the one hand, as the modern sector expands, foreign-owned subsidiaries use up their tax holidays and related concessions. Then responsiveness to tax concessions may be weakened by the existence of double tax agreements and the division of responsibility between the equity owners and expatriate management may reduce the commitment to greater labor intensity especially where management has to familiarize itself with new skills and techniques. Certainly, existing methods pursued by foreign business enterprises would not appear to reflect the prevailing factor/price ratio, although in the absence of additional data this may be a consequence of the *allegedly* high cost of supervision associated with unskilled Indonesian labor. On the other hand, it must be admitted that increasing the spread of the existing system of business taxation under the present regulation would provide additional incentives to greater capital-intensity. As in many developing countries, Indonesian business taxation has been designed to promote industrialization by encouraging capital investment through investment allowances and generous depreciation provisions. In addition, these allowances, which are given for a fixed period of time, are spread over four years, but no more than 25 per cent of the allowances can be taken up in any one year. As these allowances are not geared to the rate of capital consumption, multi-shift operations are discriminated against. Furthermore, in the case of depreciation allowances, the amount set against tax is fixed, irrespective of the number of shifts worked, and in consequence the allowance is a lower proportion of value added in the case of multi-shift working as compared with single shift operations.

The *expenditure* side of the Indonesian budget would seem to offer an opportunity for encouraging labor-intensive economic activities by direct employment offered in government departments and by procurement policies. However, the Ministry of Finance has taken a justifiably cautious view of employment expansion in government departments. First of all, expenditure on wages and salaries, together with staff allowances, already absorb a large proportion of the 'routine' budget expenditure. Secondly, any general growth in real incomes of salaried population will have to be reflected in growth in public service salary scales, and unless revenue grows *pari passu* with the growth in real incomes, the government may be faced with financing problems, even if public services are not expanded. In any case, expansion of direct public employment representing expenditure in the routine budget would not expand employment opportunities where they are most needed, i.e. in rural areas, and in consequence would aggravate the urban/rural imbalance.

The existence of a relatively large development budget for improving infrastructure should offer the opportunity for government to favor those undertakings willing to employ labor intensive methods. However, in common with other developing countries, the development budget, being financed by a significant if diminishing proportion of foreign aid, is sometimes constrained by the condition that the contract work should be undertaken by firms from aid-giving countries. Such firms usually prefer to employ construction and other techniques of their country of origin based on modern technology and with a capital intensive bias. Thus any advantages gained from relative cheap labor in Indonesia may seem to them to be outweighed by the management and other costs associated with adopting unfamiliar labor-intensive techniques. A more fruitful line of approach is suggested by the growing interest in Indonesia in the extension of the so-called 'kabupaten' rural works programmes which, it is believed, will promote rural employment without loss of productive efficiency. This programme, together with its implications for the system of public finance, is considered below.

Clearly, if the system of public finance of Indonesia is to be used to promote employment, it will need to undergo considerable adaptation. Our next task is to review a number of possible ways in which this might be done.

IV. POSSIBLE METHODS OF PROMOTING EMPLOYMENT BY FISCAL MEANS

Our analysis of the employment objective (alongside other objectives) and of the way in which the present fiscal system impinges on employment creation suggests two important considerations to be borne in mind in devising possible adaptations in tax and expenditure policy. The first is that any such adaptations must take account of 'feed back' effects on employment resulting from consequential budgetary changes which have to be made in order to avoid deficit spending. The second is that fiscal changes must take account of their administrative implications, and particularly the economic costs of compliance with fiscal law.

We identify three broad categories of measures which seem to be candidates for consideration:

1. *Measures to Influence the Factor Mix*

Proposals for some form of subsidy to labor, for example a negative payroll tax, have been widely advocated in the professional literature. Unemployment resulting from imperfections in the labor market, so it is held, can be reduced by this means without having to interfere in wage bargaining arrangements or minimum wage legislation. In an extremely open economy which imports the vast bulk of its capital requirements, such a subsidy would cheapen the relative cost of domestic labor vis-a-vis imported capital. Moreover, the decrease in costs is greater the more labor-intensive the productive process. Consequently, the more labor-intensive sectors of the economy experience a comparative cost decrease compared to the more capital-intensive and a shift in demand is thus induced towards more labor-intensive output. Finally, a payroll subsidy cheapens the cost of domestically created capital relative to imported capital and thus favors employment within the domestic capital goods industry which is often initially highly labor intensive or at least gears itself to capital/labor combinations more in

keeping with comparative factor endowment.

Although labor subsidies contain many attractive features the great drawback to their extensive use is the cost imposed upon the Exchequer and the immense difficulty of administering and policing such payments. With regard to cost, it would be highly desirable if labor subsidies were limited to *additional* labor employed, for there is little point in the government having to subsidise labor which would have been employed in any event. However, if the attempt were made to limit subsidies to additional employment the policing costs would be extremely high. Firms could go out of business one day and emerge as new re-named enterprises the next day in order to claim the subsidy. Equally, difficulties are encountered in gearing the subsidy not only to the size of the wage bill but also to the number of people employed. Clearly we should want to provide an additional substitution effect in favor of the employment of the unskilled as well as wanting to ensure that the benefits take the form of additional employment of labor and not increases in hours worked by the existing labor force.

Granted that the administrative difficulties are formidable, and recognising the force of the budget constraint, it will be appreciated that the taxation of capital inputs may be an equally effective means of promoting labor intensity. (Peacock and Shaw, 1971b) Such taxes would be far easier to administer in Indonesia than labor subsidies, particularly if the tax were confined to foreign capital imports only, rendering the tax easier to collect and also granting preferential treatment of the domestic capital goods industry. It will be noted that there is a certain symmetry with the case of labor subsidies in that taxes on capital inputs have a greater cost raising impact on the more capital-intensive undertakings. Consequently, such taxes should lead to a price-induced demand shift towards more labor intensive output.

Finally, it may be noted that whereas the standard analysis of influencing the factor mix concentrates almost exclusively on means of altering relative factor prices, there is no reason why direct taxes could not be manipulated to achieve the same effect. The corporate tax burden, for example, might be made inversely proportional to the degree of labor intensity by levying an additional tax on top of the standard rate, geared to the degree of value added per employee. Consider, for example, an additional levy T equal to $t\pi\ (V/N)$ subject to $(V/N) > \alpha$ where π is the amount of taxable profit, t the additional rate of tax, V the amount of value added and N the number of non-salaried employees, α is some lower bound to value added per employee at which the additional tax would not apply and which could be made to vary between various sectors of the economy. While of limited applicability to Indonesia at the present time, owing to the narrow base of the corporate tax; such a tax could exert beneficial announcement effects and certainly could be incorporated into provisions for tax holiday exemption.

2. *Increasing the Utilization Rate of Capital*

The relatively low income per head in Indonesia effectively rules out the use of fiscal measures to increased forced saving as a means of transferring resources from consumption to investment. However, there is one way in which it may be possible to increase the supply of capital and by so doing to make it technically possible to

increase employment without incurring possible losses in the growth of output which would result from encouraging labor-intensive production. Employment may be increased, in the short term at least, by increasing the rate at which capital is utilized.

To allow capital to remain idle for considerable periods of time implies that cooperative labor inputs must also remain idle. Increasing the level of aggregate demand in selective sectors of the economy, where such excess capacity has been identified (possibly through Government buying programmes), or gearing the fiscal burden to capital stock, (so that the tax levy per unit of output declines with the increased utilization of the capital asset) would jointly raise the employment of both labor and capital. Such policies, it should be noted, do not depend on influencing existing techniques of production.

This issue is directly related to that of multi-shift operation. In Indonesia, multi-shift operations are discriminated aigainst by labor legislation which imposes high fixed costs to marginal employment, as well as the fiscal system which gears depreciated allowances to specific periods of time and not to the rate at which capital is consumed. To offset such tendencies, it is theoretically possible to rebate part of the corporate tax liability according to the number of shifts actually worked. For example a rebate of x % of tax paid, multiplied by the ratio of second and subsequent shifts to first shifts, could be reclaimed by multi-shift operators. In this example, a firm working three shifts per day would be able to claim a rebate of 2 x %, the one shift firm nothing.

3. *Methods to Promote Labor Intensive Activities*

The extent to which the fiscal system may be used to influence the output mix by favoring those products which are labor intensive and discriminating against those products which by nature are capital-intensive is debatable. Although superficially this would appear to be a relatively simple task for selective tax and expenditure treatment two factors must be continually kept in mind. First, it is by no means an easy task to identify sectors which are labor intensive when allowance is made for the labor intensity of intermediate inputs and the labor intensity of the expenditure patterns stemming from income creation within a sector. Secondly, before considering the tax/expenditure package it is necessary to ascertain the demand conditions prevailing for the products in question. For example, the imposition of a tax upon a capital intensive good will, *ceteris paribus,* reduce expenditure upon labor intensive output if the product confronts price inelastic demand conditions.

Granted that we can ascertain both the nature of demand conditions and the labor intensity of specific sectors, then selective sales/excises taxes might be used to raise the comparative cost of capital-intensive produce and thus induce a substitution of labor-intensive for capital-intensive output. Such taxes are extremely difficult to administer and may be arbitrary in their incidence because the same product may be capable of being produced in a variety of ways with varying degrees of labor intensity. [4] With regard to selective taxes, it

4. An example of such discriminatory tax treatment favoring employment creation is provided by the Indonesian example of differential tax treatment of cigarettes, with higher taxes being levied on machine rolled as opposed to hand rolled brands. Similar discrimination applies to the capital intensive and labor intensive production of soft drinks.

may be noted that in the Indonesian context, the existence of export taxes often burdens traditionally labor-intensive activities such as rubber and copra production.

Administrative problems do not beset the operation of the tariff structure to anything like the same extent, though exemptions from tariffs at present in operation induce foreign firms to use capital intensive methods. At the same time, it must be recognised that tariff exemption may be more important than tax holidays for foreign-owned companies covered by double taxation agreements. A possible modification in tax law might make it possible to improve employment by foreign firms which imported capital equipment without reducing the incentive to invest in Indonesia. This would be to offer tariff concessions to foreign companies which were biased in favor of those who produced a product which is not domestically produced for export, and to stipulate that all output must be exported. This might encourage firms to take advantage of the relatively lower wage rates in Indonesia, compared with Singapore, Taiwan and Hong Kong, while at the same time taking advantage of tariff concession to import capital equipment, an example of an appropriate industrial activity being assembling of pre-manufactured components. [5]

One of the most effective ways of inducing greater labor intensity in ouput composition is by government purchasing and procurement policies. The government is an important consumer of goods and services and yet there is little evidence that labor intensity enters into decisions concerning the acceptance of tenders. With regard to the development budget the Indonesian government is doubtless hamstrung by the need to conform with the project evaluations undertaken by the aid giving agencies yet there would appear to be a real possibility of employment creation being weighted more highly in subsequent cost benefit calculations. Governments, of course, are able to determine the degree of labor intensity throughout the public service and the public enterprises and in many developing countries there is ample evidence of 'disguised unemployment' throughout the public sector. One may question the wisdom of alleviating unemployment in this manner, however, partly because it makes it extremely difficult to obtain an objective assessment of efficiency within the public sector but mainly because it raises the employment rate in the urban areas and induces subsequent rural-urban migration. It is for this reason, amongst others that proposals for labor intensive rural public works programmes on the creation and rehabilitation of infrastructure appear extremely attractive. These increase employment and generate subsequent income in the non-urban areas and thus reduce the incentive to urban migration. With regard to Indonesia extension of the Kabupaten programmes would appear to offer a logical means of reducing unemployment in the rural regions whilst simultaneously avoiding most of the conflicts encountered with the pursuit of employment creation.

V. FISCAL POLICY AND EMPLOYMENT STRATEGY IN INDONESIA

In formulating a policy to increase employment in Indonesia by fiscal means, we

5. Generally, labor in Indonesia may be employed for U.S. $ 0.07 per hour — by far the lowest wage rate in the export situated countries of South East Asia.

have to take account of four factors:

(a) The necessary modifications in the tax structure which would promote employment can only be introduced slowly. In the short run, the best one can expect is to introduce changes which will remove its present bias towards capital-intensive production.

(b) There is probably more scope for employment creation by modifications in the composition of government purchases and in the 'factor mix' of government programmes, particularly public works.

(c) The choice of particular fiscal measures is narrowed down considerably when we take into account the objectives of policy to be 'traded off' against employment, notably economic growth and stability, and also consider the resource costs necessary to improve tax administration.

(d) The efficacy of fiscal measures must be judged in terms of alternative policy measures of government which might be used to achieve the same end.

This final section examines each of these statements in detail.

The principal reason why modification of the tax structure can not be expected to influence the volume of employment significantly is that the industrial and commercial tax base is extremely limited. The private sector contributed less than 25% of the non-oil corporate income tax in 1971-72, and all the evidence suggests that under-reporting and tax evasion is commonplace amongst the smaller private firms. Tax evasion is akin to a lowering of the effective rate of tax, so that it reduces the incentive effects of preferences given to labor intensive undertakings. The bulk of tax receipts stemming from industry are paid by state and foreign owned enterprises. The former are already more labor-intensive than strict profit maximization strategy would recommend and the latter are more or less immune to marginal changes in factor/price ratios owing to their desire to maintain technical complementarity with parent companies overseas, or because they enjoy tax holidays or double tax agreements which cushion the impact of changes in the corporate rate of tax.[6] Similar reasoning applies to the domestic sales tax whose base is extremely limited,[7] and whose yield suggests that under-reporting and evasion is extensive. The conclusion must be that variations in corporate tax liability or resort to selective sales taxes would be ineffective. At the same time, the force of the budget constraint must rule out the use of labor subsidies on any extensive scale even if the required administrative machinery existed. It follows that any attempt to influence the degree of labor intensity within the private sector must operate upon the purchase price of factor inputs and not through attempts to influence the subsequent tax liability of the business unit.

The most effective way of changing relative

6. In addition, it may be noted that foreign contractors engaged on development projects financed by international aid giving agencies are specifically exempt from taxation on the insistence of the donors. Typically, these contractors are attached to more capital intensive techniques than Indonesia's factor endowment would suggest is optimal and the consequence of tax exemption is that there are no means available whereby they might be induced to become more labor intensive.

7. Currently there are less than 100,000 registered sales taxpayers and the domestic sales tax grosses only Rp. 38 billion despite high nominal rates of tax.

factor prices is by continuing to subsidise important items purchased by workers such as rice and by tax exemption of essential commodities such as cheap cotton fabrics together with increased tax and duty levies upon capital inputs. Increased import duties on capital items together with higher rates of sales taxes on capital goods (both imported and domestic) would both increase the cost of capital whilst also giving a measure of preferential treatment to the domestic capital goods industry. The virtue of higher levies on capital inputs, and in particular upon imported capital inputs, is that they would increase revenue and, in addition to inducing greater labor intensity, they would also allow the expansion of public expenditures or the rebate of other taxes in the interests of employment creation. Taking the latter point first, it would be instructive to quantify the impact of export tax rebates on the traditional export commodities which are decidedly labor intensive such as rubber. Such rebates, if introduced, would increase the income accruing to those employed in the rural regions whether or not output were to increase.

Expenditure programmes seem to offer a better prospect. Although increase in expenditures conflicts with the budget constraint, and to this extent must be offset against reduced expenditure or increased taxes elsewhere, nonetheless they offer the most immediate and most effective means of raising employment in the short-term. The most promising alternatives would appear to be:

1. *Expansion of the Kabupaten Programme:* These expenditures have the following advantages:

(a) They have proved themselves to be administratively feasible;
(b) They add to infrastructure and rehabilitation generally and thus directly aid the development programme;
(c) They generate not only increased rural income but this multiplier impact would appear to gives rise to increased output of basic foodstuffs and other necessities in the rural areas. Short-run inelastic supply constraints are thus avoided and the growth of rural incomes slows the impetus to urban drift;
(d) To the extent that the benefits accrue to the local population they increase awareness of the benefits of public expenditure and thus lessen resistance to local taxation.

2. *Expenditure on the tourist sector:* There is a good reason to believe that the tourist industry in Indonesia, still in its infancy, is decidedly labor-intensive, partly because tourists purchase the products of labor intensive local handicrafts (Batiks, Bali sculpture etc.). Moreover, as the tourist industry develops, it will certainly benefit the regions and outlying islands relatively more than the metropolis of Jakarta which offers little to the tourist apart from an interesting stopover point. Whether increased expenditure to aid the tourist sector is worthwhile would require a detailed cost benefit study of the potential market. Exploitation of the tourist sector would add to foreign exchange reserves and in this connection it may be noted that tourist expenditures dictate the pattern of resource allocation towards exports without conscious planning intervention — an important consideration in an economy where administrative expertise is not overabundant. Last, but not least, the tourist industry could become an important employer of surplus labor as its product is

income elastic. Income elasticity must remain a major criterion for selecting those labor intensive activities which the government might support, for such industries may be expected to grow at a greater than average pace. Government assistance to establish labor intensive industries which confront income elastic demand conditions therefore is a means of generating a self-sustaining change in the composition of output towards greater labor intensity.

Expansion of the Kabupaten programme financed by additional levies upon capital imports, the continued subsidization of basic foodstuffs (particularly rice) and possibly increased aid to the tourist sector would appear to be the most usefully oriented fiscal measures to aid employment. None of the above make undue demands upon the existing administrative competence of the Indonesian fiscal authorities. As previously emphasized, it would be necessary to harmonize such measures with other government programmes to ensure that fiscal actions for employment creation are not offset or countered by changes elsewhere. If the proposed fiscal changes are to have their intended impact, then existing labor laws need to be reformed in order to remove the element of high fixed cost implicit in the employment of additional labor. Equally, it must be remembered that other policies besides fiscal policy can be used to promote employment and may be even more effective, or may be essential to counter changes in the fiscal system introduced for reasons other than employment creation. For example, if payroll taxes were introduced to finance a social security scheme in Indonesia, these would obviously raise the cost of labor relative to capital. To encounter any decline in employment, such taxes could be accompanied by devaluation of the currency as a means of raising the cost of imported capital inputs. Indeed, if employment is the goal, there is a strong argument for maintaining an undervalued rate of exchange in the interests of the labor-intensive export sector and the domestic capital goods industry. Certainly, variations in the exchange rate constitute a major tool in employment creation generally. It would make little sense if fiscal measures for employment were rendered ineffective by the commitment to a fixed rate of exchange no longer relevant to Indonesia's policy goals. [8]

8. At the present time, the Rupiah is effectively tied to the US $ at the exchange rate Rp. 415 = US $ 1. It follows that any subsequent dollar devaluation relative to the Japanese Yen or the German Mark automatically implies devaluation of the Rupiah. However, to the extent that labor-intensive domestic industry fails to find export markets because of overseas marketing expenses it will be noted that devaluation raises the cost of the required initial investment.

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A BRIEF OUTLINE OF THE IMPOSITION IN GUYANA OF INCOME TAX, CORPORATION TAX, CAPITAL GAINS TAX, WITHHOLDING TAX AND PROPERTY TAX WITH SPECIAL REFERENCE TO FOREIGN CORPORATIONS OPERATING IN GUYANA, THROUGH A BRANCH ESTABLISHMENT OR AN AGENCY

PART I – INTRODUCTION

Foreign corporations or companies are in effect corporations which are not incorporated in Guyana and the businesses of which are controlled and managed outside of Guyana. The Guyana tax laws in this respect follow the principles adopted in the United Kingdom. The term "foreign company" has little or no significance in the application of the tax laws in Guyana. The term appears only once in the Income Tax Ordinance for the purpose of the imposition of withholding tax on certain types of insurance premium paid to "a foreign company". By the provisions of the "Capital Issues (Control) Act, 1971" any Company *not* incorporated in Guyana, and any Company which *is* incorporated in Guyana but has any one director on its board who is not a citizen of Gyana or where more than one-third of its capital is owned by non-citizens, are deemed to be "alien companies".

So far as the Income Tax Ordinance imposes withholding tax on certain insurance premiums paid to a "foreign company", the definition given to "foreign company" is the same as that given to a non-resident company which is defined as "a company the control and management of whose business is exercised outside of Guyana". Note, however, that for the purposes of the "Capital Issues (Control) Act, 1971", a foreign company means something else, but it may be added that this Act has no bearing on the imposition of tax on foreign companies.

The pertinent or material issue in the imposition of tax on companies is not that its being "foreign" but that its being *"resident"* or "non-resident". In other words, if a company is resident in Guyana it is liable to tax on the whole of its income wherever the income arises whereas if a company is not resident in Guyana, it is liable to tax only on its income arising in Guyana. Being foreign either because of its being incorporated outside of Guyana or its shares are held by foreigners even though incorporated in Guyana is irrelevant.

By the Income Tax Ordinance a company is deemed to be resident in Guyana if the "control and management of (its) business are exercised in Guyana". The following provisions appear in the Corporation Tax Act:

> "'non-resident company' means a company the control and management of whose business are exercised outside of Guyana".
>
> "'resident company' means a company

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the control and management of whose business are exercised in Guyana".

"For the purpose of the definition of 'resident company' and 'non-resident company' the place where such a company is to be regarded as controlled is the place where the mind or management of the company is ordinarily situated".

It is quite clear then that for taxation purposes, the material distinction lies in the condition of residence or non-residence of a company which in turn depends on the place where management and control of the business of the company are exercised. If a company is held to be resident in Guyana even if it is incorporated outside of Guyana, it is liable to Guyana tax on its world income; while on the other hand even if a company is incorporated in Guyana its business is managed and controlled outside of Guyana it is liable to Guyana tax only on its income which arises in Guyana. And it follows that if a company which is incorporated outside of Guyana and its business is managed and controlled outside of Guyana such a company is a non-resident company liable to tax only on its income arising in Guyana. A branch establishment or an established agency in Guyana of a company not resident in Guyana is, therefore, subject to Guyana tax in the name of the company on the income of its Guyana branch or agency.

PART II – INCOME TAX & CORPORATION TAX

Classification of companies & Rates of tax

Companies are classified for tax purposes as follows and the respective rates payable by them are as follows:

Classification	*Rates of Tax on Chargeable Income*		
	Income Tax	*Corporation Tax*	*Total*
(a) Commercial Company	20%	35%	55%
(b) Non-Commercial Company	20%	25%	45%
(c) Long-term Insurance Company	45%	None	45%
(d) Investment Company	None	None	None

Definitions & explanations

(a) "'Commercial Company' means a company at least 75% of the gross income of which is derived from trading in goods not manufactured by it, and includes any commission agency, *any body corporate, licensed or otherwise authorised by law to carry on banking business in Guyana,* and any Company carrying on in Guyana insurance business, other than long-term insurance business, as defined in Section 2 of the Insurance Act, 1970.

(b) Non-Commercial company is given no express definition, but by implication it must be understood to mean any company which is not a "commercial company" or a "long term insurance company" or an "investment company".

(c) "Long term insurance company" is a company whose business includes insurance business of all or any of the following classes namely - life insurance, non-cancellable sickness and accident insurance and bond investment business.

(d) "Investment company" is a company

resident in Guyana which in any Year of Assessment satisfied the following -

(i) 100% of its assets are situate in Guyana;
(ii) at least 80% of its property owned throughout the year consist of shares, bonds or marketable securities;
(iii) not less than 90% of its profits is derived from shares, bonds or marketable securities;
(iv) at no time in the year did more than 10% of its property consist of shares, bonds or marketable securities of any one company or debtor other than those of the Government of Guyana;
(v) at no time was the number of shareholders of the company less than 50.

As we see, the income of a commercial company (which includes a banking company) is subject to a total of 55% income and corporation taxes (the highest aggregate rate), while on the other extreme an "investment company" is exempt from the two taxes. While a non-commercial company pays income and corporation taxes at a total rate of 45%, a long-term insurance company pays income tax at the rate of 45%, but pays no corporation tax.

Note that both resident and non-resident companies pay tax at the same rate. The only differences are that while a resident company pays tax on its world income, a non-resident company pays tax on its Guyana income only, and the corporation tax rates vary according as to the classification of companies.

Computation of chargeable income

1. *Expense deduction*

In computing the chargeable income or profits for income tax and corporation tax purposes all outgoings and expenses which are wholly and exclusively incurred in production of the income are allowed as deductions from the gross income of a company for each year, but the following are not allowed as deductions:

(a) any disbursement or expenses not being money wholly and exclusively laid out for the purpose of acquiring the income;
(b) any capital withdrawn or any sum employed or intended to be employed as capital;
(c) any capital employed in improvements;
(d) any income tax, corporation tax, net property tax or capital gains tax paid or payable;
(e) expenses in excess of the amount which the Commissioner of Inland Revenue considers reasonable and necessary having regard to the requirements of the business;
(f) "head office expenses" in excess of one-half per cent (in the case of commercial companies) and one per cent (in the case of other companies) of the sales or gross income of a company.

Note: "Head office expenses" is defined to mean any expenses arising from a charge by a non-resident parent or associate company of a company resident in Guyana, or the head office of a non-resident company in respect of a branch or agency in Guyana for any administrative, technical, professional or other like service of an essentially managerial nature".

2. *Wear & tear deduction*

In ascertaining the chargeable income or profits of a company which carries on any business in Guyana there may be claimed as a deduction an allowance for the wear and tear of any plant, machinery, equipment, vehicles, buildings housing machi-

nery or industrial building, etc. employed in acquiring the company's income. The rates granted annually are regulated statutorily and range between 2% and 25% normally on the written down value or cost of the asset depending on its type. For instance 2% on cost is allowed on buildings annually, 10% annually on the written down value of machinery and equipment and 25% on the written down value of Motor Vehicles.

3. *Deduction for previous years' losses*
Losses incurred in previous years may be accumulated and allowed as deductions against future years' income until finally liquidated subject to the condition that in any year in which previous losses are claimed as deductions, only so much of the previous losses would be allowed that would not cause the tax payable to be reduced to more than half of the tax that would be payable had there been no previous years' losses. Losses from one source (say farming) are not allowable against income from another source (say trading) therefore a claim for losses would only be allowed against income from the same or similar type of source.

4. *Deductions for gifts & donations*
A gift or donation made in any year to the Government of Guyana or to any prescribed Government institution or organisation is allowed as a deduction in respect of the year in which the gift or donation is made.
Where a company disposed of its income or any part thereof to an ecclesiastical, charitable or educational institution, organisation or endowment of a public character within Guyana (or outside of Guyana if approved by the Minister of Finance) such disposition may be claimed as a deduction in the ascertainment of its chargeable income provided such disposition is made irrevocable for a period exceeding two years.
(Note this is normally done through the execution of a deed of covenant.)

Basis of assessment
Income Tax and Corporation Tax are assessed in each year (called the Year of Assessment) on the income of a company which arises in the year immediately preceding the Year of Assessment. The year immediately preceding the Year of Assessment is conventionally referred to as the "Year of Income".

PART III – CAPITAL GAINS TAX

Basis of assessment
As in the case of Income Tax and Corporation Tax, "Capital Gains Tax" is assessable on a company in each year (called the Year of Assessment) on the capital gains arising in the year immediately preceding the Year of Assessment.

Imposition
Capital Gains Tax is payable by a company upon any capital gains arising from -
(a) the change of ownership of any property occurring by sale, disposal, transfer, realisation or exchange, or in any other manner whatsoever;
(b) the surrender or relinquishment of any right in any property other than the surrender of a life insurance policy;
(c) the transfer or some of the rights in any property other than the transfer of the rights of a trustee in any property subject to a trust;
(d) the redemption of any shares, debentures, or other obligations;

(e) the dissolution of a business or the liquidation of a company;
(f) the amalgamation or merger of two or more businesses or companies;
(g) the formation of a company; or
(h) any transaction in connection with which a person who promotes that transaction without being a party to it receives any commission or reward.

Short term capital gain deemed to be income

Where capital gains accrue to a company because of the change of ownership of property within twelve months of the date of its acquisition, such gains are deemed to be income and taxed as profits from trade or business under the provisions of the Income Tax Ordinance at income and corporation tax rates.

Non-resident & resident companies

In the case of a company not resident in Guyana capital gains tax is payable only on Capital gains arising in Guyana. A company resident in Guyana is subject to the tax on the whole of its capital gains wherever arising.

Exemption from the tax

No capital gains tax is payable on capital gains which accrue: -

(a) from any of the sources listed under "Imposition" abovementioned where the change of ownership or relinquishment or transfer of rights etc., took place more than twenty-five years after the date of acquisition of the property or rights etc.;
(b) from the donation of a property to any approved charitable institution of a public character or to any prescribed institution or organisation of a national character in Guyana;
(c) from the realization by a liquidator of the assets of a company in liquidation for the purpose of the return of the proceeds to shareholders of the company;
(d) to any company where total capital gains in any one year do not exceed one thousand dollars;
(e) from the change of ownership of any property which was acquired before 1st January, 1960.

Computation of chargeable capital gains

Capital Gains are represented by the excess of the net value received for any property (whose ownership has changed), over and above its cost of acquisition plus the cost of any improvements or additions made between the date of acquisition and the date of change of ownership. But where any wear and tear allowances have been granted for the purpose of Income Tax or Corporation Tax on any property, capital gains are represented by the excess of the net value received on change of ownership over and above its written down value for tax purposes immediately before the change of ownership took place.

Capital Losses

Capital Losses suffered in any year of a thousand dollars or more may be carried forward and wholly set off against taxable capital gains in future years until the whole of the previous years' capital losses have been liquidated.

Rate of tax on chargeable capital gains

A flat rate of 20% is imposed on the net chargeable capital gains remaining after allowing for previous years' capital losses, if any.

PART IV – WITHHOLDING TAX

Basis of imposition on "distributions" & "payments"

Tax is to be withheld at specified rates (details given separately) on:

(a) any gross distribution made to any individual not resident in Guyana or to any company not resident in Guyana and to any company resident in Guyana;

(b) any gross payment made to any individual or company not resident in Guyana or to any person on behalf of such non-resident where the non-resident individual or company is not engaged in trade or business in Guyana, but withholding tax shall not be payable in the case of any payment which constitutes income arising outside of Guyana.

Interpretation

(a) "Distribution" means any dividend paid by a company including a capital dividend. It includes any other distribution of the assets of the company in respect of shares of the company except so much as represents the repayment of share capital or is equal in amount to any new consideration given on the distribution. It also includes the issue by the company of any redeemable share capital in respect of shares in the company to the extent that such share capital is not issued for a new consideration.

(b) "Payment" means a payment without any deductions whatsoever other than a distribution with respect to -

(i) interest on any debt, mortgage or other security, but excluding interest paid on a temporary bank loan or in respect of any trade account;

(ii) rentals, royalties, discounts, annuities or other annual periodic payments;

(iii) management charges or charges for the provision of personal services and technical and managerial skills;

(iv) premiums, commissions, fees and licences, but excluding premiums paid to insurance companies and contributions to pension funds;

(v) such other payment as may be prescribed.

Withholding tax on the profits remitted by branch of a non-resident company

Tax is to be withheld by an office or a branch or agency of any non-resident company engaged in trade or business in Guyana, where such office, branch or agency remits or is deemed by the Commissioner to remit any part of the profits of such non-resident company accruing in or derived from Guyana as if the remitting of such profits was a distribution.

A branch or agency of a non-resident company is normally deemed to have remitted all its profits except to the extent that it has re-invested in Guyana such profits or any part thereof to the satisfaction of the Commissioner other than in the replacement of fixed assets.

Withholding tax on the surrender of a life policy

Where a life insurance policy is surrendered before the policy-holder attains the age of sixty years, tax is to be withheld at the rate of 15% (fifteen percent) of the amount representing the surrender value.

Withholding tax from insurance premiums payable to foreign companies

Where any person pays any premium to a foreign company in respect of insurance (including re-insurance) other than long-

term insurance, whether or not such premium is remitted outside Guyana, the person making the payment shall deduct therefrom tax and pay over to the Commissioner at the rate of -

(i) ten percent of the premium where payment is made to a foreign company which has not established a place of business in Guyana; and

(ii) six percent of the premium where payment is made to a foreign company which has established a place of business in Guyana.

The amount of the premium on which tax is deductible shall be the amount remaining after deducting from the premium any commission paid to an agent resident in Guyana, and in the case of re-insurance the amount received for placing the re-insurance, the deduction allowable in either case for the purpose of computing the withholding tax is not to exceed ten percent of the premium.

Interpretation of "foreign company"

"Foreign company" means a company the control and management of whose business is exercised outside of Guyana.

Note: "Foreign Company" is given the same meaning as a "Non-Resident Company" in this case, but by the "Capital Issues (Control) Act 1971", any company *not* incorporated in Guyana and any company which is incorporated in Guyana but having any one director on its board who is not a citizen of Guyana or where more than one-third of its capital is owned by non-citizens, are deemed to be alien companies.

Rates of withholding tax

1. *On distribution by a resident company to a non-resident individual* -

(a) Where the distribution is made by a commercial company -

(i) on gross dividend not exceeding $10,000: - 31%

(ii) on gross dividend of $10,000: or more - 40%

(b) Where the distribution is made by a non-commercial company -

(i) on gross dividend not exceeding $8,000: - 27%

(ii) on gross dividend of $8,000: or more - 35%

2. *On distribution to a non-resident or resident company* -

(i) where the dividend is paid by a commercial company - 40%

(ii) where the dividend is paid by a non-commercial company - 35%

3. *On any "payment" made to a non-resident individual or company* - 25%

Note: Where the Guyana branch of a non-resident company remits any profits to the non-resident company abroad or is deemed to remit such profits, tax is to be withheld on the remittance as though it is a distribution at the rates specified under (2) above. Credit is given for company *income tax* suffered against withholding tax on *dividends.*

Pas as you earn withholding

Each employer is required to deduct tax from the emoluments of their employees currently on the taxable portion of their pay calculated with reference to statutory Tables issued by the Commissioner of Inland Revenue.

PART V – PROPERTY TAX

Explanation

Property Tax is not the same as municipal rates and taxes as levied by municipal or local authorities. It is a tax levied annually

by the central Government like income or corporation tax, but it is measured on the basis of the net worth of a company rather than on income.

Basis of assessment
"Property Tax" is chargeable in the Year of Assessment on the basis of the "net property" or "net worth" of a company as at 31st December of the year immediately preceding the Year of Assessment or at any other date as approved by the Commissioner of Inland Revenue being the end of the accounting year of the company in the year immediately preceding the Year of Assessment.

Net property
"Net Property" means the amount by which the aggregate value of the property of any company on the valuation date is in excess of the aggregate value of the debts owed by it on that date; provided that in ascertaining the amount of the "net property" for the purpose of imposing the tax, the aggregate value of the debts owed by the company that may be deducted from the total value of its property shall not exceed twenty percent of the total value of the company's property after taking into account Wear & Tear Allowances and any provision for bad debts as allowed as deductions under the Income Tax Ordinance.

Exemption in the case of banking & insurance companies
The limitation of deduction of debt owed in ascertaining the "net property" of a company carrying on the business of banking does not apply to debts owed by the company in the form of deposits to depositors. The limitation does not apply also to liabilities in respect of insurance policies issued by an insurance company in respect of long term insurances.

Meaning of "property" & "valuation date".
(i) "Property" includes immovable and movable property, rights of any kind whether absolute, conditional or contingent, and effects of any kind situate or having their seat in Guyana or elsewhere and the proceeds of sale thereof, and any money or investment for the time being representing them.
(ii) "Valuation Date", in relation to any Year of Assessment, means the last day of the year immediately preceding the Year of Assessment.

Exclusion in the case of non-resident companies
The property which is outside of Guyana of any company not resident in Guyana is excluded in the computation of net property for property tax purposes.
The holdings by a non-resident company of securities issued by the Government of Guyana is also excluded for property tax purposes.

Rate of property tax
Property Tax is payable at the rate of one-half percent on the net chargeable property of the company.

PART VI – SUBMISSION OF RETURNS & PAYMENT OF TAXES, ETC.

Submission of returns
Returns are to be made by Companies in statutory forms provided by the Inland Revenue Department and separate Returns are issued annually in respect of: -

1. Income Tax and Capital Gains Tax;
2. Corporation Tax;
3. Property Tax;
4. Return of the emoluments paid by the Company to each employee.

Date of submission of returns

Returns of employees' emoluments are to be submitted for each year of assessment, that is, in respect of the emoluments of the year preceding the year of assessment on or before 28th February in the year of assessment.

All other Returns for each year of assessment as listed above must be submitted on or before 30th April in the year of assessment in respect of that year of assessment.

Note: Returns are not required to be made by non-residents who do not carry on business in Guyana notwithstanding the fact that withholdings have been made from their income arising in Guyana.

Payment of taxes

1. Pay as you Earn Tax withheld from the emoluments of employees in respect of each month should be paid to the Commissioner of Inland Revenue on or before the 14th day of the following month.

2. Income Tax and Corporation Tax for each year of assessment is payable in four instalments on the 15th December in the year preceding the year of assessment, on the 15th March, 15th June and 15th September in the year of assessment. (Since it is expected that the precise amount of the chargeable income of the year preceding the year of assessment may not be known until after the 15th March in the year of assessment, the instalments payable for the two first quarters are to be based on the tax paid for the previous year of assessment).

3. All Withholding Taxes (other than P.A.Y.E. withholdings from employees' emoluments) are to be paid over by the withholder to the Commissioner of Inland Revenue within twenty-eight days of the date of the withholding.

FRANCE

Modernisation des bases de la fiscalité directe locale (Projet de loi)

Le produit des contributions directes locales a atteint 19,8 milliards de F en 1972 et représente actuellement plus de 60% de l'ensemble des ressources fiscales des départements et des communes.

La croissance de ces impôts locaux a souligné le vieillissement et l'inadaptation des bases d'imposition, mais la refonte de la fiscalité locale, dont le principe avait été posé par l'Ordonnance n. 59-108 du 7 janvier 1959 restait néanmoins subordonnée à la détermination de nouvelles valeurs locatives devant servir à l'assiette des taxes dont la création a été prévue.

La Loi n. 68-108 du 2 février 1968 en a fixé la première étape, c'est-à-dire les conditions dans lesquelles devait être réalisée cette révision, aujourd'hui en voie d'achèvement.

Il reste à définir les modalités de l'incorporation des résultats de cette mise à jour dans les bases de l'impôt.

Tel est l'objet du «projet de Loi portant modernisation des bases de la fiscalité directe locale» qui vient d'être déposé devant le Parlement.

Une note d'information du Ministère de l'Economie et des Finances, ci-après reproduite, a commenté sommairement les principales dispositions de ce texte après avoir rappelé les grandes lignes du système actuel ainsi que les aspects fondamentaux de la réforme.

I. – LA FISCALITE LOCALE ACTUELLE ET LA REFORME ENTREPRISE

Le système des impôts directs perçus au profit des collectivités locales est encore constitué actuellement par les quatre «anciennes contributions directes» — les «quatre vieilles» — auxquelles s'ajoutent diverses taxes annexes.

Il s'agit donc essentiellement de:

— *la contribution foncière des propriétés bâties,* acquittée par les propriétaires des constructions (immeubles, appartements, maisons, usines, locaux commerciaux, etc.);

— *la contribution foncière des propriétés non bâties,* supportée par les propriétaires de terres;

— *la contribution mobilière,* à la charge des occupants de locaux d'habitation, qu'ils soient propriétaires ou locataires;

— *la contribution des patentes,* à laquelle sont assujetties les personnes physiques ou morales qui exercent une activité industrielle ou commerciale ou une profession libérale.

A. — Un système vieilli ne permettant pas une répartition satisfaisante de l'impôt

Les bases de ces anciennes contributions, constituées «d'indices extérieurs» aisément identifiables représentent en principe, soit le revenu directement attaché à la propriété de terrains ou de constructions, soit celui dont témoigne la jouissance d'un appartement, soit encore le produit qu'est susceptible de procurer l'exercice d'une activité professionnelle.

Bien qu'elles procèdent d'une philosophie commune, les quatre taxes sont très différentes et la détermination des bases d'imposition ne s'effectue pas en fonction des mêmes critères: il en résulte ainsi une première source d'iniquité.

1. — *La contribution foncière des propriétés bâties*

Cette contribution est établie annuellement sur les propriétés bâties situées en France. Elle frappe les constructions présentant le caractère de véritables bâtiments, ainsi que certains éléments assimilés à ces constructions en vertu d'une disposition expresse de la loi.

Pour des raisons d'intérêt public ou d'utilité générale, certaines propriétés bénéficient d'exemptions permanentes (immeubles publics, bâtiments affectés à usage agricole, édifices culturels . . .) ou temporaires (exonération pendant quinze ans réservée par la loi du 31 décembre 1972 aux logements neufs répondant aux normes des H.L.M.).

La valeur locative est déterminée soit au moyen des baux et locations verbales (immeubles loués), soit par comparaison ou par voie d'appréciation directe (immeubles non loués). Sauf le droit de réclamation ouvert à l'issue de chaque révision, elle reste immuable dans l'intervalle de deux révisions successives. Toutefois, par dérogation à ce principe, elle peut être modifiée en cas de dépréciation de l'immeuble à la suite de circonstances exceptionnelles.

Le revenu cadastral sert de base d'imposition aux propriétés bâties: il est égal à la valeur locative de ces propriétés, sous déduction d'un abattement forfaitaire de 50% représentant les frais de gestion, d'assurance, d'amortissement et d'entretien.

La contribution foncière des propriétés bâties est établie dans la commune où sont situées les propriétés soumises à l'impôt. Le débiteur légal en est le propriétaire de l'immeuble au 1er janvier de l'année d'imposition. Certaines personnes âgées et de condition modeste sont dégrevées d'office de cette contribution pour leur habitation principale.

La valeur locative dite «cadastrale», déterminée lors de révisions périodiques générales des évaluations, et qui constitue la base de cette taxe, *reste immuable dans l'intervalle de deux révisions*, sous réserve des changements affectant la consistance des biens.

Mais ces révisions n'ont pratiquement jamais pu être effectuées selon les périodicités prévues.

Ainsi, pour *les propriétés bâties*, les valeurs locatives cadastrales résultent de la révision de 1943 qui a été opérée d'après les loyers existants au *1er août 1939*. Encore faut-il signaler qu'elle n'a été complète que pour les immeubles d'habitation et les locaux à usage commercial; la valeur locative cadastrale des usines a simplement fait l'objet d'une majoration forfaitaire et partielle des bases antérieurement fixées et remontant à *1925*.

2. — *La contribution foncière des propriétés non bâties*

Cette contribution est relative aux propriétés non bâties de toute nature sises en France. Certaines parcelles bénéficient d'une exemption permanente (propriétés publiques, voies de communication . . .) ou temporaire (plantations forestières, marais desséchés . . .).

La contribution foncière des propriétés non bâties est assise sur la valeur locative des parcelles imposables, qui est déterminée lors de révisions générales des évaluations. La première de ces révisions a été effectuée en 1961 et ses résultats incorporés aux rôles d'impôts de 1963. La loi du 22 décembre 1967 a prescrit une seconde révision des évaluations, qui a été conduite selon une procédure simplifiée.

La valeur locative de chaque parcelle est fixée d'après un tarif d'évaluation établi

dans chaque commune — par nature de culture et, le cas échéant, par classe, ces classes correspondant à la qualité de la terre. Sauf le droit de contestation ouvert aux contribuables après la mise en recouvrement des deux premiers rôles suivant la mise en application des résultats d'une révision, les évaluations demeurent fixes dans l'intervalle de deux révisions successives. Il n'en est autrement, de manière exceptionnelle, qu'en cas de changement de nature de culture n'ayant pas un caractère temporaire ou de dépréciation notable et durable des propriétés résultant d'événements imprévus indépendants de la volonté du propriétaire et affectant le fonds même du terrain.

La base d'imposition est le revenu cadastral qui est égal à la valeur locative diminuée de 20%. De même que pour la contribution foncière des propriétés bâties, le débiteur légal de l'impôt est le propriétaire au 1er janvier de l'année d'imposition.

3. — *La contribution mobilière*

Toute personne ayant à sa disposition un local meublé — qu'elle soit ou non propriétaire du local ou des meubles — est soumise à cette contribution. Des exemptions sont prévues en faveur des membres du corps diplomatique pour leur résidence officielle et, sous certaines conditions, des hommes de troupe mariés.

La base d'imposition — susceptible de révision annuelle — *est constituée par le loyer matriciel qui est fixé par la commission communale des impôts directs en fonction de la valeur locative du logement nu, apprécié en principe d'après le loyer normal pratiqué à la date du 1er septembre 1948.* En réalité, on se réfère très souvent à une date très antérieure.

Des abattements pour charges de famille sont obligatoirement institués dans les communes comptant au moins 5.000 habitants et dans celles où il est procédé, à la demande des conseils municipaux, à un recensement à domicile des contribuables. Dans ces mêmes communes, les conseils municipaux peuvent décider la déduction d'un abattement à la base, dit abattement pour minimum de loyer.

La contribution mobilière est également soumise au principe de l'annualité de l'impôt, c'est-à-dire qu'elle est due pour l'année entière d'après la situation constatée au 1er janvier de l'année d'imposition.

Des dégrèvements de cette contribution sont accordés, sous certaines conditions, aux personnes âgées et de condition modeste.

4. — *La contribution des patentes*

Chaque personne physique ou morale qui exerce, à titre habituel et pour son propre compte, un commerce, une industrie ou une profession non compris dans les exceptions prévues par la loi, est assujettie à la contribution des patentes.

Les principales exemptions concernent les salariés, les agriculteurs, les artisans n'employant pas d'ouvriers, les artistes . . .

La contribution des patentes comporte un droit dit «fixe» et un droit dit «proportionnel».

Le droit «fixe» est fonction, pour chaque établissement, de l'activité exercée et de divers autres éléments, essentiellement le nombre de salariés.

Le droit «proportionnel» est une fraction de la valeur locative des locaux servant à l'exercice de la profession et, éventuellement, de celle de l'outillage mis en œuvre (établissements industriels). Exception faite des dates de référence (selon le cas, 31 décembre 1947 ou 1er septembre 1948), les règles d'évaluation de la valeur locative sont sensiblement identiques à celles utili-

sées pour la contribution foncière des propriétés bâties.

Les droits «fixe» et «proportionnel» correspondant aux diverses professions sont réglés conformément à un tarif annexé au code général des impôts, dont la mise à jour est assurée par une commission permanente nationale. Cette commission s'efforce de faire en sorte que la charge de patente représente, d'une profession à l'autre, une part relativement constante du profit moyen. Mais, en raison du vieillissement du tarif, cet objectif n'est pas réellement atteint.

La contribution des patentes — dont *les bases sont révisées annuellement* — est due pour l'année entière, par tous les patentables exerçant leur activité au 1er janvier de l'année d'imposition. Ce principe comporte toutefois des dérogations (début d'activité ou fermeture d'établissement en cours d'année, transfert de droits en cas de cession d'établissement . . .).

Pour les entreprises minières, la patente est remplacée par la redevance (départementale et communale) des mines qui porte chaque année sur le tonnage net des produits extraits au cours de l'année précédente. Les taux varient suivant la nature de ces produits.

En définitive, le système en vigueur n'est plus à même, en raison tant de la disparité et de la complexité des règles d'évaluation que du vieillissement des bases d'imposition, de permettre une répartition satisfaisante de la charge fiscale non seulement entre les différentes catégories de contribuables, mais aussi entre les redevables d'un même impôt.

B. — Les objectifs de la réforme de la fiscalité directe locale

La réforme de la fiscalité directe locale telle qu'elle a été décidée par l'Ordonnance du 7 janvier 1959 *vise essentiellement, à partir de bases actualisées et mieux adaptées, à établir une meilleure répartition de l'impôt revenant à une Collectivité.*

Il s'agit fondamentalement de répartir l'impôt d'une manière plus équitable et plus juste.

L'Ordonnance de 1959 a remplacé les quatre anciennes contributions directes par quatre nouvelles taxes relatives aux mêmes catégories de contribuables. Ce sont:

— *la taxe foncière des propriétés bâties;*

— *la taxe foncière des propriétés non bâties;*

— *la taxe d'habitation,* remplaçant la contribution mobilière;

— et *la taxe professionnelle,* remplaçant la patente.

En outre, la plupart des taxes annexes aux anciennes contributions sont supprimées, seules devant subsister celles qui représentent la rémunération d'un service rendu (taxe d'enlèvement des ordures ménagères et taxe de balayage).

En fait, le nouveau système ne subit pas de modifications profondes dans sa structure, mais il s'éloigne des «quatre vieilles» en ce qui concerne les bases d'imposition. La mise en œuvre de cette réforme impliquait donc au préalable, la révision générale des évaluations foncières qui en fournit le support technique.

C. — Les opérations de la révision des bases d'imposition

L'ordonnance de 1959 posait le principe de l'unicité d'assiette en vertu duquel *les quatre nouvelles taxes seront toutes déterminées d'après les valeurs locatives foncières* au lieu de reposer sur des bases hétérogènes et disparates. Il était donc nécessaire d'actualiser ces évaluations et pour

cela de fixer une date de référence unique. C'est ce qui a été entrepris et mené à bien par la révision générale des évaluations foncières prévue par la loi du 2 février 1968 et le décret du 28 novembre 1969, qui a retenu le 1er janvier 1970 comme date de référence.

L'ampleur de la tâche entreprise a conduit à étaler ces opérations sur plusieurs années. Ces travaux ont, en effet, porté sur 20 millions de logements auxquels il faut ajouter 2 millions de locaux commerciaux et 200.000 établissements industriels.

Toutes les évaluations ont été arrêtées au terme d'une procédure longue et minutieuse menée de concert avec les élus locaux. Ainsi, la valeur locative cadastrale des locaux d'habitation, établie à partir des déclarations fournies par les propriétaires, a été calculée, dans chaque commune, par comparaison avec les loyers réellement pratiqués dans un échantillon de locaux représentatifs préalablement constitué. La participation active des Commissions communales aux travaux de la révision garantissait le respect des intérêts des Collectivités locales et des contribuables.

Parallèlement, une révision simplifiée des évaluations des propriétés non bâties, consistant en une actualisation à la même date du 1er janvier 1970 des bases résultant de la révision de 1961 a été entreprise.

Il est essentiel de noter, qu'à terme, de tels travaux seraient vains si toutes les précautions n'étaient pas prises pour assurer, ce qui n'a pratiquement jamais été le cas dans le passé, une périodicité régulière des révisions. Le recours aux techniques modernes de gestion et notamment à l'informatique, doit permettre d'atteindre cet objectif. Les conditions matérielles nécessaires ont ainsi été réunies pour éviter que l'incorporation des résultats de la révision ne constitue que la «justice d'un moment».

II. – LES DISPOSITIONS GENERALES DU PROJET

La technicité de ce texte n'a pu être évitée dès lors qu'il fallait établir la compatibilité entre un système ancien dont une partie importante est conservée et un système nouveau.

En second lieu, la participation très fructueuse des élus locaux à toutes les phases de la révision, notamment au sein de la Commission communale des impôts directs, a conduit à proposer l'extension des pouvoirs d'appréciation confiés aux Conseils municipaux, notamment en matière de dispositions transitoires.

Enfin, il a paru sage, ainsi que l'ordonnance de 1959 l'avait partiellement prévu, de ménager des étapes d'adaptation suffisamment souples.

A. — *Les mesures de portée générale*

1. — *La date d'entrée en vigueur de la réforme*

• Le projet de loi fixe au *1er janvier 1974*, la date d'incorporation dans les rôles des valeurs locatives qui seront utilisées pour l'assiette de la *taxe foncière sur les propriétés bâties* et de la *taxe d'habitation*, la même date étant retenue pour l'incorporation, par voie réglementaire, des résultats de la révision simplifiée applicable à la *taxe foncière sur les propriétés non bâties*.

• Il n'est pas possible, en revanche, de prévoir dès maintenant l'application de l'ordonnance relative à la *taxe professionnelle* et à ses taxes annexes. En effet, la complexité des problèmes soulevés par le remplacement de l'actuelle contribution des patentes implique que le Parlement puisse réfléchir sur les conditions et les implications de la réforme avant même que lui soit soumis le projet de loi. Un document

d'orientation sera remis au préalable aux Commissions compétentes des deux assemblées.
Ainsi, le projet de loi que le gouvernement s'est engagé à déposer avant le 1er novembre 1973 sur les conditions de remplacement de la patente pourra tenir compte des premières réflexions du Parlement.
Pour 1974, la patente et les taxes annexes à cet impôt — notamment la contribution pour frais de chambres de commerce et d'industrie, et la taxe pour frais de chambre de métiers — continueront d'être assises selon les règles actuelles.

2. — *La répartition de la charge fiscale*
Le projet de loi ne remet pas en cause l'un des traits fondamentaux des impôts directs locaux: leur caractère d'impôts de répartition. Le produit de ces impôts continuera d'être égal aux sommes votées par les autorités locales, seules habilitées à exercer ce pouvoir qui correspond à celui du Parlement en ce qui concerne le budget de l'Etat.
En elle-même, la mise à jour des bases d'imposition, organisée par le projet de loi, *n'aura donc aucune incidence sur la progression de l'impôt dans une collectivité donnée, et a fortiori, aucune incidence sur sa progression au niveau de l'ensemble du territoire. C'est seulement sa répartition entre contribuables qui pourra se trouver modifiée.*

a) *Les transferts de la charge fiscale entre les quatre impôts*

• L'adoption des nouvelles bases d'imposition pour les taxes foncières et la taxe d'habitation entraînera nécessairement des transferts de charge entre les redevables de chacune de ces taxes.
Il convient donc d'éviter d'ajouter à ces transferts ceux qui pourraient résulter d'une modification de l'équilibre entre les quatre contributions.
Au surplus, il n'est pas possible de régler ce nouvel équilibre avant d'avoir arrêté les grandes lignes de l'impôt appelé à remplacer la patente. *C'est pourquoi le présent projet de loi prévoit, jusqu'à l'entrée en vigueur de la loi instaurant la taxe professionnelle, de maintenir la répartition actuelle entre les différents impôts locaux,* sauf à tenir compte:
— comme par le passé, des variations intervenues dans la matière imposable,
— de l'incidence de l'exonération de la taxe foncière des outillages fixes des établissements industriels, afin d'éviter que cet allègement ne soit supporté par les autres propriétaires fonciers de la commune.
• Par conséquent, dans l'immédiat, chacune des grandes catégories de contribuables (ménages, propriétaires fonciers, patentables) continuera de supporter la même part des charges locales qu'à présent.

b) *Les transferts de la charge fiscale à l'intérieur d'un même impôt*

• L'ordonnance de 1959 n'avait pas fixé les mesures propres à limiter les conséquences des transferts de charge entre redevables. Sans attendre l'achèvement complet des travaux de la révision, une enquête a été conduite afin de déterminer le sens de l'ampleur des variations prévisibles, sur près de 50.000 locaux situés à Paris et dans 44 autres communes d'importances diverses.
Si des mesures d'adaptation sont souhaitables, elles doivent — sauf à devenir contraires à l'équité et ainsi ruiner partiellement l'objectif de la révision — demeurer limitées. *C'est pourquoi le mécanisme d'étalement sur plusieurs années des variations les plus accusées ne concernera que la taxe d'habitation.*

En effet, pour celle-ci, la réforme entraînera la substitution des nouvelles valeurs locatives aux «loyers matriciels» utilisés jusqu'à présent. *Un étalement sera accordé de droit sur une période de cinq ans, sauf décision contraire des Conseils municipaux.*
Pour 1974, cette correction sera effectuée, de manière à ramener les variations des bases d'imposition en plus ou en moins par rapport à la moyenne, à l'intérieur d'une fourchette comprise entre + 25% et — 10%.
Pour 1975, 1976 et 1977, la base d'imposition retenue en 1974 sera progressivement rapprochée — par quart — de la nouvelle valeur locative issue de la révision afin de l'atteindre totalement en 1978.

B. — L'aménagement des règles d'assiette des nouvelles taxes

Un certain nombre de mesures contenues dans le projet de loi ne concernent pas directement les modalités du passage de l'ancien système à celui prévu par la réforme. Elles constituent des aménagements spécifiques de l'assiette des nouvelles impositions.

1. — *L'évaluation des locaux soumis à la législation des loyers*

La nouvelle valeur locative des locaux d'habitation ou à usage professionnel est déterminée par comparaison avec la valeur locative de locaux de référence loués librement à des conditions de prix normales, et ce, pour assurer l'homogénéité des évaluations.
Toutefois, son application aux logements encore soumis à la réglementation des loyers édictée par la loi de 1948 aurait pu conduire à imposer leurs propriétaires à la taxe foncière d'après une valeur locative supérieure au montant annuel des loyers effectivement perçus.
Afin d'éviter cet inconvénient, la valeur locative de ces logements ne pourra excéder le plus faible des deux chiffres suivants:
— la valeur locative cadastrale,
— ou le montant du loyer au 1er janvier 1970 affecté d'un coefficient (révisé tous les trois ans), tenant compte des augmentations de loyers intervenues depuis cette date.
Naturellement, les logements qui cesseront, après le 1er janvier 1974, d'être soumis à la réglementation de 1948, ne pourront plus bénéficier de ce régime spécial et seront imposés à la taxe foncière d'après leur valeur locative cadastrale.

2. — *Des exemptions temporaires en matière de taxe foncière sur les propriétés non bâties*

Diverses exonérations temporaires de cette taxe sont prévues en faveur des propriétaires qui modifient la nature de leurs terrains dans certaines conditions. Ces exemptions s'appliquent ainsi aux terrains ensemencés, plantés ou replantés en bois, aux marais desséchés, aux terres incultes ou en friche depuis quinze ans et plantées en arbres fruitiers ou mises en culture.
Sans remettre en cause le principe de ces exonérations, le présent projet de loi, dans l'intérêt des finances locales, prévoit d'en aménager l'importance et la durée.
Les exonérations accordées avant le 1er janvier 1974, selon la réglementation ancienne, ne seront pas remises en question.

3. — *Les mesures affectant la taxe d'habitation*

Sous le régime actuel, le loyer matriciel servant de base à la contribution mobilière est diminué:
— d'un abattement obligatoire pour charges de famille,

— d'un abattement facultatif, à titre de minimum de loyer.

Mais ces abattements ne peuvent être pratiqués que dans les communes de plus de 5.000 habitants et dans celles où il est procédé à la demande du conseil à un recensement sur place des contribuables.

• Il paraît souhaitable d'étendre le système des abattements à l'ensemble du territoire, la politique familiale étant une politique nationale. C'est pourquoi le projet de loi propose de fixer le taux de l'*abattement pour charges de familles* à:

— 10% de la valeur locative moyenne de la commune, pour chacune des deux premières personnes à charge;

— 15% par personne à charge à partir de la troisième.

Par mesure d'harmonisation avec l'abattement familial, le projet prévoit un abattement à la base égal à 10% de la même valeur locative moyenne au titre de *minimum de loyer*. Cependant, les communes demeurent libres d'instituer ou non ce dernier abattement.

Les abattements pour charges de famille seront calculés, comme actuellement, en tenant compte à la fois des ascendants âgés de plus de 70 ans ou infirmes qui vivent au foyer du contribuable et des enfants à la charge de celui-ci. Quant à la notion d'enfant à charge retenue, elle sera identique à l'avenir à celle de l'impôt sur le revenu (il s'agit donc notamment des enfants mineurs, des enfants âgés de moins de 25 ans qui poursuivent leurs études ou effectuent leur service militaire, ainsi que des enfants infirmes, quel que soit leur âge).

Dans le cas où dans certaines communes les abattements actuellement existants seraient supérieurs à ceux institués par le projet de loi, ils pourront être maintenus pendant une période transitoire qui s'achèvera en 1980.

Pour l'année 1974, les abattements appliqués en 1973 seront simplement reconduits après avoir été revalorisés en fonction de l'augmentation des bases d'imposition.

4. — *Les dispositions intéressant les autres taxes*

• *La plupart des taxes annexes aux «quatre vieilles» sont supprimées*

Il s'agit notamment de la taxe sur la valeur locative des locaux d'habitation, de la taxe sur le revenu net des propriétés bâties, de la taxe sur le revenu net des propriétés non bâties, de la taxe des prestations, etc. Cette simplification nécessaire est d'ailleurs sans incidence sur le produit global des impôts, directs locaux, puisque les taxes qui disparaissent en représentent moins de 0,50%.

• Par contre, celles d'entre elles qui ont une importance réelle sont maintenues. Il s'agit:

— des taxes annexes à la contribution foncière bâtie;

La taxe d'enlèvement des ordures ménagères et la taxe de balayage correspondent en effet à des services rendus par les municipalités.

— des impositions perçues au profit des groupements de communes.

D'autre part, un certain nombre d'organismes (budget annexe des prestations sociales agricoles, chambres d'agriculture, etc.), perçoivent des *taxes fiscales ou parafiscales* qui sont calculées d'après le revenu cadastral servant de base à la contribution foncière des propriétés non bâties. Des décrets apporteront, à compter du 1er janvier 1974, les mesures d'adaptation nécessaires à la suite de la révision des évaluations foncières.

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JOSEPH A. PECHMAN *:

INTERNATIONAL TRENDS IN THE DISTRIBUTION OF TAX BURDENS: IMPLICATIONS FOR TAX POLICY

This paper reports on the results of a new Brookings study, which Mr. Ben Okner and I have just completed, on the distribution of tax burdens in the United States. The study will be of interest not only for its substantive results, but also for its methodology. Since the techniques are easily transferable, I hope that scholars at the Institute for Fiscal Studies and elsewhere will be encouraged to develop similar tax burden distributions for other countries. Although the study relates only to the United States, I will try to draw some inferences from the results about trends in the distribution of tax burdens in other countries and then examine the implications of these trends for tax policy.

THE DATA AND CONCEPTS

In the past, the income distribution data available for tax analysis have been deficient in two respects: first they did not represent the entire income-receiving population and, second, they failed to include all the income known to have been received by that population. In the United States, we have annual information on income subject to tax from our federal individual tax returns, but the omission of people not required to file distorts the distribution for those at the bottom of the income scale. Our Census Bureau also collects income information each year from a sample of about 50,000 households. But, aside from using a different population unit, the Census survey employs an income concept that excludes capital gains and other important income items. In addition, both the tax data and the Census data understate incomes in varying degrees and therefore cannot be linked with personal income and other aggregate income data.

To remedy the defects of the two sets of data, we constructed a new file — called the MERGE file — that combines the best information in both sets. In creating this file, information on 30,000 families and single persons included in the 1967 Survey of Economic Opportunity (SEO) conducted by the Census Bureau for the U.S. Office of Economic Opportunity was combined with data from a file containing information from 90,00 federal individual income tax returns filed for the year 1966. This was done by estimating the kind of tax return that would have been filed by the survey respondents and then, for tax

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filers, by matching each survey unit (on the basis of major source of income and other common characteristics) with a return selected from the tax file. For the units deemed to be non-filers, the income information from the survey was used. For the filers, the income information from the tax return was used. Since there were very few high-income units in the survey file, the upper end of the tax file distribution (returns with income above $ 30,000) was substituted in total for the survey distribution.

Thus, the MERGE file contains 1966 incomes for families who were not in the tax-filing population, as well as the more complete — and more accurate — income tax information for higher-income individuals. In addition, income information in the MERGE file was corrected for nonreporting and underreporting, so that — with the appropriate weights applied to the sample units — the file accounts for the total income (on almost any desired definition of income) estimated to have been received in the United States in 1966. All of this information is available on magnetic tape and can be processed quickly and efficiently on a high-speed electronic computer. The availability of the computer technology permitted us to prepare estimates in the type of detail that was never possible with the older data processing techniques.

The income concept used in the study corresponds to an economist's comprehensive definition of income. In addition to the incomes earned in the production process — wages, interest, dividends, rents and royalties — this concept includes transfer payments and accrued capital gains. Gifts and bequests should also be included as income under this definition, but these were omitted because we know very little about the distribution of these items among families.

Our income concept corresponds to national income at market prices rather than at factor costs. This required the inclusion of indirect taxes as well as direct taxes in income. Direct taxes are, of course, automatically included in factor shares. Indirect taxes were allocated to individual family units in proportion to their shares of factor incomes. [1]

Since economists still disagree about the incidence of several of the most important taxes in the tax system and since we were able to use a computer to do the work, we did not limit ourselves to one view of tax incidence. Instead, we prepared estimates on the basis of eight sets of incidence assumptions that span the range of opinions currently held by economists.

Those who are familiar with the literature will recognize that we tried to apply the incidence methodology which has developed in recent years under the leadership of Richard A. Musgrave and Arnold C. Harberger. The distinguishing feature of the new methodology is that it provides a consistent framework for the analysis of tax incidence, although it has not eliminated differences of opinion about the incidence of particular taxes. According to the methodology, the incidence of a tax is measured by the reduction of real incomes that results from the imposition of that tax. Taxes affect real incomes in either or both of two ways: they may reduce the incomes of individuals in their roles as producers; or they may increase prices and thus reduce the purchasing power of a

1. Indirect taxes were distributed on the basis of income shares measured at factor costs, on the assumption that the use of indirect taxes does not alter the distribution of factor incomes.

given amount of income. The former effect is the burden of taxation on the "sources" of income; the latter is the burden on the "uses" of income. In practice, it is often the case that the uses side of income can be ignored because the expenditure patterns of those who are affected by the tax are similar, or that the sources of income side can be ignored because the tax does not change relative prices.

If all income were consumed, the incidence of a proportional income tax and a general consumption tax would be identical. In such a case, the two taxes would be borne in proportion to the initial shares of each family in total income, and it would be meaningless to try to distinguish between burdens on the sources and uses of income. If some income is saved, the incidence of the two taxes becomes distinct. Assuming that the supply of labor and of saving is relatively inelastic, the proportional income tax is borne in proportion to income (the sources side); and, since relative prices remain unchanged, a general consumption tax is borne in proportion to consumption (the uses side). Even though income taxes are generally progressive and consumption taxes are not perfectly general, most economists are satisfied that the income tax is primarily a burden on the sources of income and a general sales tax or a value added tax is a burden on the uses of income.

Selective excise taxes and partial sales taxes do change relative prices, thus burdening those who consume the commodities subject to tax. But there is no burden on the sources side because, on the assumption that the government manages to maintain full employment, any labor or capital that may shift from the taxed industries ultimately receives approximately the same income when it is reemployed in the nontaxed industries. (Selective excise taxes and other partial taxes impose "excess burdens", but these are ignored because they are believed to be small and are difficult to measure.)

While there is substantial agreement on the incidence of the individual income tax and consumption taxes, the incidence of the other major taxes in modern tax systems — the corporation income tax, the property tax, and payroll taxes — is in considerable dispute. Assuming perfect competition, price flexibility, perfect factor mobility and inelasticity of the supply of labor and capital, it can be shown that these three taxes are borne by the factors of the production. This means that the corporation income tax and the general property tax reduce the rate of return on capital in general, [2] and the payroll tax is borne entirely by wage earners. On the other hand, to the extent that business firms and owners of real estate do not operate to maximize profits and have the power to set prices, the corporation income tax, the property tax, and the payroll tax may be shifted in whole or in part to consumers.

We do not attempt to settle this dispute in our study, but we do provide enough information to permit anybody to come up with a distribution of tax burdens on the basis of the particular assumptions he prefers. As will soon be evident, the estimates are instructive not only because of the differences in the distribution of tax burdens that arise as a result of making different assumptions, but also because of some of the similarities as well.

2. However, practically every economist still believes that the property tax on raw land is capitalized and falls on owners of land when it is imposed or increased.

MAJOR FINDINGS

The differential burdens imposed by the various taxes used in the United States in the year 1966 are not very surprising. The individual income tax is progressive over virtually the entire income scale, but it becomes regressive at the very top, where a substantial proportion of total income is not subject to tax. Sales and excises are unambiguously regressive throughout the entire income scale. Whether they are borne by labor alone or shared with the consumer, payroll taxes are progressive up to the maximum taxable earnings level ($ 6,600 in 1966), but regressive beyond this level. For the corporation income tax and the property tax, the relative tax burdens depend on the assumptions used. On the assumption that these are taxes on owners of property, they are highly progressive. If it is assumed that half the corporation income tax is a tax on consumption and that the property tax on improvements is a tax on shelter and consumption, the progressivity of these taxes disappears: the burden of the corporation income tax becomes U-shaped (because of the ratio of property income to total income is U-shaped) and the property tax becomes regressive throughout the income scale (because the ratio of total consumption and housing expenditures to annual incomes falls as incomes rise).

When the effective rates of all these taxes are combined, the progressive taxes are more or less offset by the regressive taxes — and this occurs regardless of the incidence assumptions used. As a result, the tax system turns out to be virtually proportional or only slightly progressive for the vast majority of families in the United States. On the average, U.S. taxes in 1966 amounted to a little over 25 percent of income. There is very little deviation from this average for the broad range of incomes between $ 2,000 and $ 30,000, which includes 87 percent of all family units. Thus, under the most progressive set of assumptions examined in the study, taxes reduce inequality (as measured by the Gini coefficient) by less than 5 percent; under the least progressive assumptions, income inequality is increased by one-quarter of 1 percent.

The only exceptions to the flatness of the effective rate curve appear at the very bottom and at the very top of the income scale, where the rates rise sharply. The high rates for those in the lowest income classes are probably not representative of the tax burdens they pay over longer periods of time than a year, because in these classes there is a heavy concentration of retired persons and others with temporarily low incomes. If income were measured over a longer period, the regressivity at the bottom of the income distribution would be greatly moderated or might even disappear. The very rich pay high taxes because a substantial proportion of their income comes from property income. But the total tax burden at these levels depends crucially on the assumed incidence of the corporation income and property taxes. If these taxes are regarded as taxes on income from capital, the tax burden of those with incomes of $ 1,000,000 or more approaches 50 percent, or roughly double the rates paid by most families. If these taxes are assumed to be shifted in whole or in part to consumers, the tax burden at the highest income level is about 30 percent, or only about 5 percentage points more than the effective rates paid by most families.

In addition to differences that arise because of differences in incidence assumptions, there are substantial variations in tax rates

among various economic and demographic groups in the population that are due to the structural features of the U.S. tax system. For example, homeowners pay lower taxes than renters, urban residents pay lower taxes than residents of rural-farm areas, and married couples pay lower taxes than single people.

Perhaps the most interesting calculation we were able to make on the basis of the MERGE file was to estimate the relative tax burdens imposed on income from labor and capital. As might be expected, income from capital bears a much heavier tax burden than income from labor if the corporation income tax and the property tax are assumed to be taxes on capital. On these assumptions, the average tax rate was 33 percent on income from capital compared with about 17.5 percent for income from labour. But the difference is narrowed considerably if the corporation income and property taxes are assumed to be paid in whole or in part by consumers. In these circumstances, income from capital bears an average tax rate of only 21 percent, while labor income bears a tax of 16.0 percent.

TAX BURDENS IN OTHER COUNTRIES

Although we have not made similar tax burden calculations for other countries, it is not difficult to infer what the situation is on the basis of the distribution of revenue sources. Throughout the 1950s and 1960s, there has been a trend away from the use of income taxes toward greater reliance on consumption taxes. Payroll taxes have always been a much more important source of revenue in European countries than in the United States, because European social security and related programs — which are financed mainly through payroll taxes — are more elaborate than the U.S. system and therefore require more revenues. Furthermore, in practically every country, allowances and tax credits for investment have been greatly liberalized in the interest of promoting private investment, but they have not been financed by raising income tax rates. This practice has reduced the revenue productivity of the corporation income tax almost everywhere.

The result of these trends is that progressive tax sources now account for much less than half of total tax revenues in most developed countries. According to recent estimates prepared by the OECD, [3] only Japan, Australia, and Canada rely about as heavily as the United States on the individual and corporation income taxes. Except for Sweden and Denmark, consumption taxes and payroll taxes play a much larger role than income taxes in Western Europe. In the United Kingdom, consumption taxes and payroll taxes account for 47 percent of total tax revenue, as compared with only 38 percent in the United States. In France and Italy, where it is apparently impractical to levy an effective personal income tax, consumption taxes and payroll taxes account for more than three-quarters of total tax revenues. Even in Scandinavia, where income taxes are relatively high, consumption taxes and payroll taxes account for about half of total revenues.

Given these facts, its does not require knowledge of higher mathematics to visualize the approximate shape of the distribution of tax burden in other countries by extrapolating from the U.S. data. In Western Europe, the two major sources of revenue — consumption taxes and payroll

3. *Revenue Statistics of OECD Member Countries*, 1968-70 (OECD: Paris), 1972.

taxes — are clearly regressive. Even in the United States, where the income taxes are more important, they are just barely sufficiently progressive to offset the regressivity of the consumption taxes and payroll taxes. Moreover, if the corporation tax and the property tax are assumed to be shifted to consumers in any substantial degree, the U.S. tax system becomes regressive on balance. It follows that, on the whole, tax systems are not very progressive anywhere in the world. In Canada, Australia, and Japan, taxes are probably distributed roughly in proportion to income. But, with the possible exception of Denmark and Sweden, taxes are regressive in Western Europe and, in some of these countries, they must be very regressive indeed.

AGENDA FOR REFORM

The preceding discussion leads me to the conclusion that the objectives of progressive taxation are honored only in the breach throughout the world. Politicians find it useful to support progression in principle, but then turn to regressive sources when new revenue needs arise. There is no evidence of a concerted effort anywhere to improve the personal income tax so that it will be an effective instrument of progressive taxation. Furthermore, in the search for methods of promoting economic growth, governments seem inevitably to turn to tax devices that reduce revenues from the progressive sources, but have uncertain, if not downright perverse, economic effects. In these circumstances, I suggest that the time has come for the public finance fraternity to make an effort to help restore progressive taxation to its proper place in the hierarchy of national objectives. The following are among the major revisions that might be considered for any reform agenda.

1. The first order of business should be to make the personal income tax a progressive tax in fact as well as in name. My use of the term "progressive" should not be interpreted as a synonym for "punitive". Excessively high tax rates on incomes do have undesirable effects on work, saving, and investment incentives. They also encourage taxpayers to use legal and sometimes extra-legal means of avoiding them. But there are two sides to this coin. Proliferation of special tax favors to particular groups — for whatever reason — narrows the income tax base, which in turn requires the use of higher rates to raise needed revenues. Taxpayers who cannot take advantage of these special provisions find that they are paying much higher taxes than others with equal incomes, and they demand and frequently get equal treatment. This leads to further erosion of the income tax base, which leads to the use of regressive tax sources when revenue needs become urgent. The way out of this dilemma is to reverse the cycle of erosion of the income tax base. With a comprehensive definition of income for tax purposes, it should be possible to raise needed revenues from the income tax with reasonably moderate rates.

Ben Okner and I demonstrated the potentials of this approach in testimony before the U.S. Joint Economic Committee last year.[4] Using the MERGE file I described earlier, we calculated the tax base for the United States under a definition of income that closely approximates what economists would call "income". This means full taxation of capital gains, the

4. Joseph A. Pechman and Benjamin A. Okner, "Individual Income Tax Erosion by Income Classes", *Economics of the Federal Subsidy Programs,* U.S. Joint Economic Committee (1972), pp. 13—40 (Brookings Reprint 230).

treatment as income of capital gains on assets transferred through gifts or bequests, elimination of all preferences (such as percentage depletion and tax-exempt interest), taxation of imputed income on owned homes, inclusion of transfer payments in the tax base, weeding out unnecessary personal deductions, and elimination of the tax rate advantages of the income splitting provisions. With such a tax structure, it would be possible to raise the revenues now produced by the personal income tax in the United States with tax rates that are 43 percent lower, on the average, than present rates (which begin at 14 percent and go up to a maximum of 70 percent). Actually, we devised five alternative tax rate schedules to meet these specifications, no one of which had a maximum marginal rate exceeding 50 percent. Our preferred schedule began at 7 percent and rose to a maximum of 44 percent.

I am not familiar enough with other tax systems to be able to make such calculations for other countries. But it is evident from a cursory examination of present practices that income tax erosion is not confined to the United States. Most countries still do not tax capital gains, allow deductions of selected items of personal saving and of personal expenditures, permit income splitting of the equivalent, exclude transfer payments from the tax base, and so on. If a determined effort were made to use a comprehensive definition of income as the basis for personal income taxation, marginal tax rates could be lowered everywhere without affecting the revenue potential of the tax. The advantage of this approach is that it would greatly improve horizontal equity without increasing rates to such levels that they might impair incentives. It would also improve taxpayer morale, which is so vital to the success of a modern tax system.

2. The corporation income tax should not be regarded as an ugly appendage to the tax system, as most businessmen and some finance ministers view it. Data for the United States indicate that, without the corporation income tax, the tax system would lose the tax that contributes most to progression in the top brackets. (Even if half the corporation tax is assumed to be shifted, the other half — which is borne mainly by middle- and high-income shareholders or owners of capital in general — is still significant.) The corporation income tax is needed, therefore, to safeguard much of the progression the system possesses.

It follows that any structural change that reduces the corporation income tax substantially also reduces progression substantially, and this is exactly what has happened in most countries. For example, the U.S. corporation income tax rate has been reduced only by 4 percentage points since 1954. In the interim, depreciation has been liberalized twice and a 7 percent investment credit has been adopted. The result has been that the corporation income tax has dropped from 32.8 percent of gross profits (i.e., profits before capital consumption allowances) earned by corporations to about 24 percent, a reduction of over one quarter in almost two decades.

The U.S. experience is not an isolated one. The corporation income tax has been whittled away in most developed countries during the past two decades; it is now a secondary source of income almost everywhere. I am not aware that this trend has been moderated to any significant degree by offsetting increases in the tax burdens of those who benefitted from these significant tax reductions. In view of these developments, I suggest that any additio-

nal inroads into the corporation income tax — by straight rate reductions, further liberalization of investment allowances, structural changes to provide relief for distributed earnings, or any other such devices — should be resisted unless they are accompanied by structural revisions or rate increases that will raise offsetting revenues from the income classes where these tax reductions are concentrated.

3. Perhaps the most puzzling feature of modern tax systems is the continued acceptance of regressive payroll taxation as a major source of revenue. The payroll tax was originally used in Europe as the basic method of financing old-age benefits on the principle that the workers were buying their own annuities. This idea is doubtless responsible for the widespread acceptance of social security; but the insurance analogy is no longer applicable — if it ever was — as social security systems have developed. In growing economies, present beneficiaries receive far larger benefits than the taxes they paid would entitle them to — a situation that will continue indefinitely, so long as benefits keep pace with the rise of wages. Even if the device of a trust fund or a special account is used, the payroll taxes paid by the worker are not stored up or invested; they are used to finance current benefits and sometimes even other government outlays. When benefits provided to people now working come due, the funds for their payment will be provided out of tax revenues as of that future date and not out of the taxes they paid earlier.

Another reason why payroll taxation is tolerated is that the tax is usually levied on both employers and employees. Even the portion that the worker pays is withheld from his pay check, and few countries require that a statement of the total tax withheld during the year be furnished to the worker. Most economists believe that the burden of the employer tax, as well as the employee tax, falls eventually on the worker (either by substituting for larger wage increases or raising prices). Most workers are not aware that, in one form or another, they pay the employer share of the tax as well as their own.

At this late stage, I doubt that the payroll tax can be dislodged from its preeminent position in social security financing. But there is no reason why it cannot be transformed into a much more respectable tax. A first step would be to carry over the income tax concept of a minimum taxable level. There is no reason to suppose that individuals and families who are considered too poor to pay income taxes have any more ability to pay a payroll tax. A second step would be to lift the maximum taxable earnings level for payroll tax purposes. In most cases, the additional taxes that would be paid by middle- and high-income earners would be enough to pay for the tax now paid by the poor.

4. In less than a decade, the value added tax has become the largest single source of revenue in Europe. In many countries, the value added tax substituted for turnover taxes or other types of consumption taxes that placed unjustifiably heavy burdens on some producers and treated others very lightly. In such cases, enactment of the value added tax was a great improvement. Moreover, the value added tax is unquestionably an easy tax to coordinate among countries that are associated in a common market or customs union.

Despite these advantages, I am not persuaded that the value added tax deserves its present popularity. The burden of a value added tax is distributed roughly in the same proportions as a general retail sales

tax. Even if food is exempt, the burden of such general consumption taxes is regressive. At the high rates that are used in some countries, the value added tax is nothing less than oppressive on families in the bottom third of the income distribution. Granted that value added taxation is sometimes useful for reasons of international economic policy, steps should be taken to lift this burden from those who should not be asked to bear it.

There is no general consumption tax in the United States at the federal level, but 46 out of the 50 states have various forms of retail sales taxes. To take the sting out of the regressivity of these taxes, seven states have adopted tax credits against their individual taxes for the imputed amount of value added tax paid on the first $1,000 or so of consumption for a family of four. Refunds are given to those who do not pay income taxes. Although such credits cannot eliminate the regressivity of a general consumption tax, they do help to alleviate the burden of the tax on the poor and near poor. The tax credit device is more urgently needed in Europe than in the United States because European value added tax rates are much higher than U.S. sales tax rates.

5. Death taxes are regarded by most economists as a much better instrument of redistribution policy than income taxes because they have less adverse effects on incentives. Nevertheless, the revenue from death taxes is pitifully low in every country. Although rates are progressive and usually reach very high percentages for large amounts of taxable wealth, rich people manage to escape paying death taxes on most of their estates through one device or another. Gift taxes are either weak or nonexistent; land and other property is undervalued; and, in Anglo-Saxon countries, wealth put in trust can escape taxation for several generations. Even if the additional revenue were used entirely for income tax rate reduction, death and gift tax reform would be well worth the effort.

In summary, in the United States, taxes are essentially proportional for the vast majority of families and therefore have little effect on the distribution of income. Since the United States relies most heavily on progressive tax sources (perhaps with the exception of Sweden) taxes are probably regressive on balance in most other countries. The major culprits are the consumption and payroll taxes, which are almost universally the major sources of revenue. If there is a will, there are methods of improving the progressivity of tax systems without adopting prohibitive tax rates. The time has come to pay some attention to progression in the development of tax policy throughout the world. The Institute for Fiscal Studies, and organizations like it in other countries, can make an important contribution to this objective through their research and through their influence on the attitudes of policymakers and the public alike.

MARIAN WERALSKI *:

THE NEW STRUCTURE OF TURNOVER AND INCOME TAXES IN POLAND

I. INTRODUCTION

1. *Sphere of Private Economic Activity*

As a result of social, economic and constitutional transformations which took place after the Second World War, Poland became a socialist country, in which now about 80% of the national income comes from the activity of socialized economic units (State and cooperative). Only 20% of the national income results from the activity of unsocialized (private) enterprises and farms.

Large industry, foreign trade, insurance and banking have been socialized. Agriculture, handicraft, and in a more limited scope small industry, transportation, building, domestic trade and services comprise part of the field of private activity in Poland.

2. *Taxation of Private Economic Activity*

The share of receipts from private economic activity in the State budget is very minimal. It is much smaller than the contribution of this activity to the creation of national income might suggest. About 87% of budget receipts comes from socialized economy, i.e. cooperative and State owned business, the remaining 13% includes 8% coming from the incomes of working people and merely 5% coming from taxes and duties paid by private economic units. [1]

The main source of budget receipts coming from private economic units is a land tax, which is a basic form of assessment on individual and cooperative farms. It is a tax based on estimated gross income. Progressive rates are partially applied. This tax is expected to be reformed in the near future.

The other private (extraneous to farming) economic activity in Poland is liable to various forms of taxation, among which turnover tax, income tax and equalizing tax, are of the highest importance.

The turnover tax in Poland is a multi-stage tax, paid separately in each turnover stage, according to low proportional rates. [2]

The income tax is a schedular tax and its rates are progressive, amounting to 65% of the taxed income. The equalizing tax [3] is paid by natural persons only. It is a superstructure on the income tax and some other taxes. Only the excess of the income (which remains after the income tax has been paid) over 96,000 zloties a year is liable to this tax. Tax rates are progressive and range to 90%. This tax too is to be reformed in the near future.

Besides these three main taxes, natural and

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1. Explanation of this phenomenon see: M. Weralski, Les bases économiques et sociales des recettes budgétaires en Pologne et leurs fonctions. Rapport pour le XIX Congrès de l'Institut des Finances Publiques (dans "Comparaison et Harmonisation des Systèmes des Recettes Budgétaires", York 1966).

2. The structure of the turnover tax on the units of socialized economy is quite different. It is a single-stage tax, characterized by very differential rates which depend on the prices of given assortment.

3. Law of December 13, 1957 about the equalizing tax, Journal of Laws 1971, no. 14 item 140.

legal persons (unsocialized) pay many other taxes, for instance: urban property tax, tax on the apartments, [4] tax on the acquisition of property rights, [5] stamp duties [6] and others. All these taxes are, however, of small financial importance. [7]

On January 1st, 1973, new legislation concerning turnover and income taxes [8] came into force. Its aim is to simplify the rules of assessment and collection of taxes, to create stabilized conditions for economic activity of the discussed units and, in particular, for handicraft, which is expected to develop widely under the national social-economic plans.

The presentation of the new constructions of these two taxes is the object of this paper.

II. TURNOVER TAX

1. *Taxable events and taxpayers*

The turnover tax in Poland is levied on the economic activity within industry, trade, services, handicraft, learned professions as well as other economic occupations. Both natural and legal persons as well as companies not being legal entities are liable to the tax.

Activity is assumed to be economic when it is performed in order to render commodities (real goods and services) in an iterative manner to profit by its main or secondary gross income sources, even if these commodities were rendered once only. Especially within the field of trade, even a single act of selling goods purchased specially for sale is understood as economic activity liable to the turnover tax.

Many kinds of economic activity are exempted, however, the exemptions may be classified into five groups. The first group of exemptions includes any activity liable to the tax on wages and salaries. It should be clearly understood that the sphere of the tax on wages and salaries in Poland is very wide.

It includes not only incomes realized from employment, but also from various activities not connected with any labour relations, and especially based on contracts of concrete work or commission, of literary, scientific, artistic and journalistic activities — if not connected with the managing in enterprise. Taking into consideration that the taxation within the tax on wages and salaries is more mild than the taxation within the framework of turnover and income taxes, the wide sphere of economic activity which is liable to the tax on wages and salaries (and consequently not liable to the turnover and income taxes) is a rather advantageous solution for the persons concerned.

The second group of exemptions from the

4. These two taxes have been regulated by the decree of May 20, 1955 about some local taxes and duties, Journal of Laws 1963, no. 16, item 87 and 1965 no. 46 and 51, items 288 and 316.

5. Decree of February 3, 1947 about tax on acquisition of property rights, Journal of Laws 1951, no. 9, item 74 and 1971, no. 7, item 77.

6. Law of December 13, 1957 about stamp duty, Journal of Laws 1958 no. 1, item 1; 1964, no. 41, item 277 and 1972 no. 23, item 164.

7. On the tax system in Poland see: 1) M. Weralski, Droit financier (dans l'oeuvre collective "L'Introduction à l'Etude du Droit Polonais", Varsovie 1966), 2) M. Weralski, Les problèmes de la fiscalité dans les Etats Socialistes, "Revue de Science Financière" 1969. no. 4; 3) M. Weralski, El Sistema de Ingressos Presupuestarios en Polonia, "Revista de Derecho Financiero y de Hacienda Publica" 1972, no. 100.

8. Law of December 16, 1972, about turnover and income taxes, Journal of Laws no. 53, items 338 and 339 and Order of Finance Minister of January 11, 1973, Journal of Laws no. 2, item 17.

turnover tax includes economic activity of a cultural and social nature (e.g. running a library or a boarding school) performed by legal persons which use their receipts for educational and cultural purposes provided in bylaws.

The third group of exemptions includes some kinds of economic activities performed by natural persons in small dimensions, i.e. the casual sale of personally farmed products, similarly the sale of fish and crayfish of ones own fishing, the retail sale at specially designed markets, the sale of forest and meadows products (e.g. mushrooms, berries) harvested personally or with the help of the closest family members, country coach driving, culturing of silkworms, the sale of home made meals, folklore output, renting guest chambers or bungalows, small personal services and small handicrafts (not taxed but assessed on behalf of the budget in a manner that will be discussed further).

The fourth group of exemptions includes domestic sale (for zloties) of goods purchased abroad for foreign currency or purchased from certain Polish economic units, authorized for a sale for foreign currency and also the domestic sale of goods obtained from abroad as gifts. Concerning goods purchased abroad and imported, the exemption amounts to no more than 1,200 USA dollars (sale) a year.

The last group, justified by social reasons, includes personal exemptions. It concerns aged persons (women over 60 and men over 65) and serious invalids who produce handicrafts or manage eating-houses, i.e. establishments, serving cheap meals, without selling alcohol, within the limits provided in the law.

2. *Base of the tax*

Turnover tax is imposed on the turnover, i.e. as a rule, it is levied on the sum due (not necessarily the sum received) for delivery of goods and rendering of services which fall under the economic activity assessed by the tax. The losses caused by unrealized liabilities are not deducted from the turnover. Also such expenses born by the taxpayer as commission, reward for brokerage, transportation costs, or import duties are not deducted. Into the turnover, however, we do not include transportation and insurance costs and other expenses borne on account of the contracting party, i.e. the customer. [9]

In some exceptional cases, however, real payment and not a due sum makes the base of turnover tax. It concerns first of all, cases of commodities rendered partly, when it is impossible to calculate dues for rendering services in the given period. It concerns also learned professions as well as some other economic occupations.

Also in cases regulated by the law, we assume brokerage (and some other rewards for rendering services) as the base of the taxation. It concerns first of all, activities depending upon agency contracts, or commission of brokerage contracts.

3. *Tax Rates*

Turnover tax rates are proportional. They are differentiated depending on the type of economic activity. They range between 1% to 30%.

9. The general rule is that the person who delivers the goods bears any transportation and insurance costs. If this is the case these costs are included in the assessed turnover. However, where these costs are borne by the customer no such inclusion is prescribed.

The rate scale is as follows:

Type of activity	Rate
1. Editorial	1 %
2. Grocery	2.5%
3. Other trade	3.5%
4. Handicraft production depending on the number of employed people	3.5% or 4%
5. Handicraft services	3.5%
6. Eating-houses without sale of alcohol	2 %
7. Eating-houses with the sale of alcohol, depending on the kind of alcohol sold	3 % or 8%
8. Hotels	15 %
9. Medical and nurses services	4 %
10. Occupations and trade taxed on the base of brokerage	10 %
11. Artistic, entertainment or sport activity (enterprises)	30 %
12. Other kinds of economic activity (most importantly industrial production and handicraft)	5 %

The above rates no. 3, 4 and 12 are raised to 13.5%, 14.5% or even to 15% if luxury goods are sold, such as: precious or semi-precious stones, pearls, ambers, corals, precious metals, crystals, marbles, alabaster, fine arts products (excluding those made by living artists), precious furs and exotic flowers.

The Minister of Finance may introduce by an order the reduction of rates, or total or partial exemptions for personal (taxpayer group) or any other kind of activity.

III. INCOME TAX

1. *Taxable Income*

Income from all sources of gross income enumerated below (after deduction of possible deficits, which will be discussed further) are subjected to income tax.

The income tax law mentions the following sources of gross income:

a) economic activity subject to the turnover tax,
b) economic activity neither subject to the turnover tax nor tax on wages and salaries,
c) scientific, artistic, literary, journalistic and educational activity provided, it is not subject to the tax on wages and salaries,
d) real property (excepting farms),
e) tenancy (which concerns gross income of the owner), [10]

10. The term "tenancy" denotes in Polish law that the owner of the good — whether real or personal property — who rents this good to a third person is subject to income tax with respect to the rentals he receives. Polish law distinguishes between the terms "tenancy" and "lease". Tenancy concerns good which may yield a certain profit. The term "lease" is reserved for leasing property for one's own use (e.g. an apartment, a motor car).
Note also that income from tenancy can be distinguished from income from real property in that (i) tenancy may concern also personal property and (ii) may also concern farms in the case a farm is rented.

f) money capital and property rights, [11]
g) sale of tangible property and property rights (except those obtained by the seller by means of heritage or testament, as well as his personal and household effects and fine arts products, books etc., provided they were not purchased with profit intent, [12])
h) other sources, such as lease of movables or lease of a part of an apartment, gross income from commodities purchased without any charge (except those exempted; see further) and gross income from unrevealed sources.

The following kinds of gross income and income are exempted from the income tax. First of all joint aggregated income below 12,000 zloties a year is exempted. It is the minimum wholly exempted from the tax. Secondly, exempt from income tax are receipts subjected to other taxes such as: salaries and wages, farm receipts, small handicraft receipts and lottery prizes.

Thirdly, exempted from income tax are various kinds of receipts earned from the government or from individuals without any charge, such as grants from government funds destined for the development of science, culture and arts, prizes, social insurances commodities, alimony, heritage, or donation. Also exempted from the income tax are subventions in behalf of legal persons realizing scientific, educational, cultural, religious or charitable activity.

The fourth group of income tax exemptions includes (as is the case for turnover tax) different small receipts from such sources as: sale of meals, sale of forest and meadow products, culture of silkworms, etc.

The fifth group (as is the case for turnover tax) includes exemption of receipts from the sale of goods purchased for foreign currcency.

The last group includes exemptions specific to the income tax: interest from deposits (saving) or from saving bonds (excluding deposits connected with someone's economic activity).

2. *Taxable Persons*

Subjected to the income tax are natural and legal persons who earn their income from the above mentioned sources. In case that both, husband and wife, earn incomes, the aggregated income is taxed. Income earned by children and grandchildren is aggregated with income of parents (grandparents) when the latter have the use of this income.

In relation to companies which are not legal entities, income of each partner is separately taxed if his share may be proved. If, however, such a proof is impossible, the whole burden of taxation is borne by this partner who had crucial influence on the activity of the company.

Among personal exemptions we may mention income tax exemption of legal persons who are dealing with scientific, educational, cultural, religious or charitable activities if their profits are destined directly for purposes provided for in their bylaws. Besides, as is the case for the turnover tax, exempted from the income tax are receipts of old-aged people (women over 60 and men over 65) and serious

11. Money capital income denotes interest from loans and deposits on current account, from bonds and dividends and other receipts derived from a share in the benefit of legal entities. Property rights mean here e.g. annuities based on donation or heritage, copyrights royalties, patent royalties etc.

12. Property rights are mentioned both under f) and g), note, however, that property rights under f) only denotes *income* from such rights, where as g) concerns the sale of such rights.

invalids, earned from handicraft or eating-houses.

3. *Base of the Tax*

Income tax is based on schedules. There are four different schedules aggregating income from defined sources of gross-income. In the framework of each schedule we fix separately the yearly income amount and tax it according to the appropriate rate scale. The structure of these schedules is very complicated.

In the framework of the schedule no. 1 we aggregate:

a) income from eating-houses without selling alcohol;
b) income from handicraft earned by craftsmen performing services in behalf of the population or agriculture and by other craftsmen provided they employ no more than one employee;
c) income from author's rights and patent rights (on inventions) received by the inventors; and
d) income from scientific, artistic, literary, journalistic and educational activities (provided they are not liable to tax on wages and salaries).

Schedule no. 2 includes:

a) income from handicraft earned by craftsmen not included in the schedule no. 1;
b) income from eating-houses selling alcohol;
c) income from transportation services;
d) income from economic occupations liable to turnover tax (learned professions etc.); and
e) income from author's rights obtained in the way of heritage or testament.

Income from economic activities liable to the turnover tax or exempted from this tax, provided it is not included in two preceding schedules, is included in schedule no. 3. This is first of all, income from commercial or industrial activity and from services (beyond eating houses, transportation services and handicrafts, which are included in the preceding schedules).

Schedule no. 4 includes income from all other sources not included in the preceding schedules. This is first of all:

income from real property, tenancy and lease, from money capital and property rights [13] (not included in the preceding schedules and not liable to the tax on wages and salaries) and income from sale of tangible property and property rights.

The total income in the framework of each schedule is fixed through the aggregation of all incomes earned from every source belonging to the schedule. From the total income there are, however, deducted deficits (if there are any) from the sources of the schedule. For instance, a taxpayer had earned in the framework of schedule no. 1 income from author's rights (x) and income from literary activity (y), but his eating-house had deficit (z). His income taxable in the framework of schedule no. 1 represents the difference between the sum of incomes from both first sources and the deficit from the third one ($x + y - z$). The only exception from this rule of calculation is the interdiction of deducting deficits from the sale of tangible property and property rights.

The income tax Law determines principles of income (or deficit) calculation from every source. As income from every separate source, we regard a difference between the sum of receipts from this source and the costs of earning these receipts. If the costs surpass the sum of receipts there is a deficit.

13. See note 11, *supra.*

Regarded as receipts from one source are money or the value of goods obtained in kind earned from this source. As receipts from economic activities subjected to the turnover tax, we regard the turnover. We regard as receipts the rent from buildings (for buildings exploited without any charge we regard the annual rental value as receipts). As receipts from money capital we regard interest from loans and deposits on current account, interest from bonds, dividends and other receipts earned from the share in benefits of legal persons. It is evident that besides the taxation of companies that are legal persons, income tax is assessed on dividends of each partner. Note that interest earned from savings is not taxable.

As costs of earning the receipts (that are deducted from receipts) one regards as a rule all expenses aimed at earning receipts. These costs especially include property losses (in so-called fixed capital) if they exceed the assurance indemnity and amortisation fund. Other losses (in circulating capital) as money or stock losses may be partly or on the whole included in the costs only in case that they gravely weaken economic capability of the taxpayer.

Into the costs (that are deducted from receipts) one includes also interest from loans, economic union dues and contributions to professional and social unions, taxes, duties and assurance contributions (excluding income tax and equalizing tax), and reserve funds for irrecoverable liabilities. Depreciation deductions on fixed capital are not included in the costs that are deducted from receipts. The Minister of Finance is authorized, however, to change this latter regulation.

One does not regard as costs of earning the receipts (and consequently one does not deduct from the receipts) all the property expenditures (in order to purchase, enlarge or improve sources of receipts) whose value exceeds 2,000 zloties. The only exception is deduction of such investment expenditures, when calculating income from the sale of tangible property and property rights. One does not include into costs other (than above mentioned) reserve funds, interest from own capital, expenditure destined for reimbursement of the loans, shareholders shares in benefits of legal persons, as well as deductions of sale prices granted to shareholders, gifts, execution costs, penalties and fines (excluding contract ones), contribution to social insurance of the taxpayer, expenditures of the household of the taxpayer and subsistence of his family members (if they are not employed in the enterprise and the taxpayer does not benefit from their income).

4. *Tax Amount*

There is a separate rate scale in the framework of each schedule. Rates are progressive. They amount to:

Schedule no. 1. from 12% to 55% (income over 360,000 zloties)

Schedule no. 2. from 15% to 65% (income over 360,000 zloties)

Schedule no. 3. from 20% to 65% (income over 360,000 zloties)

Schedule no. 4. from 26% to 65% (income over 210,000 zloties)

If the taxpayer earns income in the framework of more than one schedule, one refers to the tax rate appropriate to the aggregated sum of income.

Aggregation of income in the framework of all schedules serves only to define the right tax rate (not in order to define the joint sum of income tax). Income tax is calculated separately on the base of in-

come in each schedule, and afterwards summed up.

The tax amount is raised for single taxpayers over 25 without any children (20%) and for married taxpayers without children after two years of marriage (10%). Joint amount of income tax should not exceed 65% of joint aggregated taxable income.

IV. SOME SIMPLIFIED FORMS OF TAXATION

1. *Taxation in the Form of Duties*

There are two main simplified forms of taxation of economic activity: market duty and stamp duty. They both are in reality a form of lump-sum tax on turnover and on income. People subjected to these duties pay neither turnover tax nor income tax.

Market duty [14] is levied in the case of selling products on markets (especially agricultural products). Duty is levied for one day as a lump-sum defined in a duty-table.

Stamp duty is levied from small handicraft instead of turnover and income taxes. This simplified form of taxation affects only craftsmen who perform services for population or agriculture and do not employ any employees (besides family members and apprentices). The order of Minister of Finance [15] fixes a duty table. The amount of duty depends on the kind of handicraft and the locality of the workshop (from 600 to 12,000 zloties a year). There are, however, some allowances for old-aged people and invalids.

2. *Lump-sum Turnover and Income Tax*

In Poland lump-sum taxation includes a very large circle of population. There are several forms of lump-sum taxation: so called "tax sheet", contract lump-sum, lump-sum on folk and artistic manufacture, cooperative lump-sum and export lump-sum.

Lump-sum taxation in the form of so called "tax sheet" is levied on craftsmen who perform services for population and agriculture and do not employ more than one employee (in several kinds of handicraft — two employees). The family members and apprentices are not regarded as employees. [16] The "tax sheet" amounts from 1,200 to 30,000 zloties a year, depending on the kind of handicraft, locality of the workshop and the number of employees. Lump-sum is fixed for the period of three years by financial authorities on the base of application of the craftsman.

Contract lump-sum is levied on bigger handicraft workshops (but as a rule with no more than four employees, exceptionally even 8 employees) and on other economic activity, for instance folk and artistic manufacture, small trade and transport, eating houses, hotels, economic activity in the field of health, and several kinds of services. Contract lump-sum is fixed for a year on the base of application of the taxpayer.

A specific form of lump-sum turnover and income taxes is levied on folk and artistic manufacture performed on commission of socialized economic units. [17] Lump-sum is assessed in percentage from the turnover.

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14. Decree of Ministry Council of June 12, 1973 about market duty, Journal of Laws no. 25, item 146.

15. Order of September 30, 1972 about stamp duty from handicraft, Journal of Laws no. 45, item 288.

16. "Tax sheet" and contract lump-sum tax are fixed by order of Minister of Finance of December 12, 1972, Journal of Laws no. 55, item 378.

17. Order of Minister of Finance of January 11, 1973, Journal of Laws no. 2, item 18.

Its amount changes depending on the amount of turnover (4% to 15% for the sale of goods and 4% to 25% for services).

Construction of two other lump-sum taxes is similar, although they include not only turnover and income taxes but the equalizing tax too. The lump-sum tax is levied: a) on craftsmen performing commodities through handicraft-cooperatives, [18] and b) on handicraft and industrial workshops, that perform commodities for export or in order to replace import. [19]

3. *Tax Allowances*

Several turnover and income taxpayers (handicraft workshops, production of building materials, eating-houses, workshops performing services for population and agriculture) who invest their money during the period 1971—1975 may benefit from tax allowances. They are entitled to deduct 15% to 50% of their investment expenditures from tax liabilities during five subsequent years (for small handicraft workshops even during ten years). [20]

The newly opened (until 1980) small handicraft workshops and eating-houses are entitled to total turnover and income tax exemptions as well as total stamp-duty exemption for the period of two or three years. [21]

V. TAXATION ON THE FOREIGN ECONOMIC ACTIVITY IN POLAND

The principles of taxation presented above (chapters II—IV) affect legal and natural persons having their residence, seat or direction within the territory of Poland.

Such persons pay income tax levied on the whole of their income, no matter whether sources of their receipts are in or outside Poland.

Lately, Poland has concluded conventions with several other countries to avoid double taxation. In default of such conventions, natural persons' incomes coming from sources located abroad are exempted from income tax, provided such incomes are liable in a foreign country to tax of the same kind and the foreign country respects the principles of reciprocity in relation to similar incomes coming from sources located in Poland.

Identical principles of income taxation (from the whole of income no matter where its sources are) are valid for all natural persons who come to Poland for temporary stay over 6 months. However, diplomatic representatives, consular officials from foreign countries and other persons with immunity are exempted from income tax on income coming from sources located outside Poland.

Legal and natural persons who have in Poland neither place of residence, nor seat, nor direction, as well as natural persons who come to Poland for less than 6 months, who earn in this country income liable to income tax, pay income on this income only. In case of persons who come to Poland for less than 6 months we regard income earned in this country as the

18. Order of Minister of Finance of September 5, 1968, Journal of Laws no. 36, item 247 and no. 5 from 1973, item 32.

19. Order of Minister of Finance of December 22, 1966, Journal of Laws no. 54, item 326 and no. 39 from 1968, item 379.

20. Law of November 25, 1970 about investment tax allowances, Journal of Laws no. 29, item 246 and no. 1 from 1971, item 1.

21. Order of Finance Minister of June 5, 1973, Journal of Laws no. 24, item 141. About investment incentives in Poland see: M. Weralski, Les moyens financiers d'action sur le processus d'investissement en Pologne (dans "Rapports Polonais présentés au Septième Congrès International de Droit Comparé, Varsovie 1966).

base of the tax and we apply to it the tax rate appropriate to this income, calculated in annual ratio.

Interestingly an exemption from income tax is granted to foreign insurance corporations earning income from their share in Polish insurances. Such income is exempted from the income tax provided the principles of reciprocity are observed.

Worth noticing is also the situation of a taxpayer who is in economic relationship to a person having his seat or place of residence abroad. If such a taxpayer so arranges his business as to indicate no income or income smaller than might be expected in case the mentioned relationship did not exist, then the income of such a taxpayer is calculated without considering the charges resulting from the above relationship.

Within the frame of turnover tax the solution is very simple. Foreign legal entities and individual persons having their seat, direction or residence within the territory of Poland are subject to turnover tax. According to the above presented principles, subject to turnover tax are also legal entities and individual persons having their place of residence or stay abroad and performing within the territory of Poland economic activities personally or through a representative or an employee, or with the help of an establishment or other permanent base maintained in Poland.

We expect in the near future new legal acts regulating the principles of activity of enterprises based upon foreign and mixed (Polish and foreign) capital.

* * * DOCUMENTS * * *

Propositions de directive en matière de droits d'accise et d'impositions indirectes autres que la T.V.A. [1]

— Resolution —

La CONFERENCE PERMANENTE DES CHAMBRES DE COMMERCE ET D'INDUSTRIE DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE:

RAPPELANT ses résolutions antérieures sur les accises, et en particulier:

— la résolution sur l'harmonisation des droits d'accise ou taxes à la consommation dans les pays de la Communauté Economique Européenne, adoptée le 24 avril 1964, à ATHENES;

— la résolution sur l'harmonisation des droits d'accise dans la Communauté Economique Européenne, adoptée le 1er décembre 1967, à BRUXELLES.

CONSIDERANT l'ensemble des propositions de directives du Conseil en matière de droits d'accise et impôts indirects autres que la T.V.A. et les impositions établies par les institutions des Communautés Européennes,

1. *Sur le principe de l'harmonisation des accises:*

CONSTATE:

— que la spécificité des législations nationales en matière de droits d'accise peut entraîner, dans certaines circonstances, des distorsions de concurrence entre les Etats membres,

— que les mesures compensatoires aux frontières constituent, le cas échéant, des entraves à la libre circulation intracommunautaire des biens et, partant, à la réalisation d'un véritable marché commun;

— que cette situation plaide en faveur d'une harmonisation des droits d'accise et que pour pallier précisément ces inconvénients la Commission a présenté au Conseil des propositions de directive répondant à cet objectif.

APPROUVE cet objectif ainsi que la procédure choisie pour assurer l'harmonisation des législations nationales dans ce domaine et prévoyant:

— une première étape portant sur la structure des accises (base d'imposition, exonération, exigibilité, perception, mode de contrôle), le rapprochement des taux s'effectuant dans un deuxième temps;

— l'obligation pour les Etats qui ont l'intention d'apporter des modifications à leur régime d'accises d'en aviser préalablement la Commission de façon à éviter une aggravation des divergences des législations nationales, de nature à accroître les obstacles à la libre circulation des marchandises à l'intérieur de la Communauté;

— l'institution d'un Comité des accises consulté pour avis sur les modalités d'application des directives.

SOULIGNE néanmoins instamment que la suppression hautement désirable des frontières fiscales exige non seulement l'har-

1. Conférence Permanente des Chambres de Commerce et d'Industrie de la Communauté Économique Européenne. XXXIIIe Assemblée Plénière, Munich, le 29 juin 1973.

monisation des structures et des taux, mais au même titre l'institution d'un règlement financier permettant d'assurer que les recettes afférentes ne soient pas détournées du fisc du pays dans lequel s'effectue la consommation et d'éviter ainsi de transformer les impôts à la consommation en impôts à la production et donc de dénaturer les droits d'accise;

ESTIME que ce règlement financier devrait prévoir que les sommes soient versées à une caisse commune et réparties selon une clé à convenir, établie judicieusement.

S'ETONNE par conséquent de constater que la proposition de la Commission se contente de prévoir l'harmonisation des structures et d'annoncer l'harmonisation des taux, sans se préoccuper du règlement financier sans lequel la réforme proposée n'aboutirait pas à l'effacement des frontières fiscales et demande que ce règlement financier soit établie avant que ne soit mise en vigueur l'harmonisation des structures et des taux.

2. *Sur les modalités de l'harmonisation*

ESTIME NECESSAIRE de définir les impératifs fondamentaux auxquels devrait obéir l'harmonisation des accises;

a) *Au regard du calendrier des mesures d'harmonisation*

DEMANDE INSTAMMENT que le rapprochement des législations nationales s'opère en la matière selon un schéma progressif quant aux délais et simple quant aux modalités de façon à éviter notamment:

— que des modifications trop sensibles des règles d'imposition de certains produits de consommation courante ne suscitent des perturbations sur les marchés intérieurs;

b) *Au regard du nombre et de la nature des accises*

NOTE:

— les critères de sélection des accises devant être harmonisés (taxation dissuasive des produits préjudiciables à la santé, non imposition des produits de première nécessité, prise en considération des intérêts des pays en voie de développement),

— les articles 4 et 6 de la proposition de directive générale qui, conformément au souhait exprimé par la Conférence Permanente dans sa résolution de BRUXELLES du 1er décembre 1967, offrent la possibilité de conserver ou d'introduire d'autres droits d'accise que ceux retenus par la Commission à la condition qu'ils ne donnent pas lieu, dans les échanges entre les Etats membres, ni à taxation à l'importation et détaxation à l'exportation ni à des contrôles aux frontières,

— l'article 8 qui autorise le Conseil à instituer des droits ou impositions harmonisés autres que ceux frappant les huiles minérales, les tabacs manufacturés, l'alcool, la bière et le vin;

SOULIGNE TOUTEFOIS LA NECESSITE:

— d'adapter, dans le temps, les modalités d'harmonisation des accises pour tenir compte de l'évolution des habitudes de consommation,

— d'aménager les articles 4 et 6 de manière à laisser à la disposition des Etats un nombre suffisant d'accises, facteurs de souplesse, d'une utilisation plus aisée que les impôts, à fort rendement,

EMET DONC LES PLUS EXPRESSES RESERVES sur l'institution d'une liste de cinq accises à maintenir et à harmoniser (huiles minérales, tabacs manufacturés, alcools, bière, vin) et demande que soit

disjoint l'article 8 qui substitue la compétence du Conseil à celle des Etats membres en ce qui concerne l'introduction de droits et impositions harmonisés autres que ceux énumérés ci-dessus.

c) *Au regard de la neutralité économique*
ENFIN DEMANDE INSTAMMENT:

— que conformément à leur objet, les accises frappent exclusivement la consommation finale et que, par suite, le principe d'exonération des produits utilisés comme matières premières, moyens de production ou agents de fabrication, soit inscrit dans la directive-cadre, et scrupuleusement observé,
— que des précautions soient prises pour que le rapprochement des législations nationales en matière de droits d'accise s'effectue en parfaite harmonie avec les objectifs et les moyens des politiques sectorielles communautaires, notamment dans le domaine de l'agriculture, des transports et de l'énergie.

27TH IFA CONGRESS — LAUSANNE 1973

Resolution on Subject I: The taxation of enterprises with permanent establishment abroad

1. The Congress draws attention to the recommendations of the IFA-Congress in Cologne 1954, Vienna 1957 and Stockholm 1967. It is satisfied that these resolutions have contributed to further clarify the questions related to the taxation of enterprises with permanent establishments abroad.
2. The Congress advocates that the permanent establishment principle already embodied in the national law of many countries, be generally accepted for the taxation of business income and capital connected therewith.
3. The Congress recommends that under the national tax laws permanent establishments of non resident enterprises be treated for all important aspects in the same way as resident enterprises. In this context the principle of non discrimination should be given a wide scope of application. Discrimination still reflected in the law or in practice should be abolished. For example, the permanent establishment should be entitled to the same taxfree rollover rights or other rights arising on incorporation as are available to a domestic enterprise. On the other hand, permanent establishments of non resident enterprises should fulfill the same requirements connected with taxation as resident enterprises.
4. The Congress is further of the opinion that the concept of "permanent establishment" as set-out in the OECD Model Draft has generally proved its merits and should continue to be included in double taxation agreements. The competent committees of international organisations such as the Fiscal Committee of the OECD should decide in what measure and under what conditions a permanent establishment could take advantage of the double taxation conventions entered into by the country where it is located.
5. At the present stage, no single method of allocation — direct or indirect or otherwise, is uniformly and exclusively appropriate. However, in view of the increasing economic interdependence, additional provisions regarding the allocation of income and capital should be embodied in the double taxation agreements and in internal legislation. Efforts should be made to harmonize methods of allocation, rights of election of alternative methods of allocation, foreign tax credits, exemptions for foreign income, losses, and treatment of unrealized profits, in order to avoid double taxation.
6. In order to achieve the objective that assessments made in the interested countries correspond to a much greater extent than hitherto, the provisions of double taxation agreements should institute, where reasonably required, an efficient consultation of short duration prior to issuance of a tax assessment. Along the same lines the mutual agreement procedure necessary where an effective double taxation still arises should be improved. The enterprise concerned should in both cases have the right to be heard. In this context attention is drawn to the establish-

ment of an international tax court suggested by the IFA-Congress at Zurich 1951, Vienna 1957 and Basle 1960.

7. The Congress reiterates the opinion expressed in Stockholm 1967 according to which the generally accepted concept of a permanent establishment needs to be adapted to the needs of developing countries.

Resolution on Subject II: Partnerships and joint enterprises in international tax law

In view of the fact that partnerships are treated in some states for fiscal purposes as taxable entities whilst in other states only the partners are treated as taxable entities in respect to the same income,

And in view of the recognition of this situation and of the recommendation of the Fiscal Committee of the OECD that the problems arising therefrom be solved by special appropriate provisions to be agreed upon by the Contracting States concerned and to be adopted in their bilateral relations,

Now therefore it was resolved by the Congress that the following recommendations be made and submitted to the appropriate authorities.

1. Where the partnership is treated as a taxable unit subject to unlimited tax liability in one Contracting State, the income received by such partnership from another Contracting State should be treated as income received by a resident of the first mentioned State and express provisions for that purpose should be included in the Convention;
2. Where the partnership is not treated as a taxable unit subject to unlimited tax liability in a Contracting State, but income from another Contracting State is included in the tax basis of the different partners within the first mentioned State, whether or not they are residents of such States, protection against double taxation should be granted as if such income were received by a resident of the first mentioned State; and
3. Where the characterization which is given to the allocation of profits to the partners or to the special remuneration that the partners receive from the partnership by the Contracting State where the partnership has its principal place of business differs from the characterization of the same income in the Contracting State of residence of the partners, the characterization given by the first mentioned State should be binding upon the other State for the purpose of the Convention.

29TH CONGRESS

scheduled 22nd—26th September 1975 in London (U.K.)

Subject I (Or.):
— Tax treatment of the importation and exportation of technology — know-how, patents, other intangibles and technical assistance.
— Le régime fiscal des importations et des exportations de connaisance technique — savoir faire, brevets, autres droits incorporels et assistance technique.
— Die steuerliche Behandlung von grenzüberschreitenden Erwerb und Veräusserung technologischen Wissens — know how, Patente, andere immaterielle Güter und technische Unterstützung.
— Tratamiento fiscal de las importaciones y exportaciones de tecnología — know-how, patentes y otras asistencias intangibles y tecnicas.

General Reporter: John Crowe, Taxation Controller of Imperial Chemical Ind. (U.K.).

Subject II
— Allocation of expenses in international arm's length transactions of related companies.

(Or.):
La répartition des dépenses pour les transactions réalisées dans des conditions de pleine concurrence entre sociétés apparentées.
— Die steuerliche Zuordnung von Ausgaben bei internationalen „arm's length" Transaktionen verbundener Unternehmen.
— El reparto de los gastos para las transacciones realizadas en condiciones de plena concurrencia, entre sociedades relacionadas.

General Reporter: Dr. Wolfgang Ritter, Director Tax Department — Badische Anilin- und Sodafabrik A.G., German Federal Republic.

Seminar subject: (Or.): (Wednesday afternoon)
— Relationship between tax accounting and commercial accounting.
— Les relations entre la comptabilité fiscale et la comptabilité commerciale.
— Die Beziehungen zwischen Steuerbilanz und Handelsbilanz
— Las relaciones entre la contabilidad fiscal y la contabilidad comercial.

Chairman: Mr. Douglas A. Clarke, Pannell Pitzpatrick & Co, London (U.K.).

Seminar subject
(Friday morning): — Tax reforms in the United Kingdom 1970—1974.

Publication on IFA activities in the Bulletin

All national branches are encouraged to send reports to the General Secretariat on any local or regional meetings, at the special request of the Executive Committee. Similar reports are regularly received from the American, British, Canadian, Central American, French, German, Mexican and Swiss Branches.

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Convention entre le Royaume de Belgique et la République d'Autriche en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune, y compris l'impôt sur les exploitations et les impôts fonciers

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVII, No. 2, February/février 1973

INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty between Belgium and Austria was signed on December 29, 1971. The treaty will enter into force 15 days after the instruments of ratification have been exchanged. It will be effective as of January 1 of the year in which the instruments of ratification will be exchanged.

TEXT

Sa Majesté le Roi des Belges
et
Le Président Fédéral de la République d'Autriche
désireux d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune, y compris l'impôt sur les exploitations et les impôts fonciers, ont décidé de conclure une convention et ont nommé à cet effet pour leurs plénipotentiaires, savoir:
Sa Majesté le Roi des Belges:
M. Georges C. Puttevils, Ambassadeur de Belgique à Vienne,
Le Président Fédéral de la République d'Autriche:
M. Dr. Josef Hammerschmidt, Directeur Général au Ministère des Finances,
lesquels, après avoir échangé leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes:

I. CHAMP D'APPLICATION DE LA CONVENTION

Article 1
Personnes visées

La présente convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2
Impôts visés

§ 1. La présente convention s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte de chacun des Etats contractants, de ses subdivisions politiques et de ces collectivités locales, quel que soit le système de perception.

§ 2. Sont considérés comme impôts sur le revenu et sur la fortune, les impôts perçus sur le revenu total, sur la fortune totale ou sur des éléments du revenu ou de la fortune, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, ainsi que les impôts sur les plus-values.

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

1° en ce qui concerne la Belgique:

a) l'impôt des personnes physiques;

b) l'impôt des sociétés;

c) l'impôt des personnes morales;

d) l'impôt des non-résidents,

y compris les précomptes et les compléments de précomptes, les décimes et centimes additionnels auxdits impôts et précomptes, ainsi que la taxe communale additionnelle à l'impôt des personnes physiques;

2° en ce qui concerne l'Autriche:

a) die Einkommensteuer (l'impôt sur le revenu);

b) die Körperschaftsteuer (l'impôt des sociétés);

c) die Vermögensteuer (l'impôt sur la fortune);

d) der Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches (l'impôt sur le revenu pour la construction de maisons d'habitation et pour la péréquation des charges familiales);

e) die Aufsichtsratsabgabe (l'impôt sur les rétributions accordées aux membres des conseils d'administration);

f) die Gewerbesteuer (l'impôt sur les exploitations) y compris la fraction de cet impôt portant sur les salaires (Lohnsummensteuer);

g) die Grundsteuer (l'impôt foncier);

h) die Abgabe von land- und forstwirtschaftlichen Betrieben (l'impôt sur les entreprises agricoles et forestières);

i) die Abgabe vom Bodenwert bei unbebauten Grundstücken (l'impôt sur la valeur des propriétés foncières non bâties);

j) die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind (l'impôt sur les parts de la fortune qui échappent à l'impôt sur les successions);

k) die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen (les contributions des exploitations agricoles et forestières au fonds de péréquation pour les aides familiales);

l) die Sonderabgabe vom Einkommen (l'impôt spécial sur le revenu);

m) die Sonderabgabe vom Vermögen (l'impôt spécial sur la fortune);

n) der Katastrophenfondsbeitrag vom Einkommen (la contribution sur le revenu au fonds des calamités);

o) der Katastrophenfondsbeitrag vom Vermögen (la contribution sur la fortune au fonds des calamités),

quel que soit le mode de perception de ces impôts.

§ 4. Les dispositions de la convention concernant l'imposition des bénéfices des entreprises s'appliquent également par analogie à l'impôt sur les exploitations perçu en raison d'autres bases que le bénéfice ou la fortune.

§ 5. 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 année les modifications apportées à leurs législations fiscales respectives.

II. DÉFINITIONS

Article 3
Définitions générales

§ 1er. Au sens de la présente convention, à moins que le contexte n'exige une interprétation différente:

1° a) le terme «Belgique», employé dans un sens géographique, désigne le territoire du Royaume de Belgique; il inclut tout territoire en dehors de la souveraineté nationale de la Belgique qui est ou sera désigné, selon la législation belge sur le plateau continental et conformément au droit international, comme territoire sur lequel les droits de la Belgique à l'égard du sol et du sous-sol de la mer et de leurs ressources naturelles peuvent être exercés;

b) le terme «Autriche», employé dans le même sens, désigne le territoire de la République d'Autriche;

2° les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la Belgique ou l'Autriche;

3° le terme «personne» comprend les personnes physiques et les sociétés;

4° le terme «société» désigne toute personne morale ou toute autre entité qui est imposable comme telle sur ses revenus ou sur sa fortune dans l'Etat dont elle est un résident;

5° les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant;

6° l'expression «autorités compétentes» désigne:

a) en ce qui concerne la Belgique, l'autorité compétente suivant sa législation nationale et

b) en ce qui concerne l'Autriche, le Ministre Fédéral des Finances.

§ 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 qui font l'objet de la convention, à moins que le contexte n'exige une interprétation différente.

Article 4
Domicile fiscal

§ 1. Au sens de la présente convention, l'expression «résident(e) d'un Etat contractant» désigne 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 de nature analogue; elle désigne également les sociétés de droit belge — autres que les sociétés par actions — qui ont opté pour l'assujettissement de leurs bénéfices à l'impôt des personnes physiques.

§ 2. Lorsque, selon la disposition du § 1, une personne physique est considérée comme résidente de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:

1° cette personne est considérée comme résidente 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 résidente de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

2° si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé ou qu'elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme résidente de l'Etat contractant où elle séjourne de façon habituelle;
3° 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 résidente de l'Etat contractant dont elle possède la nationalité;
4° si cette personne possède la nationalité de chacun des Etats contractants ou qu'elle ne possède la nationalité d'aucun d'eux, les autorités compétentes des Etats contractants se consultent conformément à l'article 25.

§ 3. Lorsque, selon la disposition du § 1er, une société est considérée comme résidente de chacun des Etats contractants, elle est réputée résidente de l'Etat contractant où se trouve son siège de direction effective.

Article 5
Etablissement stable

§ 1er. 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:
1° un siège de direction;
2° une succursale;
3° un bureau;
4° une usine;
5° un atelier;
6° une mine, une carrière ou tout autre lieu d'exploitation de ressources naturelles;
7° un chantier de construction ou de montage dont la durée dépasse douze mois.

§ 3. On ne considère pas qu'il y a établissement stable si:
1° il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
2° des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
3° des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
4° une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunis des informations pour l'entreprise;
5° 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 unt caractère préparatoire ou auxiliaire.

§ 4. Une personne — autre qu'un agent jouissant d'un statut indépendant, visé au § 5 — qui agit dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme constituant un établissement stable de l'entreprise 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.

§ 5. 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 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.

§ 6. Une entreprise d'assurances d'un Etat

contractant est considérée comme ayant un établissement stable dans l'autre Etat dès l'instant où, par l'intermédiaire d'un représentant visé au § 4 ou d'un agent jouissant d'un statut indépendant et disposant de pouvoirs, qu'il exerce habituellement, lui permettant de conclure des contrats au nom de l'entreprise, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situés sur ce territoire.

§ 7. Le fait qu'une société résidente d'un Etat contractant contrôle une société qui est un résident de l'autre Etat 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.

III. IMPOSITION DES REVENUS

Article 6
Revenus de biens immobiliers

§ 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 en tout cas les accessoires, le cheptel mort ou vif des exploitations 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 fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres richesses du sol.

§ 3. La disposition du § 1er s'applique aux revenus provenant de l'exploitation ou de la jouissance directes, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers.

§ 4. Les dispositions des §§ 1er 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 7
Bénéfices des entreprises

§ 1. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise 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, mais uniquement dans la mesure où ils sont imputables audit établissement stable.

§ 2. Sans préjudice de l'application du § 3, 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 agissant en toute indépendance.

§ 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. A défaut de comptabilité régulière ou d'autres éléments probants permettant de

déterminer le montant des bénéfices d'une entreprise d'un Etat contractant, qui est imputable à son établissement stable situé dans l'autre Etat, l'impôt peut notamment être établi dans cet autre Etat conformément à sa propre législation, compte tenu des bénéfices normaux d'entreprises analogues du même Etat, se livrant à la même activité ou à des activités analogues dans des conditions identiques ou analogues.
Dans l'éventualité visée à l'alinéa précédent, le bénéfice imputable audit établissement stable peut également être déterminé sur la base d'une répartition des bénéfices totaux de l'entreprise entre ses diverses parties, pour autant que le résultat ainsi obtenu soit conforme aux principes énoncés dans le présent article.
§ 5. 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.
§ 6. Les dispositions du présent article s'appliquent également aux bénéfices d'un associé dans une «stille Gesellschaft» de droit autrichien.
§ 7. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la convention, les dispositions du présent article ne font pas obstacle à l'application des dispositions de ces autres articles pour la taxation de ces éléments de revenu.

Article 8
Bénéfices des entreprises de navigation maritime ou aérienne

§ 1. Par dérogation à l'article 7, §§ 1er à 6, les bénéfices provenant de l'exploitation de navires ou d'aéronefs en trafic international ne sont imposables que dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.
§ 2. Si le siège de direction effective d'une entreprise de navigation maritime est à bord d'un navire, ce siège est réputé situé dans l'Etat contractant dont l'exploitant unique ou principal est le résident.

Article 9
Entreprises interdépendantes

Lorsque
a) une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au financement 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 financement 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 entre 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
Dividendes

§ 1. Les dividendes attribués par une société résidente d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.
§ 2. Toutefois, ces dividendes peuvent être imposés dans l'Etat contractant dont la société qui attribue les dividendes est un

résident et selon la législation de cet Etat; mais l'impôt ainsi établi ne peut excéder 15 p.c. du montant brut desdits dividendes. Les dispositions du présent paragraphe ne limitent pas l'imposition de la société sur les bénéfices qui servent au paiement des dividendes.

§ 3. Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de mine, parts de fondateurs ou autres parts bénéficiaires, à l'exception des créances, ainsi que les revenus d'autres parts sociales soumis au même régime que les revenus d'actions par la législation fiscale de l'Etat dont la société distributrice est un résident. Ce terme comprend les revenus — même attribués sous la forme d'intérêts — imposables au titre de revenus de capitaux investis par les associés dans les sociétés — autres que les sociétés par actions — résidentes de la Belgique.

§ 4. Les dispositions des §§ 1 en 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, les dispositions de l'article 7 sont applicables, étant entendu que lesdits dividendes peuvent être imposés soit séparément, soit comme des bénéfices, conformément à la législation de cet autre Etat contractant.

§ 5. Lorsqu'une société résidente d'un Etat contractant tire des bénéfices ou des revenus de l'autre Etat contractant, celui-ci ne peut percevoir aucun impôt sur les dividendes payés par cette société en dehors de cet autre Etat à des personnes qui n'en sont pas des résidents, ni aucun impôt au titre d'imposition complémentaire des bénéfices non distribués de la société, même si les dividendes distribués ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat. La disposition qui précède n'empêche pas ledit autre Etat d'imposer les dividendes afférents à une participation qui se rattache effectivement à un établissement stable exploité dans cet autre Etat par un résident du premier Etat,

Article 11
Intérêts

§ 1. Les intérêts provenant d'un Etat contractant et attribués à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent et selon la législation de cet Etat; mais l'impôt ainsi établi ne peut excéder 15 p.c. de leur montant.

§ 3. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices et, sous réserve du § 4 ci-après, des créances ou dépôts de toute nature, ainsi que les lots d'emprunts et tous autres produits soumis au même régime que les revenus de sommes prêtées ou déposées par la législation fiscale de l'Etat d'où proviennent les revenus.

§ 4. Les dispositions du présent article ne s'appliquent pas:

1° aux intérêts considérés comme des dividendes en vertu de l'article 10, § 3, deuxième phrase;

2° aux intérêts de créances commerciales — y compris celles qui sont représentées par des effets de commerce — résultant du paiement à terme de fournitures de mar-

chandises, produits ou services, par une entreprise d'un Etat contractant à un résident de l'autre Etat contractant;
3° aux intérêts de comptes courants ou d'avances entre des entreprises bancaires de chacun des deux Etats;
4° aux intérêts de dépôts de sommes d'argent, non représentés par des titres au porteur, effectués dans des entreprises bancaires, y compris les établissements publics de crédit.
Les intérêts visés sub 2° à 4° de l'alinéa qui précède sont soumis, suivant le cas, au régime prévu à l'article 7 ou à l'article 21.
§ 5. Les dispositions des §§ 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 ceux-ci un établissement stable auquel se rattache effectivement le prêt, la créance ou le dépôt générateur de ces revenus. Dans ce cas, les dispositions de l'article 7 sont applicables.
§ 6. 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 de cet Etat. 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 générateur des intérêts a été contracté et qui supporte comme telle la charge de ceux-ci, ces intérêts sont réputés provenir de l'Etat contractant où est situé l'établissement stable.
§ 7. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou déposant ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des intérêts attribués, compte tenu de la créance ou du dépôt pour lequel ils sont versés, excède celui dont seraient convenus le débiteur et le créancier ou déposant en l'absence de pareilles relations, les dispositions des §§ 1 et 2 ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des intérêts reste imposable conformément à la législation de chaque Etat contractant et compte tenu des autres dispositions de la Convention applicables aux revenus auxquels cette partie excédentaire peut être assimilée.

Article 12
Redevances

§ 1. Les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.
§ 2. Les redevances payées par une société résidente de l'un des Etats contractants à une personne résidente de l'autre Etat contractant qui possède plus de 50 pour cent du capital de la société qui paie les redevances peuvent être imposées dans le premier Etat, mais le taux de cet impôt ne peut pas excéder 10 p.c. du montant brut de ces 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 œuvre littéraire, artistique ou scientifique, y compris les films cinématographiques et les films ou les enregistrements conçus pour la radio et la télévision, 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 ne constituant pas un bien immobilier visé à l'article 6 et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

§ 4. Les dispositions des §§ 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, a dans l'autre Etat contractant d'où proviennent les redevances, un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.

§ 5. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision politique, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel le contrat donnant lieu au paiement des redevances a été conclu et qui supporte comme telle la charge de celles-ci, ces redevances sont réputées provenir de l'Etat contractant où est situé l'établissement stable.

§ 6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des redevances attribuées, compte tenu de la prestation pour laquelle elles sont versées, excède le montant normal dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions des §§ 1 et 2 ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des redevances reste imposable conformément à la législation de chaque Etat contractant et compte tenu des autres dispositions aux revenus auxquels cette partie excédentaire peut être assimilée.

Article 13
Gains en capital

§ 1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis à l'article 6, § 2, sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, ou de biens mobiliers constitutifs d'une base fixe dont un résident d'un Etat contractant dispose dans l'autre Etat contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre Etat. Les règles prévues à l'article 7, §§ 2 et 3, s'appliquent à la détermination du montant de ces gains.

Toutefois, les gains provenant de l'aliénation de biens mobiliers visés à l'article 22, § 3, ne sont imposables que dans l'Etat contractant où ces biens eux-mêmes sont imposables en vertu dudit article.

§ 3. Les gains provenant de l'aliénation de tous autres biens, y compris une participation — ne faisant pas partie de l'actif d'un établissement stable visé au § 2 — dans une société par actions ou une autre société de capitaux, ne sont imposables que dans l'Etat contractant dont le cédant est un résident.

Article 14
Professions libérales

§ 1. Sous réserve des dispositions des articles 16 et 17, les revenus qu'un résident d'un Etat contractant tire 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 d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base, les revenus sont imposables dans l'autre Etat,

mais uniquement dans la mesure où ils sont imputables aux activités exercées à l'intervention de ladite base fixe.

§ 2. L'expression «professions libérales» comprend en particulier 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 15
Professions dépendantes

§ 1. Sous réserve des dispositions des articles 16, 17, 18, 19 et 20, 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. Par dérogation au § 1 et sous la réserve y mentionnée, les rémunérations qu'un résident d'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:

1° elles rétribuent l'activité exercée dans l'autre Etat pendant une période ou des périodes — y compris la durée des interruptions normales de travail — n'excédant pas au total 183 jours au cours de l'année civile, et

2° les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de l'autre Etat et,

3° la charge des rémunérations n'est pas supportée comme telle par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat.

§ 3. Par dérogation au §§ 1 et 2 et sous la réserve mentionnée audit § 1, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef exploité en trafic international sont considérées comme se rapportant à une activité exercée dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise et sont imposables dans cet Etat.

Article 16
Administrateurs et commissaires de sociétés par actions ou de capitaux

§ 1er. 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 ou d'un organe analogue d'une société par actions ou d'une autre société de capitaux, résidente de l'autre Etat contractant, sont imposable dans cet autre Etat. Il en est de même des rémunérations d'un associé commandité d'une société en commandite par actions, résidente de la Belgique.

§ 2. Les rémunérations allouées à une personne visée au § 1 pour une activité journalière exercée dans un établissement stable situé dans l'Etat contractant autre que celui dont la société est un résident sont imposables dans cet autre Etat si elles sont supportées comme telles par cet établissement stable.

Article 17
Artistes et sportifs

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,

sont imposables dans l'Etat contractant où ces activités sont exercées.

Article 18
Pensions

§ 1. Sous réserve des dispositions de l'article 19, 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.
§ 2. Toutefois, les pensions et toutes allocations, périodiques ou non, payées en exécution de la législation sociale d'un Etat contractant par cet Etat, une subdivision politique, une collectivité locale ou une personne morale de droit public de cet Etat sont imposables dans cet Etat.

Article 19
Rémunérations et pensions publiques

§ 1. Les rémunérations, y compris les pensions, versées par un Etat contractant ou par l'une de ses subdivisions politiques, collectivités locales ou personnes morales de droit public, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, au titre de services rendus à cet Etat ou à une de ses subdivisions politiques, collectivités locales ou personnes morales de droit public, sont imposables dans ledit Etat.
Cette disposition ne s'applique pas lorsque le bénéficiaire de ces revenus possède la nationalité de l'autre Etat sans posséder en même temps la nationalité du premier Etat.
§ 2. Le § 1 ne s'applique pas aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par un Etat contractant, par une subdivision politique, une collectivité locale ou une personne morale de droit public de cet Etat.

Article 20
Etudiants, apprentis ou stagiaires

§ 1. Les sommes qu'un étudiant, un apprenti ou un stagiaire qui est, ou 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 proviennent de sources situées en dehors de cet autre Etat.
§ 2. Les rémunérations que les personnes visées au § 1 reçoivent au titre d'un emploi salarié exercé dans l'autre Etat à seule fin d'acquérir des pratiques professionnelles pour une durée qui ne dépasse pas 183 jours dans l'année civile ne sont pas imposables dans cet Etat.

Article 21
Revenus non expressément mentionnés

Un résident d'un Etat contractant n'est pas imposable dans l'autre Etat contractant sur les éléments de son revenu qui ne sont pas expressément mentionnés dans les articles précédents, à moins que ces éléments de revenu ne soient compris dans les revenus attribuables à un établissement stable ou une base fixe exploité dans ce dernier Etat par ledit résident du premier Etat.

IV. IMPOSITION DE LA FORTUNE

Article 22

§ 1. La fortune constituée par des biens immobiliers, tels qu'ils sont définis à l'article 6, § 2, est imposable dans l'Etat contractant où ces biens sont situés.
§ 2. Sous réserve des dispositions du § 3,

la fortune constituée par des biens mobiliers faisant partie de l'actif d'un établissement stable d'une entreprise ou par des biens mobiliers constitutifs d'une base fixe servant à l'exercice d'une profession libérale est imposable dans l'Etat contractant où est situé l'établissement stable ou la base fixe.

§ 3. Les navires et les aéronefs exploités en trafic international, ainsi que les biens mobiliers affectés à leur exploitation, ne sont imposables que dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

§ 4. Tous les autres éléments de la fortune d'un résident d'un Etat contractant, y compris une participation — ne faisant pas partie de l'actif d'un établissement stable visé au § 2 — dans une société par actions ou une autre société de capitaux, ne sont imposables que dans cet Etat.

V. DISPOSITIONS PRÉVENTIVES DE LA DOUBLE IMPOSITION

Article 23

§ 1. En ce qui concerne les résidents de l'Autriche, la double imposition est évitée de la manière suivante:

1° les revenus provenant de la Belgique — à l'exclusion des revenus visés au 2° — et les éléments de la fortune situés en Belgique, qui sont imposables dans cet Etat en vertu des articles précédents, sont exemptés d'impôts en Autriche. Cette exemption ne limite pas le droit de l'Autriche de tenir compte, lors de la détermination du taux de ses impôts, des revenus et des éléments de fortune ainsi exemptés;

2° l'impôt perçu en Belgique conformément à la présente convention

a) sur les dividendes soumis au régime prévu à l'article 10, § 2 et non visés au 3° ci-après,

b) sur les intérêts imposables conformément à l'article 11, § 2 et

c) sur les redevances imposables conformément à l'article 12, § 2, est imputé sur l'impôt afférent à ces mêmes revenus qui est perçu en Autriche. Le montant ainsi déduit ne peut toutefois excéder la fraction de l'impôt, calculé avant la déduction, qui correspond proportionnellement auxdits revenus imposables en Belgique;

3° lorsque le résident de l'Autriche est un associé d'une société en nom collectif ou d'une société en commandite simple, résidente de la Belgique, les dispositions du 1° s'appliquent à sa quote-part dans les bénéfices sociaux et à sa participation dans la fortune de la société; le même régime s'applique aux revenus, autres que les revenus de capitaux investis, recueillis par un résident de l'Autriche en qualité d'associé d'une société de personnes à responsabilité limitée, résidente de la Belgique.

§ 2. En ce qui concerne les résidents de la Belgique, la double imposition est évitée de la manière suivante:

1° les revenus provenant de l'Autriche — à l'exclusion des revenus visés aux 2° et 3° — et les éléments de la fortune situés en Autriche, qui sont imposables dans cet Etat en vertu des articles précédents, sont exemptés d'impôts en Belgique. Cette exemption ne limite pas le droit de la Belgique de tenir compte, pour la détermination du taux de ses impôts, des revenus et des éléments de la fortune ainsi exemptés;

2° en ce qui concerne les dividendes soumis au régime prévu à l'article 10, § 2, les intérêts imposables conformément à l'article 11, §§ 2 ou 7 et les redevances imposables conformément à l'article 12, §§ 2 ou 6, la quotité forfaitaire d'impôt étranger prévue par la législation belge est imputée dans les

conditions et au taux prévus par cette législation, soit sur l'impôt des personnes physiques afférent auxdits dividendes, intérêts et redevances, soit sur l'impôt des sociétés afférent auxdis intérêts et redevances;
3° a) lorsqu'une société résidente de la Belgique a la propriété d'actions ou parts d'une société de capitaux, résidente de l'Autriche, les dividendes qui lui sont attribués par cette dernière société et qui ont été soumis au régime prévu à l'article 10, § 2, sont exemptés d'impôt des sociétés en Belgique, dans la mesure où cette exemption serait accordée si les deux sociétés étaient résidentes de la Belgique; cette disposition n'exclut pas le prélèvement sur ces dividendes du précompte mobilier exigible suivant la législation belge;
b) lorsqu'une société résidente de la Belgique a eu pendant toute la durée de l'exercice social d'une société de capitaux, résidente de l'Autriche et soumise à l'impôt des sociétés dans cet Etat, la propriété exclusive d'actions ou parts de cette dernière société, elle peut également être exemptée du précompte mobilier exigible, suivant la législation belge, sur les dividendes de ces actions ou parts, à la condition d'en faire la demande par écrit au plus tard dans le délai prescrit pour la remise de sa déclaration annuelle; lors de la redistribution à ses propres actionnaires de ces dividendes ainsi exemptés, ceux-ci ne peuvent, dans ce cas, être déduits des dividendes distribués passibles du précompte mobilier. Cette disposition n'est pas applicable lorsque la première société a valablement opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.
Dans l'éventualité où les dispositions de la législation belge, exemptant de l'impôt des sociétés le montant net des dividendes qu'une société résidente de la Belgique reçoit d'une autre société résidente de la Belgique, seraient modifiées de manière à limiter l'exemption aux dividendes afférents à des participations d'une importance déterminée dans le capital de la seconde société, la disposition de l'alinéa précédent ne s'appliquera qu'aux dividendes attribués par des sociétés résidentes de l'Autriche et afférents à des participations de même importance dans le capital desdites sociétés.
4° lorsque le résident est une société autre que par actions:
a) l'exemption prévue au 1° s'applique aussi aux associés de cette société, qu'ils soient ou non des résidents de la Belgique, dans la mesure où les revenus ou éléments de fortune de ladite société qui sont imposables en Autriche en vertu de la convention, sont également imposables en Belgique, autrement qu'au titre de revenus de capitaux investis, à charge de ces associés en vertu de la législation belge;
b) la déduction prévue au 2° s'applique dans la même mesure aux associés de ladite société, lorsque celle-ci a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques;
5° l'exemption prévue au 1° ne s'applique pas aux revenus d'un résident de la Belgique, associé d'une société en nom collectif ou d'une société en commandite simple ou d'une société civile, de droit autrichien, qui a son siège de direction effective en Autriche, lorsque ces revenus ne constituent pas des revenus imposables dans ce dernier Etat en vertu de sa législation.
§ 3. Lorsque, conformément à la législation d'un Etat contractant, des pertes subies par une entreprise de cet Etat dans un établissement stable situé dans l'autre Etat sont, pour l'imposition de cette entreprise, effectivement déduites de ses bénéfices imposables dans le premier Etat, l'exemption prévue aux §§ 1, 1°, et 2, 1°, ne s'applique pas dans ce premier Etat aux bénéfices

d'autres périodes imposables qui sont imputables à cet établissement, dans la mesure où ces bénéfices ont aussi été exemptés d'impôt dans l'autre Etat en raison de leur compensation avec lesdites pertes.

VI. DISPOSITIONS SPÉCIALES

Article 24
Non-discrimination

§ 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. Le terme «nationaux» désigne:

a) les personnes physiques qui possèdent la nationalité d'un Etat contractant;

b) les sociétés constituées conformément à la législation en vigueur dans un Etat contractant.

§ 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 qui exercent la même activité.

Cette disposition ne peut être interpretée

1° 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 résidentes;

2° comme empêchant la Belgique d'imposer globalement le total des bénéfices imputables à l'établissement stable dont dispose dans cet Etat une société résidente de l'Autriche, ou tout autre groupement ou société de personnes ayant son siège de direction effective en Autriche, au taux fixé par sa législation, à condition que celui-ci n'excède pas, en principal, le taux maximal applicable à l'ensemble ou à une fraction des bénéfices des sociétés résidentes de la Belgique;

3° comme empêchant la Belgique d'imposer sur le montant minimal de revenu, déterminé par sa législation et applicable aux non-résidents de cet Etat qui en sont ou non des nationaux et qui y disposent d'une habitation, les nationaux de l'Autriche qui ne sont pas des résidents de la Belgique mais y disposent d'une habitation.

§ 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, autre ou plus lourde que celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.

§ 5. Le terme «imposition» désigne, dans le présent article, les impôts de toute nature ou dénomination.

Article 25
Procédure amiable

§ 1. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats entraînent ou entraîneront pour lui une imposition non conforme à la convention, il peut, sans préjudice des recours prévus par la législation nationale de ces Etats, adresser à l'autorité compétente de l'Etat contractant dont il est un résident, une demande écrite de révision de cette imposition. Pour être recevable, ladite de-

mande doit être présentée dans un délai de deux ans à compter de la notification ou de la perception à la source de l'imposition.
§ 2. L'autorité compétente visée au § 1, s'efforce, si la réclamation lui paraît 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 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 peut donner lieu l'application de la convention.
§ 4. Les autorités compétentes des Etats contractants se concertent au sujet des mesures administratives compatibles avec leurs législations, qui sont nécessaires à l'exécutions des dispositions de la 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'impôts prévues à cette convention.

Article 26
Echange de renseignements

§ 1. Les autorités compétentes des Etats contractants échangent les renseignements nécessaires pour appliquer les dispositions de la convention et celles des lois internes des Etats contractants relatives aux impôts visés par la convention, dans la mesure où l'imposition qu'elles prévoient est conforme à la convention.
Tout renseignement ainsi obtenu doit être tenu secret; il ne peut être communiqué, en dehors du contribuable ou de son mandataire, qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la convention et des réclamations et recours y relatifs.
§ 2. Les dispositions du § 1 ne peuvent en aucun cas être interprétées comme imposant à un Etat contractant l'obligation:
1° de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat contractant;
2° de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;
3° de transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial, ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27
Divers

§ 1. Les dispositions de la convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques et des postes consulaires en vertu, soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.
§ 2. Aux fins de la convention, les membres d'une mission diplomatique ou consulaire d'un Etat contractant accréditée dans l'autre Etat contractant ou dans un Etat tiers, qui ont la nationalité de l'Etat accréditant, sont réputés être résidents de l'Etat accréditant s'ils y sont soumis aux mêmes obligations, en matière d'impôts sur le revenu et sur la fortune, que les résidents dudit Etat.
§ 3. La convention ne s'applique pas aux organisations internationales, à leurs organes ou à leurs fonctionnaires, ni aux personnes qui sont membres d'une mission diplomatique ou consulaire d'un Etat tiers, lorsqu'ils se trouvent sur le territoire d'un

Etat contractant et ne sont pas traités comme des résidents dans l'un ou l'autre Etat contractant en matière d'impôts sur le revenu et sur la fortune.

§ 4. Aucune disposition de la convention ne peut être interprétée:

1° comme empêchant un Etat contractant d'appliquer les dispositions de sa législation nationale tendant à éviter l'évasion et la fraude fiscale;

2° comme limitant l'imposition d'une société résidente de la Belgique en cas de rachat de ses propres actions ou parts ou à l'occasion du partage de son avoir social.

§ 5. Le Ministre des Finances de la Belgique ou ses délégués mandatés à cette fin et le Ministre fédéral des Finances de l'Autriche communiquent entre eux pour l'application de la convention.

VII. DISPOSITIONS FINALES

Article 28
Entrée en vigueur

§ 1. La convention sera ratifiée et les instruments de ratification seront échangés le plus tôt possible à Bruxelles.

§ 2. La convention entrera en vigueur le quinzième jour suivant celui de l'échange des instruments de ratification et elle s'appliquera:

1° en Belgique:

a) aux impôts dus à la source sur les revenus normalement attribués ou mis en paiement après le 31 décembre de l'année de l'échange des instruments de ratification;

b) aux autres impôts établis sur des revenus de périodes imposables prenant fin normalement après le 31 décembre de la même année;

2° en Autriche:

a) aux impôts dus à la source sur les revenus attribués aux bénéficiaires après le 31 décembre de l'année de l'échange des instruments de ratification;

b) aux autres impôts perçus pour les années suivant la même année.

Article 29
Dénonciation

La convention restera indéfiniment en vigueur; mais chaque Etat contractant pourra, jusqu'au 30 juin inclus de toute année civile à partir de la cinquième année suivant celle de sa ratification, la dénoncer, par écrit et par la voie diplomatique, à l'autre Etat contractant. En cas de dénonciation, la convention s'appliquera pour la dernière fois

1° en Belgique:

a) aux impôts dus à la source sur les revenus normalement attribués ou mis en paiement au plus tard le 31 décembre de l'année de la dénonciation;

b) aux autres impôts établis sur des revenus de périodes imposables prenant fin normalement au plus tard le 31 décembre de la même année;

2° en Autriche:

a) aux impôts dus à la source sur les revenus attribués aux bénéficiaires au plus tard le 31 décembre de l'année de la dénonciation;

b) aux autres impôts perçus pour la même année.

En foi de quoi les Plénipotentiaires des deux Etats ont signé la présente convention et y ont apposé leurs sceaux.

Fait à Vienne, le 29 décembre 1971, en double exemplaire, en langue française, en langue néerlandaise et en langue allemande, les trois textes faisant également foi.

Pour le Royaume de Belgique:

G. C. Puttevils

Pour la République d'Autriche:

J. Hammerschmidt

Convention entre le Royaume de Belgique et la République Fédérative du Brésil, en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu.

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVII, No. 4, April/avril 1973

INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double tax treaty was signed between Belgium and Brazil on June 23, 1972. The treaty will be generally effective in the year in which the instruments of ratification will be exchanged. The treaty will apply to withholding taxes in the next year.

TEXT

Sa Majesté le Roi des Belges
et
Le Président de la République Fédérative du Brésil,
désireux d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu, ont décidé de conclure une Convention et ont nommé à cet effet pour leurs Plénipotentiaires, savoir:
Sa Majesté le Roi des Belges:
Le Baron Paternotte de La Vaillée, Ambassadeur de Belgique au Brésil,
Le Président de la République Fédérative du Brésil:
Monsieur Mario Gibson Barboza, Ministre d'Etat des Relations extérieures,
lesquels, après avoir échangé leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes:

Article 1.
Personnes visées.

La présente convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2.
Impôts visés.

1. Les impôts actuels auxquels s'applique la convention sont:
a) pour la Belgique:

— l'impôt des personnes physiques;
— l'impôt des sociétés;
— l'impôt des personnes morales;
— l'impôt des non-résidents, y compris les précomptes et les compléments de précomptes, les décimes et centimes additionnels auxdits impôts et précomptes ainsi que la taxe communale additionnelle à l'impôt des personnes physiques (ci-après dénommés «l'impôt belge»);

b) pour le Brésil:
— l'impôt fédéral sur le revenu et les profits de toute nature, à l'exclusion de l'impôt sur les transferts excédentaires et sur les activités de moindre importance (ci-après dénommé «l'impôt brésilien»).

2. La convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient.

Article 3.
Définitions générales.

1. Dans la présente convention:
a) le terme «Belgique, employé dans un sens géographique, désigne le territoire du Royaume de Belgique; il inclut tout territoire en dehors de la souveraineté nationale de la Belgique qui est ou sera désigné, selon la législation belge sur le plateau continental et conformément au droit international, comme territoire sur lequel les droits de la Belgique à l'égard du sol et du sous-sol de la mer et de leurs ressources naturelles peuvent être exercés;
b) le terme «Brésil», employé dans un sens géographique, désigne la République Fédérale du Brésil;
c) les expressions «un Etat contractant» et «l'autre Etat contractant», désignent, suivant le contexte, le Brésil ou la Belgique;
d) le terme «personne» comprend une personne physique, une société et tout autre groupement de personnes;
e) le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition;
f) les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant;
g) l'expression «autorité compétente» désigne:
1. en Belgique:
L'autorité compétente suivant la législation belge.
2. au Brésil:
Le Ministre des Finances, le Secrétaire de la Recette Fédérale ou leurs représentants 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.
Domicile fiscal.

1. Au sens de la présente convention, l'expression «résident d'un Etat contractant» désigne 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 de nature analogue; elle désigne aussi les sociétés de

droit belge — autres que les sociétés par actions — qui ont opté pour l'assujettissement de leurs bénéfices à l'impôt des personnes physiques.

2. Lorsque, selon la disposition du paragraphe 1, une personne physique est considérée comme résident de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:

a) Cette personne est considérée comme 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);

b) 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 où elle séjourne de façon habituelle;

c) Si cette personne séjourne de façon habituelle dans chacun des Etats contractants ou si elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme résident de l'Etat contractant dont elle possède la nationalité;

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

3. Lorsque, selon la disposition du paragraphe 1, une personne autre qu'une personne physique est considérée comme résident de chacun des Etats contractants, elle est réputée résident de l'Etat contractant où se trouve son siège de direction effective.

Article 5.
Etablissement stable.

1. Au sens de la présente convention, l'expression «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce toute 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, 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.

3. On 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, 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.

4. 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 indépen-

dant visé au paragraphe 5 — 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.

Toutefois 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 n'entrant pas dans la catégorie des personnes visées au paragraphe 5 ci-après, elle perçoit des primes sur le territoire de ce dernier Etat ou assure des risques situés sur ce territoire.

5. 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 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.

6. Le fait qu'une société résidente 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 6.
Revenus immobiliers.

1. Les revenus provenant de biens immobiliers sont imposables dans l'Etat contractant où ces biens sont situés.

2. *a*) L'expression «biens immobiliers» est définie conformément au droit de l'Etat contractant où les biens considérés sont situés.

b) Cette expression englobe en tous cas les accessoires, le cheptel mort ou vif des exploitations 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 fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres ressources naturelles; les navires, bateaux et aéronefs ne sont pas d'exploitation de biens immobiliers.

3. Les dispositions du paragraphe 1 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.

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 7.
Bénéfices des entreprises.

1. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce son activité dans l'autre Etat contractant par l'ntermédiaire 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 mais uniquement dans la mesure où ils 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.

4. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

5. Lorsque les bénéfices comprennent des élements de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

Article 8.
Navigation maritime et aérienne.

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

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

Article 9.
Entreprises associées.

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 entre 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.
Dividendes.

1. Les dividendes payés par une société résidente d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

2. Toutefois, les dividendes peuvent être imposés dans l'Etat contractant dont la société qui paie les dividendes est un resident et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 p.c. du montant brut des dividendes.

Les dispositions du présent paragraphe ne limitent pas l'imposition de la société sur les bénéfices qui servent au paiement des dividendes.

3. Le terme «dividendes» employé dans le présent article désigne les revenus pro-

venant d'actions, actions ou bons de jouissance, parts de mine, parts de fondateurs ou autres parts bénéficiaires, à l'exception des créances, ainsi que les revenus d'autres parts sociales soumis au même régime que les revenus d'actions par la législation fiscale de l'Etat dont la société distributrice est un résident. Ce terme désigne également les revenus — même attribués sous la forme d'intérêts — imposables au titre de revenus de capitaux investis par les associés dans les sociétés autres que les sociétés par actions, résidentes de la Belgique.

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, les dispositions de l'article 7 sont applicables.

5. Lorsqu'une société résidente de la Belgique a un établissement stable au Brésil, cet établissement peut y être assujetti à un impôt retenu à la source conformément à la législation brésilienne, mais cet impôt ne peut excéder 15 p.c. du montant du bénéfice de l'établissement stable, déterminé après le paiement de l'impôt sur les sociétés afférent audit bénéfice.

6. Les limitations du taux de l'impôt prévues aux paragraphes 2 et 5 ne s'appliqueront pas aux dividendes et bénéfices qui seront payés ou transférés avant le 1er janvier 1976.

Article 11.
Intérêts.

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, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 p.c. du montant brut des intérêts.

3. Par dérogation aux dispositions du paragraphe 2:

a) les intérêts des prêts et crédits consentis par le gouvernement d'un Etat contractant ne sont pas imposés dans l'Etat d'où proviennent les intérêts;

b) le taux de l'impôt ne peut excéder 10 p.c. en ce qui concerne les intérêts des prêts et crédits consentis, pour une durée minimale de 7 ans, par des établissements bancaires avec la participation d'un organisme public de financement spécialisé et liés à la vente de biens d'équipement ou à l'étude, à l'installation ou à la fourniture d'ensembles industriels, ou scientifiques ainsi que d'ouvrages publics.

4. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, 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 d'où proviennent les revenus.

Ce terme ne comprend pas les intérêts assimilés à des dividendes par l'article 10, paragraphe 3, deuxième phrase, de la présente convention.

5. 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, les dispositions de l'article 7 sont applicables.

6. La limitation prévue aux paragraphes 2 et 3 ne s'applique pas aux intérêts provenant d'un Etat contractant et payés à un établissement stable d'une entreprise de l'autre Etat contractant qui est situé dans un Etat tiers.

7. 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 de cet Etat. 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 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.

8. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, 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 12.
Redevances.

1. Les redevances provenant d'un Etat contractant et payées à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

2. Toutefois, ces redevances peuvent être imposées dans l'Etat contractant dont elles proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder:

a) 10 p.c. du montant brut des redevances payées soit pour l'usage ou la concession de l'usage d'un droit d'auteur sur une œuvre littéraire, artistique ou scientifique, soit pour l'usage ou la concession de l'usage de films cinématographiques, de films ou de bandes de télévision ou de radiodiffusion produits par un résident de l'un des deux Etats contractants;

b) 25 p.c. du montant brut des redevances payées pour l'usage d'une marque de fabrique ou de commerce;

c) 15 p.c. dans les autres cas.

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 œuvre littéraire, artistique ou scientifique, y compris les films cinématographiques et les films ou bandes de télévision ou de radiodiffusion, 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 et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, a, dans l'autre Etat contractant d'où proviennent les redevances, un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.

5. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le

débiteur est cet Etat lui-même, une de ses subdivisions politiques, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non un résident d'un Etat contractant, a dans un Etat contractant, un établissement stable pour lequel il a contracté l'obligation de payer les redevances et que cet établissement stable supporte la charge de ces redevances, lesdites redevances sont considérées comme provenant 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 des tierces personnes, le montant des redevances payées, compte tenu de la prestation pour laquelle elles sont versees, 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.
Gains en capital.

1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, sont imposables dans l'Etat contractant ou ces biens sont situés.

2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, ou de biens mobiliers constitutifs d'une base fixe dont un résident d'un Etat contractant dispose dans l'autre Etat contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre Etat. Toutefois, les gains provenant de l'aliénation de navires ou d'aéronefs exploites en trafic international et de biens mobiliers affectés à l'exploitation desdits navires ou aéronefs ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situe.

3. Les gains provenant de l'aliénation de tous biens ou droits autres que ceux qui sont mentionnés aux paragraphes 1 et 2 sont imposables dans les deux Etats contractants.

Article 14.
Professions indépendantes.

1. Les revenus qu'un résident d'un Etat contractant tire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que la charge de ces rémunérations ne soit supportee par une société résidente de l'autre Etat ou par un établissement stable y situé. Dans ce cas, ces revenus sont imposables dans cet autre Etat.

2. L'expression «profession libérale» comprend en particulier les activités indépendantes d'ordre scientifique, technique, littéraire, artistique, éducatif ou pédagogique, ainsi que les activités indépendantes des médicins, avocats, ingénieurs, architectes, dentistes et comptables.

Article 15.
Professions dépendantes.

1. Sous réserve des dispositions des arti-

cles 16, 18, 19, 20 et 21 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, les rémunérations qu'un résident d'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 résident de l'autre Etat; 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.

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 où le siège de la direction effective de l'entreprise est situé.

Article 16.
Tantièmes.

1. 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 ou d'un organe analogue d'une société par actions, résidente de l'autre Etat contractant, sont imposables dans cet autre Etat. Il en est de même des rémunérations d'un associé commandité d'une société en commandite par actions résidente de la Belgique.

2. Toutefois, les rémunérations normales que les intéressés touchent en une autre qualité sont imposables, suivant le cas, dans les conditions prévues soit à l'article 14, soit à l'article 15, § 1, de la présente convention.

Article 17.
Artistes et sportifs.

Nonobstant les dispositions des articles 14 et 15, 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 sont imposables dans l'Etat contractant où ces activités sont exercées.

Article 18.
Pensions.

1. Sous réserve des dispositions de l'article 19, les pensions, rentes 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.

2. Le terme «rentes» employé dans le présent article désigne une somme déterminée payée périodiquement, à échéance fixe, à titre viager ou pendant une période déterminée ou déterminable, en vertu d'un engagement d'effectuer les payements en contrepartie d'une prestation équivalente en argent ou évaluable en argent.

3. Le terme «pensions» employé dans le présent article désigne les payements périodiques effectués après la retraite en considération d'un emploi antérieur ou à titre

de compensation de dommages subis dans le cadre de cet emploi antérieur.

Article 19.
Rémunérations et pensions publiques.

1. Les rémunérations, y compris les pensions, versées par un Etat contractant ou l'une de ses subdivisions politiques ou collectivités locales, soit directement soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus à cet Etat ou à cette subdivision politique ou collectivité locale, dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet Etat.
Cette disposition ne s'applique pas lorsque le bénéficiaire de ces revenus possède la nationalité de l'autre Etat contractant sans posséder en même temps la nationalité du premier Etat.
2. Les dispositions des articles 15, 16 et 18 s'appliquent aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par l'un des Etats contractants ou l'une de ses subdivisions politiques ou collectivités locales.

Article 20.
Professeurs.

Une personne physique qui est un résident d'un Etat contractant au début de son séjour dans l'autre Etat contractant et qui, sur l'invitation du gouvernement de l'autre Etat contractant, ou d'une université ou d'un autre établissement d'enseignement ou de recherche officiellement reconnu de cet autre Etat, séjourne dans ce dernier Etat principalement dans le but d'enseigner ou de se livrer à des travaux de recherche, ou dans l'un et l'autre de ces buts, est exonérée d'impôts dans ce dernier Etat pendant une période n'excédant pas deux années à compter de la date de son arrivée dans ledit Etat à raison des rémunérations reçues au titre de ces activités d'enseignement ou de recherche.

Article 21.
Etudiants et stagiaires.

Les sommes qu'un étudiant ou un stagiaire qui est, ou 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 proviennent de sources situées en dehors de cet autre Etat.
Il en est de même de la rémunération qu'un tel étudiant ou stagiaire reçoit au titre d'un emploi exercé dans l'Etat contractant où il poursuit ses études ou sa formation, à condition que la durée de cette activité ne dépasse pas trois années et que le montant annuel de cette rémunération ne dépasse pas 100 000 francs belges ou son équivalent en monnaie brésilienne.

Article 22.
Revenus non expressément mentionnés.

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 sont imposables dans les deux Etats.

Article 23.
Règles générales d'imposition.

1. En ce qui concerne le Brésil, la double

imposition est évitée de la manière suivante:

Lorsqu'un résident du Brésil reçoit un revenu qui est imposable en Belgique conformément aux dispositions de la présente convention, le Brésil accorde pour l'application de son impôt un crédit équivalent à l'impôt payé en Belgique.

Toutefois, le montant de ce crédit ne peut excéder la fraction de l'impôt brésilien calculée selon la proportion de ce revenu par rapport à l'ensemble des revenus imposables au Brésil.

2. En ce qui concerne la Belgique, la double imposition est évitée de la manière suivante:

1° Lorsqu'un résident de la Belgique reçoit des revenus non visés sub 2°, 3° et 4° ci-après, qui sont imposables au Brésil conformément aux dispositions de la convention, la Belgique exempte ces revenus de l'impôt, mais elle peut, pour calculer le montant de ses impôts sur le reste du revenu de ce résident, appliquer le même taux que si les revenus en question n'avaient pas été exemptés.

2° *a*) En ce qui concerne les dividendes imposables conformément à l'article 10, paragraphe 2, et non visés sub 3° ci-après, les intérêts imposables conformément à l'article 11, paragraphes 2, 3, *b* ou 8 et les redevances imposables conformément à l'article 12, paragraphes 2 ou 6, la Belgique accorde sur l'impôt belge dû par ledit résident une déduction égale à 20 p.c. du montant brut des revenus susvisés qui est compris dans la base imposable au nom de ce résident.

b) Dans l'éventualité où le Brésil réduirait la charge fiscale normale applicable aux revenus susvisés attribués à des non-résidents, à un taux inférieur à 14 p.c. du montant brut de ces revenus, la Belgique réduirait de 20 à 15 p.c. le taux de cette déduction; dans le cas où le Brésil éliminerait ladite charge fiscale, la Belgique limiterait à 5 p.c. le taux de cette déduction.

c) Par dérogation aux dispositions de sa législation, la Belgique accorde également la déduction de 20 p.c. prévue à l'alinéa *a* à raison des revenus susvisés qui sont imposables au Brésil en vertu de la convention et des dispositions générales de la législation brésilienne, lorsqu'ils y sont temporairement exemptés d'impôt par des dispositions légales particulières tendant à favoriser les investissements nécessaires au développement de l'économie du Brésil. Les autorités compétentes des Etats contractants déterminent d'un commun accord les revenus à admettre au bénéfice de cette disposition.

3° *a*) Lorsqu'une société résidente de la Belgique a la propriété d'actions ou parts d'une société par actions, résidente du Brésil et soumise dans cet Etat à l'impôt sur le revenu des sociétés, les dividendes qui lui sont attribués par cette dernière société et qui sont imposables au Brésil conformément à l'article 10, paragraphe 2, sont exemptés de l'impôt des sociétés en Belgique, dans la mesure où cette exemption serait accordée si les deux sociétés étaient résidentes de la Belgique; cette disposition n'exclut pas le prélèvement sur ces dividendes du précompte mobilier exigible suivant la législation belge.

b) Lorsqu'une société résidente de la Belgique a eu pendant toute la durée de l'exercice social d'une société par actions, résidente du Brésil et soumise à l'impôt sur le revenu des sociétés dans cet Etat, la propriété exclusive d'actions ou parts de cette dernière société, elle est également exemptée du précompte mobilier exigible suivant la législation belge sur les dividendes de ces actions ou parts, à la condition d'en faire la demande par écrit au plus tard

dans le délai prescrit pour la remise de sa déclaration annuelle; lors de la redistribution à ses propres actionnaires de ces dividendes ainsi exemptés, ceux-ci ne peuvent être déduits des dividendes distribués passibles du précompte mobilier. Cette disposition n'est pas applicable lorsque la première société a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.

Dans l'éventualité où les dispositions de la législation belge, exemptant de l'impôt des sociétés le montant net des dividendes qu'une société résidente de la Belgique reçoit d'une autre société résidente de la Belgique, seraient modifiées de manière à limiter l'exemption aux dividendes afférents à des participations d'une importance déterminée dans le capital de la seconde société, la disposition de l'alinéa précédent ne s'appliquera qu'aux dividendes attribués par des sociétés résidentes du Brésil et afférents à des participations de même importance dans le capital desdites sociétés.

Dans cette éventualité, la double imposition des dividendes ne se rapportant pas à de telles participations sera évitée comme il est indiqué sub 2°.

4° Les revenus qui ont été imposés au Brésil conformément aux articles 13, paragraphe 3, ou 22 et qui sont compris dans les revenus passibles de l'impôt belge sont soumis à cet impôt suivant les modalités prévues par la législation fiscale belge en ce qui concerne les revenus professionnels réalisés et imposés à l'étranger.

5° Lorsque, conformément à la législation belge, des pertes subies par une entreprise belge dans un établissement stable situé au Brésil ont été effectivement déduites des bénéfices de cette entreprise pour son imposition en Belgique, l'exemption prévue sub 1° ne s'applique pas en Belgique aux bénéfices d'autres périodes imposables qui sont imputables à cet établissement, dans la mesure où ces bénéfices ont aussi été exemptés d'impôt au Brésil en raison de leur compensation avec lesdites pertes.

Article 24.
Non-discrimination.

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. Le terme «nationaux» désigne:

a) toutes les personnes physiques qui possèdent la nationalité d'un Etat contractant;

b) toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

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 qui exercent la même activité.

Cette disposition ne peut être interprétée 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.

4. Sauf en cas d'application des articles 9 et 11, paragraphe 8, les intérêts payés par une entreprise d'un Etat contractant à un résident de l'autre Etat contractant sont déductibles, pour la détermination des bénéfices imposables de cette entreprise, dans les mêmes conditions que s'ils avaient été payés à un résident du premier Etat.

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 celle à laquelle 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 ou dénomination.

Article 25.
Procédure amiable.

1. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats entraînent ou entraîneront pour lui une imposition non conforme à la présente convention, il peut, sans préjudice des recours prévus par la législation nationale de ces Etats, adresser à l'autorité compétente de l'Etat contractant dont il est un résident, une demande écrite et motivée de révision de cette imposition. Pour être recevable, ladite demande doit être présentée dans un délai de deux ans à compter de la notification ou de la perception à la source de l'imposition non conforme à la convention ou, s'il y a double imposition, de la seconde imposition.

2. L'autorité compétente visée au paragraphe 1 s'efforce, si la réclamation lui paraît 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 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 peut donner lieu l'application de la convention.

4. Les autorités compétentes des Etats contractants peuvent communiquer 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 composée de représentants des autorités compétentes des Etats contractants.

5. Les autorités compétentes des Etats contractants se concertent au sujet des mesures administratives nécessaires à l'exécution des dispositions de la 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'impôts prévues à cette convention.

Article 26.
Echange de renseignements.

1. Les autorités compétentes des Etats contractants échangeront les renseignements nécessaires pour appliquer les dispositions de la présente convention et celles des lois internes des Etats contractants relatives aux impôts visés par la convention dans la mesure où l'imposition qu'elles prévoient est conforme à la convention. Tout renseignement ainsi échangé sera tenu secret et ne pourra être communiqué qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la présente convention.

2. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à l'un des Etats contrac-

tants l'obligation:
a) de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat contractant;
b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;
c) de transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27.
Divers.

1. Sans préjudice de l'application de l'article 23, paragraphe 2, 3°, *b*, les dispositions de la présente convention ne limitent pas les avantages que la législation d'un Etat contractant accorde en matière d'impôts visés à l'article 2.
2. Aucune disposition de la présente convention ne peut avoir pour effet de limiter l'imposition d'une société résidente de la Belgique en cas de rachat de ses propres actions ou parts ou à l'occasion du partage de son avoir social.
3. Les dispositions de la présente convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques et des postes consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.
4. Aux fins de la présente convention, les membres d'une mission diplomatique ou d'un poste consulaire d'un Etat contractant acrrédités dans l'autre Etat contractant ou dans un Etat tiers, qui ont la nationalité de l'Etat accréditant, sont réputés être résidents dudit Etat s'ils y sont soumis aux mêmes obligations, en matière d'impôts sur le revenu, que le résidents de cet Etat.
5. La convention ne s'applique pas aux organisations internationales, à leurs organes et fonctionnaires, ni aux personnes qui, membres de missions diplomatiques ou consulaires d'Etats tiers, sont présentes dans un Etat contractant et ne sont pas considérées comme résidentes de l'un ou l'autre Etat contractant au regard des impôts sur le revenu.
6. Les Ministres des Finances des Etats contractants ou leurs délégués communiquent directement entre eux pour l'application de la présente convention.

Article 28.
Entrée en vigueur.

1. La présente convention sera ratifiée et les instruments de ratification seront échangés à Bruxelles, dès que possible.
2. Elle entrera en vigueur le trentième jour qui suivra l'échange des instruments de ratification et ses dispositions s'appliqueront pour la première fois:
a) aux impôts perçus par voie de retenue à la source dont le fait générateur se produit à partir du premier janvier de l'année qui suit immédiatement l'échange des instruments de ratification;
b) aux autres impôts établis sur des revenus de périodes imposables prenant fin à partir du 31 décembre de l'année de l'échange des instruments de ratification.

Article 29.
Dénonciation.

La présente convention restera indéfiniment en vigueur. Toutefois, chaque Etat pourra, moyennant un préavis de six mois notifié par écrit et par la voie diploma-

tique, la dénoncer pour la fin d'une année civile, à partir de la troisième année à compter de la date de son entrée en vigueur.
Dans ce cas, la convention s'appliquera pour la dernière fois:
a) en ce qui concerne les impôts perçus par voie de retenue à la source, aux impôts dont le fait générateur se produira avant l'expiration de l'année civile au cours de laquelle la dénonciation aura été notifiée;
b) en ce qui concerne les autres impôts, pour l'imposition des revenus de périodes imposables prenant fin avant le 31 décembre de cette année.
En foi de quoi, les Plénipotentiaires des deux Etats ont signé la présente Convention et y ont apposé leurs sceaux.
Fait à Brasilia, le vingt-trois juin 1972, en double exemplaire, en langue française, en langue néerlandaise et en langue portugaise, les trois textes faisant également foi.

Pour le Royaume de Belgique,
PATERNOTTE de LA VAILLEE.

Pour la République Fédérative du Brésil,
MARIO GIBSON BARBOZA.

PROTOCOLE FINAL.

Au moment de procéder à la signature de la convention en vue d'éviter des doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu, conclue ce jour entre le Royaume de Belgique et la République Fédérative du Brésil, les Plénipotentiaires soussignés sont convenus des dispositions suivantes qui forment partie intégrante de cette convention.

1. *Ad/Article 10, paragraphes 2 et 5.*
Sans préjudice de l'application de l'article 10, paragraphes 2 et 5, lorsqu'une société résidente d'un Etat contractant reçoit des bénéfices ou des revenus de l'autre Etat contractant, cet autre Etat ne peut percevoir aucun impôt sur les dividendes payés par cette société aux personnes qui ne sont pas des résidents de cet autre Etat, ni prélever aucun impôt, au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes payés ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de ce autre Etat.

2. *Ad/Article 13, paragraphe 3 et article 14, paragraphe 1.*
Dans l'éventualité où postérieurement à la signature de la présente convention, le Brésil conclurait avec un Etat tiers non situé en Amérique Latine une convention limitant — pour les revenus visés aux articles 13, paragraphe 3 et 14, paragraphe 1 — le pouvoir d'imposition de l'Etat contractant autre que celui dont le bénéficiaire des revenus est un résident, une limitation identique serait automatiquement appliquée dans les relations entre le Brésil et la Belgique.

3. *Ad/Article 24, paragraphe 4.*
Dans l'éventualité où, postérieurement à la signature de la convention, le Brésil admettrait que les redevances payées par une société résidente du Brésil à une société résidente d'un Etat tiers non situé en Amérique Latine, détenant une participation d'au moins 50 p.c. du capital de ladite société résidente du Brésil soient déduites en vue de la détermination du bénéfice de cette société imposable au Brésil, une déduction identique serait automatiquement appliqueé dans les relations entre une société résidente du Brésil et une société ré-

sidente de la Belgique se trouvant dans la même situation.

4. *Ad/Article 24.*
Cette disposition n'empêche pas la Belgique:
a) d'imposer le résident du Brésil qui dispose d'une habitation en Belgique sur un montant minimal de revenu égal à deux fois le revenue cadastral de cette habitation;
b) d'imposer globalement les bénéfices imputables à l'établissement stable dont dispose en Belgique une société résidente du Brésil ou un groupement de personnes ayant son siège de direction effective dans cet Etat, au taux fixé par la législation belge, à condition que ce taux n'excède pas, en principal, le taux maximal applicable à l'ensemble ou à une fraction des bénéfices des sociétés résidentes de la Belgique.

Fait à Brasilia, le vingt-trois juin 1972, en double exemplaire, en langue française, en langue néerlandaise et en langue portugaise, les trois textes faisant également foi.

Pour le Royaume de Belgique,
PATERNOTTE de LA VAILLEE.

Pour la République Fédérative du Brésil,
MARIO GIBSON BARBOZA.

Supplement **C**
1973

Convention entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Singapour tendant à éviter la double imposition en matière d'impôts sur le revenu

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

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INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double tax treaty was signed between Belgium and Singapore on February 8, 1972. The treaty shall enter into force on the fifteenth day after the date of exchange of notes indicating approval by Belgium and Singapore in accordance with their respective legal procedures.

TEXT

Le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Singapour,
Désireux de conclure une Convention tendant à éviter la double imposition en matière d'impôts sur le revenu,
Sont convenus des dispositions suivantes:

Article 1
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2
Impôts visés

§ 1. La présente Convention s'applique aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants, quel que soit le système de perception.

§ 2. Sont considérés comme impôts sur le revenu, les impôts perçus sur le revenu total ou sur des éléments du revenu, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, les impôts sur le montant total des salaires payés par les entreprises, ainsi que les impôts sur les plus-values.

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

(a) en ce qui concerne la Belgique:
  (i) l'impôt des personnes physiques;
  (ii) l'impôt des sociétés;
  (iii) l'impôt des personnes morales;
  (iv) l'impôt des non-résidents;
  (v) les précomptes et compléments de précomptes; et
  (vi) les décimes et centimes additionnels à chacun des impôts visés sous (i) à (v) ci-avant, y compris la taxe com-

munale additionnelle à l'impôt des personnes physiques (ci-après dénommés «l'impôt belge»);

(b) en ce qui concerne Singapour:

l'impôt sur le revenu (income tax) (ci-après dénommé «l'impôt de Singapour»).

§ 4. La Convention s'appliquera aussi aux impôts futurs de nature indentique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront les modifications importantes apportées à leurs législations fiscales respectives.

§ 5. Dans l'éventualité ou, par suite de modifications apportées à la législation fiscale de l'un des Etats contractants, il apparaîtrait nécessaire d'amender un article de la présente Convention sans en affecter les principes généraux, les ajustements nécessaires pourront être effectués de commun accord, par échange de notes diplomatiques ou de toute autre manière qui soit conforme aux dispositions constitutionnelles de ces Etats.

Article 3
Définitions générales

§ 1. Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:

(a) le terme «Belgique», désigne le Royaume de Belgique; il inclut toute région en dehors de la souveraineté nationale de la Belgique qui a été ou serait ultérieurement désignée, en vertu de la législation belge sur le plateau continental et conformément au droit international, comme une région dans laquelle peuvent être exercés les droits de la Belgique afférents au lit de la mer et au sous-sol des régions sous-marines ainsi qu'à leurs ressources naturelles;

(b) le terme «Singapour», désigne la République de Singapour;

(c) les expressions «un Etat contractant», et «l'autre Etat contractant», désignent, suivant le contexte, la Belgique ou Singapour;

(d) le terme «impôt», désigne, suivant le contexte, l'impôt belge ou l'impôt de Singapour;

(e) le terme «personne», comprend les personnes physiques, les sociétés et tous autres groupements de personnes considérés comme des entités aux fins d'imposition;

(f) le terme «société», désigne toute personne morale ou toute entité considérée comme une personne morale aux fins d'imposition dans l'Etat contractant dont elle est un résident;

(g) les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant», désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant;

(h) l'expression «autorités compétentes», désigne, en ce qui concerne la Belgique, l'autorité compétente suivant la législation belge et, en ce qui concerne Singapour, le Ministre des Finances ou son représentant autorisé.

§ 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
Domicile fiscal

§ 1. Au sens de la présente Convention, l'expression «résident d'un Etat contractant», désigne toute personne qui est con-

sidérée comme résident d'un Etat contractant aux fins d'imposition par cet Etat.

§ 2. Lorsque, selon la disposition du paragraphe 1, une personne physique est considérée comme résident de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:

(a) cette personne est considérée comme 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);

(b) si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut être déterminé ou qu'elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme 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, les autorités compétentes des Etats contractants tranchent la question d'un commun accord.

§ 3. Lorsque, selon la disposition du paragraphe 1, une personne autre qu'une personne physique est considérée comme résident de chacun des Etats contractants, elle est réputée résident de l'Etat contractant où se trouve son siège de direction effective.

Article 5
Etablissement stable

§ 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, une carrière ou tout autre lieu d'exploitation de ressources naturelles;
(g) une exploitation agricole ou une plantation;
(h) un chantier de construction ou de montage dont la durée dépasse six mois.

§ 3. On 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, 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.

§ 4. Une entreprise d'un Etat contractant est réputée posséder un établissement stable dans l'autre Etat contractant si elle exerce pendant plus de six mois dans cet autre Etat contractant des activités de surveillance relatives à un chantier de construction, d'installation ou de montage entretenu dans cet autre Etat contractant.

§ 5. Une personne autre qu'un agent

jouissant d'un statut indépendant, visé au paragraphe 6, agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme un établissement stable dans le premier Etat contractant:

(a) 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; ou

(b) si elle dispose dans le premier Etat d'un stock de marchandises appartenant à l'entreprise, au moyen duquel elle exécute régulièrement des commandes pour le compte de cette entreprise.

§ 6. 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 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.

§ 7. 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 6
Revenus immobiliers

§ 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 en tous cas les accessoires, le cheptel mort ou vif des exploitations 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 fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux 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 aux revenus provenant de l'exploitation ou de la jouissance directes, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation 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 7
Bénéfices des entreprises

§ 1. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat à moins que l'entreprise 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 mais uniquement dans la mesure ou ils sont imputables à cet 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 toutes les dépenses, y compris les dépenses de direction et les frais généraux d'administration, qui seraient déductibles si l'établissement stable constituait une entreprise indépendante, dans la mesure où elles peuvent raisonnablement être imputées à l'établissement stable, qu'elles soient exposées dans l'Etat contractant, où est situé l'établissement stable ou ailleurs.

§ 4. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté (et transporté) des marchandises pour l'entreprise.

§ 5. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

Article 8
Navigation maritime et aérienne

§ 1. Nonobstant les dispositions de l'article 7, les bénéfices provenant de l'exploitation de navires ou d'aéronefs en trafic international ne sont imposables que dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

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

§ 3. Le paragraphe 1 s'applique également à la quote-part des bénéfices qu'une entreprise engagée dans l'exploitation de navires ou d'aéronefs tire de participations à un pool quelconque.

§ 4. L'expression «trafic international», comprend le trafic entre des lieux situés dans un Etat contractant, au cours d'un voyage s'étendant sur plus d'un pays.

Article 9
Entreprises interdépendantes

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 entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenues 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
Dividendes

§ 1. Les dividendes attribués par une sociétés résidente 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 attribue les dividendes est un résident et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 p.c. 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. Nonobstant les dispositions du paragraphe 2, aussi longtemps que Singapour ne perçoit pas d'impôt sur les dividendes en sus de l'impôt qui frappe les bénéfices ou les revenus des sociétés, les dividendes attribués par une société résidente de Singapour à un résident de la Belgique seront exemptés à Singapour de tout impôt susceptible de s'appliquer aux dividendes en sus de l'impôt qui frappe les bénéfices ou les revenus de la société.
Toutefois, aucune disposition du présent paragraphe n'affecte les dispositions de la législation de Singapour permettant de rectifier le montant de l'impôt afférent à des dividendes attribués par une société résidente de Singapour et sur lesquels l'impôt de Singapour a été ou est censé avoir été retenu, en ayant égard au taux d'impôt applicable pour l'année d'imposition suivant immédiatement celle au cours de laquelle les dividendes ont été attribués.
§ 4. Le terme «dividendes», employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de mine, parts de fondateur ou autres parts bénéficiares à l'exception des créances ainsi que les revenus d'autres parts sociales soumis au même régime que les revenus d'actions par la législation fiscale de l'Etat contractant dont la société distributrice est un résident. Ce terme désigne également, même s'ils sont attribués sous forme d'intérêts, les revenus imposables au titre de revenus de capitaux investis par les associés dans les sociétés, autres que les sociétés par actions, résidentes de la Belgique.
§ 5. Les dispositions des paragraphes 1, 2, et 3 ne s'appliquent pas lorsque le bénéficiaire des dividendes, resident d'un Etat contractant, a dans l'autre Etat contractant dont la société qui attribue les dividendes est un résident un établissement stable auquel se rattache effectivement la participation génératrice des dividendes. Dans ce cas, les dividendes sont imposables conformément à la législation de cet autre Etat contractant.
§ 6. Lorsqu'une société qui est un résident d'un Etat contractant tire des bénéfices ou des revenus de l'autre Etat contractant, cet autre Etat ne peut percevoir aucun impôt sur les dividendes attribués par la société en dehors de cet autre Etat à des personnes qui ne sont pas des résidents de cet autre Etat, ni prélever aucun impôt, au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes attribués ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat.
§ 7. Pour l'application de la présente Convention, les dividendes attribués à un résident de la Belgique par une société malaise et provenant de bénéfices tirés de sources situées à Singapour sont traités comme des dividendes attribués par une société résidente de Singapour.
L'expression «société malaise», désigne une

société qui, pour l'application de l'impôt sur le revenu en Malaisie, est un résident de Malaisie.

Article 11
Intérêts

§ 1. Les intérêts provenant d'un Etat contractant et attribués à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 p.c. du montant brut des intérêts.

§ 3. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, des créances et dépôts de toute nature ainsi que les lots d'emprunts et tous autres revenus soumis au même régime que les revenus de sommes prêtées ou déposées par la législation fiscale de l'Etat d'où proviennent les revenus; toutefois, ce terme ne comprend pas les intérêts considérés comme des dividendes en vertu de l'article 10, paragraphe 4, deuxième phrase.

§ 4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des intérêts, [qu'il soit ou non]* 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 ou le dépôt générateur des intérêts. Dans ce cas, les intérêts sont imposables conformément à la législation de cet autre Etat contractant.

§ 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, un organisme de droit public ou un résident de cet Etat. 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 générateur des intérêts a été contracté et qui supporte directement la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat contractant où est situé l'établissement stable.

§ 6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou déposant ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des intérêts compte tenu de la créance ou du dépôt pour lequel ils sont attribués, excède celui dont seraient convenus le débiteur et le créancier ou déposant 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 l'Etat contractant d'où proviennent les intérêts.

Article 12
Redevances

§ 1. Les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant sont imposables dans les deux Etats contractants.

§ 2. 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 œuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, d'un brevet, d'une marque de fa-

* Erreur probable de traduction.

brique, 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 ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique, ou pour des prestations d'assistance technique ou commerciale accessoires à l'usage de tels biens ou droits, dans la mesure où ces prestations sont effectuées dans l'Etat contractant d'où proviennent les redevances.

§ 3. Nonobstant la disposition du paragraphe 1, les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant sont exemptées d'impôt dans le premier Etat, lorsqu'elles sont attribuées:

(a) pour l'usage ou la concession de l'usage:

(i) d'un droit d'auteur sur une œuvre scientifique, d'un brevet, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets ou d'une marque de fabrique;

(ii) d'un équipement industriel, commercial ou scientifique;

(b) pour la fourniture de connaissances, d'informations ou d'assistance dans le domaine scientifique, technique ou industriel.

§ 4. La disposition du paragraphe 3 ne s'applique pas lorsque le bénéficiaire des redevances, [qu'il soit ou non]* résident d'un Etat contractant, a dans l'autre Etat contractant d'où proviennent les redevances, un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les redevances sont imposables conformément à la législation de cet autre Etat.

§ 5. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision politique, une collectivité locale, un organisme de droit public ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel le contrat donnant lieu au paiement des redevances a été conclu et qui supporte directement la charge de celles-ci, ces redevances sont réputées provenir de l'Etat contractant ou est situé l'établissement stable.

§ 6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des redevances, compte tenu de la prestation pour laquelle elles sont attribuées, excède le montant dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, la disposition du paragraphe 3 ne s'applique qu'à ce dernier montant.

Article 13
Gains en capital

§ 1. Les gains provenant de l'aliénation de biens immobiliers, tels qu'ils sont définis à l'article 6, paragraphe 2, sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) sont imposables dans cet autre Etat contractant. Toutefois, les gains pro-

* Erreur probable de traduction.

venant de l'aliénation de navires et d'aéronefs exploités en trafic international ainsi que de biens mobiliers affectés à leur exploitation ne sont imposables que dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

§ 3. Les gains provenant de biens autres que ceux qui sont mentionnés aux paragraphes 1 et 2 sont imposables dans les deux Etats contractants.

Article 14
Services personnels

§ 1. Sous réserve des dispositions des articles 15, 17, 18, 19 et 20 les traitements, salaires et autres rémunérations similaires et les revenus qu'un résident d'un Etat contractant reçoit au titre de services personnels (y compris l'exercice d'une profession libérale) ne sont imposables que dans cet Etat à moins que les services ne soient accomplis dans l'autre Etat contractant. Si les services y sont accomplis, les rémunérations ou revenus reçus à ce titre sont imposables dans cet autre Etat.

§ 2. Nonobstant les dispositions du paragraphe 1, les rémunérations ou les revenus qu'un résident d'un Etat contractant reçoit au titre de services personnels (y compris l'exercice d'une profession libérale) accomplis dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:

(a) le bénéficiaire séjourne dans l'autre Etat pendant une ou des périodes n'excédant pas au total centquatre-vingt-trois jours au cours de l'année civile considérée; et

(b) les rémunérations ou les revenus sont payés par une personne ou au nom d'une personne qui est un résident du premier Etat; et

(c) la charge des rémunérations ou des revenus n'est pas supportée directement par un établissement stable que cette personne possède dans l'autre Etat.

§ 3. Nonobstant les dispositions précédentes du présent article, les rémunérations qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef en trafic international ne sont imposables que dans cet Etat.

Article 15
Tantièmes

§ 1. 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 résidente de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Les rémunérations qu'une personne visée au paragraphe 1 reçoit de la société en raison de l'exercice d'une activité journalière de direction ou de caractère technique sont imposables conformément aux dispositions de l'article 14.

Article 16
Artistes et sportifs

§ 1. Nonobstant les dispositions de l'article 14, 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 tirent de leurs activités personnelles en cette qualité sont imposables dans l'Etat contractant où ces activités sont exercées.

§ 2. Les dispositions du paragraphe 1 ne s'appliquent pas aux rémunérations ou profits, traitements, salaires, et autres re-

venus similaires que des professionnels du spectacle tirent d'activités exercées dans un Etat contractant si le séjour dans cet Etat est financé pour une large part au moyen des fonds publics de l'autre Etat contractant, y compris une subdivision politique, une collectivité locale ou un organisme de droit public de cet Etat.

§ 3. Nonobstant les dispositions de l'article 7, lorsque les activités mentionnées au paragraphe 1 sont exercées dans un Etat contractant à l'intervention d'une entreprise de l'autre Etat contractant, les bénéfices que cette entreprise tire de cette intervention sont imposables dans le premier Etat, à moins que, pour son intervention dans lesdites activités, l'entreprise ne soit financée pour une large part au moyen des fonds publics de l'autre Etat contractant, y compris une subdivision politique, une collectivité locale ou un organisme de droit public de cet Etat.

Article 17
Pensions et rentes

§ 1. Sous réserve des dispositions de l'article 18, paragraphes 1 et 2, les pensions ou rentes reçues par un résident d'un Etat contractant ne sont imposables que dans cet Etat.

§ 2. Le terme «pensions», désigne des paiements périodiques effectués au titre d'un emploi antérieur ou en compensation de dommages subis.

§ 3. Le terme «rentes», désigne une somme prédéterminée, payable périodiquement à échéances fixes, la vie durant ou pendant un laps de temps déterminé ou déterminable, en vertu d'un engagement d'effectuer les paiements en échange d'une pleine et adéquate contrevaleur en argent ou en son équivalent.

Article 18
Fonctions publiques

§ 1. Les rémunérations, y compris les pensions, versées par la Belgique ou par une de ses subdivisions politiques ou collectivités locales soit directement, soit par prélèvement sur des fonds qu'elles ont constitués, à une personne physique au titre de services rendus à la Belgique ou à une de ses subdivisions politiques ou collectivités locales dans l'exercice de fonctions de caractère public ne sont imposables qu'en Belgique, à moins que la personne physique ne soit un citoyen ou un résident permanent de Singapour sans être en même temps un ressortissant de la Belgique.

§ 2. Les rémunérations, y compris les pensions, versées par Singapour ou par un organisme de droit public de cet Etat, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus à Singapour ou à un organisme de droit public de cet Etat dans l'exercice de fonctions de caractère public ne sont imposables qu'à Singapour, à moins que la personne physique ne soit un ressortissant ou un résident permanent de la Belgique sans être en même temps un citoyen de Singapour.

§ 3. Pour l'application des paragraphes 1 et 2, une personne physique est considérée comme un résident permanent d'un Etat contractant si elle est un résident de cet Etat avant de commencer l'exercice de ses fonctions publiques.

4. Les dispositions du présent article ne s'appliquent pas aux rémunérations, y compris les pensions, versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par un Etat contractant, par une de ses subdivisions politiques ou collectivités locales ou par un organisme de droit public de cet Etat.

Article 19
Professeurs et enseignants

§ 1. Une personne physique qui est un résident de la Belgique immédiatement avant son départ pour Singapour et qui, à l'invitation d'une université, d'un collège, d'une école ou d'une autre institution similaire d'enseignement, reconnus par l'autorité compétente de Singapour, séjourne à Singapour pendant une période n'excédant pas deux ans à seule fin d'enseigner ou d'effectuer des recherches ou d'exercer ces deux activités dans une telle institution d'enseignement, n'est imposable qu'en Belgique sur les rémunérations provenant de cet enseignement ou de ces recherches.

§ 2. Une personne physique qui est un résident de Singapour immédiatement avant son départ pour la Belgique et qui, à l'invitation soit d'une université, soit d'un collège, d'une école ou d'une autre institution similaire d'enseignement reconnus, séjourne en Belgique pendant une période n'excédant pas deux ans à seule fin d'enseigner ou d'effectuer des recherches ou d'exercer ces deux activités dans une telle institution d'enseignement, n'est imposable qu'à Singapour sur les rémunérations provenant de cet enseignement ou de ces recherches.

§ 3. Le présent article ne s'applique pas aux revenus tirés de recherches entreprises non dans l'intérêt public mais principalement au profit personnel d'une ou de plusieurs personnes déterminées.

Article 20
Etudiants et apprentis

§ 1. Une personne physique qui immédiatement avant son départ pour un Etat contractant est un résident de l'autre Etat contractant et qui séjourne temporairement dans le premier Etat contractant uniquement en qualité d'étudiant dans une université, un collège ou une école reconnus de ce premier Etat, ou en qualité de stagiaire, est exemptée d'impôt dans le premier Etat.

(a) sur toutes les sommes que cette personne reçoit de l'autre Etat contractant pour couvrir ses frais d'entretien, d'études ou de formation; et

(b) sur les rémunérations reçues en contrepartie de services personnels rendus dans le premier Etat en vue d'augmenter ses ressources destinées à faire face aux frais susvisés, si ces rémunérations n'excèdent pas par année civile 100 000 francs belges ou l'équivalent de cette somme en monnaie de Singapour.

§ 2. Une personne physique qui immédiatement avant son départ pour un Etat contractant est un résident de l'autre Etat contractant et qui séjourne temporairement dans le premier Etat contractant pendant une période n'excédant pas trois ans, pour poursuivre ses études, ses recherches ou sa formation uniquement en tant que bénéficiaire d'une bourse, d'une allocation ou d'un prix reçu d'un établissement scientifique, éducatif, religieux ou philanthropique ou dans le cadre d'un programme d'assistance technique mis sur pied par l'un des Etats contractants, est exemptée d'impôt dans le premier Etat.

(a) sur le montant de cette bourse, de cette allocation ou de ce prix; et

(b) sur les rémunérations reçues en contrepartie de services personnels accomplis dans le premier Etat contractant et n'excédant pas, par année civile, 150 000 francs belges ou l'équivalent de cette somme en monnaie de Singapour, à condition que ces services soient connexes ou accessoires aux études, aux recherches ou à la formation

de cette personne.

§ 3. Une personne physique qui immédiatement avant son départ pour un Etat contractant est un résident de l'autre Etat contractant et qui séjourne temporairement dans le premier Etat contractant pendant une période n'excédant pas douze mois, uniquement en qualité d'employé de l'autre Etat contractant ou d'une entreprise de cet Etat ou en exécution d'un contrat avec ledit autre Etat ou avec une telle entreprise, en vue d'acquérir une expérience technique, professionnelle ou commerciale, est exemptée d'impôt dans le premier Etat contractant:

(a) sur toutes les sommes que cette personne reçoit de l'autre Etat contractant pour couvrir ses frais d'entretien, d'études ou de formation; et

(b) sur les rémunérations reçues en contrepartie de services personnels accomplis dans le premier Etat contractant et n'excédant pas, par année civile 200 000 francs belges ou l'équivalent de cette somme en monnaie de Singapour, à condition que ces services soient connexes ou accessoires aux études ou à la formation de cette personne.

§ 4. Pour l'application du présent article, le terme «Etat contractant», comprend les subdivisions politiques, les collectivités locales et les organismes de droit public de cet Etat.

Article 21
Revenus non expressément mentionnés

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 sont imposables dans les deux Etats contractants.

Article 22
Limitation de l'exemption ou de la réduction

Lorsque la présente convention prévoit (avec ou sans d'autres conditions) que les revenus ayant leur source dans un Etat contractant sont exemptés d'impôt ou sont imposés à un taux réduit dans cet Etat contractant et que, suivant la législation en vigueur dans l'autre Etat contractant, lesdits revenus y sont soumis à l'impôt à concurrence de leur montant transféré ou perçu dans cet autre Etat contractant, et non à concurrence de leur montant total, l'exemption ou la réduction d'impôt qui doit être accordée dans le premier Etat contractant en vertu de la présente convention ne s'applique qu'au montant du revenu ainsi transféré ou perçu dans l'autre Etat contractant.

Article 23
Prévention de la double imposition

§ 1. Sauf dispositions contraires expresses de la présente Convention, l'imposition des revenus restera régie dans chaque Etat contractant, par la législation en vigueur dans cet Etat. Lorsqu'un revenu est passible de l'impôt dans les deux Etats contractants, il est remédié à la double imposition conformément aux paragraphes suivants du présent article.

§ 2. (a) S'il s'agit d'un résident de Singapour et sous réserve des dispositions de la législation de Singapour concernant l'imputation sur l'impôt de Singapour de l'impôt dû dans un pays autre que Singapour, l'impôt belge dû, directement ou par voie de retenue, sur un revenu ayant sa source en Belgique est imputé sur l'impôt de Singapour dû en raison de ce revenu.

(b) Lorsque ledit revenu est un dividende attribué par une société résidente de la Belgique à une société résidente de Singapour qui détient directement ou indirectement au moins 25 p.c. du capital de la première société, l'imputation tient compte non seulement de tout impôt belge afférent aux dividendes mais aussi de l'impôt belge du en raison de ses bénéfices par la société qui attribue les dividendes.

§ 3. En ce qui concerne les revenus ayant leur source à Singapour qui sont passibles de l'impôt en Belgique conformément à la législation belge:

(a) (i) Lorsqu'une société résidente de la Belgique à la propriété d'actions ou parts d'une société résidente de Singapour, les dividendes attribués à la première société et non soumis au régime prévu à l'article 10, paragraphe 5, sont exonérés en Belgique de l'impôt visé à l'article 2, paragraphe 3 (a) (ii), dans la mesure où cette exonération serait accordée si les deux sociétés étaient résidentes de la Belgique.

(ii) Une société résidente de la Belgique ayant la propriété exclusive d'actions ou parts d'une société résidente de Singapour pendant toute la durée de l'exercice social de cette dernière société est également exonérée ou obtient le dégrèvement du précompte mobilier exigible suivant la législation belge sur le montant net des dividendes susvisés qui lui sont attribués par ladite société résidente de Singapour et soumise à l'impôt visé à l'article 2, paragraphe 3, (b), à la condition d'en faire la demande par écrit au plus tard dans le délai precrit pour la remise de sa déclaration annuelle, étant entendu que lors de la redistribution à ses propres actionnaires de ces revenus non soumis au précompte mobilier, ceux-ci ne peuvent, par dérogation à la législation belge, être déduits des dividendes distribués passibles dudit précompte. Cette exonération ne s'applique pas dans le cas où la première société a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.

Toutefois, l'application de la disposition de ce sous-paragraphe (a) (ii) sera limitée aux dividendes attribués par une société résidente de Singapour à une société résidente de la Belgique qui contrôle directement ou indirectement au moins 25 p.c. des droits de vote dans la première société, dans l'éventualité où pour l'exonération de l'impôt visé à l'article 2, paragraphe 3 (a) (ii), une limitation similaire serait instaurée par la législation belge concernant les dividendes attribués par des sociétés qui ne sont pas résidentes de la Belgique.

(iii) Dans les cas non couverts par le sous-paragraphe (a) (i), la Belgique accorde une déduction sur l'impôt belge afférant aux revenus recueillis par un résident de la Belgique lorsque ces revenus sont:

— des dividendes visés à l'article 10, paragraphe 2;

— des intérêts visés à l'article 11, paragraphes 2 et 6 et passibles de l'impôt de Singapour conformément à la législation fiscale de Singapour, y compris les intérêts exemptés d'impôt à Singapour en vertu de dispositions spéciales prévues dans la loi relative aux allégements fiscaux tendant à promouvoir l'expansion économique «Economic Expansion Incentives (Relief from Income Tax) Act» (chapitre 135, édition 1970), de la République de Singapour, ou en vertu de toute autre disposition ultérieure d'exemption à laquelle les autorités compétentes des deux Etats contractants reconnaîtraient un caractère analogue en substance;

— des redevances visées à l'article 12, paragraphe 1, 3 et 6.

Cette déduction est égale à 15 p.c. du montant brut de ces dividendes, intérêts ou

redevances compris dans la base imposable dudit résident.

(b) (i) Lorsqu'un résident de la Belgique reçoit des revenus, autres que ceux qui sont mentionnés au sous-paragraphe (a) ci-dessus, qui sont imposables à Singapour conformément aux dispositions de la présente convention, la Belgique exempte de l'impôt ces revenus mais elle peut pour calculer le montant de l'impôt sur le reste du revenu de ce résident, appliquer le même taux que si les revenus en question n'avaient pas été exemptés.

(ii) Les revenus imposables, conformément à la législation belge, au titre de bénéfices d'exploitation dans le chef d'associés ou membres de sociétés et groupements de personnes sont traités comme s'ils étaient des bénéfices provenant d'une entreprise exploitée par les associés ou membres eux-mêmes pour leur propre compte.

(iii) Par dérogation au sous-paragraphe (b) (i) ci-dessus, l'impôt belge peut être établi sur des revenus imposables à Singapour, dans la mesure où ces revenus n'ont pas été imposés à Singapour parce qu'ils y ont été compensés avec des pertes qui ont également été déduites, pour un exercice comptable quelconque, de revenus imposables en Belgique.

Article 24
Non-discrimination

§ 1. Les nationaux ou citoyens 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 pourraient être assujettis les nationaux ou citoyens de cet autre Etat se trouvant dans la même situation. Cette disposition ne peut être interprétée comme obligeant Singapour à accorder aux nationaux de la Belgique qui ne sont pas des résidents à Singapour, les déductions personnelles, abattements et réductions d'impôts qui, suivant la législation en vigueur à la date de la signature de la présente Convention, ne sont accordées qu'aux citoyens de Singapour ou aux autres personnes y spécifiées qui ne sont pas de résidents à Singapour.

§ 2. L'expression «nationaux ou citoyens», désigne:

(a) toutes les personnes physiques possédant la nationalité ou la citoyenneté d'un Etat contractant; et

(b) toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

§ 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 de façon moins favorable que l'imposition des entreprises de cet autre Etat qui exercent la même activité.

Cette disposition ne peut être interprétée comme empêchant la Belgique d'imposer au taux prévu par la législation belge le montant total des bénéfices d'un établissement stable belge d'une société résidente de Singapour ou d'une association ayant son siège de direction effective à Singapour pourvu que le taux précité n'excède pas avant application des additionnels mentionnés à l'article 2, paragraphe 3 (a) (vi) le taux maximal applicable à l'ensemble ou à une fraction des bénéfices des sociétés résidentes de la Belgique.

§ 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.

§ 5. Le terme «imposition» désigne dans le présent article, les impôts faisant l'objet de la présente Convention.

Article 25
Procédure amiable

1. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats 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, adresser à l'autorité compétente de l'Etat contractant dont il est un résident une demande écrite et motivée de révision de cette imposition. Cette demande doit être présentée avant l'expiration d'un délai de deux ans, à compter de la notification ou de la perception à la source de l'imposition que le résident estime non conforme à la présente Convention.

§ 2. L'autorité compétente visée au paragraphe 1 s'efforcera, si la réclamation lui paraît fondée et si elle n'est pas 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 peut donner lieu l'application de la présente Convention.

§ 4. Les autorités compétentes des Etats contractants se concertent au sujet des mesures administratives nécessaires à l'exécution des dispositions de la présente Convention et notamment au sujet des justifications à produire par les résidents de chaque Etat contractant pour bénéficier dans l'autre Etat contractant des exemptions ou réductions d'impôts prévues dans la présente Convention.

Article 26
Echange de renseignements

§ 1. Les autorités compétentes des Etats contractants échangent les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des Etats contractants relatives aux impôts visés par la présente Convention dans la mesure où l'imposition qu'elles prévoient est conforme à la présente Convention. Tout renseignement ainsi échangé sera tenu secret et ne pourra être communiqué, en dehors du contribuable ou de son mandataire, aux personnes ou autorités autres que celles qui sont chargées de l'établissement ou du recouvrement des impôts visés par la présente Convention, ou de l'examen des recours y relatifs.

§ 2. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à un Etat contractant l'obligation:

(a) de prendre des mesures administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat contractant;

(b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;

(c) de transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27
Divers

§ 1. Les dispositions de la présente Convention ne limitent pas l'imposition d'une société résidente de la Belgique, conformément à la législation belge, en cas de rachat de ses propres actions ou parts ou à l'occasion du partage de son avoir social.

§ 2. 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.

§ 3. La Convention ne s'applique pas aux organisations internationales, à leurs organes ou à leurs fonctionnaires, ni aux personnes qui sont membres d'une mission diplomatique ou consulaire d'un Etat tiers, lorsqu'ils se trouvent sur le territoire d'un Etat contractant et ne sont pas imposés comme des résidents dans l'un ou l'autre Etat contractant en matière d'impôts sur le revenu.

§ 4. Les autorités compétentes des Etats contractants communiquent directement entre elles pour l'application de la présente convention.

Article 28
Entrée en vigueur

§ 1. La présente Convention sera approuvée par la Belgique et par Singapour conformément à leurs dispositions légales respectives et elle entrera en vigueur le quinzième jour suivant la date de l'échange des notes annonçant cette approbation.

§ 2. La présente convention s'appliquera:

En Belgique:

(a) à tous les impôts dus à la source sur des revenus attribués ou mis en paiement à partir du 1er janvier de l'année civile au cours de laquelle la présente Convention entre en vigueur.

(b) à tous les impôts, autres que les impôts dus à la source afférents à des revenus d'exercices comptables prenant fin à partir du 31 décembre de l'année civile au cours de laquelle la présente Convention entre en vigueur.

A Singapour:

à tous les impôts dus pour l'année d'imposition commençant le 1er janvier de l'année civile suivant celle au cours de laquelle la présente Convention entre en vigueur et pour les années d'imposition ultérieures.

Article 29
Dénonciation

La présente Convention restera indéfiniment en vigueur mais chacun des Etats contractants pourra jusqu'au 30 juin inclus de toute année civile à partir de la cinquième année suivant celle de l'entrée en vigueur, la dénoncer, par écrit et par la voie diplomatique, à l'autre Etat contractant. Dans ce cas, la Convention s'appliquera pour la dernière fois:

En Belgique:

(a) à tous les impôts dus à la source sur des revenus attribués ou mis en paiement au plus tard le 31 décembre de l'année civile au cours de laquelle la dénonciation aura été notifiée;

(b) à tous les impôts autres que les impôts dus à la source, afférents à des revenus d'exercices comptables se terminant au plus tard le 30 décembre de l'année civile suivant celle au cours de laquelle la dénonciation aura été notifiée.

A Singapour:

à tous les impôts dus pour l'année d'imposition commençant le 1er janvier de l'année civile suivant celle au cours de laquelle la dénonciation aura été notifiée.

En foi de quoi, les soussignés dûment autorisés à cet effet, ont signé la présente Convention.

Fait à Singapour, le 8 février 1972 en double exemplaire, en langue anglaise.

Pour le Gouvernement du Royaume de Belgique:

J. D'Hondt.

Pour le Gouvernement de Singapour:

Hon Sui Sen

Protocole

Au moment de procéder à la signature de la Convention entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Singapour, tendant à éviter la double imposition en matière d'impôts sur le revenu, les soussignés sont convenus des dispositions suivantes qui forment partie intégrante de la convention.

§ 1. En ce qui concerne l'article 10, paragraphe 2 et l'article 11, paragraphe 2, un Etat contractant, tel qu'il est défini au paragraphe 3, du présent Protocole, sera exempté d'impôt dans l'autre Etat contractant sur les dividendes, les intérêts et les gains provenant de l'aliénation d'actions ou parts, de valeurs mobilières ou d'autres droits générateurs de dividendes et d'intérêts, qu'il tire de sources situées dans cet autre Etat contractant.

Toutefois, l'exemption sera limitée aux actions parts ou autres droits visés à l'article 10, paragraphe 4 ou aux valeurs mobilières ou autres droits visés à l'article 11, paragraphe 3, qui sont détenus uniquement à des fins d'intérêt public et non à d'autres fins.

§ 2. En ce qui concerne l'article 22, la limitation établie par ledit article ne s'appliquera pas aux revenus qu'un Etat contractant tire de sources situées dans l'autre Etat contractant.

§ 3. L'expression «un Etat contractant» employée aux paragraphes 1 et 2 du présent Protocole désigne:

(a) en ce qui concerne la Belgique, le Royaume de Belgique et comprend:

(i) toute subdivision politique ou collectivité locale de la Belgique;

(ii) la Banque Nationale de Belgique; et

(iii) les institutions de la Belgique agréées périodiquement de commun accord par les

autorités compétentes visées à l'article 3, paragraphe (1) (h) de la Convention;
(b) en ce qui concerne Singapour, la République de Singapour et comprend:
(i) le «Board of Commissioners of Currency»;
(ii) le «Monetary Authority of Singapore»; et
(iii) les institutions de Singapour agréées périodiquement de commun accord par les autorités compétentes visées à l'article 3, paragraphe (1) (h) de la Convention.

En foi de quoi, les soussignés dûment autorisés à cet effet, ont signé le présent Protocole.

Fait à Singapour, le 8 février 1972, en double exemplaire, en langue anglaise.

Pour le Gouvernement du Royaume de Belgique:

J. D'Hondt.

Pour le Gouvernement de la République de Singapour:

Hon Sui Sen

Convention entre le Gouvernement du Royaume des Pays-Bas et le Gouvernement de la République française tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVII, No. 8, August/août 1973
INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION
Muiderpoort - 124 Sarphatistraat - Amsterdam

A new double taxation treaty was signed between the Netherlands and France on March 16, 1973. The treaty shall enter into force on the 30th day following the date on which the contracting states have notified each other that the formalities constitutionally required in their respective countries have been complied with.

TEXT

Le Gouvernement du Royaume des Pays-Bas
et
le Gouvernement de la République française,
désireux de remplacer par une nouvelle convention la Convention signée à Paris le 30 décembre 1949 pour éviter les doubles impositions en matière d'impôts sur les revenus et régler certaines autres questions en matière fiscale,
sont convenus des dispositions suivantes:

CHAPITRE I
CHAMP D'APPLICATION DE LA CONVENTION

Article 1
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents de l'un des Etats ou de chacun des deux Etats.

Article 2
Impôts visés

1. La présente Convention s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte de chacun des Etats, de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.
2. Sont considérés comme impôts sur le revenu et sur la fortune les impôts perçus sur le revenu total, sur la fortune totale, ou sur des éléments du revenu ou de la fortune, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, ainsi que les impôts sur les plus-values.
3. Les impôts auxquels s'applique la Convention sont:

a) en ce qui concerne les Pays-Bas:
— l'impôt sur le revenu (de inkomstenbelasting);
— l'impôt sur les traitements, salaires, pensions (de loonbelasting);
— l'impôt des sociétés (de vennootschapsbelasting);
— l'impôt sur les dividendes (de dividendbelasting);
— l'impôt sur la fortune (de vermogensbelasting);
(ci-après dénommés: «l'impôt néerlandais»);
b) en ce qui concerne la France:
— l'impôt sur le revenu;
— l'impôt sur les sociétés;
— la contribution des patentes en ce qui concerne l'article 8;
y compris toutes retenues à la source, tous précomptes ou avances décomptés sur les impôts visés ci-dessus;
(ci-après dénommés: «l'impôt français»).
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 se communiqueront les modifications importantes apportées à leurs législations fiscales respectives.

CHAPITRE II
DEFINITIONS

Article 3
Définitions générales

1. Au sens de la présente Convention:
a) le terme «Etat» désigne, suivant le contexte, les Pays-Bas ou la France;
b) le terme «Pays-Bas» désigne la partie du Royaume des Pays-Bas qui est située en Europe et les zones situées hors des eaux territoriales du Royaume des Pays-Bas sur lesquelles, en conformité avec le droit international et selon sa législation, le Royaume des Pays-Bas peut exercer les droits relatifs au lit de la mer, au sous-sol marin et à leurs ressources naturelles;
c) le terme «France» désigne les départements européens et les départements d'outre-mer (Guadeloupe, Guyane, Martinique et Réunion) de la République française et les zones situées hors des eaux territoriales de la France sur lesquelles, en conformité avec le droit international et selon sa législation, la France peut exercer les droits relatifs au lit de la mer, au sous-sol marin et à leurs ressources naturelles;
d) le terme «personne» comprend les personnes physiques et les sociétés;
e) le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition;
f) les expressions «entreprise de l'un des Etats» et «entreprise de l'autre Etat» désignent respectivement une entreprise exploitée par un résident de l'un des Etats et une entreprise exploitée par un résident de l'autre Etat;
g) l'expression «autorité compétente» désigne:
(1) aux Pays-Bas: le Ministre des Finances ou son représentant dûment autorisé;
(2) en France: le Ministre de l'Economie et des Finances ou son représentant dûment autorisé.
2. Pour l'application de la Convention par chacun des Etats, toute expression qui n'est pas autrement définie a le sens qui lui est attribué par la législation de cet Etat régissant les impôts faisant l'objet de la Convention, à moins que le contexte n'exige une interprétation différente.

Article 4
Domicile fiscal

1. Au sens de la présente Convention, l'expression «résident de l'un des Etats»

désigne 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 de nature analogue.

2. Aux fins de la présente Convention, les membres d'une représentation diplomatique ou consulaire de l'un des Etats dans l'autre Etat ou dans un Etat tiers qui possèdent la nationalité de l'Etat accréditant ou d'envoi sont considérés comme des résidents de cet Etat s'ils y sont soumis aux mêmes obligations concernant les impôts sur le revenu et sur la fortune que les résidents dudit Etat.

3. Lorsque, selon la disposition du paragraphe 1, une personne physique est considérée comme résidente de chacun des Etats, le cas est résolu d'après les règles suivantes:

a) cette personne est considérée comme résidente de l'Etat où elle dispose d'un foyer d'habitation permanent. Lorsqu'elle dispose d'un foyer d'habitation permanent dans chacun des Etats, elle est considérée comme résidente de l'Etat avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

b) si l'Etat où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou qu'elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats, elle est considérée comme résidente de l'Etat où elle séjourne de façon habituelle;

c) si cette personne séjourne de façon habituelle dans chacun des Etats ou qu'elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme résidente de l'Etat dont elle possède la nationalité;

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

4. Lorsque, selon la disposition du paragraphe 1, une personne autre qu'une personne physique est considérée comme résidente de chacun des Etats, elle est réputée résident de l'Etat où se trouve son siège de direction effective.

Article 5
Etablissement stable

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, une carrière ou tout autre lieu d'extraction de ressources naturelles;
g) un chantier de construction ou de montage dont la durée dépasse douze mois.

3. On 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 uti-

lisée, 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.

4. Une personne agissant dans l'un des Etats pour le compte d'une entreprise de l'autre Etat — autre qu'un agent jouissant d'un statut indépendant, visé au paragraphe 6 — 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.

5. Une entreprise d'assurance de l'un des Etats 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 au paragraphe 6 ci-après, elle perçoit des primes sur le territoire de ce dernier Etat ou assure des risques situés sur ce territoire.

6. On ne considère pas qu'une entreprise de l'un des Etats a un établissement stable dans l'autre Etat 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.

7. Le fait qu'une société qui est un résident de l'un des Etats contrôle ou soit contrôlée par une société qui est un résident de l'autre Etat 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.

CHAPITRE III
IMPOSITION DES REVENUS

Article 6
Revenus immobiliers

1. Les revenus provenant de biens immobiliers y compris les revenus des exploitations agricoles ou forestières sont imposables dans l'Etat où ces biens sont situés.

2. L'expression «biens immobiliers» est définie conformément au droit de l'Etat où les biens considérés sont situés. L'expression englobe en tout cas les accessoires, le cheptel mort ou vif des exploitations 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 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. La disposition du paragraphe 1 s'applique 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.

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 7
Bénéfices des entreprises

1. Les bénéfices d'une entreprise de l'un des Etats ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce son activité dans l'autre Etat 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 im-

posables dans l'autre Etat mais uniquement dans la mesure où ils sont imputables audit établissement stable.

2. Lorsqu'une entreprise de l'un des Etats exerce son activité dans l'autre Etat par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chacun des 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 établissement stable, soit ailleurs.

4. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

5. 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.

6. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

Article 8

Navigation maritime, intérieure et aérienne

1. Par dérogation aux dispositions de l'article 7:

a) les bénéfices qu'un résident de l'un des Etats tire de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans cet Etat;

b) les bénéfices qu'un résident de l'un des Etats tire de l'exploitation de bateaux servant à la navigation intérieure ne sont imposables que dans cet Etat.

2. Nonobstant les dispositions du paragraphe 1, les bénéfices susvisés peuvent aussi être imposés dans l'autre Etat, si le siège de la direction effective de l'entreprise est situé dans cet autre Etat.

3. Si le siège de la 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 où se trouve le port d'attache de ce navire ou de ce bateau ou, à défaut de port d'attache, dans l'Etat dont l'exploitant du navire ou du bateau est un résident.

4. Les paragraphes 1 et 2 s'appliquent par analogie à la contribution des patentes, perçue sur une autre base que le bénéfice commercial.

Article 9

Entreprises associées

Lorsque

a) une entreprise de l'un des Etats participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre Etat ou que

b) les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'un des Etats et d'une entreprise de l'autre Etat,

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 entre 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
Dividendes

1. Les dividendes payés par une société qui est un résident de l'un des Etats à un résident de l'autre Etat sont imposables dans cet autre Etat.

2. Toutefois, ces dividendes peuvent être imposés dans l'Etat dont la société qui paie les dividendes est un résident, et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder:

a) 5 pour cent du montant brut des dividendes si le bénéficiaire est une société par actions ou à responsabilité limitée qui dispose directement d'au moins 25 pour cent du capital de la société qui paie les dividendes;

b) 15 pour cent du montant brut des dividendes dans tous les autres cas.

3. a) Les dividendes payés par une société, résidente de France, qui donneraient droit à un avoir fiscal s'ils étaient reçus par une personne qui est un résident de France, ouvrent droit, lorsqu'ils sont payés à des bénéficiaires qui sont des résidents des Pays-Bas à un paiement brut du Trésor français d'un montant égal à cet avoir fiscal, sous réserve de la déduction de l'impôt prévu au paragraphe 2, alinéa b), ci-dessus.

b) La disposition de l'alinéa a) s'appliquera aux bénéficiaires ci-après, qui sont des résidents des Pays-Bas:

(i) les personnes physiques assujetties à l'impôt néerlandais à raison du montant total des dividendes distribués par la société qui est un résident de France et du paiement brut visé à l'alinéa a) afférent à ces dividendes;

(ii) les sociétés assujetties à l'impôt néerlandais à raison du montant total des dividendes distribués par la société qui est un résident de France et du paiement brut visé à l'alinéa a) afférent à ces dividendes;

(iii) les sociétés et les fonds d'investissement, n'entrant pas dans les prévisions de l'alinéa (ii) ci-dessus, qui satisfont aux conditions fixées d'un commun accord entre les autorités compétentes.

4. A moins qu'elle ne bénéficie du paiement prévu au paragraphe 3, une personne qui est un résident des Pays-Bas et qui reçoit des dividendes distribués par une société, résidente de France, peut demander le remboursement du précompte afférent à ces dividendes acquitté, le cas échéant, par la société distributrice, sous réserve de la déduction de l'impôt prévu au paragraphe 2 ci-dessus.

5. a) Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de mine, 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 dont la société distributrice est un résident.

b) Sont également considérés comme des dividendes payés par une société qui est un résident de France le paiement brut représentatif de l'avoir fiscal visé au paragraphe 3 et les sommes brutes remboursées au titre du précompte visées au paragraphe 4, qui sont afférents aux dividendes payés par cette société.

6. Les dispositions des paragraphes 1 à 4 ne s'appliquent pas lorsque le bénéficiaire des dividendes, résident de l'un des Etats, a, dans l'autre Etat 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, les dispositions de

l'article 7 sont applicables.
7. Lorsqu'une société qui est un résident de l'un des Etats tire des bénéfices ou des revenus de l'autre Etat, cet autre Etat ne peut percevoir aucun impôt sur les dividendes payés par la société aux personnes qui ne sont pas des résidents de cet autre Etat, ni prélever aucun impôt, au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes payés ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat.

Article 11
Intérêts

1. Les intérêts provenant de l'un des Etats et payés à un résident de l'autre Etat sont imposables dans cet autre Etat.
2. Toutefois, ces intérêts peuvent être imposés dans l'Etat d'où ils proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 10 pour cent du montant des intérêts.
Par dérogation à la disposition de la phrase précédente, les intérêts des obligations émises en France avant le 1er janvier 1965 peuvent être soumis dans cet Etat à un impôt de 12 pour cent.
3. Par dérogation aux dispositions du paragraphe 2, les intérêts mentionnés au paragraphe 1 ne peuvent pas être imposés dans l'Etat d'où ils proviennent, lorsqu'ils
a) sont payés en vertu d'un contrat de financement ou de paiement différé afférent à des ventes d'équipements industriels, commerciaux ou scientifiques ou à la construction d'installations industrielles, commerciales ou scientifiques ou d'ouvrages publics;
b) sont payés sur un prêt de n'importe quelle nature consenti par un établissement bancaire;
c) sont payés à titre d'indemnité de retard, à la suite d'une sommation ou d'une action en justice, sur une créance pour laquelle un intérêt n'avait pas été stipulé.
4. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assortis 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 d'où proviennent les revenus.
5. Les dispositions des paragraphes 1, 2 et 3 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident de l'un des Etats, a, dans l'autre Etat d'où proviennent les intérêts, un établissement stable auquel se rattache effectivement la créance génératrice des intérêts. Dans ce cas, les dispositions de l'article 7 sont applicables.
6. Les intérêts sont considérés comme provenant de l'un des Etats lorsque le débiteur est cet Etat lui-même, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident de l'un des Etats, a, dans l'un des Etats, un établissement stable pour lequel l'emprunt générateur des intérêts a été contracté et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat où l'établissement stable est situé.
7. 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 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 excé-

dentaire des paiements reste imposable conformément à la législation de chacun des Etats et compte tenu des autres dispositions de la présente Convention.

Article 12
Redevances

1. Les redevances provenant de l'un des Etats et payées à un résident de l'autre Etat ne sont imposables que dans cet autre Etat.

2. 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 et les films et bandes magnétiques de télévision ou de radio-diffusion, 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 et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

3. La disposition du paragraphe 1 ne s'applique pas lorsque le bénéficiaire des redevances, résident de l'un des Etats, exerce dans l'autre Etat d'où proviennent les redevances, soit une activité commerciale par l'intermédiaire d'un établissement stable, soit une profession libérale au moyen d'une base fixe et que le droit ou le bien générateur des redevances s'y rattache effectivement. Dans cette hypothèse, les dispositions de l'article 7 ou de l'article 14 sont, suivant les cas, applicables.

4. 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 des redevances payées, compte tenu de la prestation pour laquelle elles sont versées, 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 chacun des Etats et compte tenu des autres dispositions de la présente Convention.

Article 13
Gains en capital

1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, ainsi que les gains provenant de l'aliénation de parts ou de droits analogues dans une société dont l'actif est composé principalement de biens immobiliers sont imposables dans l'Etat où ces biens sont situés.

2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise de l'un des Etats a dans l'autre Etat, ou de biens mobiliers constitutifs d'une base fixe dont dispose un résident de l'un des Etats dans l'autre Etat pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre Etat.

3. Par dérogation à la disposition du paragraphe 2:

a) les gains qu'un résident de l'un des Etats tire de l'aliénation de navires ou d'aéronefs exploités en trafic international et de bateaux servant à la navigation intérieure ainsi que de biens mobiliers affectés à l'exploitation de tels navires, aéronefs et bateaux, ne sont imposables que dans cet Etat;

b) nonobstant la disposition de l'alinéa a), les gains susvisés peuvent aussi être imposés dans l'autre Etat, si le siège de la direction effective de l'entreprise est situé dans cet autre Etat.

4. Les gains provenant de l'aliénation de tous biens autres que ceux qui sont mentionnés aux paragraphes précédents ne sont imposables que dans l'Etat dont le cédant est un résident.

5. Nonobstant la disposition du paragraphe 4, chacun des deux Etats conserve le droit de percevoir, conformément à sa propre législation, un impôt sur les gains provenant de l'aliénation d'actions, parts ou bons de jouissance constituant tout ou partie d'une participation substantielle dans une société par actions ou à responsabilité limitée qui est un résident de cet Etat, lorsque ces gains sont réalisés par une personne physique qui est un résident de l'autre Etat, à condition toutefois que cette personne:

— ait la nationalité du premier Etat sans avoir la nationalité de l'autre Etat; et
— ait été un résident du premier Etat pendant une période quelconque au cours des cinq années précédant l'aliénation.

Article 14
Professions indépendantes

1. Les revenus qu'un résident de l'un des Etats tire 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 d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base, les revenus sont imposables dans l'autre Etat mais uniquement dans la mesure où ils sont imputables à ladite base fixe.

2. L'expression «professions libérales» comprend en particulier 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 15
Professions dépendantes

1. Sous réserve des dispositions des articles 16, 19 et 20, les salaires, traitements et autres rémunérations similaires qu'un résident de l'un des Etats 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. 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 de l'un des Etats reçoit au titre d'un emploi salarié exercé dans l'autre Etat 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; et

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) la charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat.

3. Nonobstant les dispositions précédentes du présent article, les rémunérations qu'un résident de l'un des Etats reçoit au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef en trafic international, ou à bord d'un bateau servant à la navigation intérieure, ne sont imposables que dans cet Etat.

Article 16
Administrateurs, directeurs (bestuurders) et commissaires (commissarissen) de sociétés

1. Les tantièmes, jetons de présence et autres rémunérations reçus par un résident des Pays-Bas qui est membre du Conseil d'administration ou de surveillance d'une société par actions ou d'une société à responsabilité limitée résidente de France, sont imposables en France.
2. Les tantièmes, jetons de présence et autres rémunérations reçus par un résident de France qui est commissaire (commissaris) ou directeur (bestuurder) d'une société anonyme ou d'une société à responsabilité limitée résidente des Pays-Bas, sont imposables aux Pays-Bas.
3. Nonobstant les dispositions des paragraphes 1 et 2, les rémunérations susvisées qui sont reçues par des personnes exerçant des fonctions réelles et permanentes dans un établissement stable situé dans l'Etat autre que celui dont la société est résidente et qui sont supportées comme telles par cet établissement stable sont imposables dans cet autre Etat.

Article 17
Artistes et sportifs

1. Nonobstant les dispositions des articles 14 et 15, les revenus que les professionnels du spectacle, tels les artistes de théâtre, de cinéma, de la radiodiffusion ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité sont imposables dans l'Etat où ces activités sont exercées.
2. Nonobstant toute autre disposition de la présente Convention, une société de l'un des Etats qui fournit dans l'autre Etat les services d'une personne visée au paragraphe 1, est imposable dans cet autre Etat sur les bénéfices qu'elle retire de cette prestation de services, sauf si cette société établit qu'elle n'est pas contrôlée directement ou indirectement par cette personne.

Article 18
Pensions

Sous réserve des dispositions du paragraphe 1 de l'article 19, les pensions et autres rémunérations similaires, versées à un résident de l'un des Etats au titre d'un emploi antérieur, ne sont imposables que dans cet Etat.

Article 19
Fonctions publiques

1. Les rémunérations, y compris les pensions, versées par l'un des Etats ou l'une de ses subdivisions politiques ou collectivités locales, ou un établissement public de cet Etat, soit directement soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus à cet Etat ou à cette subdivision ou collectivité, ou à cet établissement public, dans l'exercice de fonctions de caractère public, sont imposable dans cet Etat.
2. Les dispositions des articles 15, 16 et 18 s'appliquent aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par l'un des Etats ou l'une de ses subdivisions politiques ou collectivités locales ou l'un de ses établissements publics.

Article 20
Professeurs

1. Les rémunérations que les professeurs et autres membres du personnel enseignant, résidents de l'un des Etats, qui enseignent dans une université ou toute autre institution d'enseignement de l'autre Etat, reçoivent pour cet enseignement ne sont imposables que dans le premier Etat pendant une période n'excédant pas deux années du

début de leur enseignement.
2. Cette disposition est également applicable aux rémunérations qu'une personne physique, résidente de l'un des Etats reçoit pour des travaux de recherche exécutés dans l'autre Etat si ces travaux ne sont pas entrepris principalement en vue de la réalisation d'un avantage particulier bénéficiant à une entreprise ou à une personne, mais au contraire dans l'intérêt public.

Article 21
Etudiants et stagiaires

1. Les sommes qu'un étudiant ou un stagiaire qui est, ou qui était auparavant, un résident de l'un des Etats et qui séjourne dans l'autre Etat 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.
2. Il en est de même de la rémunération qu'un tel étudiant ou stagiaire reçoit au titre d'un emploi exercé dans l'Etat où il poursuit ses études ou sa formation à la condition que cet emploi soit directement lié à ses études ou à sa formation et que sa durée ne dépasse pas 183 jours au cours d'une même année d'imposition.

Article 22
Autres revenus

Les éléments du revenu d'un résident de l'un des Etats, auxquels les articles précédents de la présente Convention ne s'appliquent pas, ne sont imposables que dans cet Etat.

CHAPITRE IV

Article 23
Imposition de la fortune

1. La fortune constituée par des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, est imposable dans l'Etat où ces biens sont situés.
2. La fortune constituée par des biens mobiliers faisant partie de l'actif d'un établissement stable d'une entreprise ou par des biens mobiliers constitutifs d'une base fixe servant à l'exercice d'une profession libérale est imposable dans l'Etat où est situé l'établissement stable ou la base fixe.
3. Par dérogation à la disposition du paragraphe 2:
a) les navires et les aéronefs exploités en trafic international et les bateaux servant à la navigation intérieure, ainsi que les biens mobiliers affectés à l'exploitation de tels navires, aéronefs et bateaux, ne sont imposables que dans l'Etat dont l'exploitant est un résident;
b) nonobstant la disposition de l'alinéa a), les navires, aéronefs, bateaux et biens mobiliers susvisés peuvent aussi être imposés dans l'autre Etat, si le siège de la direction effective de l'entreprise est situé dans cet autre Etat.
4. Tous les autres éléments de la fortune d'un résident de l'un des Etats ne sont imposables que dans cet Etat.

CHAPITRE V

Article 24
Dispositions pour éliminer les doubles impositions

Il est entendu que la double imposition sera évitée de la façon suivante:
A. En ce qui concerne les Pays-Bas:
1. Pour déterminer les impôts dus par leurs résidents, les Pays-Bas pourront comprendre dans la base sur laquelle ces impôts sont prélevés les éléments du revenu ou de la fortune qui, conformément aux dispositions de la présente Convention, sont imposables en France.
2. Toutefois, sous réserve des dispositions de la législation interne néerlandaise con-

cernant la compensation des pertes, les Pays-Bas déduiront du montant des impôts calculés selon le paragraphe 1, un montant égal à la fraction de ces impôts correspondant au rapport existant entre le montant des éléments du revenu ou de la fortune compris dans la base imposable visée au paragraphe 1 et imposables en France en vertu des articles 6, 7, 8 paragraphe 2, 10 paragraphe 6, 11 paragraphe 5, 12 paragraphe 3, 13 paragraphes 1, 2 et 3 alinéa b), 15 paragraphe 1, 19, 23 paragraphes 1, 2 et 3 alinéa b) de la présente Convention et le montant du revenu total ou de la fortune totale retenue comme base d'imposition en application dudit paragraphe 1.

3. En ce qui concerne les éléments du revenu compris dans la base imposable visée au paragraphe 1 et qui sont imposables en France en vertu des articles 10 paragraphe 2, 11 paragraphe 2, 16 et 17, les Pays-Bas accordent, sur l'impôt néerlandais ainsi calculé, une réduction égale au moins élevé des montants suivants:

a) un montant égal à l'impôt prélevé en France soit en vertu des articles 16 et 17, soit dans la limite des taux prévus aux articles 10 paragraphe 2 et 11 paragraphe 2;

b) un montant égal à la fraction de l'impôt néerlandais calculé suivant le paragraphe 1 du présent article, qui correspond au rapport existant entre le montant desdits éléments du revenu et le montant total du revenu qui constitue la base imposable visée audit paragraphe 1.

B. En ce qui concerne la France:

a) Les revenus autres que ceux visés à l'alinéa b) ci-dessous sont exonérés des impôts français visés à l'article 2 paragraphe 3 alinéa b) lorsque ces revenus sont imposables aux Pays-Bas en vertu de la présente Convention.

b) En ce qui concerne les revenus visés aux articles 8, 10, 11, 16 et 17 qui ont supporté l'impôt néerlandais conformément aux dispositions de ces articles, la France accorde aux personnes qui sont résidentes de France et qui perçoivent de tels revenus, un crédit d'impôt d'un montant égal à l'impôt néerlandais.

Ce crédit d'impôt, qui ne peut excéder le montant de l'impôt perçu en France sur les revenus en cause, s'impute sur les impôts visés à l'article 2 paragraphe 3 alinéa b) dans les bases desquels lesdits revenus sont inclus.

c) Nonobstant les dispositions des alinéas a) et b), l'impôt français peut être calculé sur le revenu imposable en France en vertu de la présente Convention au taux correspondant au montant global du revenu imposable conformément à la législation française.

CHAPITRE VI
DISPOSITIONS SPECIALES

Article 25
Non-discrimination

1. Les nationaux de l'un des Etats, qu'ils soient des résidents dudit Etat ou non, ne sont soumis dans l'autre Etat 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. Le terme «nationaux» désigne:

a) toutes les personnes physiques qui possèdent la nationalité de l'un des deux Etats;

b) toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans l'un des deux Etats.

3. Les apatrides qui sont résidents de l'un des Etats ne sont soumis dans l'un et l'autre de ces Etats à aucune imposition ou obli-

gation y relative qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les nationaux de l'Etat concerné se trouvant dans la même situation.

4. L'imposition d'un établissement stable qu'une entreprise de l'un des Etats a dans l'autre Etat 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 même activité. Cette disposition ne peut être interprétée comme obligeant l'un des Etats à accorder aux résidents de l'autre Etat 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.

5. Les entreprises de l'un des Etats, dont le capital est en tout ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat, ne sont soumises dans le premier Etat 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.

6. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

Article 26

Application de la Convention

Les autorités compétentes des Etats déterminent les modalités d'application de la présente Convention.

Article 27

Procédure amiable

1. Lorsqu'un résident de l'un des Etats estime que les mesures prises par l'un des Etats ou par chacun des deux Etats 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, soumettre son cas à l'autorité compétente de l'Etat dont il est résident. Le cas devra être soumis dans les trois ans qui suivront la première notification de la mesure qui entraîne une imposition non conforme à la Convention.

2. Cette autorité compétente s'efforcera, si la réclamation lui paraît 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, en vue d'éviter une imposition non conforme à la Convention. L'accord sera appliqué quels que soient les délais prévus par les législations nationales des deux Etats.

3. Les autorités compétentes des Etats s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peut donner lieu l'application de la Convention. Elles peuvent, en particulier, se consulter en vue de parvenir à un accord:

a) pour que les bénéfices revenant à une entreprise de l'un des Etats et à son établissement stable dans l'autre Etat soient imputés d'une manière identique;

b) pour que les revenus revenant à une entreprise de l'un des Etats et à toute personne associée visée à l'article 9 soient attribués de manière identique.

Ces autorités peuvent aussi se concerter en vue d'éviter la double imposition dans les cas non prévus par la Convention.

4. Les autorités compétentes des Etats peuvent communiquer directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents.

Article 28

Echange de renseignements

1. Les autorités compétentes des deux

Etats échangeront les renseignements d'ordre fiscal dont elles disposent normalement et qui seraient nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des deux Etats relatives aux impôts visés par la Convention ainsi qu' à la répression des fraudes fiscales. Tout renseignement ainsi échangé sera tenu secret et ne pourra être communiqué qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la présente Convention.

2. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à l'un des Etats l'obligation:

a) de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat;

b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat;

c) de transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

Article 29

Fonctionnaires diplomatiques et consulaires

1. 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.

2. La Convention ne s'applique pas aux organisations internationales, à leurs organes et fonctionnaires, ni aux personnes qui sont membres de missions diplomatiques ou consulaires d'Etats tiers, lorsqu'ils se trouvent sur le territoire de l'un des Etats et ne sont pas traités comme des résidents dans l'un ou l'autré Etat en matière d'impôts sur le revenu et sur la fortune.

Article 30

Extension territoriale

1. La présente Convention peut être étendue, telle quelle ou avec les modifications nécessaires:

a) à Surinam et aux Antilles néerlandaises ou à l'un seulement de ces pays;

b) aux territoires d'outre-mer de la République française,

lorsque ces pays ou territoires prélèvent des impôts de caractère analogue à ceux auxquels s'applique la Convention. Une telle extension prend effet à partir d'une date, avec les modifications et dans les conditions, y compris les conditions relatives à la cessation d'application, qui sont fixées d'un commun accord par échange de notes diplomatiques.

2. A moins que les deux Etats n'en soient convenus autrement, lorsque la Convention sera dénoncée par l'un d'eux en vertu de l'article 32, elle cessera de s'appliquer, dans les conditions prévues à cet article, à tout pays ou territoire auquel elle a été étendue conformément au présent article.

CHAPITRE VII
DISPOSITIONS FINALES

Article 31

Entrée en vigueur

1. La présente Convention sera approuvée conformément aux dispositions constitutionnelles en vigueur dans chacun des Etats. Elle entrera en vigueur le trentième jour suivant celui au cours duquel aura eu lieu 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) aux Pays-Bas:

(i) en ce qui concerne l'impôt sur les dividendes, aux dividendes visés à l'article 10 dont la mise en paiement interviendra à compter de la date de l'entrée en vigueur;

(ii) en ce qui concerne les autres impôts, aux revenus et à la fortune afférents aux années et périodes fiscales commençant le premier janvier ou après le premier janvier de l'année au cours de laquelle interviendra l'échange des notifications;

b) en France:

(i) en ce qui concerne d'une part, les impôts perçus par voie de retenue à la source sur les dividendes et les intérêts, d'autre part, les paiements prévus à l'article 10 paragraphes 3 et 4, aux produits mis en paiement à partir de la date de l'entrée en vigueur;

(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 postérieures.

3. L'entrée en vigueur de la présente Convention mettra fin à la Convention entre la France et les Pays-Bas pour éviter les doubles impositions en matière d'impôts sur les revenus et régler certaines autres questions en matière fiscale, signée à Paris le 30 décembre 1949 telle qu'elle a été modifiée par l'Avenant à cette Convention, signé à Paris le 24 juillet 1952.

Les dispositions de cette Convention cesseront de s'appliquer à compter de la date à laquelle les dispositions correspondantes de la présente Convention s'appliqueront pour la première fois conformément au paragraphe 2 ci-dessus.

Article 32
Dénonciation

La présente Convention demeurera en vigueur tant qu'elle n'aura pas été dénoncée par l'un des Etats. Chacun des Etats peut dénoncer la Convention par voie diplomatique avec un préavis d'au moins six mois avant la fin de chaque année civile et à partir de l'année 1976.

Dans ce cas, la Convention cessera d'être applicable:

a) aux Pays-Bas: aux revenus et à la fortune afférents aux années et périodes fiscales commençant après la fin de l'année civile dans laquelle la dénonciation aura été notifiée;

b) en France: aux revenus afférents à toute année d'imposition suivant l'année au cours de laquelle la dénonciation aura été notifiée.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé la présente Convention.

FAIT à Paris, le seize mars 1973, en deux exemplaires en langues néerlandaise et française, les deux textes faisant également foi.

Pour le Gouvernement du
Royaume des Pays-Bas

(s.) J. A. DE RANITZ

Pour le Gouvernement de la
République française

(s.) GILBERT DE CHAMBRUN

Protocole

Au moment de procéder à la signature de la Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune, conclue ce jour entre le Gouvernement du Royaume des Pays-Bas et le Gouvernement de la République française, les soussignés sont convenus des dispositions suivantes qui forment partie intégrante de la Convention.

I
Ad article 4

Une personne physique qui demeure à bord d'un navire ou d'un bateau, sans avoir de domicile reél dans l'un des Etats, sera considérée comme résidente de l'Etat où se trouve le port d'attache de ce navire ou de ce bateau.

II
Ad article 6

La France se réserve le droit de considérer, conformément aux dispositions de sa loi interne, comme biens immobiliers, pour l'application des articles 6 et 13 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.

III
Ad article 10

Il est entendu que pour l'application du paragraphe 7 les sociétés résidentes des Pays-Bas qui possèdent en France un établissement stable ne sont pas soumises à l'impôt de distribution visé à l'article 115 quinquiès du Code général des Impôts.

IV
Ad articles 10, 11 et 12

Pour l'application des dispositions des articles 10, 11 et 12, les demandes de remboursement doivent être faites à l'autorité compétente de l'Etat qui a perçu l'impôt, dans le délai de trois ans après l'expiration de l'année civile dans laquelle l'impôt a été perçu.

V
Ad article 24

Il est entendu que pour autant qu'il s'agit de l'impôt néerlandais sur le revenu ou de l'impôt néerlandais des sociétés, la base visée à l'article 24, paragraphe 1, est le total des revenus nets („onzuivere inkomen") ou le bénéfice („winst") au sens de la législation néerlandaise concernant l'impôt sur le revenu ou l'impôt des sociétés respectivement.

FAIT à Paris, le seize mars 1973, en deux exemplaires, en langues néerlandaise et française, les deux textes faisant également foi.

Pour le Gouvernement du
Royaume des Pays-Bas

(s.) J. A. DE RANITZ

Pour le Gouvernement de la
République française

(s.) GILBERT DE CHAMBRUN

Convention entre le Royaume de Belgique et l'Etat d'Israël tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune

(Traduction)

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVII, No. 10, October/octobre 1973
INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION
Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty was signed between Belgium and Israel on July 13, 1972. The treaty shall enter into force on the fifteenth day after the date of the exchange of the instruments of ratification. The instruments of ratification have not yet been exchanged.

TEXT

Le Gouvernement de la Belgique,
et
le Gouvernement d'Israël.
Désireux de conclure une Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune.
Sont convenus des dispositions suivantes:

I. CHAMP D'APPLICATION DE LA CONVENTION

Article 1er.
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2.
Impôts visés

§ 1er. La présente Convention s'applique aux impôts sur le revenu et sur la fortune ou le patrimoine 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.

§ 2. Sont considérés comme impôts sur le revenu et sur la fortune ou le patrimoine, les impôts perçus sur le revenu total et sur la fortune ou le patrimoine total, ou sur des éléments du revenu, de la fortune ou du patrimoine, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, les impôts sur le montant des salaires payés par les entreprises ainsi que les impôts sur les plus-values.

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

(a) en Israël:

(i) l'impôt sur le revenu (y compris l'impôt sur les gains en capital);

(ii) l'impôt des sociétés;

(iii) la contribution de sécurité;
(iv) les impôts nationaux sur la propriété;
(v) l'impôt sur les gains provenant de la vente des terrains ou la loi portant imposition des plus-values de réalisation de terrains;

(ci-après dénommés «l'impôt israélien»).

(b) en Belgique:

(i) l'impôt des personnes physiques;
(ii) l'impôt des sociétés;
(iii) l'impôt des personnes morales;
(iv) l'impôt des non-résidents;
(v) les précomptes et compléments de précomptes; et
(vi) les décimes et centimes additionnels aux impôts visés sub (i) à (v) ci-dessus, y compris la taxe communale additionnelle à l'impôt des personnes physiques;

(ci-après dénommés «l'impôt belge»).

§ 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 régulièrement, les modifications importantes apportées à leurs législations fiscales respectives.

II. DEFINITIONS

Article 3.
Définitions générales

§ 1er. Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:

(a) le terme «Belgique», employé dans un sens géographique, désigne le territoire du Royaume de Belgique;

(b) le terme «Israël», employé dans un sens géographique, désigne le territoire de l'Etat d'Israël;

(c) les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la Belgique ou Israël;

(d) le terme «impôt» désigne, suivant le contexte, l'impôt belge ou l'impôt israélien;

(e) le terme «personne» comprend les personnes physiques et les sociétés;

(f) le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition dans l'Etat contractant dont elle est un résident;

(g) les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant;

(h) l'expression «autorité compétente» désigne:

a) en ce qui concerne la Belgique, l'autorité compétente suivant la législation belge et,

b) en ce qui concerne Israël, le Ministre des Finances ou son représentant autorisé.

§ 2. Pour l'application de la présente Convention par un Etat contractant, toute expression qui n'est pas autrement définie dans la présente Convention a le sens qui lui est attribué par la législation dudit Etat régissant les impôts auxquels cette Convention s'applique, à moins que le contexte n'exige une interprétation différente.

Article 4.
Domicile fiscal

§ 1er. Au sens de la présente Convention, l'expression «résident d'un Etat contractant» désigne 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 de nature

analogue. Une société, et en ce qui concerne la Belgique une société autre qu'une société par actions, qui a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques est considérée comme étant assujettie à l'impôt au sens de la phrase précédente, si elle y est assujettie à défaut d'une telle option.

§ 2. Lorsque, selon les dispositions du paragraphe 1er, une personne physique est considérée comme résidente de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:

(a) cette personne est considérée comme résidente 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 résidente de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

(b) si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé ou qu'elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme résidente 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 résidente 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 compétentes des Etats contractants tranchent la question de commun accord.

§ 3. Lorsque, selon la disposition du paragraphe 1er, une personne autre qu'une personne physique est considérée comme résidente de chacun des Etats contractants, elle est réputée résidente de l'Etat contractant où se trouve son siège de direction effective.

Article 5.
Etablissement stable

§ 1er. 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, une carrière ou tout autre lieu d'exploitation de ressources naturelles;

(g) une plantation;

(h) un chantier de construction ou de montage dont la durée dépasse douze mois.

§ 3. On 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, pour l'entreprise, aux seules fins de publicité, de fournitures d'informations, de recherches, scientifiques ou d'activités ana-

logues qui ont un caractère préparatoire ou auxiliaire.

§ 4. Une personne autre qu'un agent jouissant d'un statut indépendant visé au paragraphe 5 qui agit dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme constituant un établissement stable dans le premier Etat contractant 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.

Toutefois, une entreprise d'assurances d'un Etat contractant est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant où, par l'intermédiaire d'un représentant visé à l'alinéa précédent ou d'un agent jouissant d'un statut indépendant et disposant de pouvoirs, qu'il exerce habituellement, lui permettant de conclure des contrats au nom de l'entreprise, elle perçoit des primes sur le territoire de cet autre Etat ou assure des risques situés sur ce territoire.

§ 5. 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 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.

§ 6. Le fait qu'une société résidente d'un Etat contractant contrôle ou est contrôlée par une société résidente 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.

III. IMPOSITION DES REVENUS

Article 6.
Revenus de biens immobiliers

§ 1er. 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 en tout cas les accessoires, le cheptel mort ou vif des exploitations 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 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. La disposition du paragraphe 1er s'applique aux revenus provenant de l'exploitation ou de la jouissance directes, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers.

§ 4. Les dispositions des paragraphes 1er 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 7.
Bénéfices des entreprises

§ 1er. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établisse-

ment 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 ils sont imputables audit établissement stable.

§ 2. Sans préjudice de l'application du paragraphe 3, 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 agissant en toute indépendance.

§ 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 contractant où est situé cet établissement stable, soit ailleurs.

§ 4. A défaut de comptabilité régulière ou d'autres éléments probants permettant de déterminer le montant des bénéfices d'une entreprise d'un Etat contractant, qui est imputable à son établissement stable situé dans l'autre Etat, l'impôt peut notamment être établi dans cet autre Etat conformément à sa propre législation, compte tenu des bénéfices normaux d'entreprises similaires du même Etat se livrant à la même activité ou à des activités similaires dans des conditions identiques ou similaires. Toutefois, si cette méthode entraîne une double imposition des mêmes bénéfices, les autorités compétentes des deux Etats se concertent en vue d'éviter cette double imposition.

§ 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.

§ 7. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

Article 8.
Navigation maritime ou aérienne

§ 1er. Par dérogation à l'article 7, paragraphes 1er à 6, les bénéfices provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

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

§ 3. L'expression «trafic international» comprend le trafic entre des lieux situés dans un Etat contractant au cours d'un voyage s'étendant au territoire de plus d'un Etat.

Article 9.
Entreprises interdépendantes

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 entre 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.
Dividendes

§ 1er. Les dividendes attribués par une société qui est un 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 attribue les dividendes est un résident et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 pour cent 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 ou bons de jouissance, parts de fondateurs ou autres parts bénéficiaires, à l'exception des créances, ainsi que les revenus d'autres parts sociales soumis au même régime que les revenus d'actions par la législation fiscale de l'Etat contractant dont la société distributrice est un résident. Ce terme désigne également les revenus — même attribués sous la forme d'intérêts — imposables au titre de revenus de capitaux investis par les associés dans les sociétés autres que les sociétés par actions, résidentes de la Belgique.

§ 4. Les dispositions des paragraphes 1er 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, les dispositions de l'article 7 sont applicables; elles ne font pas obstacle à la perception des impôts dus à la source sur ces dividendes, conformément à la législation de cet autre Etat contractant.

§ 5. Lorsqu'une société résidente d'un Etat contractant tire des bénéfices ou des revenus de l'autre Etat contractant, cet autre Etat ne peut percevoir aucun impôt sur les dividendes attribués par la société en dehors du territoire de cet autre Etat à des personnes qui ne sont pas des résidents de cet autre Etat, ni prélever aucun impôt au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes attribués ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat.

Article 11.
Intérêts

§ 1er. Les intérêts provenant d'un Etat

contractant et attribués à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 pour cent du montant brut des intérêts.

§ 3. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et, sous réserve de l'alinéa suivant, des créances et dépôts de toute nature, ainsi que les lots d'emprunts et tous autres produits soumis au même régime que les revenus de sommes prêtées ou déposées par la législation fiscale de l'Etat contractant d'où proviennent les revenus.

Ce terme ne comprend pas:

1° les intérêts assimilés à des dividendes par l'article 10, paragraphe 3, deuxième phrase;

2° les intérêts de comptes courants ou d'avances nominatives entre des entreprises bancaires des deux Etats contractants. Ces intérêts sont soumis au régime prévu à l'article 7.

§ 4. Les dispositions des paragraphes 1er 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 ou le dépôt générateur des intérêts. Dans ce cas, les dispositions de l'article 7 sont applicables; elle ne font pas obstacle à la perception des impôts dus à la source sur ces intérêts conformément à la législation de cet autre Etat contractant.

§ 5. Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat contractant lui-même, une collectivité locale ou un résident de cet Etat. 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 générateur des intérêts a été contracté et qui supporte directement la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat contractant où est situé l'établissement stable.

§ 6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou déposant ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des intérêts, compte tenu de la créance ou du dépôt pour lequel ils sont attribués, excède celui dont seraient convenus le débiteur et le créancier ou déposant 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 l'Etat contractant d'où proviennent les intérêts.

Article 12.
Redevances

§ 1er. Les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces redevances peuvent être imposées dans l'Etat contractant d'où elles proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 10 pour cent du montant des redevances.

§ 3. Le terme «redevances» employé dans les paragraphes 1er et 2 désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage 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 pour l'usage ou la concession de l'usage de films pour le cinéma ou la télévision, ou d'un équipement industriel, commercial ou scientifique, ou pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique, ainsi que les revenus de la location coque nue d'un navire ou d'un aéronef.

§ 4. Les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant en contrepartie de l'usage ou de la concession de l'usage d'un droit d'auteur sur une œuvre littéraire, dramatique, musicale, artistique ou scientifique à l'exclusion des redevances et paiements similaires pour des films pour le cinéma ou la télévision ne sont imposables que dans cet autre Etat.

§ 5. Les dispositions des paragraphes 1er, 2 et 4 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, a dans l'autre Etat contractant d'où proviennent les redevances un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.

§ 6. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat contractant lui-même, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel le contrat donnant lieu au paiement des redevances a été conclu et qui supporte directement la charge de celles-ci, ces redevances sont réputées provenir de l'Etat contractant où est situé l'établissement stable.

§ 7. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des redevances, compte tenu de la prestation pour laquelle elles sont attribuées, 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 l'Etat contractant d'où proviennent les redevances.

Article 13.
Gains en capital

§ 1er. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis à l'article 6, paragraphe 2, sont imposables dans l'Etat contractant où ces biens sont situés.

Au sens du présent paragraphe, l'expression «biens immobiliers» comprend les parts — autres que les actions négociées en bourse — dans une association immobilière, telle que celle-ci est définie par la loi israélienne visée à l'article 2, paragraphe 3 (a) (v). Lesdites parts sont censées être situées dans l'Etat contractant où les biens immobiliers appartenant à une telle association sont situés.

§ 2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, ou de biens mobiliers constitutifs d'une base fixe dont un résident d'un Etat contractant dispose dans l'autre Etat contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entre-

prise) ou de cette base fixe, sont imposables dans cet autre Etat contractant. Toutefois, les gains provenant de l'aliénation de navires et d'aéronefs exploités en trafic international, ainsi que de biens mobiliers affectés à l'exploitation de tels navires et aéronefs ne sont imposables que dans l'Etat contractant où ces biens sont imposables en vertu de l'article 22, paragraphe 3.

§ 3. Les gains provenant de l'aliénation de tous autres biens ne sont imposables que dans l'Etat contractant dont le cédant est un résident.

Article 14.
Professions libérales

§ 1er. Les revenus qu'un résident d'un Etat contractant tire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que ce résident:

(a) ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités; ou

(b) n'exerce une telle profession libérale ou telles autres activités indépendantes dans l'autre Etat contractant pendant une période ou des périodes — y compris la durée des interruptions normales du travail — excédant au total 183 jours au cours de l'année civile considérée.

Dans ces cas, les revenus sont imposables dans cet autre Etat, mais uniquement dans la mesure où ils sont imputables aux activités exercées à l'intervention de ladite base fixe ou pendant ladite période ou lesdites périodes.

§ 2. L'expression «professions libérales» comprend, entre autres, 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 15.
Professions dépendantes

§ 1er. Sous réserve des dispositions des articles 16, 18 et 19, 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 1er, les rémunérations qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié dans l'autre Etat contractant, ne sont imposables que dans le premier Etat, si:

(a) elles rétribuent l'activité exercée dans l'autre Etat contractant pendant une période ou des périodes — y compris la durée des interruptions normales du travail — n'excédant pas au total 183 jours au cours de l'année civile considérée, et

(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 comme telle par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat contractant.

§ 3. Nonobstant les dispositions des paragraphes 1er et 2, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef exploité en trafic international sont imposables dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

Article 16.
Tantièmes

§ 1er. Les tantièmes, jetons de présence et autres rétributions qu'un résident d'un Etat contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance d'une société résidente de l'autre Etat contractant, sont imposables dans cet autre Etat.

§ 2. Les rémunérations qu'une personne visée au paragraphe 1er reçoit de la société en raison de l'exercice d'une activité journalière de direction ou de caractère technique sont imposables, conformément aux dispositions de l'article 15, comme s'il s'agissait de rémunérations payées à un employé d'une activité dépendante et comme si l'employeur était la société.

Article 17.
Artistes et sportifs

Nonobstant les dispositions des articles 14 et 15, 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 dépendantes ou indépendantes en cette qualité sont imposables dans l'Etat contractant où ces activités sont exercées. Cette disposition s'applique également auxdits revenus que les personnes susvisées obtiennent, ou qui leur reviennent directement ou indirectement, à l'intervention de personnes morales contrôlées par elles.

Article 18.
Pensions

Sous réserve des dispositions de l'article 19, paragraphe 1er, 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.

Article 19.
Fonctions publiques

§ 1er. Les rémunérations, y compris les pensions, versées par un Etat contractant ou par une de ses subdivisions politiques ou collectivités locales, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus à cet Etat ou à cette subdivision ou collectivité locale, dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet Etat.

Cette disposition ne s'applique pas lorsque le bénéficiaire de ces revenus possède la nationalité de l'autre Etat contractant sans posséder en même temps la nationalité du premier Etat.

§ 2. Les dispositions des articles 15, 16, 17 et 18 s'appliquent aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par un Etat contractant ou par une de ses subdivisions politiques ou collectivités locales.

Article 20.
Professeurs et étudiants

§ 1er. Nonobstant les dispositions de l'article 15, un professeur ou membre du personnel enseignant, qui séjourne temporairement dans un Etat contractant pour y enseigner, pendant une période n'excédant pas deux ans, dans une université, un collège, une école ou une autre institution d'enseignement, et qui est, ou qui était immédiatement avant ce séjour, un résident

de l'autre Etat contractant, est imposable uniquement dans cet autre Etat contractant sur les rémunérations de cet enseignement.

§ 2. Un étudiant ou un stagiaire qui séjourne dans un Etat contractant à seule fin d'y poursuivre ses études ou sa formation et qui est, ou qui était immédiatement avant ce séjour, un résident de l'autre Etat contractant n'est pas imposable dans le premier Etat sur les sommes qu'il reçoit de sources situées en dehors de ce premier Etat pour couvrir ses frais d'entretien, d'études ou de formation. La même règle s'applique aux rémunérations reçues du chef d'un emploi salarié exercé dans le premier Etat, si l'ensemble desdites rémunérations et des sommes visées dans la phrase précédente n'excède pas, suivant le cas, 120 000 francs belges ou 10 000 livres israéliennes pour une année.

Article 21.
Revenus non expressément mentionnés

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.

IV. IMPOSITION DE LA FORTUNE OU DU PATRIMOINE

Article 22.

§ 1er. Les biens immobiliers tels qu'ils sont définis à l'article 6, paragraphe 2, sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. Les biens mobiliers faisant partie de l'actif d'un établissement stable d'une entreprise et les biens mobiliers constitutifs d'une base fixe servant à l'exercice d'une profession libérale sont imposables dans l'Etat contractant où est situé l'établissement stable ou la base fixe.

§ 3. Les navires et les aéronefs exploités en trafic international ainsi que les biens mobiliers affectés à leur exploitation ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

§ 4. Tous les autres éléments de la fortune ou du patrimoine d'un résident d'un Etat contractant ne sont imposables que dans cet Etat.

V. DISPOSITIONS POUR EVITER LA DOUBLE IMPOSITION

Article 23.

§ 1er. En ce qui concerne les revenus qui, conformément à la présente Convention peuvent être soumis, directement ou par voie de retenue, à l'impôt israélien et qui sont passibles de l'impôt en Belgique suivant la législation belge:

(a) (i) Lorsqu'une société résidente de la Belgique a la propriété d'actions ou parts d'une société résidente d'Israël, les dividendes attribués à la première société et non soumis au régime prévu à l'article 10, paragraphe 4, sont exemptés en Belgique de l'impôt visé à l'article 2, paragraphe 3 *(b)* (ii), dans la mesure où cette exemption serait accordée si les deux sociétés étaient résidentes de la Belgique.

(ii) Une société résidente de la Belgique qui a la propriété exclusive d'actions ou parts d'une société résidente d'Israël pendant toute la durée de l'exercice social de cette dernière société, est également exemptée ou obtient le dégrèvement du précompte mobilier exigible suivant la législation belge sur le montant net des dividendes

visés ci-dessus qui lui sont attribués par ladite société résidente d'Israël, à la condition d'en faire la demande par écrit au plus tard dans le délai prescrit pour la remise de sa déclaration annuelle, étant entendu que lors de la redistribution à ses propres actionnaires de ces dividendes non soumis audit précompte mobilier, ceux-ci ne peuvent, par dérogation à la législation belge, être déduits des revenus distribués passibles du précompte mobilier.

Cette exemption n'est pas applicable lorsque la première société a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.

Toutefois, l'application de cette disposition sera limitée aux dividendes attribués par une société résidente d'Israël à une société résidente de la Belgique qui contrôle directement ou indirectement au moins 10 pour cent des droits de vote dans la première société, au cas où, pour l'exemption de l'impôt visé à l'article 2, paragraphe 3 *(b)* (ii), une limitation similaire serait imposée par la législation belge concernant les dividendes attribués par des sociétés non résidentes de la Belgique.

(iii) Dans les cas non visés au sous-paragraphe *(a)* (i) et (ii), lorsqu'un résident de la Belgique reçoit des revenus soumis au régime prévu à l'article 10, paragraphe 2, à l'article 11, paragraphes 2 et 6, et à l'article 12, paragraphes 2 et 7, la Belgique accorde sur l'impôt belge afférent à ces revenus une déduction tenant compte de l'impôt pouvant être perçu en Israël. La déduction est accordée sur l'impôt afférent au montant net des dividendes provenant de la société résidente d'Israël ainsi que des intérêts et des redevances ayant leur source en Israël et qui y sont imposables; la déduction correspond à la quotité forfaitaire d'impôt étranger prévue par la législation belge, mais ne peut être inférieure à 15 p.c. du montant brut des revenus susvisés qui est compris dans la base imposable au nom du bénéficiaire desdits revenus.

(b) (i) Lorsqu'un résident de la Belgique reçoit des revenus autres que ceux qui sont mentionnés au sous-paragraphe *(a)* ci-avant, qui, conformément aux dispositions de la présente Convention, sont imposables en Israël, la Belgique exempte ces revenus mais elle peut, pour calculer le montant de l'impôt sur le reste du revenu de ce résident, appliquer le même taux que si les revenus en question n'étaient pas exemptés.

(ii) Les revenus imposables, conformément à la législation belge, au titre de bénéfices dans le chef d'associés ou membres de sociétés et groupements de personnes sont traités comme s'il s'agissait de bénéfices provenant d'une entreprise exploitée par les associés ou membres eux-mêmes pour leur propre compte.

(iii) Par dérogation au sous-paragraphe *(b)* (i) ci-dessus, l'impôt belge peut être établi sur des revenus imposables en Israël, dans la mesure où ces revenus n'ont pas été imposés en Israël, parce qu'ils y ont été compensés avec des pertes qui ont également été déduites, pour une période imposables en Belgique.

§ 2. En ce qui concerne les revenus qui, conformément à la présente Convention, ont été soumis, directement ou par voie de retenue, à l'impôt belge et qui sont passibles de l'impôt en Israël suivant la législation israélienne:

(a) Lorsqu'une société résidente d'Israël a la propriété d'actions ou parts d'une société résidente de la Belgique, les dividendes y afférents attribués à la première société et non soumis au régime prévu à l'article 10, paragraphe 4, sont passibles de l'impôt en Israël conformément à sa législation, mais Israël accorde sur son impôt

une déduction égale à 25 p.c. des dividendes, pour tenir compte de l'impôt belge frappant les dividendes et d'une partie de l'impôt belge frappant les bénéfices au moyen desquels les dividendes ont été distribués.

(b) Les dividendes attribués par une société résidente de la Belgique à une société résidente d'Israël possédant au moins 10 p.c. des droits de vote de la société distributrice des dividendes sont exclus de la base d'imposition en Israël, mais seulement dans la mesure où ces dividendes seraient exclus de la base d'imposition en vertu de la législation israélienne si les deux sociétés étaient résidentes d'Israël.

(c) Dans tous les autres cas, Israël accorde sur son impôt, aux conditions prévues par sa législation concernant l'imputation d'impôt étranger, une déduction égale au montant de l'impôt payé en Belgique conformément à la présente Convention.

§ 3. Lorsqu'un résident d'un Etat contractant possède de la fortune ou du patrimoine qui, conformément aux dispositions de la présente Convention, est imposable dans l'autre Etat contractant, le premier Etat exempte de l'impôt cette fortune ou ce patrimoine, mais il peut, pour calculer le montant de l'impôt sur le reste de la fortune ou du patrimoine de ce résident, appliquer le même taux que si la fortune ou le patrimoine en question n'avait pas été exempté.

VI. DISPOSITIONS SPECIALES

Article 24.
Non-discrimination

§ 1er. 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 contractant se trouvant dans la même situation.

§ 2. Le terme «nationaux» désigne:

(a) toutes les personnes physiques qui possèdent la nationalité d'un Etat contractant;

(b) toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

§ 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 qui exercent la même activité.

Cette disposition ne peut être interprétée:

(a) comme empêchant un Etat contractant d'imposer globalement les bénéfices imputables à l'établissement stable dont dispose dans cet Etat une société résidente de l'autre Etat ou un groupement de personnes ayant son siège de direction effective dans cet autre Etat, au taux fixé par sa législation nationale, à condition que ce taux n'excède pas, en principal, le taux maximal applicable à l'ensemble ou à une fraction des bénéfices des sociétés résidentes de ce premier Etat;

(b) 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.

§ 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.

§ 5. Le terme «imposition» désigne, dans le présent article, les impôts de toute nature ou dénomination.

Article 25.
Procédure amiable

§ 1er. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats entraînent ou entraîneront pour lui une double imposition non conforme à la présente Convention il peut, sans préjudice des recours prévus par la législation nationale de ces Etats, adresser à l'autorité compétente de l'Etat contractant dont il est un résident une demande écrite et motivée de révision de cette imposition. Pour être recevable, ladite demande doit être présentée dans un délai de deux ans à compter de la notification ou de la perception à la source de la seconde imposition.

§ 2. L'autorité compétente visée au paragraphe 1er s'éfforce, si la réclamation lui paraît fondée et si elle n'est pas 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 double 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 peut donner lieu l'application de la présente Convention.

§ 4. Les autorités compétentes des Etats contractants se concertent 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 contractant pour bénéficier dans l'autre Etat des exemptions ou réductions d'impôts prévues à cette Convention.

Article 26.
Echange de renseignements

§ 1er. Les autorités compétentes des Etats contractants échangent les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des Etats contractants relatives aux impôts visés par la présente Convention dans la mesure où l'imposition qu'elles prévoient est conforme à cette Convention. Tout renseignement ainsi échangé est tenu secret et ne peut être communiqué, en dehors du contribuable ou de son mandataire, qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la présente Convention ou des réclamations ou recours y relatifs.

§ 2. Les dispositions du paragraphe 1er ne peuvent en aucun cas être interprétées comme imposant à l'un des Etats contractants l'obligation:

(a) de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat contractant;

(b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;

(c) de transmettre des renseignements qui révèleraient un secret commercial, industriel ou professionnel, ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27.
Divers

§ 1er. Sanse préjudice de l'application de l'article 23, paragraphe 1er, *(a)* (ii), les dispositions de la présente Convention ne limitent pas les droits et avantages que la législation d'un Etat contractant accorde en matière d'impôts visés à l'article 2.

§ 2. En ce qui concerne les sociétés résidentes d'un Etat contractant, les dispositions de la Convention ne limitent pas leur taxation conformément à la législation de cet Etat, en cas de rachat de leurs propres actions ou parts ou à l'occasion du partage de l'avoir social.

§ 3. Les dispositions de la Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques et des postes consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

§ 4. Aux fins de la présente Convention, les membres d'une mission diplomatique ou d'un poste consulaire d'un Etat contractant accrédités dans l'autre Etat contractant ou dans un Etat tiers, qui ont la nationalité de l'Etat accréditant, sont réputés être résidents dudit Etat s'ils y sont soumis aux mêmes obligations, en matière d'impôts sur le revenu et sur la fortune ou le patrimoine, que les résidents de cet Etat.

§ 5. La présente Convention ne s'applique pas aux organisations internationales, à leurs organes ou à leurs fonctionnaires, ni aux personnes qui sont membres d'une mission diplomatique ou d'un poste consulaire d'un Etat tiers, lorsqu'ils se trouvent sur le territoire d'un Etat contractant et ne sont pas traités comme des résidents de l'un ou de l'autre Etat contractant en matière d'impôts sur le revenu et sur la fortune ou le patrimoine.

§ 6. Les Ministres des Finances des Etats contractants ou leurs délégués communiquent directement entre eux pour l'application de la présente Convention.

VII. DISPOSITIONS FINALES

Article 28.
Entrée en vigueur

§ 1er. La présente Convention sera ratifiée et les instruments de ratification seront échangés à Bruxelles aussitôt que possible.

§ 2. La présente Convention entrera en vigueur le quinzième jour suivant celui de l'échange des instruments de ratification et elle s'appliquera:

En Belgique:

(a) à tous impôts dus à la source sur des revenus attribués ou mis en paiement à partir du 1er janvier de l'année civile au cours de laquelle la présente Convention entre en vigueur;

(b) à tous autres impôts établis sur des revenus de périodes imposables prenant fin à partir du 31 décembre de ladite année civile.

En Israël:

à tous impôts pour les exercices fiscaux commençant le 1er avril de l'année civile au cours de laquelle la présente Convention entre en vigueur, ou après cette date.

Article 29.
Dénonciation

La présente Convention restera indéfiniment en vigueur mais chacun des Etats contractants pourra jusqu'au 30 juin inclus de toute année civile à partir de la cinquième année à dater de celle de l'échange des instruments de ratification, la dénoncer, par écrit et par la voie diplomatique, à

l'autre Etat contractant. En cas de dénonciation avant le 1er juillet d'une telle année, la Convention s'appliquera pour la dernière fois:

En Belgique:

(a) à tous impôts dus à la source sur des revenus attribués ou mis en paiement au plus tard le 31 décembre de l'année civile au cours de laquelle la dénonciation a été notifiée;

(b) à tous autres impôts établis sur des revenus de périodes comptables prenant fin au plus tard le 30 décembre de l'année civile suivant celle au cours de laquelle la dénonciation a été notifiée.

En Israël:

à tous impôts pour l'exercice fiscal prenant fin le 31 mars de l'année civile suivant celle au cours de laquelle la dénonciation a été notifiée.

En foi de quoi les Plénipotentiaires susmentionnés, à ce dûment autorisés, ont signé la présente Convention et y ont apposé leurs sceaux.

Fait en double exemplaire à Bruxelles le 13 juillet 1972, en langue anglaise.

Pour le Gouvernement de la Belgique:

Pierre Harmel.

Pour le Gouvernement d'Israël:

Moshé Alon.

Convention entre la Belgique et le Maroc tendant à éviter les doubles impositions et à régler certaines autres questions en matière d'impôts sur le revenu

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVII, No. 12, December/décembre 1973
INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION
Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty was signed between Belgium and Morocco on May 4, 1972. The treaty shall enter into force on the fifteenth day after the date of the exchange of the instruments of ratification. The instruments of ratification have not yet been exchanged.

TEXT

Sa Majesté le Roi des Belges
et
Sa Majesté le Roi du Maroc,

Désireux d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu, ont décidé de conclure une Convention et ont nommé à cet effet pour leurs Plénipotentiaires, savoir:
Sa Majesté le Roi des Belges:
S.E. le baron Roland d'Anethan, Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté le Roi des Belges, au Maroc
Sa Majesté le Roi du Maroc:
S.E. M. Mustapha Faris, Ministre des Finances du Gouvernement de Sa Majesté le Roi du Maroc
Lesquels, après avoir échangé leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes:

I. — CHAMP D'APPLICATION DE LA CONVENTION

Article 1er
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2
Impôts visés

§ 1er. La présente Convention s'applique 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.
§ 2. Sont considérés comme impôts sur le revenu les impôts perçus sur le revenu total ou sur des éléments du revenu, y compris les impôts sur les gains provenant de

l'aliénation de biens mobiliers ou immobiliers, ainsi que les impôts sur les plus-values.

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

1° en ce qui concerne la Belgique:

a) l'impôt des personnes physiques;

b) l'impôt des sociétés;

c) l'impôt des personnes morales;

d) l'impôt des non-résidents,

y compris les précomptes et les compléments de précomptes, les centimes additionnels auxdits impôts et précomptes, ainsi que la taxe communale additionnelle à l'impôt des personnes physiques;

(ci-après dénommés «l'impôt belge»);

2° en ce qui concerne le Maroc:

a) l'impôt sur les bénéfices professionnels et la réserve d'investissements;

b) le prélèvement sur les traitements publics et privés, les indemnités et émoluments, les salaires, les pensions et les rentes viagères et l'emprunt obligatoire;

c) la taxe urbaine et les taxes y rattachées;

d) l'impôt agricole;

(ci-après dénommés «l'impôt marocain»).

§ 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 les modifications apportées à leurs législations fiscales respectives.

II. — DEFINITIONS

Article 3
Définitions générales

§ 1er. Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:

1° *a)* le terme «Belgique», employé dans un sens géographique, désigne le territoire du Royaume de Belgique; il inclut tout territoire en dehors de la souveraineté nationale de la Belgique qui est ou sera désigné, selon la législation belge sur le plateau continental et conformément au droit international, comme territoire sur lequel les droits de la Belgique à l'égard du sol et du sous-sol de la mer et de leurs ressources naturelles peuvent être exercés;

b) le terme «Maroc», employé dans un sens géographique, désigne le territoire du Royaume du Maroc; il inclut tout territoire en dehors de la souveraineté nationale du Maroc qui est ou sera désigné, selon la législation marocaine sur le plateau continental et conformément au droit international, comme territoire sur lequel les droits du Maroc à l'égard du sol et du sous-sol de la mer et de leurs ressources naturelles peuvent être exercés;

2° les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la Belgique ou le Maroc;

3° le terme «personne» comprend les personnes physiques, les sociétés et tous autres groupements de personnes;

4° le terme «société» désigne toute personne morale ou toute autre entité qui est imposable comme telle sur ses revenus dans l'Etat dont elle est un résident;

5° les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant;

6° l'expression «autorité compétent» désigne:

a) en ce qui concerne la Belgique, l'autorité compétente suivant la législation belge, et

b) en ce qui concerne le Maroc, le Ministre chargé des Finances ou son délégué.

§ 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 qui font l'objet de la Convention, à moins que le contexte n'exige une interprétation différente.

Article 4
Domicile fiscal

§ 1er. Au sens de la présente Convention, l'expression «résident d'un Etat contractant» désigne 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 de nature analogue; elle désigne aussi les sociétés de droit belge — autres que les sociétés par actions — qui ont opté pour l'assujettissement de leurs bénéfices à l'impôt des personnes physiques.

§ 2. Lorsque, selon la disposition du paragraphe 1er, une personne physique est considérée comme résidente de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:

1° cette personne est considérée comme résidente 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 résidente de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

2° si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou qu'elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme résidente de l'Etat contractant où elle séjourne de façon habituelle;

3° 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 résidente de l'Etat contractant dont elle possède la nationalité;

4° si cette personne possède la nationalité de chacun des Etats contractants ou qu'elle ne possède la nationalité d'aucun d'eux, les autorités compétentes des Etats contractants tranchent la question d'un commun accord.

§ 3. Lorsque, selon la disposition du paragraphe 1er, une personne autre qu'une personne physique est considérée comme résidente de chacun des Etats contractants, elle est réputée résidente de l'Etat contractant où se trouve son siège de direction effective.

Article 5
Etablissement stable

§ 1er. 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:

1° un siège de direction ou d'exploitation;
2° une succursale;
3° un magasin de vente;
4° un bureau;
5° une usine;
6° un atelier;
7° une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
8° un chantier de construction ou de montage dont la durée dépasse six mois.

§ 3. On ne considère pas qu'il y a établissement stable si:

1° il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;

2° des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;

3° des marchandises appartenant à l'en-

treprise sont entreposées aux seules fins de transformation par une autre entreprise;

4° une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises destinées à des établissements de vente ou de transformation de l'entreprise situés en dehors de l'Etat où se trouve cette installation;

5° une installation fixe d'affaires est utilisée pour l'entreprise aux seules fins de publicité, de recueillir ou de fournir des informations, d'effectuer de la recherche scientifique ou d'exercer des activités analogues qui ont un caractère préparatoire ou auxiliaire.

§ 4. Une personne — autre qu'un agent jouissant d'un statut indépendant, visé au paragraphe 5 — qui agit dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme constituant un établissement stable de l'entreprise 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; cette disposition ne s'applique pas si l'activité de cette personne est limitée à l'achat de marchandises pour l'entreprise et pour autant que ces marchandises ne soient pas revendues dans le premier Etat.

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 et au moyen duquel il exécute régulièrement les commandes qu'il a reçues pour le compte de l'entreprise.

§ 5. 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 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.

L'intermédiaire qui agit pour le compte d'une entreprise d'assurances et qui dispose de pouvoirs qu'il exerce habituellement, lui permettant de conclure des contrats au nom de cette entreprise, n'est pas visé à cette disposition.

§ 6. Le fait qu'une société résidente d'un Etat contractant contrôle ou est contrôlée par une société résidente de l'autre Etat contractant ou qui y exerce son activité (que ce soit pas 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.

III. — IMPOSITION DES REVENUS

Article 6
Revenus de biens immobiliers

§ 1er. 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 en tous cas les accessoires, le cheptel mort ou vif des exploitations agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droit 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. La disposition du paragraphe 1er s'applique aux revenus provenant de l'ex-

ploitation ou de la jouissance directes, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers.

§ 4. Les dispositions des paragraphes 1er 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 7
Bénéfices des entreprises

§ 1er. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise 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, mais uniquement dans la mesure où ils sont imputables audit établissement stable.

§ 2. Sans préjudice de l'application du paragraphe 3, 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 agissant en toute indépendance.

§ 3. Pour la détermination des revenus de l'établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat, il est tenu compte:

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

— d'autre part, des frais réels supportés par le siège de direction effective de l'entreprise et justifiés par des services rendus à l'établissement stable.

§ 4. A défaut de comptabilité régulière ou d'autres éléments probants permettant de déterminer le montant des bénéfices d'une entreprise d'un Etat contractant, qui est imputable à son établissement stable situé dans l'autre Etat, l'impôt peut notamment être établi dans cet autre Etat conformément à sa propre législation, compte tenu des bénéfices normaux d'entreprises similaires du même Etat, se livrant à la même activité ou à des activités similaires dans des conditions identiques ou similaires. Toutefois, si cette méthode entraîne une double imposition des mêmes bénéfices, les autorités compétentes des deux Etats se concertent en vue d'éviter cette double imposition.

§ 5. 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.

§ 6. Les participations d'un associé aux bénéfices d'une entreprise constituée sous forme de société de fait ou d'association en participation sont imposables dans l'Etat où ladite entreprise a un établissement stable. Il en est de même des revenus qui, suivant la législation de l'un des Etats contractants, sont imposables au titre de bénéfices dans le chef d'associés ou membres de sociétés et groupements de personnes.

§ 7. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions du présent article ne font pas obstacle à l'application des dispositions de ces autres articles pour la taxation de ces éléments de revenu.

Article 8
Navigation maritime et aérienne

§ 1er. Les bénéfices provenant de l'exploitation en trafic international de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

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

Article 9
Entreprises interdépendantes

Lorsque:

1° une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au financement d'une entreprise de l'autre Etat contractant ou que

2° les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au financement 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 convenues entre 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
Dividendes

§ 1er. Les dividendes attribués par une société résidente d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces dividendes peuvent être imposés dans l'Etat contractant dont la société qui attribue les dividendes est un résident si la législation de cet Etat le prévoit, mais l'impôt ainsi établi ne peut excéder 15 p.c. du montant brut desdits dividendes.

Les dispositions du présent paragraphe ne limitent pas l'imposition de la société sur les bénéfices qui servent au paiement des dividendes.

§ 3. Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de mine, parts de fondateur ou autres parts bénéficiaires, à l'exception des créances, ainsi que les revenus d'autres parts sociales soumis au même régime que les revenus d'actions par la législation fiscale de l'Etat dont la société distributrice est un résident. Ce terme désigne également les revenus — même attribués sous la forme d'intérêts — imposables au titre de revenus de capitaux investis par les associés dans les sociétés autres que les sociétés par actions, résidentes de la Belgique.

§ 4. Les dispositions des paragraphes 1er 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 attribue les dividendes est un résident, un établissement stable auquel se rattache effectivement la participation génératrice des dividendes. Dans ce cas, les dividendes sont imposables dans cet autre Etat conformément à sa législation.

§ 5. Lorsqu'une société résidente d'un Etat contractant tire des bénéfices ou des revenus de l'autre Etat contractant, cet autre Etat ne peut percevoir aucun impôt sur les

dividendes attribués par la société en dehors du territoire de cet autre Etat à des personnes qui ne sont pas des résidents de cet autre Etat, ni prélever aucun impôt au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes attribués ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat. La disposition qui précède n'empêche pas ledit autre Etat d'imposer les dividendes afférents à une participation qui se rattache effectivement à un établissement stable exploité dans cet autre Etat.

Article 11
Intérêts

§ 1er. Les intérêts provenant d'un Etat contractant et attribués à un résident de l'autre Etat contractant sont imposables dans cet autre Etat

§ 2. Toutefois, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent si la législation de cet Etat le prévoit, mais l'impôt ainsi établi ne peut excéder 15 p.c. de leur montant.

§ 3. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices et, sous réserve de l'alinéa suivant, des créances ou dépôts de toute nature, ainsi que les lots d'emprunts et tous autres produits soumis au même régime que les revenus de sommes prêtées ou déposées par la législation fiscale de l'Etat d'où proviennent les revenus. Ce terme ne comprend pas les intérêts assimilés à des dividendes par l'article 10, paragraphe 3, deuxième phrase.

§ 4. Les dispositions des paragraphes 1er 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 ou le dépôt générateur des intérêts. Dans ce cas, les intérêts sont imposables dans cet autre Etat conformément à sa législation.

§ 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 de cet Etat. 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 générateur des intérêts a été contracté et qui supporte comme telle la charge de ceux-ci, ces 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 déposant, ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des intérêts compte tenu de la créance ou du dépôt pour lequel ils sont attribués, excède celui dont seraient convenus le débiteur et le créancier ou déposant 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 intérêts est imposable, conformément à sa législation, dans l'Etat contractant d'où proviennent les intérêts.

Article 12
Redevances

§ 1er. Les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces redevances peuvent être imposées dans l'Etat contractant d'où

elles proviennent, si la législation de cet Etat le prévoit, mais l'impôt ainsi établi ne peut excéder:

1° 5 p.c. du montant brut des redevances versées en contrepartie de l'usage ou de la concession de l'usage d'un droit d'auteur sur une œuvre littéraire, artistique ou scientifique, non compris les films cinématographiques et de télévision;

2° 10 p.c. du montant brut des redevances payées pour l'usage ou la concession de l'usage 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 secret, de films cinématographiques et de télévision, ainsi que pour l'usage ou la concession de l'usage d'un équipement agricole, industriel, commercial ou scientifique ne constituant pas un bien immobilier, visé à l'article 6, pour des informations ayant trait à une expérience acquise dans le domaine agricole, industriel, commercial ou scientifique et pour la prestation d'une assistance technique accessoire à l'usage de tels biens, dans la mesure où elle est effectuée dans l'Etat d'où proviennent les redevances.

§ 3. Les dispositions des paragraphes 1er et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, a dans l'autre Etat contractant d'où proviennent les redevances un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les redevances sont imposables dans cet autre Etat conformément à sa législation.

§ 4. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision politique, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel le contrat donnant lieu au paiement des redevances a été conclu et qui supporte comme telle la charge de celle-ci, ces redevances sont réputées provenir de l'Etat contractant où est situé l'établissement stable.

§ 5. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des redevances, compte tenu de la prestation pour laquelle elles sont attribuées, excède le montant normal dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions des paragraphes 1er et 2 ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des redevances est imposable, conformément à sa législation, dans l'Etat contractant d'où proviennent les redevances.

Article 13
Gains en capital

§ 1er. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis à l'article 6, paragraphe 2, sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, ou de biens mobiliers constitutifs d'un base fixe dont un résident d'un Etat contractant dispose dans l'autre Etat contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre Etat.

Toutefois, les gains provenant de l'aliénation de navires ou d'aéronefs exploités en

trafic international, ainsi que de biens mobiliers affectés à l'exploitation de tels navires ou aéronefs ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

§ 3. Les gains provenant de l'aliénation de tous autres biens ne sont imposables que dans l'Etat contractant dont le cédant est un résident.

Article 14
Professions libérales

§ 1er. Les revenus qu'un résident d'un Etat contractant tire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat. Toutefois, ces revenus sont imposables dans l'autre Etat contractant dans les cas suivants:

1° si l'intéressé dispose de façon habituelle, dans l'autre Etat contractant, d'une base fixe pour l'exercice de ses activités; en ce cas, seule la fraction des revenus qui est imputable aux activités exercées à l'intervention de ladite base fixe est imposable dans l'autre Etat contractant; ou

2° s'il exerce ses activités dans l'autre Etat contractant pendant une période ou des périodes — y compris la durée des interruptions normales du travail — excédant au total 183 jours au cours de l'année civile.

§ 2. L'expression «professions libérales» comprend en particulier 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 15
Rémunérations du secteur privé

§ 1er. Sous réserve des dispositions des articles 16, 18 et 19, les salaires, traitements et autres rémunérations similaires — autres que ceux qui sont payés au moyen de fonds publics d'un Etat contractant ou d'une de ses subdivisions politiques ou collectivités locales — 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 1er, les rémunérations qu'un résident d'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 les trois conditions suivantes sont réunies:

1° les rémunérations rétribuent l'activité exercée dans l'autre Etat pendant une période ou des périodes — y compris la durée des interruptions normales du travail — n'excédant pas au total 183 jours au cours de l'année civile;

2° elles sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de l'autre Etat; et

3° la charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat.

§ 3. Nonobstant les dispositions des paragraphes 1er et 2, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef exploité en trafic international sont considérées comme se rapportant à une activité exercée dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise et sont imposables dans cet Etat.

Article 16
Tantièmes

§ 1er. 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 par actions résidente de l'autre Etat contractant, sont imposables dans cet autre Etat. Il en est de même des rémunérations d'un associé commandité d'une société en commandite par actions résidente de la Belgique et de celles d'un associé-gérant majoritaire d'une société à responsabilité limitée résidente du Maroc.

§ 2. Toutefois, les rémunérations normales que les intéressés touchent en une autre qualité sont imposables, suivant le cas dans les conditions prévues, soit à l'article 14, soit à l'article 15, paragraphe 1er, de la présente Convention.

Article 17
Artistes et sportifs

§ 1er. Nonobstant les dispositions des articles 7, 14 et 15:

1° 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 sont imposables dans l'Etat contractant où ces activités sont exercées;

2° la règle énoncée *sub* 1° s'applique également aux bénéfices obtenus par les exploitants ou organisateurs de spectacles ou divertissements quelconques, ainsi qu'aux revenus des activités exercées par toute personne contribuant à l'organisation ou à l'exécution des prestations des professionnels du spectacle ou des sportifs.

§ 2. Les dispositions du paragraphe 1er ne s'appliquent pas aux revenus d'activités exercées dans un Etat contractant par des organismes sans but lucratif de l'autre Etat contractant ou par des membres de leur personnel, sauf si ces derniers agissent pour leur propre compte.

Article 18
Pensions privées

Les pensions privées, ainsi que les pensions et allocations à caractère social et les rentes viagères versées à un résident d'un Etat contractant ne sont imposables que dans cet Etat.

Article 19
Etudiants, apprentis ou stagiaires

Un étudiant, un apprenti ou un stagiaire qui est, ou qui était auparavant, un résident d'un Etat contractant et qui séjourne temporairement dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, n'est pas imposable dans cet autre Etat:

— sur les sommes qu'il reçoit pour couvrir ses frais d'entretien, d'études ou de formation;

— sur les rémunérations qu'il perçoit au titre d'un emploi salarié exercé dans cet autre Etat,

à condition que l'ensemble desdites sommes et rémunérations n'excède pas pour une année d'imposition 120 000 francs belges ou l'équivalent de cette somme en monnaie marocaine au cours officiel du change.

IV. — DISPOSITIONS PREVENTIVES DE LA DOUBLE IMPOSITION

Article 20

§ 1er. En ce qui concerne la Belgique, la double imposition est évitée de la manière suivante:

1° Lorsqu'un résident de la Belgique reçoit des revenus non visés *sub* 2° et 3°, ci-après, qui sont imposables au Maroc conformément aux dispositions de la Con-

vention, la Belgique exempte de l'impôt ces revenus, mais elle peut, pour calculer le montant de ses impôts sur le reste du revenu de ce résident, appliquer le même taux que si les revenus en question n'avaient pas été exemptés.

2° En ce qui concerne les dividendes imposables conformément à l'article 10, paragraphe 2, les intérêts imposables conformément à l'article 11, paragraphes 2 ou 6, et les redevances imposables conformément à l'article 12, paragraphes 2 ou 5, la quotité forfaitaire d'impôt étranger prévue par la législation belge est imputée dans les conditions et au taux prévus par cette législation, soit sur l'impôt des personnes physiques afférent auxdits dividendes, intérêts et redevances, soit sur l'impôt des sociétés afférent auxdits intérêts et redevances.

Par dérogation aux dispositions de sa législation, la Belgique accorde également cette imputation à raison de revenus qui ne sont pas soumis à l'impôt au Maroc, lorsqu'il s'agit:

a) d'intérêts ou redevances provenant du Maroc, pour autant que le débiteur ait bénéficié d'une ou de plusieurs dispositions du dahir du 31 décembre 1960 relatif aux mesures d'encouragement aux investissements ou de la garantie de retransfert;

b) d'intérêts relatifs à des emprunts émis par des organismes spécialisés en vue de concourir au développement économique du Maroc.

3° *a)* Lorsqu'une société résidente de la Belgique a la propriété d'actions ou parts d'une société par actions, résidente du Maroc, et soumise dans cet Etat à l'impôt sur le revenu des sociétés, les dividendes qui lui sont attribués par cette dernière société et qui sont imposables au Maroc conformément à l'article 10, paragraphe 2, sont exemptés de l'impôt des sociétés en Belgique, dans la mesure où cette exemption serait accordée si les deux sociétés étaient résidentes de la Belgique; cette disposition n'exclut pas le prélèvement sur ces dividendes du précompte mobilier exigible suivant la législation belge.

b) Lorsqu'une société résidente de la Belgique a eu pendant toute la durée de l'exercice social d'une société par actions, résidente du Maroc et soumise à l'impôt sur le revenu des sociétés dans cet Etat, la propriété exclusive d'actions ou parts de cette dernière société, elle peut également être exemptée du précompte mobilier exigible suivant la législation belge sur les dividendes de ces actions ou parts, à la condition d'en faire la demande par écrit au plus tard dans le délai prescrit pour la remise de sa déclaration annuelle; lors de la redistribution à ses propres actionnaires de ces dividendes ainsi exemptés, ceux-ci ne peuvent être déduits des dividendes distribués passibles du précompte mobilier. Cette disposition n'est pas applicable lorsque la première société a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.

Dans l'éventualité où les dispositions de la législation belge exemptant de l'impôt des sociétés le montant net des dividendes qu'une société résidente de la Belgique reçoit d'une autre société résidente de la Belgique, seraient modifiées de manières à limiter l'exemption aux dividendes afférents à des participations d'une importance déterminée dans le capital de la seconde société, la disposition de l'alinéa précédent ne s'appliquera qu'aux dividendes attribués par des sociétés résidentes du Maroc et afférents à des participations de même importance dans le capital desdites sociétés.

4° Lorsque, conformément à la législation belge, des pertes subies par une entre-

prise belge dans un établissement stable situé au Maroc ont été effectivement déduites des bénéfices de cette entreprise pour son imposition en Belgique, l'exemption prévue *sub* 1° ne s'applique pas en Belgique aux bénéfices d'autres périodes imposables qui sont imputables à cet établissement, dans la mesure où ces bénéfices ont aussi été exemptes d'impôt au Maroc en raison de leur compensation avec lesdites pertes.

§ 2. En ce qui concerne le Maroc, la double imposition est évitée de la manière suivante:

1° Lorsqu'un résident du Maroc reçoit des revenus non visés *sub* 2°, ci-après, qui sont imposables en Belgique conformément aux dispositions de la Convention, le Maroc exempte de l'impôt ces revenus, mais il peut, pour calculer le montant de ses impôts sur le reste du revenu de ce résident, appliquer le même taux que si les revenus en question n'avaient pas été exemptés.

2° En ce qui concerne les dividendes imposables conformément à l'article 10, paragraphe 2, les intérêts imposables conformément à l'article 11, paragraphes 2 ou 6, et les redevances imposables conformément à l'article 12, paragraphes 2 ou 5, le Maroc peut, conformément aux dispositions de sa législation interne, les comprendre dans les bases des impôts visés à l'article 2, pour leur montant brut; mais il accorde sur le montant des impôts afférents à ces revenus et dans la limite de ce montant, une réduction correspondant au montant des impôts prélevés par la Belgique sur ces mêmes revenus.

V. — DISPOSITIONS SPECIALES

Article 21
Non-discrimination

§ 1er. 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. Le terme «nationaux» désigne:

1° toutes les personnes physiques qui possèdent la nationalité d'un Etat contractant;

2° toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

§ 3. Les personnes physiques résidentes d'un Etat contractant, qui sont imposables dans l'autre Etat, y bénéficient, pour l'assiette des impôts calculés, conformément à la législation de cet autre Etat, à des taux progressifs ou sur une base diminuée d'abattements, des exemptions, abattements à la base, déductions ou autres avantages, qui sont accordés, en raison de leurs charges de famille aux personnes physiques, ressortissantes de cet autre Etat, qui en sont des résidents.

§ 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 même activité.

Cette disposition ne peut être interprétée comme empêchant un Etat contractant d'imposer globalement les bénéfices imputables à l'établissement stable dont dispose dans cet Etat une société résidente de l'autre Etat ou un groupement de personnes ayant son siège de direction effective dans cet autre Etat, au taux fixé par sa législation nationale à condition que ce taux n'excède pas, en principal, le taux maximal applicable à l'ensemble ou à une frac-

tion des bénéfices des sociétés résidentes de ce premier Etat.

§ 5. Sauf en cas d'application des articles 9, 11, paragraphe 6, et 12, paragraphe 5, les intérêts, redevances et autres frais payés par une entreprise d'un Etat contractant à un résident de l'autre Etat contractant sont déductibles, pour la détermination des bénéfices imposables de cette entreprise, dans les mêmes conditions que s'ils avaient été payés à un résident du premier Etat.

§ 6. 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.

§ 7. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

Article 22
Procédure amiable

§ 1er. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats entraînent ou entraîneront pour lui une imposition non conforme à la présente Convention, il peut, sans préjudice de recours prévus par la législation nationale de ces Etats, adresser à l'autorité compétente de l'Etat contractant dont il est un résident, une demande écrite et motivée de révision de cette imposition. Pour être recevable, ladite demande doit être présentée dans un délai de deux ans, à compter de la notification ou de la perception à la source de l'imposition contestée ou, s'il y a double imposition, de la seconde imposition.

§ 2. L'autorité compétente visée au paragraphe 1er s'efforce, si la réclamation lui paraît 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 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 peut donner lieu l'application de la Convention.

§ 4. 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.

§ 5. Les autorités compétentes des Etats contractants se concertent au sujet des mesures administratives nécessaires à l'exécution des dispositions de la 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'impôts prévues à cette Convention.

Article 23
Echange de renseignements

§ 1er. Les autorités compétentes des Etats contractants échangent les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des Etats contractants relatives aux impôts visés par la Convention dans la mesure où l'imposition qu'elles prévoient est conforme à la Convention.

Tout renseignement ainsi obtenu doit être tenu secret et ne peut être communiqué en dehors du contribuable ou de son mandataire, qu'aux personnes ou autorités char-

gées de l'établissement ou du recouvrement des impôts visés par la présente Convention et des réclamations et recours y relatifs, ainsi qu'aux autorités judiciaires en vue de poursuites pénales.

§ 2. L'échange de 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.

§ 3. Les dispositions du paragraphe 1er ne peuvent en aucun cas être interprétées comme imposant à l'un des Etats contractants l'obligation:

1° de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat contractant;

2° de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;

3° de transmettre des renseignements qui révèleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

Article 24
Assistance au recouvrement

§ 1er. Les Etats contractants s'engagent à se prêter mutuellement aide et assistance aux fins de notifier et de recouvrer en principal, accroissements, additionnels, intérêts, frais et amendes sans caractère pénal, les impôts visés à l'article 2 qui sont définitivement dus conformément à la législation de l'Etat demandeur et à la présente Convention.

§ 2. Sur requête de l'autorité compétente d'un Etat contractant, l'autorité compétente de l'autre Etat contractant assure, suivant les dispositions légales et réglementaires applicables à la notification et au recouvrement desdits impôts de ce dernier Etat, la notification et le recouvrement des créances fiscales visées au paragraphe 1er, qui sont exigibles dans le premier Etat. Ces créances ne jouissent d'aucun privilège dans l'Etat requis et celui-ci n'est pas tenu d'appliquer des moyens d'exécution qui ne sont pas autorisés par les dispositions légales ou réglementaires de l'Etat requérant.

§ 3. Les requêtes visées au paragraphe 2 sont appuyées d'une copie officielle des titres exécutoires, accompagnée, s'il échet, d'une copie officielle des décisions passées en force de chose jugée.

§ 4. En ce qui concerne les créances fiscales qui sont susceptibles de recours, l'autorité compétente d'un Etat contractant peut, pour la sauvegarde de ses droits, demander à l'autorité compétente de l'autre Etat contractant de prendre les mesures conservatoires prévues par la législation de celui-ci; les dispositions des paragraphes 1er à 3 sont applicables, *mutatis mutandis*, à ces mesures.

§ 5. L'article 23, paragraphe 1er, alinéa 2, s'applique également à tout renseignement porté, en exécution du présent article, à la connaissance de l'autorité compétente de l'Etat requis.

Article 25
Divers

§ 1er. Sans préjudice de l'application de l'article 20, paragraphe 1er, 3°, *b*, les dispositions de la présente Convention ne limitent pas les droits et avantages que la législation d'un Etat contractant accorde en matière d'impôts visés à l'article 2; elles ne portent pas non plus atteinte aux avantages fiscaux prévus dans des accords

particuliers conclus entre les deux Etats contractants.

§ 2. Aucune disposition de la présente Convention ne peut avoir pour effet de limiter l'imposition d'une société résidente d'un Etat contractant en cas de rachat de ses propres actions ou parts ou à l'occasion du partage de son avoir social.

§ 3. Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques et des postes consulaires en vertu, soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

§ 4. Les Ministres des Finances des Etats contractants ou leurs délégués communiquent directement entre eux pour l'application de la présente Convention.

VI. — DISPOSITIONS FINALES

Article 26
Entrée en vigueur

§ 1er. La présente Convention sera ratifiée et les instruments de ratification seront échangés à Rabat aussitôt que possible.

§ 2. La présente Convention entrera en vigueur le quinzième jour suivant celui de l'échange des instruments de ratification et elle s'appliquera:

1° aux impôts dus à la source sur les revenus attribués ou mis en paiement à partir du premier jour du mois suivant celui de l'échange des instruments de ratification;

2° aux autres impôts établis sur des revenus de périodes imposables prenant fin à partir du 1er janvier de l'année de cet échange.

Article 27
Dénonciation

La présente Convention restera indéfiniment en vigueur; mais chacun des Etats contractants pourra, jusqu'au 30 juin inclus de toute année civile à partir de la cinquième année à dater de celle de l'échange des instruments de ratification, la dénoncer, par écrit et par la voie diplomatique, à l'autre Etat contractant. En cas de dénonciation avant le 1er juillet d'une telle année, la Convention s'appliquera pour la dernière fois:

1° aux impôts dus à la source sur les revenus attribués ou mis en paiement au plus tard le 31 décembre de l'année de la dénonciation;

2° aux autres impôts établis sur des revenus de périodes imposables prenant fin au plus tard le 31 décembre de la même année.

En foi de quoi, les Plénipotentiaires des deux Etats ont signé la présente Convention et y ont apposé leurs sceaux.

Fait à Rabat le 4 mai 1972, en double exemplaire, en langue française et en langue néerlandaise, les deux textes faisant également foi.

Pour la Belgique:
Baron R. d'Anethan.
Pour le Maroc:
M. Faris.

Protocole final

Au moment de procéder à la signature de la Convention tendant à éviter les doubles impositions et à régler certaines autres questions en matière d'impôts sur le revenu, conclue ce jour entre la Belgique et le Maroc, les Plénipotentiaires soussignés sont convenus des dispositions suivantes qui forment partie intégrante de cette Convention.

Au jour de la signature de la Convention, les organismes spécialisés en vue de concourir au développement économique du Maroc, dont il est question à l'article 20,

§ 1er, 2°, 2e alinéa, *b.* sont les suivants:

— Caisse nationale de crédit agricole;
— Fonds d'équipement communal;
— Office chérifien des phosphates;
— Office national de l'électricité;
— Offices régionaux de mise en valeur agricole;
— Bureau de recherches et de participations minières;
— Bureau d'études et de participations industrielles;
— Office national marocain du tourisme;
— Office national des chemins de fer;
— Office de commercialisation et d'exportation;
— Régie d'aconage du port de Casablanca;
— Crédit hôtelier et immobilier du Maroc;
— Banque nationale pour le développement économique;
— Banque centrale populaire;
— Maroc-Chimie;
— C.O.T.E.F.;
— S.C.P.;
— Samir;
— Comanav;
— R.A.M.;
— Sepyk;
— S.E.F.E.R.I.F.;
— Limadet.

Cette liste pourra être modifiée ou complétée au vu des renseignements fournis par les autorités marocaines aux autorités belges compétentes.