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AMSTERDAM - 1965

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International Bureau of Fiscal Documentation

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

(*art.* 2) The Object of the International Bureau of Fiscal Documentation is the foundation and maintenance of an international documentation bureau, in order to supply information on 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 coöperation with the I.F.A. and with the aid of experted coöperators in a great number of countries, the Bureau tries to collect all possible data in the sphere of national and international fiscal law. In this way the Bureau will be able to supply a detailed information concerning special subjects (no advise is given) for wh ch a fee is due, which is necessary for the maintenance and extension of the Bureau.

On general subjects the Bureau brings out publications of documentary character in the Series: „Publications of the International Bureau of Fiscal Documentation.

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Le BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE fut fondé en 1939. Pour des raisons de caractère organisatoire, ce Bureau est établi comme une fondation séparée conformément le 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 contenant un grand nombre d'ouvrages, revues et d'autres publications dans le domaine fiscal.
b) en fournissant des informations
c) en procurant à tous ceux qui s'y intéressent l'occasion de consulter les ouvrages qui se trouvent dans la bibliothèque.
d) en publiant un périodique
e) en recourant à tous les autres moyens dont on peut disposer.

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

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a) organizing Congresses
b) issuing a periodical
c) founding one or more libraries and a documentation bureau;
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EDITORIAL

We have already informed our readers in a previous communication that, starting with this issue, some changes are brought in the Bulletin, by which the Editors — assisted by an advisory body — will be able to offer the readers a more systematical and more complete documentation on taxation.

The Editors are pleased to inform persons interested that this advisory body consists of:

Prof. A. ANGELOPOULOS, Geneva
Prof. CESARE COSCIANI, Rome
Prof. W. J. DE LANGEN, Amsterdam
Prof. CAMILLE ROSIER, Angers (France)
Prof. EDGAR SCHREUDER, Brussels.

Because of the new setting up of the Bulletin, its contents will include six parts:

I articles
II Information on Statute Law
III Information on Case Law
IV Reviews and surveys of books and articles dealing with taxation matters
V Official papers and other documents
VI The dictionary in its new form

As the time for preparing this issue in its new form was rather short, the parts II and VI do not figure here yet.

The next issue, due to appear in the middle of April, will contain *inter alia* surveys of new fiscal enactments in France and of the countries of BENELUX.

With respect to the dictionary a final decision is still pending. The Editors hope to be able to start with it in the next issue.

The Editors shall be pleased to receive criticisms, remarks, suggestions as well as contributions within the nature of the Bulletin.

NOTE DE LA REDACTION

Comme nous l'avons déjà communiqué précédemment, à partir du présent numéro, on a apporté quelques modifications au Bulletin. Ces modifications permettent à la Rédaction, assistée d'un comité consultatif, d'offrir aux lecteurs une documentation plus systématique et plus complète dans le domaine fiscal.

La rédaction se fait un plaisir de communiquer aux intéressés les noms des personnes qui font partie de ce comité consultatif:

MM. les Professeurs: A. ANGELOPOULOS, Genève
CESARE COSCIANI, Rome
W. J. DE LANGEN, Amsterdam
CAMILLE ROSIER, Angers (France)
EDGAR SCHREUDER, Bruxelles.

En conséquence de la nouvelle organisation, le Bulletin comprendra six rubriques, à savoir:

I des articles
II des chroniques relatives à la législation fiscale des différents pays
III des chroniques relatives à la jurisprudence fiscale
IV des aperçus et comptes rendus d'ouvrages fiscaux et autres publications en matière fiscale
V des documents divers
VI la suite du dictionnaire.

On ne trouvera pas encore dans ce numéro les rubriques II et VI par suite du trop court délai apporté à la prèparation.

Le prochain numéro qui paraîtra vers la mi-avril contiendra entre autres des chroniques relatives à la législation fiscale française et aux pays du Benelux.

En ce qui concerne le dictionnaire les échanges de vue sont en cours. La Rédaction espère commencer à présenter ce dictionnaire sous sa nouvelle forme dans le prochain numéro.

La Rédaction recevra volontiers toutes remarques, suggestions et contributions.

I

PUBLIC FINANCE IN ISRAEL

by

A. W. DUESTERWALD-DOROTH,

Head of Scientific-Economic Section, Investment Centre, Ministry of Trade and Industry.
Lecturer, School of Economics.

Public Finance in the State of Israel is yet so near to its origins that a mere record of new legislation and administrative action would hardly be understood. Some remarks on foundation, structure and development are therefore indispensible. In this country historic changes were condensed in a period of less than three years, thus forms and trends of development are laid open, which are elsewhere functioning as well, though their roots are hidden in a remote past of decades or even centuries. Furthermore, the financial problems of Israel are distinguished by that in most other countries at least up to the Korean Crisis, the typical conditions of the *fifth post war year* were prevailing, while hostilities in Palestine ended only two years ago and since then, it is a truce, characterised by high tension and high standard of armament, no peace which determines the public budgets as well as the foreign trade and the man power situation.

All other particularities of Israel Public Finance may tentatively be summarised under the formula that there exists a *serious disproposition between budget needs on the one hand and the taxation-potential on the other.*

The turn to the modern pattern of financial policy was a rather sudden one. In 1946/47, the last fiscal year of Mandatory Palestine, the Jewish share in the central Government budget together with public budgets of the autonomous National institutions was equal to about 20—25 % of Jewish National Income in Palestine i.e. only half the quota indicating the relation of Public Budget and National Income in Great Britain. In 1949, Central Public Budgets — excl.

local authorities — were equivalent to about 50 % of the National Income in Israel.

The problem is aggravated by the *distribution of income.* When the war broke out between Israel and her Arab neighbours, the liquidation of the inflationary pressure inherited from the second world war had hardly begun. From this starting point a new inflation was alimented by war, mass immigration and large scale investment. Relatively, this new, local, trend of inflation was not so excessive at all. The Cost of Living Index was, in the monthly average of 1949, by 27 % only above the level of November 1947, the last month prior to the disturbances; and the average for 1950 will be by appr. 7 points lower. But, the absolute level is disturbingly high and the *discrepancy between Israel and World-prices* has widened. As both, the Israel Pound as well as its predecessor, the Palestine Pound, are officially equivalent to the English Pound Sterling, the *real income per head* of both countries may be calculated, by C. o. L. Indices, as follows:

Real income 1949, p.h., in £ of 1939: Great Britain: £ 140.—
Israel £ 60 —

Even the assumption that about 15 % of the population were concentrated in immigrants — and transition — camps and did not yet earn an income, will not decisively change the picture. The small margin between average income and minimum of subsistence prejudices the shaping of the tax system, particularly direct taxation and its scale of progression.

It is true, however, that there exists, in certain strate of the settled and earning population, a surplus-accumulation of nominal potential purchasing power, as indicated by demand-deposits and currency in circulation, which exerts an inflationary pressure and invites state collection, either by rigid taxation or by floating internal loans. Some steps have been taken in this direction, but there are objective limitations to be kept in mind.

First of all: Additional State Expenditure which fails to provide for — or to be accompanied by — an early increase of either import power or productive capacity, will strengthen the inflationary pressure, even if it is being financed by presumptively „deflationary" methods of taxation and borrowing.

Secondly: While the highest civilian priority is given, also within the government expenditure, to building up as soon as possible a capacity of production and export appropriate to the rapid increase of population, the Government feels committed in its taxation and borrowing policy to *safequard the incentives for investment and improvement* of productivity; consequently private investment is encouraged by considerable tax reductions, partial tax exemptions are granted for certain kinds of saving, for wage-premiums on increased productivity of labour, and in general — in spite of the strong tendency of social justice in public finance — the authorities are anxious not to weaken the initiative of economic activity and expansion.

Thirdly: The *foreign currency* problem so far which was during the first years after the world war obliterated by the large balances, accumulated during the war grew more serious with the exhaustion of these reserves. While, for instance, the investment budget in France could be, rightly, built on the assumption, that a considerable part of the money raised by the government from the local economy is flowing back to the local manufacturers of machinery, vehicles and building materials, the share of local industries in Israel's supply of investment goods is much smaller; and large amounts have to be spent abroad. Although the imports for consumption were gradually reduced, by both, the austerity scheme and the progress of local agriculture, the trade deficit for the first nine months of 1950 rose to nearly IL. 64 million. In France, Marshall Aid covered more than one third of last year's investment budget and virtually the whole trade deficit. In Israel there were the contributions of Jews abroad to the National Funds as well as capital imports of immigrants and other investors, but, in addition, foreign debts had to be increased — such as the loan of the U. S. A. Import-Export Bank and other public loans of foreign countries — and foreign reserves of the Issue Department, which were above 25 millions in 1949, have been gradually reduced to IL. 15 million in September 1950. The additional assets covering the currency circulation in Israel were, on the same date, appr. IL. 25 million Treasury bills and IL. 30 million Land Notes (government loans for financing basic investments). Total currency circulation rose therefore, from about 50 million at the beginning of the year

to about IL 70 million in September, but, inspite of the undeniable inflationary pressure connected therewith, the development should be measured by the simultaneous increase of production, which is likewise in excess of the rates of increase usual in most other countries. During the 24 months ending September 1950, both Government net borrowing from the printing press and total currency circulation rose, therefore by an annual rate of about 20 million pounds. But, during the same two years the population increased by more than half a million to well over 1,3 millions and in some principal branches of mixed farming as well as in the generation of electricity, particularly for industrial purposes, the output has more than doubled. In other branches of production, however, as well as in housing, the backloy is considerable.

In the tax structure, there is a slight shifting towards the progressive category of consumption-taxes, as may be seen from the following table 1 (in % of total ordinary revenue).

Inspite of the steady expansion of the total budgets the government has not forced up the share of the progressive income tax. Also property taxes and duties on either mass consumption or materials for production were only with great caution exploited as a source of additional revenue, in order to avoid a discouragement of economic activities in such circles which do not directly benefit from the special tax relieves for new investors, etc. The same helds good for land registration and other fees. The shares of taxes on production, income and essential mass consumption. in total revenue collections were therefore reduced. On the other hand, both customs and excise on tobacco and intoxicating drinks and the "Luxury"-tax — in fact a purchase tax on most consumers-goods except of foodstuffs and "utility" manufacture — were increased from IL 6.5 million pounds in the budget 1949/50 to IL 12.25 in the budget for 1950/51. It should, however, not be overlooked, that the income tax, in spite of its virtually unchanged weight, is to yield in 1950/51 about 14 millions as against about 10 millions expected for and actually collected in 1949/50, and the revenue from import customs and fuel duties which has actually surpassed the budget estimates in 1949/50, a rise by more than two million pounds or 20 % appr. is forecasted.

The increasing receipts from interest and repayments on account

Table 1:

	Actual Collection April—December 1949	Budget 1949/50	Estimates 1950/51
Income tax (incl. surtax for immigrant absorption)	21.1	25.0	23.5
Customs-Duties	25.8	20.3	15.6
Fuel	9.2	7.3	7.3
Excise on tobacco and intoxicating liquors	12.3	13.4	13.6
Luxury tax	2.6	2.4	5.9
Urban and rural property tax	3.0	2.8	2.0
Revenue stamps	2.2	2.4	2.2
Licence Fees	2.1	2.4	3.4
Land Registry and other services	4.1	3.6	3.0
Collection from loans and Government property	0.5	0.6	2.8
Land betterment tax	0.2	1.9	0.8
Inheritance tax		1.2	0.2
Revenue from communication-enterprises	9.0	12.4	12.5
Sundry	7.9	4.3	6.9
Total	100.0	100.0	100.0

of loans by which the government participated in the investment outlay of municipal and other public bodies as well as of the private economy is a natural result from the growing importance of the "development budgets" below the line of the total government accounts.

To-day the number of income-tax-payers is about 200.000 i.e. approximately 53 % of all real earners i.e. excluding from the calculation such potential earners among the new immigrants who have not yet been integrated in the economic life of the country.

Nearly 60 % of the tax-payers are concentrated in the brackets of IL 600—IL 1100 annual income, while 60 % of the taxes paid are collected from the brackets IL 900—IL 2000.

Without entering into the vicissitudes of historic development the pattern of public finance as a whole and the place of government budgets within the frame work af an all comprising summary of the various public budgets is schematically summarized in the following table where round figures are given as representing the approximate totals of the calender year 1949. Such a simplification was necessary as the fiscal years of the documents, from which data can be taken are covering various periods. Government accounts are terminated per 31st of March, the Jewish Agency and the National Funds make up their accounts per 30th of September as the date nearest to the Jewish New Year and on certain categories of Government indebtness which is related to the unpublished extraordinary budget for security and similar purposes, is in part to be indicated only by treasury bills holdings of the commercial banks as shown only once the year per 31 December in the published balance sheets of the individual banks, but not specified in the monthly bank summaries.

CONSOLIDATED [1]) SUMMARY OF PUBLIC FINANCE 1949.

Rounded up, Millions IL	(a) Government	(b) Local Authorities	(c) Jewish Agency & Nat. Funds	(d) Total
Internal Revenue				
1) Ordinary (Taxes, customs, fees etc.)	41	10	1	52
2) Extraordinary (not borrowing)	36	3	2	41
3) Total Internal Revenue	77	13	3	93

[1]) Eliminating double enumerations o/a of inter-institutional transfers and mutual participations.

External Revenue				
4) Ordinary (Contributions etc.)	—	—	3	3
5) Extraordinary (not borrowing)	8	—	21	29
6) Total External Revenue	8	—	24	32
7) Grand Total	85	13	27	125

Out of this total as much as 70 millions or nearly 2/3 of the total were on account of extraordinary budgets. It is true that these extraordinary budgets include a certain amount of extraordinary security expenditure financed as mentioned above by the issue of treasury bills to commercial banks and the issue-department, where by the way the treasury-bills are specified in the published weekly statements. On the other hand, ordinary budgets of the Government as well as of the local authorities include considerable spendings for development activities as well as for social, cultural and health-services rendered to new immigrants. The budgets of the Jewish Agency and the National Funds are almost entirely earmarked for development and immigration. If investments proper i.e. development outlay which eventually chrystalizes in the creation of new tangible assets, are being isolated from consumptive development expenditure such as feeding and housing of immigrants in transition camps, it can be calculated that in 1949 and the first part of 1950 as much as 45—48 % of real new investment in Israel were financed directly or indirectly from public budgets, the largest thereof being the Government development budget which was expanded for the fiscal year 1950/51 to 65 millions as compared with an ordinary budget of somewhat below 60 millions. While ordinary budgets could virtually be balanced by collections of taxes, customs and other ordinary revenue the main sources of the Government development budget are so far land notes a kind of 15 years loan bearing 3 % interest secured by the Government owned lands and largely taken over by the Issue-Department where it may serve as a currency reserve and the loan granted to the Government by the U.S.A. Import-Export Bank in 1949 real new investments are

equivalent to about 35 % of Israels national income. As the enlargement of the productive apparatus in accordance with the increase of the population is the precondition for raising income and revenue, the trends of both budget expenditure and taxation policy which are of course closely interlated should be understood under this aspect.

LA LUTTE CONTRE LA FRAUDE FISCALE
(3ème étude)[1])

LES MOYENS PREVENTIFS CONTRE LA FRAUDE [2])

par le

Dr CAMILLE ROSIER,

Professeur de Science fiscale et financière à l'Ecole des Hautes Etudes Commerciales de Paris, à l'Institut de Technique Comptable du Conservatoire National de Paris et à la Faculté Libre de Droit d'Angers.

Légale ou illicite, comptable, juridique, technologique ou matérielle, la fraude fiscale sous toutes ses formes et en quelque pays que ce soit, doit être combattue autant que possible.

§ I. LES REPERCUSSIONS DE LA FRAUDE FISCALE

Les raisons de cette lutte sont faciles à deviner: la fraude est, en effet, désastreuse pour le fisc et pour les assujettis.

Pour le Trésor:

a). Elle enlève au Trésor une *partie de ses recettes financières;* la moins-value difficile à préciser représente certainement plus de 40% en moyenne; en fait elle est plus élevée, par exemple quand il s'agit de taxation des cultivateurs, des professions libérales, plus réduite lorsqu'il est question de salariés, etc.

La fraude apporte, en outre, aux volontés du Parlement des modifications importantes, puisque les assujettis qui supportent, en définitive, telle ou telle contribution, ne sont pas ceux que les Assemblées parlementaires avaient visés; il en est ainsi quand

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[1]) I dans Bulletin, Vol. IV, p. 148; II dans Bulletin, vol. IV, p. 237.

[2]) Consulter CAMILLE ROSIER: La fiscalité française devant l'opinion publique (1940) — L'impôt (1936) — Tous nos impôts (1925) — Traité de législation fiscale (1925) — Fiscalité de guerre et impôt de solidarité (1945) — La vie fiscale de l'entreprise (1949) etc . . .

celles-ci ont la prétention de fixer la contribution de chaque catégorie sociale (propriétaires fonciers, cultivateurs, commerçants, etc.) d'après la composition du revenu ou du capital national.

La fraude amène aussi le fisc, justement inquiet des moins values dans les recouvrements, à proposer au Parlement et à lui faire voter des rehaussements de taux souvent excessifs, des sanctions trop sévères, des investigations domiciliaires abusives, des renseignements multiples sur le train de vie des contribuables.

La fraude généralisée crée chez les agents du fisc un état d'esprit „fiscal" c'est-à-dire les porte à voir chez tous les contribuables des contrevenants aux lois et impôts; elle fait naître un climat de suspicion.

La fraude complique la tâche des Administrations fiscales, les oblige à créer des fonctionnaires nouveaux pour contrôler les déclarations fiscales, les estimations, les évaluations — pour effectuer des investigations extérieures et des enquêtes sur place — pour faire fonctionner des commissions de conciliation et des commissions paritaires — pour rédiger des mémoires et défendre devant les tribunaux, etc.

Pour les redevables:

a). Si les inconvénients de la fraude fiscale sont indiscutables pour le Trésor, ils ne sont pas moins certains pour les redevables, fraudeurs ou honnêtes.

Elle incite ceux-ci aux simulations, aux dissimulations, aux combinaisons comptables discutables, aux doubles comptabilités, etc . . . Elle démoralise les assujettis, leur enlève toute droiture dans leurs rapports avec le Trésor; elle fait apparaîte les Conventions sous un jour inexact et fallacieux; elle donne naissance à des comptabilités commerciales inexactes bien souvent, quand elles ne sont pas dressées uniquement ad usum fisci, à des contre-lettres, à des „dessous de tables", etc.

La fraude fait surgir les „officines fiscales" les plus discutables, les „écoles de contribuables" où les assujettis manquant d'imagination et n'ayant pas trouvé l'audience des conseils fiscaux sérieux et consciencieux, vont chercher, moyennant rétribution, des idées pour lutter contre le fisc et masquer leur situation fiscale véritable.

La fraude fausse, au surplus, pour les assujettis les conditions

de la concurrence; elle place, en effet, les redevables scrupuleux et honnêtes en état d'infériorité vis-à-vis des individus peu soucieux de remplir leurs obligations fiscales, les premiers pouvant vendre à meilleur marché en n'acquittant pas les impôts réellement dûs.

La fraude oppose par ailleurs les assujettis qui ne peuvent pas ruser avec le fisc comme les porteurs de coupons, les salariés, et les Sociétés de capitaux dans une certaine mesure et les contribuables dont les possibilités de tromper le Trésor sont multiples et aisées comme les cultivateurs, les professions libérales, les artisans, les commerçants détaillants, les sociétés de personnes, les assujettis „au forfait" les entreprises nationalisées et les entreprises du secteur privé ,les sociétes nationales de chemin de fer et les transports routiers particuliers, etc.

En résumé, le fisc a le droit et le devoir absolu de reprimer les agissements contre le Trésor sous peine de commettre un véritable déni de justice à l'égard des contribuables loyaux et de provoquer des „fuites" excessives dans les rentrées budgétaires.

§ II. LES CONDITIONS OPTIMA DE LA LUTTE CONTRE LA FRAUDE FISCALE.

La lutte contre la fraude fiscale, ainsi amplement justifiée, ne peut d'ailleurs être valable pratiquement que si elle répond à certaines conditions de continuité, de pertinence, de discrétion, de règlementation, de loyauté, de rapidité, etc.

En premier lieu, la lutte doit être conduite avec *continuité*: si non, elle se traduit par des curiosités occasionnelles, épisodiques et inattendues: en un mot, les contribuables ne peuvent accepter la surveillance du fisc que si celle-ci s'exerce régulièrement et n'est pas interrompue par des arrêts dans la répression, comme les amnisties. Les redevables qui savent la possibilité du vote de celle-ci par le Parlement sont toujours convaincus que la fraude, même découverte, n'est pas toujours sanctionnée; ils sont aussi autorisés, en cas de contrôle intermittent, à croire que les règles de la morale fiscale sont revisables et que la vérité fiscale du jour sera l'erreur du lendemain.

En second lieu, la lutte doit être *générale* et s'appliquer avec

uniformité à l'ensemble du territoire et des assujettis: elle ne peut en bref être acceptée par les redevables que s'ils ont l'impression et même la certitude que la répression est poursuivie dans chaque département ou toute autre circonscription administrative (canton, commune etc.) avec la même sévérité.

En troisième lieu, la lutte contre la fraude doit se révéler *pertinente;* autrement dit, elle ne doit se manifester que si elle peut être efficace ou efficiente; il est toujours maladroit de mobiliser le personnel des Régies fiscales pour des résultats insignifiants. Il en est ainsi quand la matière imposable à contrôler est peu nombreuse, facilement dissimulable ou „evanescente", ect.

Il est aussi peu défendable de préconiser des mesures de contrôle qui seront facilement „tournées" par les assumettis par suite de la connivence des tiers, des conditions d'activité des intéressés ou des modalités des transactions à surveiller. Tel est également le cas des moyens de lutte qui ne font appel qu'à la conscience intérieure du redevable, qu'à la conception du devoir fiscal, etc...

En un mot, le fisc doit s'abstenir de toute vérification s'il doit finalement et inévitablement afficher son impuissance et sa défaite.

En quatrième lieu, la réaction contre la fraude doit faire preuve le plus souvent de *discrétion:* elle doit éviter les formes spectaculaires et extériorisées; sinon elle risque, en portant sur la place publique, les différends entre le Trésor et les assujettis de provoquer des critiques de l'opinion et l'abrogation par le Parlement de mesures jugées trop brutales.

Il est sur ce point d'ailleurs des nuances à observer; dans les pays où la fraude fiscale est réprouvée par la généralité des citoyens, il n'est pas dangereux de „clouer publiquement au pilori" les fraudeurs; dans les pays, au contraire, où la fraude fiscale est considérée presque comme un sport national, un snobisme de bon aloi, il est généralement inopportun de faire une publicité excessive aux fraudeurs, qui deviendront rapidement des „victimes de l'oppression fiscale".

En cinquième lieu, la lutte contre la fraude fiscale doit être *graduée* et différenciée, ce que veut dire qu'elle doit comporter des mesures préventives, éducatives, concommitantes et répressives. En un mot le fisc doit chercher d'abord à renseigner les assujettis sur leurs devoirs fiscaux et à les obliger discrètement à les accomplir:

il est tenu ensuite de découvrir par une série de techniques appropriées, les infractions commises et à les faire reconnaître par leurs auteurs. Enfin, il est amené à sanctionner les fraudes commises par des peines de divers ordres (financier, juridique, administratif, professionnel, pénal, etc . . .)

La lutte contre la fraude doit-elle, en outre, être *éducative?* L'affirmative paraît certaine, bien que certains puissent estimer qu'il y a des assujettis incapables de rédemption: il n'est pas douteux que les redevables, en général, se livrent aux combinaisons les plus critiquables, non pas seulement par ignorance des dispositions en vigueur, mais surtout par une mauvaise information sur les répercussions inattendues de la fraude en ce qui concerne la gestion de leur patrimoine, sur les sanctions qu'ils peuvent encourir, sur les procédés d'investigation que possède le Trésor pour déceler l'évasion de l'impôt, etc.

En un mot, la lutte contre la fraude ne peut être satisfaisante que si elle s'accompagne d'une éducation pratique préalable des assujettis: ainsi conçue, elle ne donne pas toujours tous les citoyens le sens du devoir fiscal, de la solidarité fiscale, etc. mais elle ,,alerte'' de nombreux redevables sur les dangers de la fraude et crée chez ceux-ci une appréhension opportune à l'égard de la curiosité des Régies financières; autrement dit, la lutte nettement éducative peut dégôuter des assujettis en les convaincant de la rentabilité assurée de la fraude.

Au surplus, la lutte contre la fraude n'est parfaite dans ses résultats que lorsqu'elle aboutit à faire ,,*coller'' à la réalité*, c'est-à-dire à la vie réelle des individus, à leurs recettes, à leur patrimoine, à leurs dépenses etc.: ce qui veut dire que le climat de la fiscalité n'est satisfaisant que lorsque les revenus réellement encaissés sont ceux qui sont cotisés, que lorsque les meubles et immeubles effectivement récueillis dans les héritages sont tous compris dans les déclarations de succession, que lorsque toutes les ventes de marchandises ou de services effectués par les commerçants sont inscrits sans exception dans la comptabilité commerciale etc . . . C'est là, il faut l'avouer ,une hypothèse pour une ,,cité future fiscale'' à créer où il n'existerait ni exonérations ni estimations ou évaluations forfaitaires.

En outre, il n'est pas inutile de préciser que la lutte contre la

fraude fiscale doit être *rapide,* c'est-à-dire incluse dans des délais relativement courts, trois ou quatre années au maximum: maintes raisons justifient cette observation. En premier lieu, un contrôle concomitant de l'infraction est plus efficace: il permet de connaître plus exactement les conditions de la fraude commise, de découvrir la valeur exacte du bien, etc. Il est beaucoup mieux accepté du contribuable fraudeur, qui trouve normal d'être „sanctionné" quelques semaines ou quelques mois après s'être „mis en défaut" vis-à-vis de la loi fiscale; il est, au surplus, „préparé" à subir les investigations de l'agent du fisc.

Un contrôle *quasi-concomitant* a surtout l'avantage de libérer rapidement le contrevenant, de ne pas faire peser sur lui indéfiniment la menace imprécise d'une vérification effectuée à retardement; la lutte tardive contre la fraude prend l'aspect d'une „surprise"; d'une brimade, etc. et surtout peut amener le fisc à sanctionner un assujetti qui a dépensé les revenus dissimulés, aliéné les biens omis, qui ne peut plus récupérer les sommes versées sur le client ou le consommateur etc.: le recouvrement des droits éludés s'avère alors difficile, sinon impossible.

En toute hypothèse il est souhaitable que la lutte contre la fraude fiscale soit *réglementée* le plus possible par des textes légaux ou réglementaires; elle ne doit, en un mot, ne laisser que peu de place au pouvoir discrétionnaire des agents de contrôle; ainsi délimitée par des définitions impératives, elle risque moins — de donner lieu à des initiatives inopportunes de la part du fisc — de faire accuser les agents des Régies de perdre leur calme, de manquer d'objectivité, de faire appel à la délation, de se livrer à de véritables représailles, à des violations de domicile ou à des fouilles policières.

Sans qu'il soit besoin d'insister, la lutte contre les fraudeurs doit toujours être *courtoise, loyale* et *respectueuse* de la dignité des contribuables; elle doit, autrement dit, rester bienveillante et considérer les assujettis, jusqu'à preuve contraire, comme des redevables honnêtes et non coupables.

Il paraît opportun de signaler une controverse qui divise les techniciens fiscaux: la lutte doit-elle avoir un objectif limité, une *rentrée fiscale,* c'est-à-dire le paiement des impôts éludés par les fraudeurs? Doit-elle, au contraire, avoir un but plus large, plus social, plus politique? C'est ce que certains soutiennent en vo-

yant dans la réaction du Trésor un instrument destiné à assurer *l'égalité devant l'impôt*, une meilleure répartition des charges publiques, un redressement equitable dans la couverture des dépenses publiques.

Ce point de vue comporte évidemment des conséquences particulières: la lutte ainsi comprise doit être poursuivie même pour des „résultats insignifiants", elle doit être alors assez ostensible pour satisfaire l'opinion publique; elle doit comporter des „exemples, des poursuites correctionnelles, des mesures de publicité, etc . . . Ce sont là, semble-t-il, des gestes sans doute propres à réveiller le „devoir fiscal"; mais ils risquent d'indisposer les assujettis, de les pousser à des gestes de révolte, à des refus de payer l'impôt, etc.; on peut se demander s'il appartient aux Administrations financières de prendre l'initiative de faire régner l'équité fiscale, alors que les Parlements s'en désintéressent, que les Constitutions et les Déclarations des droits sont muettes, alors qu'au surplus, l'égalité devant l'impôt" constitue pas un critère bien vague et susceptible d'interprétations bien diverses, alors qu'on discute entre une justice fiscale uniquement commutative et une justice fiscale redistributrice.

§ III. LES MESURES PREVENTIVES CONTRE LES FRAUDEURS.

Le fisc, a-t-on dit, a le droit et le devoir absolu d'alerter et de documenter les assujettis qui peuvent ignorer ou mal connaître les prescriptions légales et réglementaires.

Sans doute, nul n'est censé ignorer la loi fiscale; mais celle-ci est si changeante, si compliquée, si difficile à découvrir dans les codes, dans les recueils officiels, etc. en dépit des essais de codification, qu'il est opportun de rappeler périodiquement aux redevables leurs obligations.

Les procédés à utiliser en cette matière sont multiples: ils font appel à la mémoire et à l'intérêt des redevables: déclarations d'existence de revenus, de fabrication, tenues de documents comptables ou de répertoires, présentation de renseignements, de justifications, etc., les autres supposent une organisation adéquate du personnel fiscal et l'institution de mesures générales susceptibles de créer un climat assez receptif à la fiscalité.

§ 1. RENSEIGNEMENTS FOURNIS PAR LES ASSUJETTIS.

a). Les *déclarations* sont incontestablement les mesures les plus fréquentes; elles portent sur les éléments imposables et sur certaines signes extérieurs; les assujettis sont tenus d'avouer leurs revenus cédulaires, leur revenu global, certains éléments de leur patrimoine ou l'ensemble de leur patrimoine, le montant de leurs ventes ou de leur chiffre d'affaires, leurs véhicules, leurs chevaux, leurs chiens, leurs appareils de T.S.F., leurs pianos, leurs affiches et enseignes, leurs locations, leurs héritages, leurs donations, etc.

Les déclarations portent également sur les *éléments du train de vie:* loyer d'habitation, personnes à leur service personnel, voitures et avions de tourismes, précepteurs et gouvernants, détention d'actions de chasse, appartenance à un club ou à un cercle, pluralité de résidences, etc.

Les déclarations sont utilisées aussi pour faire connaître au fisc certains *éléments d'information:* le montant des stocks, les salaires payés, les personnes (ouvriers et employés) salariées d'une entreprise, les loyers d'habitation et les loyers professionnels, le nombre des voitures utilitaires et touristiques, etc.

Les déclarations peuvent aussi donner au trésor des indications précieuses, si elles mentionnent *l'existence et les évènements d'une activité professionnelle,* l'ouverture d'un magasin, d'une succursale, la mise en fabrication d'un produit, le placement en entrepôt, la mise en circulation, etc.

Les déclarations souscrites par les contribuables euxmêmes, il est bon de le souligner, sont loin d'étre toujours sincères; mais si elles sont exigées *de tiers* comme les sociétés versant des coupons, les débiteurs payant des intérêts aux créanciers, les employeurs décomptant des salaires à leurs employés et ouvriers, les déclarations sont nécessairement plus sérieuses et évitent les fraudes, dès lors surtout qu'elles permettent à leurs auteurs de réduire par leur sincérité leurs propres cotisations.

Les déclarations, au surplus, sont un moyen plus efficace de réduire la fraude, si elles sont souscrites sur des imprimés ,,détaillés'', réclamant de nombreuses précisions, rendant impossibles les obscurités volontaires, les silences systématiques sur certains revenus (revenus d'origine étrangère par exemple), sur certains biens (valeurs

mobilières au porteur, argent comptant par exemple). Sur certaines dépenses professionnelles, sur le montant des dettes, etc.

b). Aux déclarations peuvent être ajoutés les *renseignements* exigés du fisc à l'appui des déclarations, notamment pour la taxation des revenus ou des capitaux: compte de profits et pertes, état des provisions, état des amortissements, état des bénéfices mis en réserve, état des bénéfices distribués, bilan, montant des tantièmes, des jetons de présence et des réserves, procès-verbaux d'assemblées générales et de conseils d'administration, actes de constitution de sociétés, d'augmentation ou de réduction de capital, de transformation, de liquidation, etc.

c). Une place à part doit être faite aux *éclaircissements:* il s'agit de renseignements qui sont réclamés par l'agent du fisc à l'occasion de l'examen des déclarations pour expliquer des divergences entre les revenus déclarés au cours d'années successives, entre des éléments d'un patrimoine à différentes dates, pour distinguer des biens „anciens" et des biens „nouveaux", c'est-à-dire entrés dans le patrimoine depuis une certaine date; généralement renseignements et rehaussements font l'objet de bulletins à remplir, de réponses à faire dans un certain délai assez court.

d). Les *justifications* constituent une autre catégorie de mesures préventives contre la fraude: il est réclamé à l'assujetti: des preuves écrites justifiant l'existence de charges de famille, d'enfants mineurs ou d'enfants majeurs à charge, de dettes déductibles d'un patrimoine ou d'un héritage, de cotisations payées à un fisc étranger, etc.

e). Le fisc impose de plus en plus aux assujettis la tenue régulière de certains documents révélant jour par jour l'activité taxable.

Ce sont, d'une part, des *répertoires,* c'est-à-dire des registres sur lesquels ils doivent inscrire, d'une façon sommaire, par ordre chronologique, les *actes* ou *opérations* qu'ils réalisent, de manière que le fisc puisse, par ce moyen, en avoir facilement connaissance: le répertoire peut être imposé aux officiers ministériels (notaires, huissiers, greffiers), aux Secrétaires généraux de préfecture et de mairie, aux marchands de biens, aux intermédiaires en matière de fonds de commerce, aux propriétaires louant des coffres- forts, aux banquiers, aux exploitants d'alambics, aux payeurs de coupons, aux bijoutiers, aux antiquaires, aux pharmaciens, aux courtiers en

marchandises, aux professions libérales, aux loueurs en meublé, etc.

Ce sont, d'autre part, des *livres spéciaux* exigés de certains petits artisans, commerçants, façonniers, professions libérales, etc. pour faire connaître au fisc, jour par jour, leurs ventes de marchandises et de services, leurs honoraires, etc. Ces livres sont destinés à suppléer la comptabilité commerciale que ne sont pas obligés de tenir les dits assujettis, d'après le Code de Commerce de leur pays.

Autrement dit, alors que les répertoires contiennent le relevé des actes et operations de vente, d'achat, de dépôt, etc. le livre spécial donne la liste des encaissements, des prix de ventes ou de services, etc.

L'obligation du livre spécial, en général, n'est pas prévue encore pour les propriétaires fonciers, pour les porteurs de valeurs mobilières, pour les salariés, pour les cultivateurs, etc.

Sont aussi surtout prévus les *documents comptables* qui sont precrits par la loi commerciale: ils comprennent à la fois les livres obligatoires exigés par le Code (livre journal et annexes, copie de lettres, livre d'inventaire) et les livres facultatifs recommandés par la pratique (pièces de recettes et de dépenses, livre d'ordonnances de pharmacien, inventaires, feuilles de présence aux assemblées générales, registres de transport, d'actions et d'obligations, etc.).

f). Une autre catégorie de documents peut être réclamée par le fisc, notamment pour le contrôle des contributions indirectes et des droits de douane: ce sont les *titres de mouvement* ou papiers remplissant certaines conditions de forme et destinés à accompagner le déplacement de certains objets taxables: ils constatent soit l'acquittement préalable des droits et la circulation en franchise, soit l'exonération des droits, soit enfin le déplacement en suspension des droits; ces documents, tirés de registres à souche, sont dénommés des congés, des laissez-passer, des passedebout, des acquits à caution, des feuilles de transport, etc. Quelquefois, le titre en question est remplacé par une vignette, une estampille, une plaque de garantie, un poinçon, qui attestent le paiement de l'impôt.

Peuvent être également signalées au fisc les *ouvertures de comptes* dans les usines contrôlées: comptes de fabrication, comptes de matières premières, comptes de produits semi-finis ou de produits finis, etc.

g). En matière de *valeurs mobilières*, les procédés préventifs de contrôle utilisés par le fisc sont encore plus particuliers.

Le fisc éprouve les plus grandes difficultés à suivre les déplacements des titres au porteur, à connaître l'encaissement de leurs produits soit à l'intérieur du territoire, soit hors des frontières; à cet égard, plusiers moyens sont susceptibles d'être utilisés: ce sont le remplacement des titres au porteur par des titres nominatifs, l'endossement des titres, le bordereau de coupons, le carnet de coupons, le précompte.

La *nominativité et l'endossement obligatoires* des titres sont à écarter immédiatement comme contraires à l'évolution économique et financière, qui exige la possibilité d'une mobilisation facile et rapide de la fortune.

Le système du *bordereau de coupons*, qui consiste à exiger des banques payeuses de coupons, l'établissement de fiches transmises ultérieurement au fisc, est une mesure pratiquement inopérante, du fait notamment que l'Administration est dans l'impossibilité matérielle d'utiliser les millions de documents qui ont éte établis par les établissements de crédit.

Le *précompte* ne doit pas non plus retenir l'attention; il consiste à faire retenir, lors du paiement des coupons par les banques, une somme fixée forfaitairement et contre laquelle est délivré un récépissé; ce document permet ensuite d'acquitter un certain nombre d'impôts généraux sur le revenu.

Un seul procédé efficace de contrôle peut, en définitive, être admis par le *carnet de coupons;* il s'agit d'une espèce de calepin, dont la feuille de tête constitue une véritable carte d'identité et qui est délivré et périodiquement visé par le fisc; aucun versement d'intérêts de valeurs ou de capitaux mobiliers ne peut être effectué sans y avoir été inscrit; l'évasion fiscale est ainsi réduite à l'extrême et ne devient possible qu'au cas de paiements faits à l'étranger ou avec l'aide de carnets empruntés par le contribuable à des tiers complaisants.

h). Le carnet de coupons peut être étendu sous la forme d'un *carnet de revenus:* toute recette correspondant à un loyer, un fermage, un intérêt, un salaire, un honoraire, une commission, etc. doit être inscrite sur le dit document qui est individuel ou familial, et peut être ensuite réclamé par le fisc quand celui-ci procède à

la vérification des déclarations d'impôts sur le revenu souscrites par les propriétaires fonciers, les salariés, les professions libérales, etc.

Il n'est pas douteux que le système peut appeler des critiques: il est paperassier, il oblige les créanciers à ne jamais s'en séparer, les débiteurs d'intérêts à le réclamer afin de faire un paiement régulier, etc.; il peut donner lieu à des pertes simulées quand il est révélateur d'encaissements trop importants; il permet les collusions dès l'instant que des recettes pourront être inscrites sur des carnets de comparses de secrétaires, de domestiques, etc., c'est-à-dire de personnes aisément complaisantes, puisque, le plus souvent, elles-mêmes ne sont pas cotisables comme n'ayant pas le minimum taxable.

§ 1bis. LES AFFIRMATIONS DE SINCERITE ET LES SERMENTS FISCAUX

Est signalée, pour ordre, la prescription imposée dans certains pays aux contribuables de terminer leurs déclarations fiscales ou leurs conventions juridiques par une affirmation de sincérité; autrement dit, les redevables sont tenus, sous la sanction des peines du faux serment, d'affirmer qu'ils ont fait état de toutes les recettes nationales et étrangères, nominatives et anonymes; qu'ils ont mentionné dans leurs ventes et échanges le chiffre exact des prix et soultes stipulés; qu'ils ont indiqué, dans une déclaration de succession, toutes les valeurs mobilières, toutes les espèces, tout l'argent comptant faisant partie de l'héritage, etc.

La même obligation peut être imposée aux officiers publics et ministériels, à occasion de la rédaction de contrats authentiques, etc.

Les techniciens de la fiscalité reconnaissent que les affirmations de sincérité n'ont aucune portée pratique, tout au moins dans les pays latins, où le fraudeur fiscal ne se croit pas obligé d'être en règle avec sa conscience individuelle ou avec sa réligion.

§ 2. L'ORGANISATION ADEQUATE ET INTERNE DES ADMINISTRATIONS FISCALES.

Le fisc, même aussi documenté par avance, se trouve en présence de redevables de plus en plus disposés à écluder leurs obligations

vis-à-vis des lois d'impôt, à discuter les cotisations réclamées, à minimiser les évaluations des immeubles, des fonds de commerce, à présenter leurs documents comptables sous un aspect critiquable à fournir des déclarations incomplètes, sans justification, etc.

Il doit donc, s'il veut se monter armé dans un débat, organiser ses services d'assiette, de contrôle et de recouvrement, éduquer ses agents, leur imposer une large culture à la fois générale, juridique, technologique, comptable, économique, et, instituer dans ses bureaux toute une documentation, etc.

Si ces conditions sont remplies, le fisc peut faire bonne figure dans la controverse, savoir *convainre* l'assujetti; il ne donne pas au fraudeur l'impression qu'il est brimé, ,,matraqué'' suivant un mot à la mode en France, il l'amène à reconnaître son erreur et à accepter sa ,,pénitence''.

a). Une première mesure est incontestablement dans cet ordre d'idées, l*e recrutement nettement sévère des agents du fisc;* ceux-ci doivent être pourvus, au minimum, d'une licence en droit ou d'un diplôme équivalent, recrutés exclusivement au concours, sélectionnés dans une carrière par une série d'examens, appelés périodiquement à faire des stages dans des centres nationaux, où sont dispensés les enseignements sur les formes nouvelles de la fiscalité, du droit, de la comptabilité, de la technologie, de la vie économique et financière des entreprises, etc.

Ainsi choisis et formés, lés agents fiscaux ne peuvent être accusés d'ignorer leur métier, de faire figure de fonctionnaires ,,amateurs'' ou ,,politiciens'' ou ,,bornés'' par le professionnalisme fiscal; ils apparaissent, aux yeux des fraudeurs possibles, comme des adversaires objectifs, informés, fermés aux interventions politiques et partisanes; ils se présentent comme des serviteurs de la puissance publique disposés à appliquer les dispositions fiscales avec intelligence, modération et largeur d'idées, et à discriminer avec habileté les bons contribuables des véritables fraudeurs.

Grâce à leur ,,formation générale'', les agents du fisc peuvent donner aux redevables l'impression juste qu'ils ne cherchent pas à satisfaire un instinct maladif et sadique de persécution, qu'ils ne sont pas obsédés par le désir d'avoir chaque jour un ,,beau'' tableau de chasse, de collectionner des fraudeurs, etc.

Possédant un gros bagage intellectuel, une éducation parfaite,

une facilité d'élocution incontestable, une discrétion marquée, les fonctionnaires des Régies financières sont alors capables de créer, en faveur du fisc, un climat favorable: ils induisent la masse des assujettis à reconnaître qu'ils ont pour mission *principale* de demander à chacun sa contribution aux charges publiques, et que leur préoccupation n'est pas uniquement de surveiller, de guetter, de suspecter les assujettis, de fouiller leur vie privée, leurs comptabilités, etc.

b). Cette conception de l'organisation des Régies fiscales comporte implicitement pour celles-ci l'obligation d'utiliser leurs agents subalternes et temporaires, uniquement pour les fonctions *d'ordre intérieur;* autrement dit, le fisc doit, pour ne pas rendre la fraude excusable, éviter de mettre en contact avec les assujettis des auxiliaires dont l'instruction est insuffisante, dont le zèle peut être intempestif et maladroit, dont les explications motivant l'exigibilité de l'impôt sont maintes fois sommaires, dont les facultés de discussion sont limitées, etc.

c). Une question, accessoire en apparence, se pose au sujet de l'utilisation des agents chargés de réprimer la fraude: doivent-ils résider *sur place,* au chef-lieu de canton ou d'arrondissement? ou est-il préférable qu'ils soient affectés au chef-lieu du département ou de la région, et qu'ils viennent épisodiquement dans les différentes communes de leur circonscription pour remplir leur mission de vérificateur?

La première solution semble la meilleure: seul un agent du fisc, vivant au milieu de „ses" assujettis, est capable de contrôler efficacement leurs agissements répréhensibles; c'est uniquement sur place que peuvent être connues les fluctuations du marché des immeubles urbains; des fermes, des fonds de commerce, des pas de porte, etc. C'est uniquement un agent à attributions territoriales limitées, qui peut connaître le train de vie, la marche apparente des industries, des exploitations, etc.

On défend cependant la seconde solution pour les motifs suivants: l'agent du fisc, qui vient de vingt ou trente kilomètres, est ignoré heureusement des fraudeurs; il peut agir avec une plus grande indépendance, puisqu'il n'est lié par aucun lien mondain, par aucune relation de cercle, de café, d'association, de parenté, par aucun rapport de client à fournisseur, etc.; il est aussi plus capable

de déceler une fraude parce qu'il a des vues plus générales, parce qu'il contrôle des contribuables dont les activités professionelles sont plus diversifiées, parce qu'il estime des fermes et des parcelles situées dans des terroirs plus différents, etc.

Il y a lá, certes, une argumentation qui a sa valeur; mais il n'est pas douteux que l'agent du fisc, qui doit se déplacer, hésite à se transporter loin de son domicile, n'en a pas toujours les moyens financiers ou techniques, prend assez aisément l'habitude de „sévir" dans les quartiers ou terroirs voisins de sa résidence, etc., de préférence; cet état d'esprit se traduit par une lutte contre la fraude manquant d'uniformité, trop sévère sur un point, trop légère sur un autre.

d). Il ne suffit pas, pour lutter contre la fraude, que les agents principaux du fisc soient dotés d'une large culture générale et professionnelle et que les agents inférieurs soient cautionnées dans des besognes internes, il faut aussi qu'ils appuient leurs recherches sur une *documentation administrative* bien conçue, facilement consultable et continuellement mise à jour.

Sont à signaler à cet égard: les fichiers, les répertoires, les casiers fiscaux, les renvois, les cadastres, les monographies, etc.

Les fichiers sont constitués par des ensembles de fiches établies progressivement, et donnant des précisions sur les immeubles de rapport, les châteaux, les villas, les hôtels particuliers, les maisons de rapport, les immeubles ruraux, les fermes, les parcelles, les fonds de commerce, les clientèles, les "pas de porte", etc.

Ces fiches renseignent sur la valeur vénale et la valeur locative, telle qu'elle ressort des mutations successives à titre gratuit et à titre onéreux: elles font ressortir la valeur unitaire à l'hectare, à l'étage, à la pièce, à l'appartement etc.; elles soulignent si l'aliénation a été faite aux enchères publiques, par la voie judiciaire ou à l'amiable; groupées par communes ou paroisses, par cantons même, ces fiches sont révélatrices du marché immobilier, du marché des fonds de commerce et de leurs différents éléments (clientèles, droit au bail, marchandises neuves, etc.).

Le répertoire est une organisation interne différente: celle-ci est constituée par un ensemble de sommiers tenus dans chaque circonscription territoriale (commune, canton, arrondissement, etc.); des comptes sont ouverts à chaque contribuable et reçoivent des

inscriptions (à l'actif et au passif), à l'occasion des ventes, des échanges, des achats d'immeubles, de fonds de commerce, de cessions de droits successits, des liquidations, des partages, des donations, des successions, d'obligations, des prêts, des reconnaissances de dettes, des attributions, de droits sociaux, etc. Chaque assujetti étant pourvu d'une fiche individuelle l'identifiant (nom du conjoint, des ascendants, date de naissance, du mariage, etc.), il est aisé au fisc de le retrouver en cas de fraude constatée.

Le casier fiscal est une forme voisine de la précédente, mais plus compréhensive: alors que le répertoire n'est destiné qu'à l'inscription sur des registres des opérations juridiques actives et passives en capital, le plus souvent le casier fiscal réunit, dans des *dossiers individuels*, par commune, canton, arrondissement, etc., toutes les déclarations annuelles toutes les indications, tous les renseignements, etc. susceptibles de révéler la situation exacte de l'assujetti en *revenus;* le casier fiscal groupe par suite, avant tout, les déclarations de revenus encaissés, les déclarations de salaires payés, les déclarations de stocks, de chiffres d'affaires, les déclarations de récoltes, d'ensemencement, etc.

Les monographies sont des instruments excellents de documentation contre la fraude si elles sont bien établies. Concernant des professions bien déterminées (épicerie, banque, transport, mercerie, restaurants, hôtellerie, teinturerie, etc.) ou des exploitations rurales, particulières (céréalières, arboricoles, maraîchères, florales, grainières, etc.); elles précisent les pratiques de ces diverses entreprises, les rapports existant habituellement entre le chiffre d'affaires et les bénéfices, entre le bénéfice brut et le bénéfice net, entre le chiffre d'affaires et les frais généraux, entre les capitaux fixes et les capitaux circulants, entre le nombre des hectares et celui des bêtes à corne, entre l'importance de la ferme et le nombre des salariés, etc.

Cette documentation technologique permet de faire des rapprochements opportuns entre les bénéfices des exploitations honnêtes et les revenus avoués par les entreprises fraudeuses, etc. Il convient cependant d'observer que les monographies se périment bien vite; en raison de la mouvante conjoncture, de l'instabilité des marchés, de la reconversion rapide des entreprises, etc.; leur mise à jour continue est, autrement dit, indispensable pour une lutte fructueuse contre la fraude.

Les matrices sont des registres où sont inscrits les contribuables assujettis à des impôts directs, c'est-à-dire à des cotisations périodiques, annuelles le plus souvent, parce qu'ils possèdent des immeubles, des fonds de commerce, des meubles facilement identifiables ou parce qu'ils encaissent des revenus réguliers (commerciaux, industriels, etc.): les matrices permettent de suivre la courbe des impositions successives, de faire, le cas échéant, des rapprochements et de provoquer, de la part des redevables, des éclaircissements au cas où les différences d'année en année dans les éléments taxables semblent injustifiées.

Les matrices appellent, le plus souvent, malheureusement, une procédure spéciale: l'émission de rôles annuels qui constitue, à n'en pas douter, une méthode périmée d'assiette et de liquidation fiscale.

Les cadastres sont un ensemble de documents techniques, géographiques et administratifs, donnant les précisions utiles sur les immeubles cotisables; les cadastres présentent les immeubles ruraux soit par parcelles, soit par exploitation, soit par natures de culture; l'établissement des cadastres est d'ailleurs complexe: il nécessite des travaux d'arpentage, de cartographie, il exige la classification des biens ruraux, leur estimation, la valeur locative et la valeur vénale, etc.; la mise à jour périodique est encore plus difficile; en fait, les cadastres arrivent à la fixation de ,,revenus cadastraux'' ,,sclérosés'' pendant 10, 20 ans et souvent plus encore.

Les renvois méritent une certaine attention: le contrôle des biens ne pouvant se faire qu'au lieu de la situation, celui des revenus qu'au domicile ou au séjour principal, il est indispensable qu'une centralisation se fasse aux bureaux fiscaux de la situation ou du domicile; elle ne peut être obtenue que par le système des renvois, les services fiscaux adressant une copie des documents fiscaux aux fonctionnaires susceptibles de faire utilement *sur place* la vérification des déclarations. Si *internement*, le système est relativement aisé à organiser, il en est différemment *sur le plan international*: il ne peut fonctionner que grâce à des ,,échanges'' autorisés par des conventions d'assistance.

Le plan comptable est un procédé intéressant pour combattre la fraude: c'est un type de comptabilité imposé surtout pour des raisons fiscales aux entreprises agricoles, industrielles, artisanales,

commerciales ou libérales; tant aux recettes qu'aux dépenses, les postes sont obligatoirement prévus, les comptabilités sont ainsi imposées même aux assujettis, même s'ils sont dispensés par la loi civile ou commerciale; elles sont tenues suivant des modalités „typisés", de telle sorte que les amortissements, les provisions, les frais généraux (publicité, salaires, déplacements, locaux des bureaux et des usines, etc.) apparaissent obligatoirement et à la même place dans les documents de tous les redevables; le fisc a, de cette manière, la possibilité de se défendre contre les insuffisances, les omissions, les imprécisions plus ou moins volontaires des entreprises; il est fondé surtout à faire des rapprochements entre les différentes déclarations, à établir pour chaque profession des pourcentages *normaux* entre les chiffres d'affaires et les bénéfices, entre les chiffres d'affaires et les frais généraux, etc.; il peut effectuer ses vérifications plus rapidement et plus sûrement.

La conclusion d'accords internationaux d'assistance mutuelle.

La fraude fiscale prend de plus en plus, tout au moins pour les gros contribuables, la forme internationale: la mobilité des individus et des patrimoines, la dissociation des entreprises sociétaires en mères et filiales, la rapidité des communications, etc. facilitent l'exportation des capitaux, la constitution d'avoirs à l'étranger, les transferts de sièges sociaux, les dépôts de valeurs mobilières dans les banques étrangères, l'encaissement de coupons hors frontières, la multiplication des domiciles ou séjours principaux fiscaux, etc.

Il n'est qu'une seule solution possible pour les Etats soucieux de suivre leurs ressortissants dans leurs déplacements et placements financiers: la conclusion d'accords d'assistance mutuelle. Cette technique, qui permet ainsi par des renvois de nationaux respectifs, est malheursement difficile à réaliser, bien des Etats, pays refuges fiscaux par définition, répugnent en effet à effarer leur clientèle étrangère.

§ 3. LES AUTRES MESURES PREVENTIVES GENERALES.

La liste des techniques susceptibles de prévenir la fraude fiscale peut être allongée aisément: il paraît utile de citer, en premier lieu, parmi celles-ci *la publication d'urgence des lois fiscales.*

La publication urgente des lois fiscales.

La publication normale des textes fiscaux nouveaux comportant des majorations de tarifs, des obligations supplémentaires, etc. amène maintes fois les contribuables à recourir à des antidates, étant donné que plusieurs jours peuvent s'écouler entre l'insertion au Journal officiel du pays et la mise en vigueur dans chaque circonscription territoriale (région, département, arrondissement, etc.); cette fraude est évitée si la publication se fait télégraphiquement, c'est-à-dire presque d'une façon concomitante (le lendemain le plus souvent); les assujettis n'ont alors pas le temps matériel de "se retourner" pour déplacer le fait générateur de l'impôt.

Mais il est d'autres techniques comme la publicité des déclarations fiscales, la portée civile des déclarations fiscales, le contrôle des agences fiscales, etc.

La publicité des déclarations fiscales.

C'est un moyen efficace pour inciter les contribuables à remplir leurs obligations fiscales; la publicité de certaines déclarations d'impôt fonctionne aux Etats-Unis, où il est appliqué sans difficulté; les journaux reproduisent les indications communiquées par l'Administration; un fraudeur ne peut ainsi déclarer comme revenu total ce qu'il dépense pour ses seules automobiles ou ses villégiatures; sans doute, en France, la liste des contribuables assujettis à l'impôt général sur le revenu est déposée par la direction des Contributions directes de chaque département dans les mairies, dont dépend le domicile de ces redevables et tenue à la disposition de tous les assujettis de la commune. Mais cela est encore insuffisant il n'y aurait pas là de véritable violation du secret des affaires; et les redevables, peut-être par crainte d'être convaincus de mensonges par la notoriété publique ou encore par amour-propre, seraient incités à déclarer au fisc des revenus ou des capitaux en rapport avec leurs ressources réelles.

La même mesure pourrait être appliquée aux prix de ventes d'immeubles, aux prix de cession des fonds de commerce, aux évaluations mentionnées pour les mêmes biens dans les déclarations de succession, etc. Bien entendu la publication totale ou partielle de ces listes et des indications qu'elles contiendraient serait interdite et punie de peines correctionnelles sévères.

La portée civile des déclarations fiscales.

Il est à remarquer que si les contribuables sont peu sincères vis-à-vis du fisc, s'est parce qu'ils savent que leurs déclarations n'ont pas d'autre portée que la liquidation de leurs impôts; s'ils avaient la certitude que les indications et les chiffres qu'ils avouent au fisc doivent les lier dans leur activité privée ultérieure, ils montreraient plus de franchise envers le Trésor.

Il suffirait, pour cela, de faire décider, par le législateur, que les déclarations fiscales feront pleine foi de leurs mentions et des sommes déclarées, non seulement vis-à-vis de l'Administration, mais entre les parties qui les auraient souscrites, leurs héritiers ou ayants cause et les tiers.

On devine la portée pratique d'une pareille disposition: „l'accidenté" ne pourrait obtenir une pension d'invalidité ou d'incapacité calculée sur une somme supérieure aux revenus annuels déclarés au fisc; la compagnie d'assurance serait en droit de refuser une indemnité supèrieure à la somme déclarée au fisc pour immeuble; il serait impossible aux époux survivants ou à leurs représentants d'exercer une reprise pour un chiffre excédant le prix déclaré au Receveur de l'Enregistrement, etc.; il serait refusé aux parties d'intenter une action en réduction du prix d'un bail qui ne serait pas basée sur le loyer avoué au fisc; les services publics expropriants seraient en droit de ne verser aux propriétaires qu'une indemnité exactement égale à l'estimation en valeur vénale contenue dans une donation ou une déclaration de succession, etc. Ce système compléterait, en l'élargissant, le procédé utilisé par le législateur lorsqu'il déclare nulles les contre-lettres en matière de ventes d'immeubles ou de fonds de commerce, les dispostitions prévues pour la fixation des indemnités correspondant à des biens ayant fait l'objet de déclarations fiscales.

Le contrôle des agences fiscales.

Il n'est pas douteux que les conseils fiscaux sont indispensables à l'heure actuelle, dans la plupart des pays, avec les tendances nouvelles de la fiscalité; les déclarations fiscales sont nombreuses et difficiles à établir; les prescriptions fiscales sont multiples et impératives; l'interprétation des dispositions légales et réglementaires est délicate, etc.

Les conseils fiscaux peuvent donc scander très utilement les Administrations fiscales dans leurs besognes, en rédigeant les déclarations pour leurs clients, en préparant pour ceux-ci les renseignements, les justifications, les éclaircissements réclamés par le fisc, en tenant les documents comptables, les livres spéciaux, etc.

Par ailleurs, les conseils peuvent opportunément „tenir en haleine" les fonctionnaires fiscaux, empêcher ceux-ci de soutenir des prétentions excessives, proposer des solutions transactionnelles, souligner la bonne foi des contrevenants, présenter leur défense, etc.

Mais ils ne doivent être habilités quelque soit le pays, à remplir ces missions délicates que s'ils réunissent certaines conditions: ils doivent posséder une culture juridique professionnelle, et comptable très solide, justifié, de titres et d'années de pratique; ils doivent, en outre, être soumis à une sévère déontologie professionnelle, celle-ci ne pouvant être respectée que par une inscription sur une liste dressée officiellement par région, département et sous le contrôle de la justice et de l'Administration fiscale; il faut surtout qu'ils soient constitués en *ordre professionnel* et soient ainsi soumis à la surveillance de leurs pairs, qu'il s'agisse de leurs opérations, de leur mode de rétribution ou du montant de leurs honoraires.

Rien ne s'oppose à cette organisation, puisqu'il existe déjà en France en particulier, des experts comptables groupés en ordre national, régional, etc., des commissaires aux comptes inscrits sur des listes établies par ressort de Cour d'Appel, etc.

L'éducation fiscale des contribuables.

Il y a lieu de mentionner une autre mesure préventive, qui peut faire sourire certains techniciens, mais qui doit être tentée cependant: c'est l'éducation fiscale des assujettis.

Pourquoi n'enseignerait-on pas, dans loutes les écoles, quelques leçons de civisme fiscal? Pourquoi ne ferait-on pas, dans les lycées et collèges et aussi dans les établissements d'enseignement supérieur, quelques conférences sur le fisc, l'utilité de son prélèvement et sa nécessité sociale? ces mesures mettraient semble-t-il, en état de réceptivité le futur contribuable. Son éducation serait poursuivie le jour où il deviendrait redevable; des articles nombreux et clairs devraient être insérés dans les journaux, des causeries seraient faites par des Agents supérieurs compétents aux portes de radio-

phonie, pour faire connaître au grand.public les délais, les modalités de paiement, les recours à la voie contentieuse, etc.; les dirigeants ne devraient pas traiter les rubriques fiscales en parents pauvres du journalisme ou en pages publicitaires.

A l'heure actuelle, le contribuable ne s'intéresse aux questions d'impôts que pour se plaindre, avec bruit et imprécision, contre les exigences du fisc ou pour trouver le moyen de ne pas verser une somme déterminée qui lui est réclamée par une Régie; il faudrait qu'il comprenne que la législation fiscale est importante à connaître, dans ses principes, d'une manière générale, et en dehors de toute difficulté particulière.

L'Administation devrait elle-même seconder cette campagne de vulgarisation fiscale, et installer, comme elle l'a déjà fait, en matière douanière, des bureaux où les redevables trouveraient, verbalement ou par écrit, tous les renseignements indispensables sur les impôts dont ils peuvent être redevables à un moment déterminé de leur activité économique (ouverture ou fermeture de magasin, création ou liquidation d'une société, achat ou vente d'un fonds de commerce, apposition d'une affiche ou d'une enseigne lumineuse, ouverture d'une succession, acquisition d'un immeuble, rédaction d'une convention (vail, partage), encaissement d'un lot, d'une indemnité d'assurance, etc. Il ne s'agirait pas là de consultations au sens propre du mot, mais de conseils précis sur la déclaration à souscrire, sur le fonctionnaire fiscal à voir, sur le texte à consulter, etc. Ce système éviterait aussi, à bien des contribuables, de recourir à des „conseils ou contentieux fiscaux" plus ou moins qualifiés, et à écouter leurs encouragements à la fraude et aux combinaisons critiquables.

La restriction du secret professionnel.

On trouve dans la législation de nombreux pays l'institution du secret pour certaines catégories professionnelles: il s'agit pratiquement de l'interdiction morale et légale de ne pas divulguer des faits confidentiels, que des médecins, des chirurgiens, des avocats, etc. ont appris dans l'exercice ou à l'occasion de l'exercice de leurs activités.

Cette obligation à la discrétion, imposée aux personnes dépositaires de secrets qu'on leur confie, donne lieu, on le sait, à de nom-

breuses controverses sur sa caractère (contractuel, social, etc.); sur le plan fiscal, par contre, elle fait l'unanimité chez les techniciens des impôts; elle peut faciliter la fraude de plusieurs manières: d'une part, les ,,confidents nécessaires'' déterminés par la loi fiscale et reconnus comme tels, légalement tenus au secret, se trouvent plus ou moins dispensés d'etre complètement sincères dans leurs propres déclarations; d'autre part, leurs clients peuvent espérer n'avoir rien à redouter de leurs révélations ou de leurs indiscrétions en ce qui concerne leurs cotisations personnelles.

Il n'est pas douteux qu'il y a grâce à cette institution juridique, très valable en elle-même, une sérieuse fissure dans le contrôle des impôts; mais il est aussi certain que les professions, qui sont assujetties au secret professionnel, sont particulièrement ,,châtouilleuses'' en la matière et n'hésitent pas à alerter l'opinion publique chaque fois que le secret professionnel est mis en discussion par les juges et les agents du fisc.

Il est donc souhaitable d'agir avec lenteur pour modifier l'opinion des intéressés et faire fléchir la réglementation en la matière, tout au moins vis-à-vis du fisc; la vérité oblige à dire que l'évolution paraît se faire assez rapidement depuis que ,,l'habéas corpus'' de chacun est désagrégé par les curiosités des services officiels de sécurité sociale et de statistique; il est bon de préciser que les restrictions, qui peuvent être apportées par la loi au secret ne peuvent, en toute hypothèse, obliger les médecins, les chirurgiens, les avocats, en particulier, à s'expliquer sur la nature d'une maladie, d'une opération, ou sur les détails d'un chantage, d'un divorce, d'un drame passionnel, etc.; la curiosité du fisc, en un mot, doit être limitée aux aspects ,,financiers'' et patrimoniaux.

Les systèmes de preuve en matière de fraude.

C'est au fisc, enfin qui agit comme demandeur pour le recouvrement de l'impôt, et la lutte contre la fraude qu'incombe la preuve de l'existence de la matière imposable, des omissions dans les déclarations, des inexactitudes et des insuffisances dans les estimations des revenus ou biens déclarés, etc.

Le législateur peut édicter un ensemble de mesures cohérentes permettant de démontrer la réalité des faits juridiques ou matériels cotisables; c'est notamment le système utilisé en Allemagne où

avaient été votées des lois trés complètes sur l'adaptation fiscale (Steueranpassungsgesetz), sur la „trahison au préjudice de la nation" (Volksverratgesetz), sur les procédés d'évaluation (Reichsbewertungsgesetz), etc.

Dans d'autres pays, le législateur se montre moins „totalitaire"; il prévoit quelques dispositions spéciales visant certains impôts ou certains faits générateurs imposables; pour le surplus des contributions, il s'en remet, plus ou moins, aux règles de preuve du *droit commun;* c'est ainsi qu'il peut décider que la preuve des faits donnant ouverture à l'impôt sera établie suivant les principes civils ou commerciaux, c'est-à-dire grâce à la preuve littérale, aux présomptions, à l'aveu, à la preuve testimoniale, à l'enquête, à l'interrogation, à la délation du serment.

Quelquefois le législateur se montre plus discret et n'accepte que la *procédure écrite,* et exclut ainsi la preuve testimoniale, l'enquête, l'interrogation et la délation du serment qui impliquent la comparution personnelle des témoins ou du contribuable.

En sens inverse, le fisc peut aller plus loin — ce qui est alors critiquable — dans l'administration de la preuve et accepter la dénonciation des tiers, auxquels il attribue une part de l'impôt recouvré grâce à leur délation d'une fraude.

Tels sont les moyens, plus ou moins efficaces, de „réveiller" les contribuables, de leur rappeller directement ou indirectement leurs obligations vis-à-vis du Trésor, de leur faire comprendre que la fraude fiscale est loin d'être toujours payante, de les alerter sur les „antennes" que possède le fisc pour déceller les combinaisons propres à éluder l'évasion; certains sceptiques soutiendront que ce sont là des mécanismes impuissants à faire naître ou renaître la vertu fiscale; ils méritent qu'on leur réponde que l'essai doit toujours être tenté pour éviter aux contribuables la tentation du péché.

III

A REVIEW OF BRITISH TAX CASES IN 1950

The year 1950 was not, generally speaking, one in which any large new principles were established, or established practices upset. Furthermore, recent Double Taxation Relief conventions have not been in force for a sufficient length of time for questions of construction to come before the Courts for decision. In these matters, both the Revenue authorities and practitioners are still working out the practical application of the Regulations and points of difference have not yet been firmly established.

The more important decisions on other matters are briefly reviewed below:

Foreign Income.

The house of Lords in *Goodlass, Wall and Lead Industries Ltd. v Atkinson* (29 A.T.C. 164) settled a difficult question as to the basis of assessment of dividends received by a British resident from shares in a foreign company. The rules as to this are contained in Sections 29 to 31 of the Finance Act 1926, and the dispute centred about proviso (ii) of Section 30, which lays down rules for assessment where "in any year of assessment any person acquires a new source of income, or an addition to any source of income".

The facts in the case were that the taxpayer had held shares for some years in an Argentine company, on which a dividend was paid for the first time in 1942/43. The Revenue contended that the taxpayer had acquired a new source of income (the shares) "in any years of assessment" and that, accordingly, the words of proviso (ii) of Section 30 were satisfied. If this was correct, then the dividend received in 1942/3 was assessable for that year, in accordance with Section 29 (1) (b) (1) (That subsection provides that tax shall be computed, as respects the year in which income first arises, on the amount of the income arising in that year, instead of on the usual basis of the income arising in the preceding year).

The taxpayer's contention was that since the Income Tax is an

annual tax, the "year of assessment" referred to in proviso (ii) *supra* must mean the year for which tax is being computed. On this basis, since the source of income (the shares) was acquired prior to 1942/43, the proviso was inapplicable. Accordingly the dividend received in 1942/43 was assessable, in the ordinary way. for 1943/44.

The House of Lords found some difficulty in reconciling the language of the different parts of Sections 29 to 31, but decided in favour of the taxpayer. The result of the decision is briefly that the rules which require assessable income to be computed by reference to the actual income of the previous fiscal year will apply to dividends from "foreign" shares in all cases *except* those in which new shares are acquired, and a dividend on them is declared, in the same fiscal year.

Assessability after Death.

An interesting position arose in *Purchase v Stainer's Executors* (29 A.T.C. 74) in connection with the earnings of the late Leslie Howard, the well-known film star and producer. Mr. Howard contracted with a film company to produce certain films for various lump sums plus a percentage of the company's receipts from exhibition of the film. Before all the specified payments had been made, Mr. Howard was killed, and various sums were received, under the terms of the contracts, by his Executors. Since Mr. Howard died before they were received, he could not be assessed upon them as receipts of his profession.

The Revenue accordingly sought to assess the Executors, alternatively, under Case III of schedule D (which refers to annual interest, annuities and other annual payments) or Case VI (which refers to annual profits or gains, not falling within Cases I to V).

The Court of Appeal distinguished three types of payment:—

(1) lump sums of an amount specified in the contract, paid after Mr. Howard's death. Since the executors were not carrying on any trade of which these could be regarded as receipts, there was no basis for an assessment. The sums received were earned by Mr. Howard in his lifetime, and the executors were not liable to tax upon them.

(2) a single payment of a specified part of the film company's profit on the film. The considerations applying here were the same as those in (1) above, and on the principle laid down in *Bennett v. Ogston* (15 T.C. 374) the executors were not liable.

(3) Periodical payments, covering several years, in respect of a share of the film company's receipts from exhibition of the films. Here different considerations applied. It was true that these amounts, or the right to receive them, were earned by Mr. Howard in his lifetime, but nevertheless they were annual payments, having an element of actual or potential recurrence. Accordingly, they were assessable on the Executors under Case III of Schedule D.

Compensation for loss of Office.

Two contrasted cases threw well-established principles into clear relief. In *Henley v. Murray* (29 A.T.C. 35) the appellant was entitled, under his service agreement as managing director of a company, to certain remuneration. At the request of the Board of the company, he resigned his appointment and subsequently claimed compensation. His claim was settled by payment of a sum equal to what his remuneration would have been had he continued to hold his employment for a further 9 months. Since the sum was paid to him as consideration for giving up his rights under the agreement, it was held not bo be assessable under Schedule E. as remuneration.

In *Dale v. De Soissons* (29 A.T.C. 125), on the other hand, the appellant's service agreement provided for employment for 3 years, with an option to the employer to determine it, at the end of the first or second year, on payment of certain specified sums of money. The employer exercised his option, and the appellant was held assessable on the lump sum paid to him under the agreement. It was not a price paid to him for abandoning his rights. On the contrary, he had got exactly what he bargained for in his contract.

A short but important compensation point was raised in *Paterson v. South West Scotland Electricity Board.* Paterson's service agreement had been prematurely terminated and it had been agreed that he should receive as compensation the actuarial value of the salary which he would have received, had the contract run its full course.

The employer, however, contended that, since Paterson would pay no income tax on the compensation, the sum payable to him should be the value of his *net* remuneration, after deducting the income tax which would have been payable upon it. This contention was rejected by the Court of Session in Scotland. Any liability to tax was a matter between Paterson and the Revenue: it was irrelevant in considering the actuarial value of the salary.

Director resident abroad.

The principle that a directorship of a company resident in the United Kingdom is an "office of profit" in the U. K. was exemplified in *Goodwin v Brewster* ((1950) T.R. 329). There was a subsidiary point that a "managing directorship" was separate from a "directorship" and although this was accepted by the Court, it was held that, upon the authority of *McMillan v Guest* (24 T.C. 190) the office was within the United Kingdom, even though Mr. Goodwin was resident in Trinidad and received his remuneration and worked there.

Deductions for estimated future liabilities.

A firm of stevedores did not insure against liability to pay compensation for injuries to its employees. In computing its profits, it claimed to deduct, not only claims which had been admitted, but also a sum in respect of accidents which had occurred but in regard to which no claim was admitted or established until after the end of the year in question. This claim was rejected (*James Spencer & Co. Ltd. v Commissioners of Inland Revenue* 29 A.T.C. 245) on the ground that, at the relevant date, no liability had been established. That liability did not arise until the fact of liability was either admitted, or determined by a court of law.

Surtax — „controlled" companies.

In their fight against surtax evasion by means of settlements of assets and limited companies controlled by less than five persons, the Revenue have received a severe blow by the decision of the House of Lords in *Pott's Executors v Commissioners of Inland Revenue.*

Briefly, the question in the case turned upon the meaning of the words "any sum paid by way of loan" in Section 40 of the Finance

Act 1938. Sums of this nature paid to the settler under certain settlements are to be treated as income liable to surtax in his hands.

Certain sums in discharge of debts owing by Potts were paid by a company connected with a settlement made by him. The company maintained in its books a current account, in which it debited Potts with payments made on his behalf, and credited him with certain director's fees, etc. If the Revenue could have established that the sums paid by the company were "paid by way of loan" to Potts, the latter would have been liable to surtax thereon. The House of Lords, however, held that, as the section was in effect penal, its words must be construed rigidly against the Revenue, and that it was not a normal use of language to say that the disputed sums were "paid by way of loan" to Potts.

The effect of this decision, as pointed out by Revenue counsel during the course of the case, is to open the door to such wholesale evasion as to render Section 40 largely nugatory.

Profits Tax — control of a company by directors.

What constitutes control of a company? The problem has been further explored in the cases of *Silverts Ltd.* (29 A.T.C. 142) and *John Shields Ltd.* In the former, a controlling shareholding was held by a custodian trustee on behalf of two managing trustees who were directors of the company. The court held that since the custodian trustee was bo und to act in accordance with the directions of the managing trustees, the latter could effectivily exercise voting rights in respect of the shares and were accordingly in control of the company.

In the latter case, wide and almost complete power to manage the affairs of the company was given to a "controlling director" who did not own a major part of the share capital. Since the shareholders could, by exercising their voting rights, dismiss the director, they, and not he, had a controlling interest for the purposes of Profits Tax.

Crown priority in bankruptcy.

In *re Pratt* ((1950) T.R. 293) the Court of Appeal decided that the right of the Crown in bankruptcy to claim priority for income tax assessed on the bankrupt "up to the fifth day of April next before

the date of the receiving order, and not exceeding in the whole one year's assessment" (see Section 33 (1) (a) Bankruptcy Act, 1914) was a whittling-down of the pre-existing prerogative right of the Crown to priority in respect of all assessed taxes. Accordingly, they upheld the long-established practice under which the Revenue claimed priority for the year for which most tax was payable — not necessarily the tax year last preceding the receiving order. This construction of the statute was the most intelligible on general principles and has been accepted for many years without challenge.

Salaries paid free-of-tax.

It has never been generally considered that the prohibition against covenants to make annual payments without deducting tax (Rule 23 (2), General Rules, Income Tax Act 1918) extended to agreements to pay salaries "free of tax". In fact, the practice of making such agreements has been indirectly recognised in the Companies Act, 1948 (where, for the first time, free-of-tax salaries to directors are prohibited) and in the Pay-As-You-Earn regulations which provide for the calculation of the appropriate tax in such case. In *Jaworski v Institution of Polish Engineers*[1]) however, the point was raised in an action to recover arrears of salary. The Court of Appeal was able to decide the action on another ground, but did express doubts as to whether Rule 23 (2) had any application in the circumstances. Attention was, however, drawn to Paragraph 1 of the P.A.Y.E. Statutory Regulations which requires the employer to deduct tax, and it was suggested that this would prevail over a covenant not to deduct tax. However the matter would be clearly one of interpretation of the particular agreement and a covenant in the familiar form of "such a sum as after deduction of the tax appropriate" — would no doubt be unassailable on this ground.

In at least two cases decided in 1950, appeals are being carried to the House of Lords, but both concern points of limited interest only — in the first, the proper valuation of cotton spinners stock as a result of a complicated agreement for variation in prices made with the Cotton Controller from whom all supplies were purchases;

[1]) (1950) 2 All England Reports.

in the second, the repercussions of the 1940 legislation as to "excess rents" on the deduction allowed to brewers under the decision in *Usher's Wiltshire Brewery* case in respect of "tied houses" let to tenants at rents lews than those paid for them by the brewer.

No comments on either case are included in this brief survey.

H. MAJOR ALLEN.

Abbreviations used in references to reports of decided cases are as follows:

Annotated Tax Cases		A.T.C.
Official Reports of Tax Cases		T.C.
Taxation Reports	(1950)	T.R.

These abbreviations are preceded by the number of the appropriate volume and followed by the page number.

IV

REVIEWS — COMPTES RENDUS

JOYCE STANLEY & RICHARD KILCULLEN: *The federal income tax*. The Tax Club Press, New York, 1948.

Les auteurs de ce manuel s'addressent aux avocats, qui se ne sont pas spécialisés en droit fiscal, aux étudiants, aux experts-comptables travaillant dans le domaine fiscal et en général à ceux, qui pour leur commerce ou profession ont besoin d'une connaissance des lois fiscales plus que superficiellement.

Il faut lire le manuel auprès des textes de la loi. Le livre est divisé en 12 chapitres.

Dans chaque chapitre le contenu des textes légales est cité en termes concises, et le cas échéant commenté et élucidé avec des exemples.

A. F. BROMIGE: *Settlements and income tax*. Taxation Publishing Company Limited, Londres, 1950.

Le point de départ de l'exposé de l'auteur est la liberté de tout le monde à arranger ses affaires de sorte qu'on paie le moins que possible au fisc. Cependant le législateur anglais a pris des mesures à limiter les conséquences de divers actes juridiques ayant pour but de diminuer l'obligation fiscale.

Dans le premier chapitre le développement et la nature de la législation en matière de donation sont analysés. Dans le deuxième chapitre les articles et les subarticles des lois sont résumés et clarifiés par des décisions judiciaires. Le troisième chapitre contient un sommaire des articles qui affectent les donations faites maintenant, dans l'avenir ou depuis le 10 Avril 1946, ainsi que les quatrième et cinquième chapitres en cas de provisions spéciales.

Les articles relatifs aux donations avant le 10 Avril 1946 sont traités dans le sixième chapitre. Les septième et dernièrent chapitres s'occupent d'arrangements entre le donateur et le donataire.

DR. HANSPETER MAERKI: *Steuern als Kosten- und Aufwandfaktor*. Verlag Paul Haupt, Bern, 1949.

Le resultat de ses recherches l'écrivain a résumé ainsi: Il faut considérer l'impôt comme élement des coûtes et des dépenses dans sa signification au point de vue de la théorïe des coûtes. Par coûtes l'auteur entend la diminution du patrimoine, indiquée dans le compte de l'entreprise afin du contrôle de l' économie de la gestion estimée selon des règles également objectives, et déterminée par la gestion elle-même ainsi que par la condition de l'entreprise ou cohérent avec le procès par l'opération de la corporation publique.

V. S. OHMSTEDE: *Belastingherziening* 1950. N. V. Johan Mulder's Uitgevers-Mij Gouda, 1950.

In this booklet the revisions of the fiscal law (of the Netherlands) brought about in 1950, are analysed and clarified with the (official) explanatory memorandum and also with practical examples.

These revisions concern mainly the income-tax, the company-tax. and the war-tax.

The law on the limitation of dividends is also included in the commentary.

In the series "Fiscale Monographiën" (published by N.V. Uitg. Mij. AE. E. Kluwer, Deventer) the first booklet "Liquidatie-winst" by M. A. Wisselink appeared, dealing with the problems in Dutch fiscal legislation concerning the income tax concequences on death of the entrepreneur and on transfer or liquidation of enterprises.

After giving in the first chapter general observations and definitions the author deals with practical questions in the following chapters. In Chapter II it is the death of the owner of the enterprise which is discussed. Which is the amount of taxable profits at that time, formerly in accordance with Case law, at present according to the new provisions of the Tax Revision Act of 1950. How should the successors activate assets and liabilities? Is there continuity in the carrying on of trade or business? The third chapter deals with the various forms of realisation when an enterprise as such is sold or brought into one or another corporate form (e.g. partnership, limited company etc.). In this chapter too the position is discussed when a partner might decease and the several juridical forms which are applied in practice in order to safeguard the existence of the partnership. Chapter IV is mainly devoted to the provisions regarding the computation of the amount of taxable profits, whereas in the fifth chapter the forms through which realisation can take place are examined. The enterprise might be sold in an outright sale, but it is possible that the seller stipulates consideration in money's worth or by way of a life insurance. Moreover it is possible that the consideration is conditioned upon the results of trading. In the sixth and final chapter the author concludes with general remarks as regards the trends in fiscal theory:

1. stimulation of life insurance contracts (annuities);
2. fiscal influence on certain juridical forms;
3. taxation on improper times e.g. the levying of income tax on decease instead of and cumulative to succession duties;
4. relationship of fiscal law to other parts of public law.

This booklet of 115 pages is worth to be read by anyone who practices fiscal science.

W. W. Bigg, F. C. A., F. S. A. A. & C. N. Beattie, of Lincoln's inn, Barrister at Law: *Ranking, Spicer & Pegler's MERCANTILE LAW incorporating "Partnership law" and "the Law of arbitration and awards"* 8th edition. H. F. L. (Publishers) Ltd, London, 1948.

Les manuels de droit anglais sont en général comme les Anglais eux-mêmes, à savoir "pratiques".

Au point de vue théorique l'introduction de 6 pages est très important.

Dans le texte les conceptions juridiques dans le domaine du droit commercial sont encadrées dans des définitions concises et élucidées par maintes citations jurisprudentielles.

Ronald Staples: *"TAXATION" KEY TO INCOME TAX AND SURTAX. New provisions of the Finance Act* 1950. Taxation Publishing Company Limited, Londres, 1950.

En feuilletant cette clé à l'impôt sur le revenu (anglais), on se demande à qui faire l'hommage, à l'auteur de la clé, qui par un dessein ingénieux a su transférer au contribuable le fil d'Ariadne dans le labyrinthe fiscal, ou à la génie du législateur qui mû par une admirable conception de justice a construit l'édifice fiscal ainsi ramifié et raffiné.

La complication de la loi (anglaise) sur l'impôt sur le revenu a pour cause l'effort évident à faire valoir dans la mesure du possible la théorie de la capacité contributive. Ainsi les salaires (earned income) sont moins tarifiés que les revenus des valeurs mobilières! (unearned income!). Le célibataire qui a une femme de ménage à sa charge est moins taxé que le célibataire qui fait lui-memê son propre ménage!! etc., etc.

Le contribuable qui se soucit sérieusement d'accomplir son devoir fiscal — comme le fait généralement l'Anglais — trouvera sans peine dans „la clé" tous les renseignements nécessaires.

H.A.R.J. WILSON, F. C. A., F. S. A. A.: *Spices & Pegler's INCOME TAX* 8e édition. H. F. L. (Publishers) Ltd, Londres, 1948.

Ce manuel ne donne pas seulement des renseignements pratiques, dont on peut profiter en dressant la déclaration pour l'impôt sur le revenu, mais on y trouve aussi abondamment des élucidations jurisprudentielles.

Au point de vue théorique le premier, le deuxième et le troisième chapitre sont les plus importants.

Dans le premier chapitre la machinerie de l'impôt sur le revenu est exposée. L'histoire de la loi sur cet impôt y est traitée, puis l'organisation du service de l'impôt.

Dans les deuxième et troisième chapitres les principes de l'impôt sont analysés.

Tout revenu des sources situées dans la Grande Brétagne est imposable n'importe le domicile du contribuable. Par contre, tout le monde résident en Grande Brétagne est imposable quant aux revenus de toutes ses sources, n'importe òu celles-ci sont situées.

Dans le quatrième chapitre les cinq cédules sont élaborées, spécialement la cédule D., qui est encore traitée dans le cinqième chapitre.

Les chapitres suivants sont consacrés successivement au revenu commercial, aux pertes commerciales, à l'impôt complémentaire, au remboursement de l'impôt, à la double taxation, aux mélanges et à l'impôt sur le revenu commerical.

De diverses formulaires et régulations sont ajoutées comme annexes.

PROF. DELAWER ALY: *Lacunes du régime fiscal en Egypte*. Société de publications égyptiennes, Alexandrie, 1947.

After having sketched in the first part of his booklet the evolution of the tax, the principles of the tax and many other doctrinal fiscal problems, the author in the second part gives an explanatory analysis of the existing taxes in Egypte.

The third part contains his suggestions for a healthy financial policy, the essential shortcomings of the fiscal system and the appropriate reforms to the actual fiscal regime.

INSTITUT DE DROIT COMPARE DE L'UNIVERSITE DE PARIS, SECTION DE FINANCES PUBLIQUES: *Annales de finances publiques No. X*. Recueil Sirey, Paris.

In the introduction to this issue is said, that the Public Finance Section has carried on and enlarged its activities. The Study Committe of the Section has addressed a number of qualified personages in Europe to give information on the budgetary system of their countiy.

In fact the issue contains the following contributions: 1. "The monetary and financial reorganization of Italy in theory and practice" („L'assainissement monétaire et financier dans la théorie et la pratique italiennes") by Prof. *Ugo Papi*.

In his conclusion the author asserts, that the post-war financial problem concerns liquid assets, which only can be solved by international cooperation. To reach equilibrity the Italian public finances require much comprehension of other countries, in particular of France.

2. "The perspectives of the unification of the fiscal law of the Benelux" („Les perspectives d'unification du droit fiscal du Benelux") by *Prof. van Houtte*.

In enumerating the many difficulties of a unification of the fiscal law of the Benelux the writer still hopes that by tenacious efforts the aim will be attained.
3. "The monetary reform of Germany" („La réforme monétaire en Allemagne") by *Mr. Leroy-Beaulieu.*
Among others the author says, that the German economy — more than that of other countries — is linked up to the world-economy. Germany will profit from a deflatory crisis, but if this crisis means the deminishing of American aid, Germany will be affected more seriously than other countries.
4. "The Italian budgetary law" („Le droit budgétaire italien") by *Prof. Stammati.*
5. "The budgetary and patrimonial accounts of the Swiss Confederation" („La comptabilité budgétaire et patrimoniale de la Confédération Suisse") by *Dr. Heimann.*
6. "The budgetary practice of the Netherlands" („La pratique budgétaire hollandais) by *Dr. Mey.*
7. "From the budget of the state to the budget of the nation („Du budget de l'état au budget de la nation") by *Prof. Seeldrayers.*
8. "The audit office of the Netherlands" („La cour des comptes des Pays Bas") by *Mr. Sanders.*
9. "The supervision of the execution of the budget in Belgium" („Le contrôle de l'exécution du budget en Belgique) by *Mr. Lefebure.*
10. "The supervision of the Belgian audit-office" („Le contrôle de la cour des comptes de Belgique") by *Mr. Matton.*
11. "The historical development of the Italian budgetary system and the supervision of the Minister of the Treasury" („Développement du système budgétaire italien et contrôle du Ministre du Trésor") by *Mr. Fattorosi.*
12. "The Italian audit-office" („La cour des comptes d'Italie") by *Mr. Ortana.*

IMPOTS ET SOCIETES: *Précis fiscal. Condensé de tous les impôts.* 3ème édition. Paris, 1950.

Though any statute is destined to be read by everybody, it is á well known fact, that its wording doesnot make reading always easy.
This booklet will be a great help to those who will penetrate in the whole of the fiscal codification of France.
It gives a condense of the most important rules, here and there clarified by examples.
Indexes and tables make the use very handy.

LORIE TARSHIS: *The elements of economics.* Houghton Mifflin Company. Boston, New York, Chicago, Dallas, Atlanta, San Francisco, 1947.

Dans une manière exclusivement pratique l'auteur s'engage à faire comprendre aux étudiants ce que la science de l'économie politique signifie pour la nation, et particulièrement la nation américaine.
Son point de départ est la meilleure condition économique du pays, c'est-à-dire la condition dans laquelle:
1e. le rendement de la production des marchandises et des services soit aussi abondant que possible avec les ressources physiques et la science technique disponible à la société, et qui concorde avec l'attitude envers le travail et le loisir des hommes et des femmes dans la société;
2e. la division du rendement entre les membres de la société soit compatible aux étandards de justice de la société;
3e. la composition de ce rendement — c.à.d. la quantité des complèts des manteaux, d'acier, des céréales, etc. — soit dans quelque sorte convenable aux désirs et aux goûts des individus dont est composée la société;

4e. il y aurait un tempo de croissance satisfaisant du rendement par tête et ainsi du bien-être matériel;
5e. tous ces buts soient atteint sans que la société soit forcée dans une telle course d'action que la guerre soit inévitable.

De ce point de départ l'auteur analyse la condition économique dans toutes les sections des Etats Unis d'Amérique à plusieurs dates.

NATIONAL TOBACCO TAX ASSOCIATION: *Proceedings of the twenty-second annual conference*. 1948. Federation of Taxadministrators.

Dans cette conférence des fonctionnaires fiscaux américains, il y a eu quelques sujets discutés qui pourront être d'importance pour d'autres pays où le tabac est imposé, à savoir: le rôle du fonctionnaire en déterminant la politique fiscale, le contrôle et les rapports des exportations, etc.

Un sommaire des impôts des divers états sera très utile aux étrangers interessés à des affaires de tabac en Amérique.

MANLIO UDINA: *Il diritto internazionale tributario*. Vol. X dans la série: Trattato di diritto internazionale. — Cedam, Padoue, 1949.

C'est depuis quelques décades seulement que l'on étudie le droit fiscal international, et souvent c'est seulement quand il y a des problèmes pratiques qui demandent une solution que l'étude d'une nouvelle discipline du droit se développe d'une façon énergique.

Tandis qu'après la première guerre mondiale, le Comité Fiscal de la Société des nations s'occupait des questions d'ordre plus ou moins pratique (le problème de la double imposition internationale, celui de la répartition des bénéfices et celui de la fraude fiscale), c'étaient les fondateurs de l'I.F.A. qui avaient en vue l'étude plus générale et plus théorique du droit fiscal international. Nous renvoyons les lecteurs aux rapports présentés au premier congrés de l'I.F.A. qui s'est tenu à La Haye en 1939. [1]).

Cependant, chasser le naturel, il revient au galop: la deuxième guerre mondiale a apporté beaucoup de changements dans le domaine de l'économie internationale et dans les relations entre les Etats, et il en résultait une vraie nécessité pour une plus grande collaboration internationale. C'est pourquoi tant les congrès d'après-guerre que les ouvrages en matière fiscale publiés pendant et après la guerre ont traité des questions essentiellement pratiques.

Exactement 50 ans après, le premier ouvrage traitant le droit fiscal international, d'une façon systématique, „Il diritto internazionale tributario" de *Garelli*, M. le Professeur UDINA, directeur de l'Institut de droit international de l'université de Trieste, a publié son ouvrage sus-mentionné, par lequel il offre au monde scientifique un manuel très important et intéressant dans ce domaine.

Malheureusement, l'espace limité ne nous permet pas d'en donner un compt rendu analytique, et il faut nous borner à quelques remarques générales. D'abord, il faut se rendre compte du point de départ de l'auteur, qui délimite la matière dans une introduction étendre, limitation qui est la conséquence de ce que son ouvrage a paru dans une série de 12 ouvrages ayant pour objet le droit international proprement dit, c'est-à-dire le droit existant entre les Etats souverains et non le droit, bien que'ayant pour objet des questions internationales, renfermé dans les législations nationales.

De ce point de départ il résulte directement ce qui est traité dans les 5 chapitres comme paraitra d'une énumeration sommaire ci-dessous.

D'abord, l'auteur met au point qu'il ne peut être question d'un droit fiscal international (§2 de son introduction). La preuve en est (p. 16) qu'il y a une unanimité en ce qui concerne la thèse que l'on ne peut parler d'une règle

[1]) Cahiers de Droit Fiscal International, vols. I et II.

de droit fiscal que ,,quand elle concerne, directement ou indirectement, les prestations pécuniaires que l'Etat (ou des pouvoirs inférieurs) impose aux personnes physiques ou morales qui y sont subordonnées.'' Il y a, le sujet actif imposant d'une part, et le sujet passif imposé devant fournir les moyens financiers au premier, d'autre part. Eh bien, cette situation ne se présente jamais dans les relations internationales; les contributions que paient les Etats à une caisse commune (par exemple, celle des Nations Unies) sont payées volontairement.

Quoi qu'il en soit, l'auteur veut admettre qu'il y a d'autres normes en matière fiscale qui peuvent entrer dans la définition du droit international fiscal, à savoir celles qui concernent, d'une manière ou d'autre, l'exercice du pouvoir fiscal des Etats, et tout spécialement celles qui peuvent être considérées intercéder, non pas entre les Etats eux-mêmes qu'entre les Etats, d'une part, et les personnes physiques ou morales, d'autre part, et ce seulement comme objet indirect médiat des normes internationales.

Ce sont ces normes qui, d'après l'auteur, constituent le droit international fiscal, tandis qu'il entend par droit fiscal international les normes comprises dans le droit interne et ayant rapport à l'étranger.

Aussi clair et précis et subtil l'auteur soit dans son exposé, on ne peut pas se refuser à l'idée que la distinction entre ,,droit fiscal international'' et ,,droit international fiscal'' est un peu dangereuse, en ce sens que, dans les langues germaniques et anglo-saxonnes, par exemple, on ne peut pas faire cette distinction pour des raisons linguistiques. Bien entendu, il faut distinguer comme il le fait, mais quand un allemand parle de ,,Internationales Steuerrecht'', ou un Anglais de ,,international fiscal law'' ou un Néerlandais de ,,internationaal belastingrecht'', ces expressions comprennent les deux idées de ,,diritto tributario internazionale'' et ,,diritto internazionale tributario''. Autrement dit: les limitations linguistiques peuvent comporter des désarrois en cas de traduction d'une langue dans une autre. Ceci constitue une vraie difficulté dans les relations scientifiques, difficultés que nous éprouvons d'ailleurs dans l'élaboration de notre dictionnaire.

Après cette remarque qui n'est pas autre chose qu'une remarque générale, il nous faut se contenter de faire observer que le lecteur intéressé trouvera beaucoup d'important dans cet excellent ouvrage, dont les 5 chapitres traitent les sujets suivants:

I. La délimitation du pouvoir fiscal des Etats, en général.
II. Réalisation territoriale du pouvoir fiscal de l'Etat.
III. Les limitations internationales à l'exercice territorial du pouvoir fiscal.
IV. Les manifestations extraterritoriales du pouvoir fiscal.
V. La collaboration internationale en matière fiscale.

V

INTERNATIONAL BAR CONFERENCE TAX SYMPOSIUM

London, July, 1950

We asked Mr. Franz Martin Joseph, senior patner of Joseph and Rodman, attorneys and counsellors-at-law in New York, to send us a summary of his report on „U.S. ESTATE TAXATION ON ESTATES OF NONRESIDENT ALIENS" which he presented to the Tax Symposium organised by the IFA.

A nonresident alien decedent for purposes of the United States estate tax is a person not a citizen of the United States, who at the time of his death had his domicile outside the United States. As a rule, a person acquires a domicile in a place by living there for even a brief period of time with no definite present intention of later removing therefrom.

The gross estate of a nonresident alien includes those property interests of the decedent which have a situs within the United States. If property was beneficially owned by the decedent but held in the name of another person, it must be included in the gross estate. If, however, the decedent held property in his name but for the sole benefit of others, such property is not a part of his estate. Partnership assets are included in the gross estate of a deceased partner to the extent of his partnership interest. On the other hand, assets of corporations or other legal entities do not form part of the estate of a deceased shareholder in such entities. Faced with a French société en commandite simple which does not end upon the death of a "commanditaire", the Treasury has ruled that such a société is a true, separate legal entity. Nonresident aliens have often attempted to escape United States estate taxation by forming a foreign holding company, such as a Panama corporation, and having it hold securities in its name in a bank in the United States. If the securities are held in the name of the holding company but for the benefit and at the risk of the nonresident alien, they form a part of his gross estate. Even if the securities are treated as the property of the holding company, the Commissioner might argue that the company had no real business existence and that it was nothing more than a second pocketbook of the decedent. The Commissioner might then attempt to pierce the corporate veil and include the securities in the nonresident alien's gross estate. That part of the decedent's property which under the applicable community property law belongs to the surviving spouse is excluded from the gross estate. In applying this rule, the American law gives effect to a variety of foreign community property law arrangements. However, property held by a joint tenancy or by a tenancy by the entirety, with right of survivorship, can be excluded from the gross estate only to the extent to which the estate's representative proves that the property belonged originally to the survivor and was never received by him from the decedent for less than an adequate and full consideration. The gross estate includes not only property interests which were beneficially owned by the decedent at his death but also certain other property interests which for various reasons Congress has seen fit to attribute to his estate. In this group belong the transfers made by the decedent during his lifetime in trust

or otherwise, as they are described in Sec. 811 (c), (d), (f) and (1) of the Code. In connection with the transfers in contemplation of death, Reg. 105, Sec. 81.16 states that a transfer is prompted by the thought of death if it is made for the purpose of avoiding the estate tax, or as a substitute for the testamentary disposition of the property, or for any other motive associated with death. The wish to avoid confiscation by foreign governments or the effect of foreign currency restrictions would probably be considered a purpose associated with life.

Little difficulty is experienced in determining the situs of real estate and of tangible personal property. It is in connection with the determination of the situs of intangible personal property that interesting problems arise. The Treasury regulations state that the written evidence of intangible personal property which is treated as being the property itself has a United States situs only if such evidence is physically within the United States. A bond for the payment of money is therefore not situated within the United States unless physically located therein. Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United states if consisting of a property right issuing from or enforceable against a resident of the United States or an American corporation. Stock in an American corporation is deemed property within the United States even if the stock certificates are held outside the United States. Shares in foreign corporations physically held within the United States have a situs within the United States. Notwithstanding the fact that property may be physically present in the United States at the time of death, it will not be held to be situated in the United States if it was merely "in transit" through the country. It was held in the case of a Canadian citizen not a resident of the United States, who died on a vacation in Florida, that her jewelry and personal effects which were located in Florida at the time of her death did not have a situs in the United States. As a general rule, the situs of property at the time of death is determinative. If the decedent, however, during his lifetime made a transfer as described in Sec. 811 (c), (d), (f) and (l) of the Code, the property is included in his gross estate if it was situated within the United States either at the time of transfer or at the time of death. For the purpose of aiding certain types of American business and for similar other reasons, Congress has exempted certain essets owned by nonresident aliens. Within this class belong, under certain conditions, life insurance proceeds, bank accounts and United States government securities. The rules of situs have been considerably amended in death tax conventions which the United States has concluded with various countries.

The value of the net estate of a nonresident alien decedent is determined by making certain authorized deductions from the value of the gross estate. The law grants to nonresident alien estates a specific exemption only in the amount of $ 2,000 for both the basic and the additional estate tax, in contrast to the $ 100,000 exemption with respect to the basic tax and the $ 60,000 exemption with respect to the additional tax, allowable in the case of estates of citizens and residents of the United States. The statute allows nonresident alien estates the usual deductions for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, and losses incurred during the settlement of the estate. It is immaterial whether the amounts to be deducted were incurred within or without the United States. Only that proportion of the aggregate amount of deductions, however, is deductible which the value of the gross estate situated in the United States bears to the value of the entire gross estate, wherever situated. The rule that only the proportionate part of the debts and expenses can be deducted sometimes results in hardship and sometimes works in favor of nonresident

alien estates. The law also permits, under certain conditions, deduction from the gross estate of any property which formed a part of the gross estate of any person who died within five years prior to the decedent, or of any property which was transferred to the decedent by gift within five years prior to his death. Furthermore, there may be deducted from the gross estate, under certain conditions, amounts which will be given for public, religious, charitable or similar purposes. The so-called marital deduction provided for in Sec. 812 (e) of the Code is not available to the estates of nonresident aliens. The various deductions are allowed only if the representative of the estate includes in the tax return the value of the gross estate not situated in the United States. The provisions with respect to deductions and exemptions have also been amended in various respects by tax conventions with foreign countries.

The tax conventions concluded by the United States have opened new sources of information to the Government. Under these conventions, the American tax authorities are enabled to obtain from the authorities of the other treaty countries, for the purpose of ascertaining the proper estate tax, such information as the authorities of the other countries may be in a position to obtain under their laws. Some of this information will be furnished to the American authorities automatically, other information only upon specific request. The estate tax conventions with Canada, the United Kingdom and France are in force. Conventions with Greece, Ireland, Norway and the Union of South Africa have been signed, but not yet ratified. Treaty negotiations have been commenced with eight additional countries.

In the past, the estates of nonresident alien decedents have often been successful in evading United States estate taxes largely because the tax authorities of the United States were unable to ascertain the facts. Thus, securities were frequently held in an American bank for the benefit and at the risk of a nonresident alien, but in an account for a foreign bank. Upon the death of the nonresident alien, the foreign bank made the appropriate notation of change of ownership on its own records, but no change was made on the books of the American bank. If the American bank which maintains the account knows the true facts, it is obliged to report the death and pay the estate tax. Experience during and after World War II with blocking and deblocking regulations, and the increasing number of estate tax conventions indicate that foreign banks and their customers are taking a serious risk in participating in arrangements to evade the American estate tax.

The United States Government does not desire to discourage investments in the United States. The American tax authorities have often stated that estate planning for purposes of reducing or avoiding estate taxes is legal and proper. It has been pointed out that bank deposits, proceeds of life insurance and United States Government securities are tax-exempt under certain circumstances. A variety of trusts and other arrangements may also be utilized by nonresident aliens safely and legitimately for the purpose of reducing or avoiding United States taxes on their estates.

During the question period and discussion, Mr. Joseph made observations about the differences in the concept of domicile, as applied by the various countries, and about the conflicts which may arise therefrom. He also explained in detail how the various double taxation treaties and, in particular, the provisions concerning international exchange of information are applied.

CONFÉRENCES SUR LE PROBLÈME FISCAL ÉTUDIÉ DU POINT DE VUE ÉCONOMIQUE ET SOCIAL.

Chaque année en septembre, on tient à l'Ecole Catholique des Hautes Etudes de Tilbourg, une série de conférences économiques et sociales. En 1950, le sujet général a été: LE PROBLÈME FISCAL ÉTUDIÉ DU POINT DE VUE ÉCONOMIQUE ET SOCIAL.

On a tenu une série de conférences dont nous allons donner un court aperçu. Une partie essentielle en était constituée par les discussions qui, cette fois, ont pris autant d'heures que les conférences elles-mêmes. Chaque problème porté à l'ordre du jour de ces discussions a été examiné dans tous les détails, et chacun des participants avait la faculté d' introduire lui-même le problème à discuter. Ce sont surtout ces débats qui ont contribué au succès de ces jours. Les conférences ont été publiées dans le numéro d'octobre-novembre de la revue „Economie"; ensuite elles paraîtront sous forme de brochure que chacun pourra se procurer.[1])

Au nombre des participants il n'y avait pas seulement ceux qui avaient fait leurs études à l'école susmentionnée; on y trouvait encore des fonctionnaires, des experts-comptables et des conseillers fiscaux; il a été possible de maintenir les débats à un niveau très élevé, vu que nombre de professeurs, de maîtres de conférences, de chargés de cours aux Universités et aux Écoles des Hautes Études néerlandaises — en particulier de professeurs de finances publiques et de droit fiscal — y ont pris une part très active.

Après quelques paroles de bienvenue adressées par le Recteur de l'Ecole des Hautes Etudes de Tilbourg, la première conférence a été faite par Monsieur le Dr. M. J. H. SMEETS, professeur de finances publiques et de droit fiscal à ladite École des Hautes Études. Le sujet en était: Les fonctions des impôts, en particulier l'arrière-plan budgétaire. L'orateur traita la fonction budgétaire et régulatrice des impôts; ensuite il émit son jugement au sujet des finances de l'État néerlandais, faisant remarquer que le total des impôts aux Pays-Bas est en un rapport de cause à effet avec les dépenses des autorités pour le service ordinaire et le service de crise. Cela n'empêche pas que par suite de la manière dont on prélève les impôts (surtout par suite de l'impôt progressif élevé sur le revenu) et pour la raison que vu les circonstances, plus de $^1/_3$ du disponible est affecté à des buts sociaux et à des sinistrés de guerre, la fonction régulatrice des impôts aux Pays-Bas est également loin d'être sans importance. Il faut ajouter que dans ce pays, en prélevant les impôts, on tient compte de la situation monétaire et des répercussions sur la balance des comptes qui est encore défavorable. Il souligna encore qu'il ne faut pas considérer les impôts uniquement du point de vue de l'autorité publique, mais qu'il est nécessaire de les placer dans la situation générale de l'économie nationale. L'orateur attira encore tout spécialement l'attention sur l'aide accordée à l'État en vertu du Plan Marshall et l'effet monétaire de ces donations. Le conférencier était d'avis qu'aux Pays-Bas une diminution des impôts n'est possible que dans le cas où l'on pourrait fixer un plafond aux dépenses toujours croissantes, et si à côté de cela, l'accroissement des impôts que l'on pourrait obtenir en cas de revenu national ascensionnel pouvait donner lieu d'alléger les charges fiscales.

Le deuxième sujet a été traité par le Dr. W. H. VAN DEN BERGE, Directeur-Général des affaires fiscales au ministère des Finances à La Haye. Il a exposé les aspects juridiques et les principes des impôts.

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[1]) Editée par H. GIANOTTEN, Tilbourg, Pays-Bas.

D'une façon rigoureuse et logique, il a traité la défense renfermée dans la Constitution néerlandaise et en vertu de laquelle il est interdit d'accorder des privilèges en ce qui concerne les impôts. Il a donné sa propre opinion sur le caractère de généralité et d'égalité que doivent revêtir les impôts.

En traitant la partie juridique de la question, l'orateur examina tout spécialement les exigences relatives à la certitude et à la détermination, ce qui l'amena à parler du droit de contrôle des fonctionnaires et de la jurisprudence fiscale. D'une manière originale, il montra qu'il y a une très grande conformité entre le droit fiscal et le droit pénal, aussi bien au sens matériel qu'au sens formel. En ce qui concerne les principes, il fit appel au sentiment général du droit qui, dans la pratique — partant de l'exigence absolue de la justice — doit être pris comme base de la législation fiscale.

La troisième conférence, faite par l'expert-comptable J. H. A. A. LASANCE de La Haye, avait pour sujet: Les aspects économiques professionnels des impôts (en particulier leur influence sur les prix de revient et le financement). L'orateur fit immédiatement savoir qu'il ne toucherait pas au problème auquel on montre actuellement tant d'intérêt aux Pays-Bas: celui du calcul des bénéfices, d'après la loi de la substitution des valeurs.

Il prit tout d'abord en considération l'impôt qui augmente le prix de revient, puis il parla de l'influence de ces impôts dans les différents départements des achats, de la production et de la vente; par la nature des choses, à côté de l'impôt de consommation, l'orateur traita la question de la taxe sur le chiffre d'affaires et la taxe compensatiore (impôt de 4 ½ % introduit par les occupants aux Pays-Bas et qui doit être payé par les entreprises; il est levé sur le montant des salaires payés).

En traitant la question du financement de la vie économique, il montra surtout l'influence exercée par l'impôt sur les revenus et les societés. Comme à son avis l'intérêt proprement dit ne fait pas partie du bénéfice, que ce dernier provienne de la propre fortune ou d'une fortune étrangère, il en arriva à la conclusion que l'impôt néerlandais sur les sociétés (levé sur le bénéfice aprés déduction des tantièmes distribués à la direction et au personnel) frappe à tort le premier dividende.

La quatrième conférence fut faite par le Professeur Dr. W. G. GROENEVELD de l'Université Catholique de Nimègue. Il avait pour sujet: Les aspects sociaux des impôts. Il attira l'attention sur le fait que les impôts ne sont plus exclusivement un moyen de recueillir de l'argent pour couvrir les besoins collectifs, mais que de nos jours ils sont devenus un instrument entre les mains de l'autorité publique pour la réalisation de sa politique. L'orateur déapprouvait surtout le maniement des impôts comme moyen d'arriver à un important nivellement des revenus. Son exposé s'étendait surtout au long terme; il était d'avis que, pour autant que cette redistribution est justifiée, elle ne fait pas partie de la tâche de l'Etat, mais des groupements subsidiaires qui existent ou qui existeront encore dans la communauté. En ce qui concerne les Pays-Bas, il voyait à ce sujet une tâche pour l'organisation professionnelle de droit public entrée récemment en vigueur dans ce pays. Cet organisme doit assurer des salaires et des prix équitables. Si cela est possible à l'avenir, il ne restera plus pour l'autorité publique aucune tâche digne.d'être mentionnée. Sous ce rapport, l'orateur estimait que la conception moderne extrême, qui voit la tâche typique de la politique fiscale dans une nouvelle répartition des revenus et des fortunes, est une chose en principe inacceptable. En ce qui concerne la tâche de l'Etat, on a constaté dans les discussions, qu'un grand nombre de participants n'étaient pas d'accord avec la conception du gouvernement néerlandais; d'autres étaient d'avis qu'il serait trés difficile de réaliser les vues académiques de l'orateur.

Le cinquième conférence a été faite par Monsieur le Dr. J. TINBERGEN, Directeur du „Centraal Planbureau " et professeur suppléant à l'Ecole des

Hautes Etudes Commerciales de Rotterdam. Le sujet traité était: Les aspects économiques généraux des impôts. Dans un exposé vigoureux et logique, l'orateur a étudié successivement entre autres:

1°. l'effet des impôts dans un Etat isolé (sans contact avec l'étranger)
   a). considéré d'une manière statique
   b). considéré d'une manière dynamique.
2°. l'effet des impôts dans un Etat concurrent, de nouveau considéré d'une manière statique et dynamique.

Le Dr. J. TINBERGEN traita un grand nombre de problèmes importants, entre autres l'influence de la progression, des impôts augmentant le prix de revient, la politique de la conjoncture, etc.

Comme point de départ général, il souligna le fait que pour juger du système fiscal auquel il faut donner la préférence dans une situation donnée, il faut prendre en considération: les effects du système fiscal sur l'économie nationale, l'estimation de ces effets et les différents éléments du système fiscal. Il attira également l'attention sur le fait que dans l'estimation des impôts il faut se placer au point de vue de la communauté et non à celui du Trésor. Comme influences des impôts progressifs il cita: une répartition plus égale des revenus et en conséquence le freinement des possibilités de procéder à des investissements et la stimulation de la consommation.

La dernière conférence fut faite par le Révérend Père Dr. F. A. WEVE, Professeur d'éthique et de sociologie à l'Ecole Catholique des Etudes Economiques de Tilbourg. Le sujet en était: Les aspects éthiques des impôts.

L'orateur partit du point de vue que la levée des impôts doit être mise en harmonie avec le but essentiel de chaque communauté: l'accroissement du bien-être général. Un impôt équitable exige trois choses: il doit avoir pour object le véritable intérêt général; il doit être fixé par le législateur compétent, et les charges doivent être réparties d'une façon équitable. Les mesures relatives à une équitable répartition des charges doivent être empruntées aux exigences de la justice distributive. D'après l'orateur, il ne s'agit pas tellement de l'argent que les contribuables doivent céder au moyen de la progression, mais plutôt de ce qui leur reste aprés avoir payé leurs impôts, afin de pouvoir réaliser ce qu'il y a d'essentiel dans la situation où ils se trouvent placés. Il ne croyait pas à la nécessité d'un nivellement général; l'impôt ne doit ni atteindre ni entamer la propriéte dans sa fonction.

Le professeur WEVE avait pour tâche de faire une conférence sur l'équité sociale que l'on doit prendre en considération en levant des impôts.

Dans les discussions, il fit savoir que personnellement il estimait qu'en ce qui concerne le payement des impôts, il fallait exercer un jugement éthique rigoureux contre les fraudes fiscales, si comme aux Pays-Bas, on vise à une répartition justifiée des charges publiques.

Aux sujets qui ont fait l'objet de discussions (nous en avons déjà cité deux), appartiennent les suivants: la formation d'une propre notion dans le droit fiscal; la question de savoir si des juristes ou autres peuvent prendre part à la jurisprudence administrative dans les affaires fiscales; la question de savoir si aux Pays-Bas on peut parler d'un système fiscal; les échelles progressives dans l'impôt néerlandais sur le revenu, spécialement celui du soi-disant „groupe moyen''; le côté psychologique du payement d'impôts; la question de savoir si la législation néerlandaise actuelle accorde assez d'attention aux exigences économiques professionnelles; le rapport entre l'impôt des sociétés et l'impôt sur le revenu; la possibilité de se rendre compte de l'utilité des besoins collectifs, en comparaison avec les préjudices qui naissent dans le secteur particulier par suite des versements d'impôts.

Pour s'orienter exactement au sujet des conférences et des discussions, nous renvoyons à la brochure qui doit encore paraître et qui renfermera tous les rapports.

THE BUDGET-SPEECH OF THE MINISTER OF FINANCE OF WESTERN GERMANY[1])

Herr Präsident! Meine Damen und Herren! Die Bundesregierung legt Ihnen den Haushaltsplan des Rechnungsjahres 1950'51 vor, nachdem er die Zustimmung des Bundesrats gefunden hat. Dieser Haushaltsplan ist der erste Haushaltsplan eines vollen Rechnungsjahres, den die junge deutsche Bundesrepublik der Öffentlichkeit vorlegt. Dieser Haushaltsplan ist daher die erste Bewährungsprobe darauf, ob sich die finanzpolitischen Gesichtspunkte und Richtlinien des Grundgesetzes in diesem Jahre bewährt haben und ob diese finanzpolitischen Richtlinien des Grundgesetzes eine dauernd gute und gesunde Grundlage für das finanzpolitische Leben der Bundesrepublik bieten können.

Der Gesetzgeber des Grundgesetzes hat in erster Linie zwei Gesichtspunkte wahrzunehmen und zwei Aufgaben zu erfüllen gesucht, nämlich finanzpolitisch das Verhältnis zwischen Bund und Ländern zu regeln und aus den Erfahrungen, die zwei grosse Ereignisse in Deutschland gebracht haben, aus den Erfahrungen der Inflation der Jahre 1918 bis 1923 und aus den Erfahrungen der Währungsumstellung des Jahres 1948, die auch eine Folge der voraufgegangenen Finanzpolitik gewesen ist, zu handeln und dem deutschen Sparer und der deutschen Bevölkerung, denen durch diese beiden Ereignisse das Vertrauen in den Staat und in das Finanzgebaren des Staates genommen worden war, in der Verfassung gegen die Wiederholung solcher Ereignisse einen Schutz zu bieten.

Der Gesetzgeber des Grundgesetzes hat diesen Schutz zunächst in der Bestimmung des Artikels 110 des Grundgesetzes zu finden gehofft, die vorschreibt, dass der Haushaltsplan der Bundesrepublik in Einnahmen und Ausgaben abgeglichen vorgelegt und — das ist natürlich der Sinn dieser Bestimmungen — auch während des Jahres gehalten werden muss. Weiter hat er in der Bestimmung des Artikels 113 des Grundgesetzes den Schutz gesucht; darin ist vorgesehen, dass dann, wenn während des laufenden Haushaltsjahres die Voranschläge des Haushaltsplans durch Beschlüsse der gesetzgebenden Körperschaften erhöht werden, d.h. dass durch diese Beschlüsse höhere Ausgaben, als im Haushaltsplan vorgesehen, nötig werden, die besondere Zustimmung der Bundesregierung zu diesen Beschlüssen gegeben werden muss.

Der Gesetzgeber hat damit der Bundesregierung eine ganz besondere und erhöhte Verantwortung zugewiesen. Die Bundesregierung kann sich nicht darauf berufen, dass sie durch Beschlüsse der gesetzgebenden Körperschaften zu einer inflatorischen Politik gezwungen gewesen sei. Die Bundesregierung selbst ist aufgerufen, den Damm gegen jede inflatorische Politik zu bilden, und sie muss für diese Entwicklung die persönliche Verantwortung übernehmen. Sie muss und kann diese persönliche Verantwortung selbstverständlich nur im Rahmen dessen übernehmen, was die Verfassung selbst vorschreibt, also insbesondere im Rahmen des Artikels 110 des Grundgesetzes in dem die Abgleichung in Einnahmen und Ausgaben vorgesehen ist.

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1) The following is only the part of the budget-speech referring to taxation as source of revenue. The complete text of the speech has been published in „BUNDESANZEIGER" of November 11th. 1950.

Damit die Bundesregierung diesem Zwang nicht ausweichen kann, hat der Gesetzgeber des Grundgesetzes in Artikel 115 auch den Weg für eine leichtfertige Schuldenpolitik verbaut. Er hat vorgeschrieben, dass zur Aufnahme jeden Kredites und zu Gewährung jeder Bürgschaft und aller Sicherheitsleistungen, deren Wirkung über das laufende Haushaltsjahr hinausgehen, ein besonderes Bundesgesetz erforderlich ist. Die Bundesregierung ist hier also an die Beschlussfassung der beiden gesetzgebenden Körperschaften, Bundesrat und Bundestag, gebunden. Durch diese Bestimmungen suchte der Gesetzgeber des Grundgesetzes zunächst einen Schutz gegen jede inflatorische Entwicklung in der deutschen Finanzpolitik zu schaffen. Um ein modernes Wort zu gebrauchen: ,,deficit spending'' ist durch das Grundgesetz in der deutschen Finanzpolitik untersagt.

Was den Aufbau zwischen Bund und Ländern und die Teilung der finanzpolitischen Verantwortung zwischen Bund und Ländern betrifft, so hat das Grundgesetz zunächst in Artikel 120 dem Bund seine besonderen Aufgaben zugewiesen: Kriegs- und Kriegsfolgelasten und damit die gesamte Erfüllung der Verpflichtungen der deutschen Bevölkerung gegenüber dem Ausland; durch Artikel 131 auch die Fürsorge für die verdrängten öffentlichen Bediensteten und beruflichen Wehrmachtsangehörigen, auch die Fürsorge für Arbeitslosenversicherung, Zuschüsse für Sozialversicherungsanstalten. Das ist der grosse Komplex, der an Aufgaben dem Bund zugewiesen ist; in erster Linie die sozialen Aufgaben.

Die Einnahmenteilung ist, ins Rohe geprochen, auf die Weise erfolgt, dass die unmittelbaren Steuereinkommen — Einkommen-, Körperschaft- und Vermögensteuer — den Ländern zufliessen, während der Bund im wesentlichen auf Umsatz- und Verbrauchsteuern angewiesen ist.

Welche Folgerungen ergeben sich finanzpolitisch daraus? Der Bund hat die sozialen Ausgaben; das sind unvermeidbare Ausgaben und solche, die ihrer ganzen Natur nach und angesichts der durch den Krieg hervorgerufenen Verhältnisse und der unglücklichen Bevölkerungschichtung, die das deutsche Volk heute nach zwei Weltkriegen nun einmal hat, in sich eine steigende Tendenz haben. Wenigstens in den nächsten Jahren werden sie immer steigen müssen. Also die unvermeidbar steigenden Ausgaben sind die Lasten des Bundes.

Die Einnahmen, die ihm zugewiesen sind, haben finanzpolitisch ebenfalls ihren besonderen Charakter. Umsatzsteuer und Verbrauchsteuer können ihrer Natur nach nicht über eine bestimmte Grenze hinaus erhöht werden. Sie sind die Steuerarten, die sich unmittelbar auf Preise und Löhne auswirken müssen und denen in der gesamten Wirtschaftsentwicklung daher soziale Grenzen gezogen sind. Die Einnahmemöglichkeiten für den Bund sind auch dadurch begrenzt, dass neben dieser natürlichen Grenze der dem Bund unmittelbar zugewiesenen Steuereinnahmen das Ausweichen und der Rückgriff auf die Steuerarten, die den Ländern zufliessen — wenn der Bund auf dem Umweg über den Artikel 106 die nicht gedeckten Ausgaben aus den Ländersteuern durch Quoten zu decken sucht —, dadurch beschränkt ist, dass die Anwendung des Artikels 106 von der Zustimmung der Länder, also von der Zustimmung derer abhängig ist, denen diese Einnahmen gekürzt oder genommen werden sollen. Also finanzpolitische Ausgangsposition für den Bund: Ausgaben ihrer Natur nach unvermeidbar und steigend, Einnahmen ihrer Natur nach beschränkt und durch die Gesetzgebung, durch das Grundgesetz selbst, begrenzt.

Welche finanzpolitischen Möglichkeiten ergeben sich? Der Weg der Inflation ist ausdrücklich durch die Verfassung, aber auch durch eigenes Wollen und eigene Erkenntnis unmöglich. Der Weg der Deflation ist ebensowenig möglich; denn der Bund der die socialen Aufgaben zu leisten hat, müsste als erster darunter leiden. Deflation bedeutet Beschränkung aller öffentlichen Ausgaben, bedeutet Lähmung der Wirtschaft, Steigerung der Arbeitslosig-

keit und damit Steigerung der sozialen Not. Alle Ausgaben, die sich aus der sozialen Not ergeben, sind ja Ausgaben des Bundes. Eine Deflationspolitik des Bundes müsste infolgedessen unmittelbar erhöhte Ausgaben des Bundes zur Folge haben. Aber auch der Weg der steuerlichen Überlastung ist dem Bund genommen — wir können sagen: zum Glück —, weil die ihm zugewiesenen Steuern ihrer Natur nach beschränkt und begrenzt sind und weil dem Rückgriff auf die Einnahmen der Länder vom Gesetzgeber durch die Notwendigkeit, die Zustimmung dessen, dem die Einnahmen genommen werden sollen, zu erhalten, auch eine Grenze gesetzt wird. — Das ist die Feststellung nach der negativen Seite.

Welcher Weg bleibt nun nach der positiven Seite? Ich habe dem Hohen Hause im Juni dieses Jahres eine Denkschrift vorgelegt, die unter den Drucksachen die Nr. 1000 erhielt, —vielleicht ein Omen dafür, dass diese Denkschrift unter den vielen Drucksachen, die Ihnen vorgelegt werden, schon wegen ihrer Nummer einer besonderen Beachtung wert wäre. Dass der heute vorgelegte Haushaltsplan wieder vom Schicksal die Nummer 1500 erhalten hat, ist vielleicht wieder ein Omen dafür, dass zwischen der Drucksache Nr. 1000 und der Drucksache Nr. 1500 doch die engsten Zusammenhänge bestehen und dass beide Drucksachen Ihre besondere Beachtung finden sollten.

Ich darf aber feststellen, dass die Drucksache Nr. 1000 damals schon die Schwierigkeiten und der Weg zu zeigen suchte. Indem sie abgrenzte, welche Wege nicht möglich seien, hat sie damals bereits die Linie gegeben, welcher Weg von der Bundesregierung als möglich bezeichnet wird, die sozialen Aufgaben zu erfüllen und ohne schwerste finanz- und wirtschaftspolitische Schäden trotzdem die notwendigen Mittel aufzubringen. Der Weg wurde darin gesehen, dass in erster Linie nicht so sehr an neue Steuergesetze gedacht wird, sondern dass die Möglichkeit und der Zwang geschaffen werden, das bestehende Gesetz zu achten und die Verpflichtungen, die dieses Gesetz schafft, nicht einer Bundesregierung, sondern voll dem deutschen Volke gegenüber, dessen soziale Aufgaben in Händen der Bundesregierung liegen, erfüllen zu helfen.

Das ist der erste Weg. Der zweite Weg muss trotz aller Schwierigkeiten darin gesehen werden, alles zu tun, um die Wirtschaft zu beleben, den Steuerzahler damit leistungsfähig zu machen und aus dem leistungsfähigen Steuerzahler die Einnahmen herauszubekommen, die zur Behebung der sozialen Not und socialen Schwierigkeiten erforderlich sind.

Das sind die Grundsätze. Lassen Sie mich nach diesen Grundsätzen einmal den Haushalt dahin vergleichen, ob er ihnen und den Forderungen entspricht, die nun einmal das Grundgesetz an Bundesregierung und gesetzgebende Körperschaften gleicherweise stellt. Die erste Frage ist dann die: Ist dem Artikel 110 des Grundgesetzes entsprochen, ist die Abgleichung des Haushalts in Einnahmen und Ausgaben eine echte und wahre und nicht bloss eine ziffernmässige?

Der Ihnen vorliegende Haushalt schliesst in Einnahmen und Ausgaben mit 13 013 Millionen DM ab. Davon entfallen auf den ordentlichen Haushalt 12 218 Millionen und auf den ausserordentlichen Haushalt 795 Millionen DM. Ich bemerke, dass ich dabei von den Ziffern ausgehe, die in dem Haushaltsvoranschlag selbst enthalten sind. In den Beratungen des Bundesrats haben sich diese Ziffern in Einnahmen und Ausgaben gleicherweise um 54 Millionen DM geändert. Die Einzelheiten darüber liegen Ihnen in der Anlage 4 zum Haushaltsvoranschlag vor. Wir haben also ein Ausgabensoll von 12,2 Milliarden DM im ordentlichen Haushalt. Die Einnahmen, die dem gegenüberstehen, sind folgende: an Steuern, Umsatz- und Beförderungssteuer 5 040 Millionen DM; Zölle und Verbrauchsteuern 4153 Millionen DM, zusammen 9193 Millionen DM; dann Interessenquoten der Länder 1131 Millionen DM nach der derzeitigen Höhe der durch die Interessenquote mitgedeckten Ausgaben; Ablieferung der Verkehrsbetriebe 308 Millionen DM, davon 134

Millionen DM auf die Post, 174 Millionen DM auf die Bahn entfallend; Notopfer Berlin nach Haushaltsvoranschlag 320 Millionen DM; Beitrag des ausserordentlichen Haushalts zum ordentlichen Haushalt für Subventionen 300 Millionen DM; Einnahmen aus Bank- und Geldwesen — das ist Münzgewinn und Gewinnanteil an der Notenbank — 580 Millionen DM, und schiesslich Verwaltungseinnahmen, die in den Ihnen vorliegenden Einzelplänen enthalten sind, mit 400 Millionen DM, insgesamt also 12,2 Milliarden DM.

Frage: Sind die Einnahmen richtig angegeben, werden die Steuerschätzungen erreicht werden? In den ersten sechs Monaten sind von den Steuerschätzungen — insgesamt 9193 Millionen DM — 4041 Millionen DM eingegangen. Das sind also rund 44 %. Ich darf vorausschicken: die Steuerschätzungen waren von vornherein nicht auf den Ergebnissen des Vorjahres aufgebaut, sie gingen wesentlich darüber hinaus. Sie waren von vornherein darauf aufgebaut, dass die von der Bundesregierung beabsichtigte gesamte Finanz- und Wirtschaftspolitik ihr Ziel erreichen, eine Bewegung bringen und damit höhere Schätzungen erlauben würde, als wir sie hätten machen dürfen, wenn wir nur das Vorjahr zugrunde gelegt hätten. Es ist infolgedessen natürlich, dass die Wirtschaftsbelebung sich erst im Laufe des Jahres auswirken kann, und es ist infolgedessen auch natürlich gewesen, dass der monatliche Eingang an Steuern in den ersten Monaten des Jahres weit unter der Schätzung lag. Im April betrug der monatliche Steuereingang insgesamt 594 Millionen DM. Er ist inzwischen im Monatsdurchschnitt gestiegen, im September auf 819 Millionen DM. Er muss, um die Fehlbeträge der ersten Monate durch die Mehrerträge der letzten Monate zu decken, auf einen Monatsdurchschnitt von 859 Millionen DM steigen.

Meine Damen und Herren, wenn ich diese Ziffern nenne, so deshalb, weil ich damit sagen will: wenn ich auch Optimist genug bin, nach der Wirtschaftsentwicklung zu glauben, dass die Steuerschätzungen erreicht werden, so möchte ich doch dringendst davor warnen, etwa zu hoffen, dass die Steuerschätzungen das Mass nich erreicht hätten, das der Wirklichkeit entspricht. Die Steuereinnahmen werden die Steuerschätzungen bestimmt nicht überschreiten; denn es ist vom September an gerechtnet noch eine Durchschnittssteigerung monatlich von 40 Millionen DM erforderlich, um die Steuerschätzungen des Gesamtjahres zu erreichen.

Ich darf einmal auf die einzelnen Steueraufkommen eingehen. Die Umsatzsteuer, die im Vorjahre 3994 Millionen DM gebracht hatte, ist geschätzt mit 4700 Millionen DM Einnahmen. Es ist dies ein Monatsdurchschnitt von 392 Millionen DM .In den ersten sechs Monaten wurden 1794 Millionen DM erreicht: ein monatlicher Durchschnitt von 358 Millionen DM. Im September wurde das Monatsdurchschnittssoll von 392 Millionen DM um einige Millionen DM überstiegen. Es ist eine weitere Steigerung notwendig, um die Gesamtjahresschätzung zu erreichen.

Die Beförderungssteuer, die 118,6 Millionen DM erreicht hat, bleibt hinter der Steuerschätzung nicht unwesentlich zurück. Das Notopfer Berlin, das im ersten Halbjahr 175 Millionen erreicht hat, hat das Vorjahr überschritten und wird die Steuerschätzung erreichen.

Die Zolleinnahmen, die für das ganze Jahr mit 600 Millionen geschätzt sind, haben bisher 278,7 Millionen DM erreicht, weit über dem Vorjahr, das 136 Millionen DM im gleichen Zeitraum hatte, ein Beweis für die gesteigerte Wirtschaftskraft des deutschen Volkes. Aber auch die Zolleinnahmen werden die Steuerschätzungen nur dann erreichen, wenn keine Störungen des Wirtschaftslebens, wenn nicht eine Erschwerung des Imports durch kreditpolitische Massnahmen sich allzu stark auswirken.

Was die Verbrauchsteuern betrifft, so darf ich zunächst von der Zuckersteuer sprechen. Die Zuckersteuer hat im ersten Halbjahr ein Aufkommen von 136 Millionen DM gegenüber einem Soll für das Halbjahr von 200 Millionen DM und einem Vorjahreserträgnis von 175 Millionen DM, ist also

weit zurückgeblieben. Das hängt nicht so sehr mit der Senkung der Zuckersteuer zusammen; denn in den Monaten Mai bis September beträgt der Unterschied in allen fünf Monaten zusammengerechnet gegenüber dem Vorjahr nur 12 Millionen DM. Die Erklärung für das Zurückbleiben liegt hauptsächlich im Monat April, in dem Monat des Übergangs von den Ländern auf den Bund. Das war eine Lücke, die inzwischen nicht aufgeholt werden konnte und die den Schluss zuliess, dass es vielleicht gelingt, die Zuckersteuer annähernd an das Soll heranzubringen, die aber nie ganz das Soll erreicht.

Ähnlich liegt es bei dem Spiritusmonopol. Das Spiritusmonopol hat im Halbjahr April bis September 184 Millionen DM gebracht und liegt mit 20 Millionen DM unter dem Vorjahr. Hervorgerufen wurde dies zum Teil durch den Monat April, zum Teil aber auch durch die Tatsache, dass das Spiritusmonopol — weil es in den Händen des Staates liegt — stark den politisch vertretenen Interessenten ausgesetzt ist und infolgedessen in der Gestaltung des wirtschaftlichen Erträgnisses nicht die Bewegungsfreiheit hat, die private Unternehmen haben würden.

Der Ertrag der Mineralölsteuer hat im ersten Halbjahr 35,1 Millionen DM betragen, im Vorjahre 25,2 Millionen DM, ist also gegenüber dem Vorjahr stark gestiegen, steht aber hinter der Steuerschätzung noch zurück und muss noch aufholen, um die volle Schätzung zu erreichen.

Ein besonderes Wort zu dem Kapitel Kaffeesteuer und Tabaksteuer. Die Tabaksteuer ist von den Verbrauchsteuern die auschlaggebende mit einem Soll von 2100 Millionen DM. Die Tabaksteuer hat im ersten Vierteljahr des Rechnungsjahres zu schweren Sorgen Anlass geben müssen. Sie blieb in den ersten Monaten um nicht weniger als 117 Millionen DM stark hinter dem Vorjahr zurück. Das hängt nicht allein mit dem Übergang von den Ländern auf den Bund zusammen; das hing wesentlich auch damit zusammen, dass durch den Schmuggel die Eingänge aus der Tabaksteuer ständig im Sinken begriffen waren. Vom Juni 1950 ab hat der verschärfte Kampf gegen den Schmuggel begonnen, und zwar mit dem bisherigen Ergebnis, das die Steuereingänge der Tabaksteuer mit 560 Millionen DM im zweiten Vierteljahr die Steuereingänge des Vorjahres schon wieder überholt haben, die nur 546 Millionen DM betragen haben. Ich hoffe, das, wenn der Kampf gegen den Schmuggel erfolgreich fortgesetzt wird, die Steuerschätzungen erreicht werden.

Zur Kaffeesteuer. Auch die Kaffeesteuer war eine besondere Probe auf dem Gebiet: Kampf gegen den Schmuggel. Die Kaffeesteuer hat in den Monaten Juli bis September, in drei Monaten, um 30 Millionen DM — also monatlich um 10 Millionen DM — mehr betragen als in den gleichen Vorjahresmonaten und damit bereits 50 % der Steuerschätzung uberschritten. Ich darf also hoffen, dass der Kampf gegen den Schmuggel sich auch hier erfolgreich fortsetzen wird. Ich weiss, dass immer noch Wünsche geäussert und an mich herangetragen werden, an Stelle des Kampfes gegen den Schmuggel durch die polizeilichen und gesetzlichen Massnahmen eine andere Massnahme zu setzen, nämlich Kaffee- und Tabaksteuer so zu senken, dass sich der Schmuggel nicht mehr lohnt. Meine Damen und Herren, ich möchte dazu sagen: wenn Sie ein endgültiges Urteil abgeben wollen, ob das möglich ist, bitte ich, nicht bloss dass Thema Kaffee- und Tabaksteuer herzunehmen, sondern den gesamten Zusammenhang zu berücksichtigen: die sozialen Ausgaben des Bundes, die unmittelbare dringliche Eile, den sozialen Ausgaben gerecht zu werden, damit die Unmöglichkeit für den Bund, auch nur für eine Übergangszeit von einem halben Jahr oder länger Schwankungen in den Steuereinnahmen entgegenzunehmen, und die Frage, ob nicht der Bund mit Rücksicht auf die natürliche Steigerung der sozialen Lasten, denen er sich zu widmen hat, auch ohne Rücksicht auf andere Gesichtspunkte gezwungen sein wird und gezwungen sein kann, seine Einnahmen trotz allem über das bisherige Mass noch auszudehnen.

Nur wenn man es in diesem Zusammenhang überlegt und nicht einzelne Steuern nur von dem Gesichtspunkt der daran wirtschaftlich interessierten Kreise aus betrachtet, wird eine richtige Lösung für die Antwort zu finden sein, ob jetzt schon der Zeitpunkt gekommen ist, eine so schwerwiegende Entscheidung über Steuerarten, die das Rückgrat der Bundeseinnahmen sind, zu treffen. Ich glaube, dass wir die letzte Entscheidung nur im Zusammenhang der Dinge fällen konnen.

Zusammenfassend darf ich sagen: Ich hoffe, dass die Steuereinnahmen die Schätzungen erreichen; ich halte es für ausgeschlossen, dass die Steuereinnahmen über die Steuerschätzungen wesentlich hinausgehen werden.

. . . . . .

Nachdem ich über diese beiden Fragen gesprochen habe, noch ein Wort über die sozial- und wirtschaftspolitische Bedeutung des Haushaltsplans. Zu diesem Zweck darf ich zunächst wieder an die Denkschrift Drucksache Nr. 1000 erinnern. In dieser Denkschrift wird darauf hingewiesen, dass nach dem ersten Überblick über die Anforderungen, die an den Bundeshaushalt gestellt werden — und das waren 15 Milliarden — und nachdem von diesen 15 Milliarden 2 Milliarden gestrichen worden sind, immer noch ein ungedeckter Bedarf von über 900 Millionen DM bleibt. Dabei wurde im Juni 1950 noch nich damit gerechnet, dass die Politik der Subventionen über den 1. Juli 1950 würde fortgesetzt werden müssen. Die Aufgabe musste trotzdem bewältigt werden, die Aufgabe der echten Abgleichung des Haushaltes. Die Deckung ist in erster Linie durch Erhöhung der Einnahmen, wie Gewinnablieferung der Notenbank, und auf der anderen Seite dadurch geschehen, dass ein Teil der ordentlichen Ausgaben auf den ausserordentlichen Haushalt übernommen worden ist, und endlich dadurch, dass ein Globalabstrich von 200 Millionen DM vorgesehen ist. In der Denkschrift ist aber — und Ihre Aufmerksamkeit möchte ich gerade auf diesen Punkt lenken — besonders darauf hingewiesen, dass der Bundeshaushalt sich insofern in einer Art Zwangslage befindet, als der grösste Teil der Ausgaben unvermeidbar und eine Bewegungsmöglichkeit innerhalb des Haushalts fast nicht gegeben ist.

Ich gebe Ihnen einmal einige Prozentzahlen. Die Ausgaben für Besatzungskosten und Besatzungsfolgekosten betragen von den Gesamtausgaben 36 %. Die Ausgaben für Kriegs- und Kriegsfolgelasten einschliesslich Arbeitslosenhilfe, Zuschüsse für Sozialversicherung betragen mehr als 40 %; die Ausgaben für die Stadt Berlin im bisherigen Ausmass 2,6 %; die Ausgaben für Subventionen 5,8 %; die Ausgaben für Wohnungsbau 4,2 %, für den Schuldendienst 1,2 %. Insgesamt sind das 90 % der Ausgaben, von denen man von vornherein sagen muss, dass sie zwangsläufig sind. Sie können in der Höhe nur ganz gering, im Wesen überhaupt nicht beeinflusst werden.

In der Öffentlichkeit beschränkt sich die Debatte über die zu erwartende Sparsamkeit in bezug auf die Gelder, die für die Steuerzahler zu verwalten sind, meistens auf die sogenannten Verwaltungsausgaben. Als Verwaltungsausgaben des Bundes finden Sie im Etat folgende Ziffern: für Gehälter und Löhne — und wir haben mehr als 50 000 Bundesangestellte und -beamte — insgesamt 277 Millionen DM, für Versorgungsbezüge und soziale Leistungen und Renten 70,8 Millionen DM und für sächliche Verwaltungsausgaben 94,7 Millionen DM. Das sind zusammen 442,5 Millionen DM, insgesamt in Prozentzahlen 3,4 % der Reinausgaben des gesamten Haushalts.

Wir haben bisher einen Globalabstrich von 200 Millionen DM vorgesehen, natürlich nicht an den Verwaltungsausgaben allein, sondern an allen Ausgaben. Aber dieser Globalabstrich allein macht der Höhe nach 50 % der gesamten Verwaltungsausgaben aus! Wir haben von den Voranschlägen der Ressorts 2000 Millionen DM weggestrichen. Man kann also der Bundesregierung bestimmt nicht vorwerfen, dass sie nicht das äusserste Bemühen zur Sparsamkeit gezeigt hat. Der Bundesfinanzminister ist ganz gewiss der letzte, der nicht seine Hand dazu reicht, um jeden Pfennig einzusparen, der

überhaupt, insbesondere bei den Verwaltungsausgaben, eingespart werden kann.

Um der Ehrlichkeit und Wahrhaftigkeit willen muss ich der öffentlichen Agitation gegenüber sagen: es ist eine Irreführung der Steuerzahler, wenn man versucht, die Steuerzahler glauben zu machen, dass dieser Posten von 3,4 %, der seinem Wesen nach auch unvermeidlich ist, der entscheidende sei, und nicht den Mut hat, darüber zu reden, was denn eigentlich die anderen Ausgabeposten in der Höhe von rund 97 % sind. Ich würde empfehlen, dass die Öffentlichkeit, die zum Beispiel über Bonner Bauten soviel redet, heute einmal die Denkschrift hinnimmt, die ich über dieses Thema dem Haushaltsausschuss schon unterbreitet habe und in der nach Heller und Pfennig alles enthalten ist. Derjenige, der diese Denkschrift gelesen hat, wird sicherlich jedem widersprechen der in der Öffentlichkeit vor dem Steuerzahler erzählt, dass da in Bonn 100, 200 und mehr phantasievolle Ziffern von Millionen Mark verbraucht worden seien.

Wenn wir Verantwortung dem deutschen Volk und dem Steuerzahler gegenüber haben, müssen wir uns mit den grossen Ausgaben mit beschäftigen.

Zu diesen grossen Ausgaben gehören in erster Linie die Besatzungskosten mit 4598,4 Millionen DM. Ich darf auf die Denkschrift, die das Bundesfinanzministerium dem Hohen Hause unterbreitet hat, verweisen. Das Bundesfinanzministerium hat in dieser Denkschrift dargelegt, welche Bemühungen es unternommen hat und welche Bemühungen es, wenn es einen sachkundigen Rat erhalten würde, weiterhin unternehmen könnte. Es wäre dafür sehr dankbar, soweit der Rat sachkundig und ehrlich ist und nicht aus irgendwelcher Voreingenommenheit erfolgt.

Die sozialen Ausgaben, der zweite grosse Posten, betragen 5200 Millionen DM. Diese 5200 Millionen DM bedeuten gegenüber dem Vorjahr eine Steigerung um 1200 Millionen DM. Sie setzen sich wie folgt zusammen: für Umsiedlung und Auswanderung 20 Millionen DM mehr als im Vorjahr, für Versorgung verdrängter öffentlicher Bediensteter und Wehrmachtangehöriger 200 Millionen DM mehr, für Kriegsopfer, Kriegerwitwen und -weisen 700 Millionen DM mehr gegenüber dem Vorjahre, für Inanspruchnahme der Arbeitslosenfürsorge — Auswirkung der erhöhten Leistung der Sozialversicherung, Zunahme der Rentenfälle — weitere 500 Millionen DM. Dieser Mehrung der sozialen Ausgaben steht als Einsparung lediglich bei dem Posten Kriegsfolgehilfe ein Betrag von rund 200 Millionen DM gegenüber, so dass also insgesamt Mehrausgaben von 1200 Millionen DM bleiben.

Ich habe auf diese Entwicklung schon in der Denkschrift Nr. 1000 hingewiesen. Wir haben die Aufgabe, unsere sozialen Verpflichtungen zu erfüllen. Wir können sie nur im Rahmen der gegebenen Möglichkeiten erfüllen. Welche sind diese? Ich habe darauf hingewiesen: erstens: eine weitere steuerliche Belastungsmöglichkeit der Volkswirtschaft dürfte im wesentlichen, zumal das Problem des endgültigen Lastenausgleichs noch daneben herläuft, nicht gegeben sein. Das gilt alles unter der clausula rebus sic stantibus, dass die wirtschaftlichen Bedingungen der Gegenwart anhalten.

Zweitens: die Einsparungsmöglichkeiten sind deshalb sehr beschränkt, weil gerade die Ausgaben des Bundes fast alle zwangsläufig sind: wie ich dargelegt habe, mit 90 %. Ein weiterer Rückgriff auf die Einnahmen der Länder erscheint bei deren gegenwärtiger Finanzlage nicht möglich. Deshalb ist nur der Weg gangbar — so widerspruchsvoll es klingt —, den Steuerzahler durch Belebung der Wirtschaft leistungsfähiger zu machen, um auf diese Weise erhöhte Steuereinnahmen zu erzielen. Darauf waren die Steuerschätzungen aufgebaut, und sie scheinen sich zu bewahrheiten. Diesem Ziel haben das Arbeitsbeschaffungsprogramm und das Wohnungsbauprogramm gegolten.

Die Belebung des Wohnungsbaumarktes kann von niemanden bestritten werden. Ich darf hier Ziffern nennen. Im ersten Halbjahr 1949 wurden 142000

Wohnungseinheiten baupolizeilich genehmigt, im ersten Halbjahr 1950 wurden 255000 Wohnungseinheiten genehmigt.

Was die Arbeitsbeschaffung betrifft, so genügt hier eine Ziffer. Die Zahl der Arbeitslosen ist von Januar 1949 bis Februar 1950 ständig gestiegen. Von März 1950 ab ist sie ständig jeden Monat um wenigstens 110 000 Menschen gesunken.

Der gesamte Produktionsindex ist, wenn wir den Dezember 1948 mit 100 ansetzen, seit September 1949, als er 121 Punkte betrug, auf 141 Punkte im Juli — ich spreche nur von der Zeit vor Korea — gestiegen. Alle diese Massnahmen sind dabei möglich gewesen — das betone ich immer wieder — ohne inflatorische Politik. Das beweist eine weitere Ziffer. Der Güterumlauf ist, wie gesagt, seit September 1949 bis Juli 1950 von 121 Punkten auf 141 Punkte gestiegen. Der Geldumlauf aber, Bargeld und private Sichteinlagen, ist in derselben Zeit von 113 auf 124 Punkte gestiegen. Also beim Güterumlauf eine bedeutend grössere Steigerung als beim Geldumlauf. Das ist grundsätzlich eine gesunde Entwicklung, die in der Gesamtlinie liegt, keine Inflation.

Neben diesen Massnahmen ist der Kampf um die Beachtung der Gesetze notwendig. Hier muss ich etwas offen aussprechen. Ich habe über die Kaffee- und Tabaksteuer sowie über die in den Steuereinnahmen sich heute bereits zeigenden sichtbaren Rückwirkungen gesprochen. Ich muss um der Wahrheit willen gestehen, dass dieser Kampf nur unter einer Bedingung bis zum letzten Ende erfolgreich geführt werden kann. Diese Bedingung ist bis heute noch nicht erfüllt. Ich muss zu meinem Bedauern um der Wahrheit willen feststellen, dass es kaum einen Fall grossen Schmuggels oder der Steuerhehlerei gibt, woran nicht eine sogenannte Displaced Person beteiligt ist. Die Gerichtsbarkeit darüber steht uns heute noch nicht zu. Dieser Mangel an Gerichtsbarkeit hat sich im Kampf gegen den Schmuggel sehr störend ausgewirkt. Ich muss bitten und ich bitte, dass der Kampf gegen den Schmuggel gegen jeden Schmuggler geführt werden darf. Schmuggler ist Schmuggler, gleichgültig welcher Religion, welcher Rasse und welcher Hautfarbe. Deshalb bitte ich, dass der Kampf gegen den Schmuggel durch die Ausdehnung der deutschen Gerichtsbarkeit bis zum letzten Ende erfolgreich geführt werden könne.

Die Belebung der Wirtschaft ist nicht nur durch unmittelbare wirtschaftspolitische Massnahmen möglich gewesen, sondern es waren auch steuerliche Massnahmen nötig. Ich erinnere nur an die Zuckersteuer, die eine starke Vermehrung der Anbaufläche von Zuckerrüben zur Folge hatte und dadurch dazu beitragen wird, dass der Devisenbedarf für die Einfuhr von fremdem Zucker im laufenden Wirtschaftsjahr geringer sein wird. Ich erinnere an die Zigarrensteuer, deren zusammenbrechende Industrie ja wieder gesundet; 31000 Arbeitslose konnten in der Zigarrenindustrie wieder neu beschäftigt werden.

Ich bitte aber, nicht zu glauben, dass alle diese Senkungen zu Steuermehrerträgen geführt hätten. Steuermehrerträge nur durch Senkung zu erzielen, wäre ein zu einfaches Experiment. Es mussten durch die Steuersenkung vielmehr wirtschaftspolitische Schädigungen vermieden werden, die durch steuerliche Massnahmen einzutreten gedroht haben. Das gilt für die Biersteuer ebenso, und das gilt — damit komme ich zu einem umstrittenen Thema — auch für die Einkommensteuerreform.

Ich weiss, dass die Einkommensteuerreform politisch umstritten ist, und muss daher etwas dazu sagen. Die Senkung der Einkommensteuer ist nicht erfolgt, wie manchmal gesagt wird, damit der Bund seinen sozialen Aufgaben ausweiche. Das wäre ein sehr ungeeigneter Weg gewesen. Denn letzten Endes ist es doch so, dass die Einkommensteuer eine Steuer der Länder, und die Erfüllung der sozialen Aufgaben eine Sache des Bundes ist. Wenn die Einkommensteuer dazu geführt hat, dass mehr verbraucht wurde und mehr Umsatzsteuer angefallen ist, so war das eine unmittelbare Stärkung der Bundesfinanzen zur Erfüllung der sozialen Aufgaben des Bundes.

Ferner darf man nicht übersehen: die Einkommensteuerreform war im Zusammenhang mit der Gesamtbelastung, die auf dem deutschen Volke lag, notwendig. Zu dieser Gesamtbelastung gehörte seit dem September 1949 die Soforthilfeabgabe. Die Soforthilfeabgabe hat um die Jahreswende Krankheitserscheinungen gezeigt, und es waren schwere Sorgen berechtigt, ob der Eingang der Soforthilfeabgabe gesichert sei. Die Zahl der Rückstände, die Zahl der Stundungen stiegen. Wenn nicht die Einkommensteuerreform eine Minderung der Gesamtlast gebracht hätte, wäre die inzwischen eingetretene Gesundung der Soforthilfeabgabe bestimmt nicht möglich gewesen.. Die Soforthilfeabgabe ist gesundet. Diese Gesundung kommt in erster Linie sozialen Zwecken und der Hilfe für die Kriegsgeschädigten aller Art zustatten. Die Länder haben dafür ganz bewusst ein Risiko in ihrem Haushalt übernommen.

Um die Soforthilfeabgabe im Zusammenhang mit der Einkommensteuer würdigen zu können, nur ein paar Ziffern. Die Soforthilfeabgabe liegt auf dem Betriebsvermögen. Ein Betriebsvermögen, das sich mit 4 % verzinste, war in seinem Ertrag durch Einkommensteuer und Soforthilfeabgabe bei einem Ledigen restlos aufgebraucht, wenn der Ertrag 8 275 DM überstieg. Es blieb nicht einmal mehr so viel übrig, dass die Landesvermögenssteuer und die sonstigen Lasten daneben hätten getragen werden können, geschweige denn die Kosten für die eigene Lebenshaltung oder für die Investitionen oder für die Sicherung der Arbeitsplätze. Das gleiche war auch bei Vermögen mit höherer Verzinsung festzustellen, Zum Beispiel bei einem Betriebsvermögen mit 100 000 DM, 10 % verzinslich, blieben einem Verheirateten — Soforthilfeabgabe und Einkommensteuer weggerechnet — insgesamt nur 3900 DM übrig, von denen die übrigen Lasten noch zu tragen waren. Eine Möglichkeit des Ausbaus von Betrieben und der Investierung wäre nicht mehr gegeben gewesen.

Ziel der Reform war, in erster Linie wieder Spielraum für eine Sparkapitalbildung zu geben und die Spartätigkeit anzuregen. Ich kann feststellen, dass die Spartätigkeit in den ersten sechs Monaten dieses Jahres insgesamt an Mehreinlagen gebracht hat: Bei den Kreditinstituten rund 680 Millionen, bei der Postsparkasse rund 30 Millionen, bei den Bausparkassen rund 80 Millionen, zusammen rund 790 Millionen DM. Diese 790 Millionen DM erhöhten Sparkapitals waren die Voraussetzung, um Arbeitsbeschaffungsprogramm und Wohnungsbauprogramm durchführen zu können; das war letzten Endes auch das Ziel der Einkommensteuerreform.

Das zweite Ziel war, die Investitionstätigkeit zu fördern und damit die Wettbewerbsfähigkeit der deutschen Volkswirtschaft zu stärken. Ich möchte bemerken, dass es heute eine andere Frage sein kann, ob die Voraussetzungen, unter denen die Einkommensteuerreform vor Korea gemacht worden ist, nach Korea noch alle weiter bestehen. Es kann eine Frage sein, ob die Steuervergünstigungen in dem Umfange aufrechterhalten werden können, wie sie wirklich gewährt worden sind, ob sich nicht in der Ausübung der Steuervergünstigungen, die den Zweck hatten, das gebildete Sparkapital volkswirtschaftlich nützlichen Zwecken zuzuführen, ein Missbrauch herausgestellt hat, ob nicht die Frage der Selbstfinanzierung nach Korea unter Umständen unter anderen Gesichtswinkeln zu betrachten ist, als vor Korea. Ich werfe diese Fragen für die Zukunft ganz ruhig auf, gerade weil ich der Überzeugung bin, dass das erste finanz- und wirtschaftspolitische Ziel der Einkommensteuerreform richtig war und auch erreicht worden ist, bis zu den Tagen von Korea, wo gewisse Rückwirkungen auch hinsichtlich des Kapitalmarkts und der Sparkapitalbildung eintraten, die damals nich vorausgesehen worden konnten.

Wenn ich auf die Entwicklung der Einkommensteuer in diesem Jahr zurückkommen darf, so kann ich kurz darauf verweisen, das in den kritischen Monaten, in denen die Rückzahlungen für Vorjahr und frühere Jahre gleich-

zeitig erfolgen mussten, der Ausfall sehr hoch erschien, dass aber die Septemberzahlen sowohl bei der veranlagten Einkommensteuer als auch bei der Körperschaftsteuer eine Gesundung dieser Steuern beweisen. Die Lohnsteuer bleibt immer noch stark zurück, trotz der erheblichen Steigerung der Beschäftigungszahl. Ich nehme aber an, dass niemand eine Reduzierung des Reallohnes will; denn die Einkommensteuerreform auf dem Gebiet der Lohnsteuer bedeutete eine Steigerung des Reallohnes, den wohl die Öffentlichkeit gewahrt wissen will. Der Ausfall des Steueraufkommens kommt daher dass die Auswirkungen gewisser Steuervergünstigungen veilleicht grösser sind, als damals vorausberechnet worden ist.

Zusammenfassend darf ich hinsichtlich der Finanzpolitik der Bundesregierung im vergangenen Jahr wohl folgendes feststellen: Die Belebung der Wirtschaft war das Ziel: die Belebung der Wirtschaft ist, soweit es sich aus den Steuerzahlen errechnen lasst, erreicht worden. Die notwendigen Steuereinnahmen zur Erfüllung der sozialen Aufgaben konnten damit beigebracht werden.

Die Bundesregierung hat sich nicht auf die Bahn einer inflatorischen Politik und auch nicht auf die Bahn einer deflatorischen Politik treiben lassen. Das beweisen die Zahlen über die Arbeitslosigkeit, das beweisen die Zahlen der Beschäftigten und die Zahlen des Wohnungsbaumarktes. Die sittliche und staatliche Verpflichtung der Erfüllung der sozialen Aufgaben konnte ebenfalls gemeistert werden. Wir haben in diesem Jahre, wie ich Ihnen vorhin sagte, an Aufwendungen 1200 Millionen DM mehr aufgebracht als im vergangenen Jahre.

Ich sehe mich aber nun gezwungen, auch über die Entwicklung der Dinge nach Ausarbeitung und Vorlage dieses Haushaltsplans zum Schluss kurz zu sprechen.

Ich war genötigt, den gesetzgebenden Körperschaften zwei Gesetzentwürfe und eine Verordnung zur Schaffung neuer Einnahmen vorzulegen: Verlängerung und Erhöhung des Berliner Notopfers, Einführung einer Benutzungsgebühr für Autobahnen und einen Gesetzentwurf zur Einführung einer Treibstoffsteuer.

Berlin ist nicht nur der Vorposten des deutschen Volkes, sondern auch Vorposten des Gedankens der Freiheit in der östlichen Welt. Berlin muss gehalten werden. Wir haben deshalb die Aufgabe, auch die Wirtschaftskraft Berlins so zu stärken, dass die seelische Widerstandskraft nicht an Armut und Arbeitslosigkeit zerbricht. Deshalb haben wir in einer Verwaltungsvereinbarung mit der Stadt Berlin die unmittelbaren Haushaltszuweisungen der Stadt Berlin für dieses Jahr von 327 auf 527 Millionen DM erhöht. Das bedeutet eine Mehrausgabe von 200 Millionen DM, denen auf anderen Gebieten keine Einsparungsmöglichkeiten gegenüberstanden. Es ist gelungen, durch Verhandlungen zu erreichen, dass ein Betrag von 125 Millionen DM in diesem Rechnungsjahr nicht vom deutschen Steuerzahler zu tragen ist, sondern aus GARIOA-Mitteln der amerikanischen Besatzungsmacht bezahlt wird. Der Rest von 75 Millionen trifft den deutschen Steuerzahler. Weiterhin hat das Bundesversorgungsgesetz über die Steuerschätzungen hinaus in diesem Haushaltsjahr einen Mehraufwand von 130 Millionen zur Folge. Insgesamt ist also in diesem Haushaltsjahr ein Betrag von etwa 200 Millionen DM zu decken.

Meine Damen und Herren! Auf den Anlass, aus dem diese Mehrausgaben entstanden sind, kommt es zunächst nicht an. Es kommt nur auf die verfassungsmässige Pflicht der Bundesregierung und der gesetzgebenden Körperschaft an, die Angleichung des Haushalts zu wahren und nicht in eine Politik der Fehlbeträge, nicht in eine Politik des Defizits zu geraten, um so weniger in einer Zeit, die damit rechnen muss, dass das nächste Jahr an sie erneute und sehr grosse Aufgaben stellen wird. Wir können die Aufgaben des nächsten Jahres nur erfüllen, wenn wir unsere Pflicht in diesem

Jahr restlos und verfassungstreu erfüllt haben!

Wenn ich nun den Weg der Inflation nicht gehen kann und nicht gehen will, so bleibt ein anderer Weg, als den Weg der Einschränkung des Konsums zu gehen, nicht übrig. Wenn ich aber schon den Mut finden muss, zwischen diesen beiden Wegen zu wählen, und wenn ich die Belastung der Gegenwart einer Sünde und einem Verbrechen an der Zukunft vorziehen muss, so muss ich auch in der Art des Weges mich dahin entscheiden, ob ich die Einschränkung des Konsums den wirtschaftlich schwächeren, breiteren oder den wirtschaftlich stärkeren Schichten zumuten will. Ich bin überzeugt dass wir den Weg gehen müssen, solange er überhaupt möglich ist, diese Lasten in erster Linie den Wirtschaftlich stärkerern Schultern zuzumuten.

Das Berliner Notopfer, ist nach diesem Gedanken gestaffelt. Die Frage der Benutzungsgebühr für Autobahnen und der Treibstoffsteuer sind aus diesem Gedanken heraus geboren. Ich muss mich grundsätzlich dagegen wehren, dass Wirtschaftskreise in solchen Fällen erklären, sie seien die einzigen Betroffenen. Das würde nur für den Fall zutreffen, dass diese Wirtschaftskreise die Steuerbelastung aus ihrer privaten Tasche zahlen und nicht auf Betreibsunkosten abwälzen. Solange ein Wirtschaftszweig die steuerliche Belastung auf Betriebsunkosten abwälzt, kann er sich nicht als den einzigen Betroffenen bezeichnen. Wir sind ein Volk. Der eine gibt, der andere nimmt. Wir haben gegenseitig zu geben und zu nehmen.

Sei es, wie es sei. Wir stehen unter der verfassungsmässigen, unter der Gewissenspflicht, eine Politik des Fehlbetrags, eine politik der Inflation zu vermeiden und mit ehrlichem offenen Mut die Ausgaben, die wir zum Wohle des deutschen Volkes beschliessen, aus Mitteln des deutschen Volkes zu decken. Das ist der Zwang, unter dem wir stehen. Der Zwang ist um so eiserner, wenn ich an die künftige Entwicklung denke. Mir wird allerdings im deutschen Volk so viel über künftige Ausgaben und Lasten geredet, allzu viel, deswegen zu viel, weil es unnützes gerede in einem Zeitpunkt ist, zu dem weder das Ob noch das Wie, noch die Grössenordnung und das Wann feststeht. Ich kann und darf erst dann, wenn ich über das Ob, Wie und Wann eine Auskunft habe, meine Berechnungen anstellen.

Aber über ein anderes Wie und Wann sollten wir uns im deutschen Volk heute bereits unterhalten, nämlich über unsere sozialen Leistungen, die das Jahr 1951'52 bestimmt und neu dem deutschen Volk bringen wird. Wir haben den endgültigen Lastenausgleich gewiss ausserhalb des Haushalts, aber seine mittelbaren Rückwirkungen werden sich auch in Haushaltsplan mit einer hohen Millionenziffer nicht nur beim Bund, sondern auch bei den Ländern geltend machen; denn die Aufgaben des Lastenausgleichs können nur mit Anspannung aller Kräfte des deutschen Völkes, auch der Haushalte von Bund und Ländern, gelöst werden.

Wir haben im nächsten Jahr die Aufgabe vor uns, die sozialen Versicherungsanstalten gesund zu erhalten, und jeder, der die Dinge kennt, weiss die Entwicklung und weiss die Grösse dieser Aufgabe, die vor uns liegt.

All das allein sollte uns schon genügen, um uns mit Sorgen für das nächste Jahr, mit Sorgen dafür zu erfüllen, ob die Wirtschaftskraft des deutschen Volkes ausreicht, um die Aufgaben zu erfüllen, die ihm gestellt sind. Wir haben uns in diesem Jahr bemüht, die Finanzen des deutschen Volkes und das Haus des deutschen Volkes in Ordnung zu halten. Wir haben uns gerade deshalb darum bemüht, in eine feste Grundlage aufzubauen, auf der wir auch Lasten einer Zukunft werden tragen können. Wir haben uns darum nicht um irgendwelcher schöner Theorien willen bemüht, sondern wir haben uns darum bemüht, weil sie eine Pflicht gegenüber dem Geiste des Gesetzes war und weil es eine Pflicht war aus dem Gedankengang heraus, dass wir alle zusammen nur einem dienen, der Gesamtheit des geliebten deutschen Volkes.

I

SITUATION DE LA FRAUDE FISCALE EN BELGIQUE

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Comme l'impôt absorbe une large part des ressources de chaque pays, le problème de la fraude fiscale est au centre des préoccupations de tous ceux qui ont souci du bien public (1). Cependant, ce problème intéresse en particulier les fiscalistes, car il touche à des sujets, comme les moyens de contrôle et les mesures prises pour combattre la fraude, qui relèvent de leur spécialité.

Le présent article fournit sur ces sujets des données en ce qui concerne la Belgique.

I. *Les formes de la fraude fiscale.*

Le contribuable élude la loi d'impôt, ou bien en la heurtant ouvertement — fraude matérielle —, ou bien en profitant des lacunes ou de l'imperfection des textes — fraude légale.

1. *La fraude matérielle.*

a. En Belgique, comme ailleurs, la fraude la plus courante consiste dans l'omission ou l'altération des faits qui influent sur la perception de l'impôt.

En matière de taxe sur les bénéfices industriels et commerciaux, on trouve des soustractions de recettes, des majorations de frais généraux (frais de publicité, de déplacement, de représentation ou autres), des fraudes comptables qui se traduisent par des sous-évaluations dans les inventaires (en quantité ou en valeur), par de fausses mentions dans les bilans et les comptes en vue de réduire les bénéfices taxables, etc.

L'impôt complémentaire personnel donne lieu surtout à des dissimulations de revenus mobiliers, et les droits de succession sont éludés par des insuffisances d'évaluation, des omissions portant sur l'or, les bijoux, les monnaies étrangères, les titres au porteur, etc.

1) Consulter: *Camille Scailteur*, Le Devoir fiscal, 1950.

b. La fraude commise par des combinaisons juridiques qui tendent à celer ou à diminuer la matière imposable, ou par des simulations d'actes, est moins répandue, mais elle est néanmoins fréquente.

Pour réduire les bénéfices des sociétés anonymes, des administrateurs sont camouflés en employés. Afin de diminuer les droits de succession, le *de cujus* fait des dons manuels, souscrit une reconnaissance de dette fictive au profit d'un héritier, acquiert un immeuble en son nom pour l'usufruit et au nom d'un successible pour la nue-propriété . . . En vue de bénéficier de la réduction des droits d'enregistrement prévue pour les échanges d'immeubles ruraux non bâtis, une convention d'échange de propriétés est scindée en un échange de bâtiments et un échange de terrains . . .

2. La fraude légale.

Au lieu de violer directement la loi fiscale, le contribuable habile cherche plutôt à la tourner en utilisant des procédés juridiques insolites ou inusités.

Des sociétés de personnes se transforment en sociétés anonymes dans le seul but de faire bénéficier leurs principaux associés, devenus administrateurs, d'un régime plus favorable en ce qui concerne la taxe professionnelle. Des sociétés anonymes érigent une ou plusieurs branches de leur activité en sociétés juridiquement distinctes de manière à diviser leurs bénéfices et réduire les effets de la progressivité de cette même taxe . . .

II. *Jurisprudence sur la fraude fiscale.*

Comment la jurisprudence belge réagit-elle en face de la fraude fiscale?

a. Elle reconnaît à l'administration le droit d'établir la fraude *matérielle,* même par témoins et présomptions mais elle exige une véritable preuve. Elle déclare, par exemple, que le fisc ne peut se contenter de la commune renommée pour réclamer la taxe professionnelle en raison d'un commerce clandestin exercé par un contribuable, mais qu'il lui incombe de justifier, par des éléments positifs, l'existence de bénéfices provenant d'un tel commerce. (Appel Bruxelles, 15 décembre 1948, *Journal pratique de droit fiscal,* 1949, p. 155.)

Par ailleurs, elle tient pour règle que l'impôt doit être assis non sur des apparences, mais sur des réalités. (Arrêt de la cour de cassation du 18 octobre 1949, *Pasicrisie*, 1950, I, 87.)

b. A l'égard de la fraude *légale*, elle adopte une attitude très nette: elle la juge licite. Elle considère que le contribuable a le droit de choisir la voie légale la moins onéreuse pour réaliser le but qu'il se propose et elle admet qu'il lui est loisible d'éviter la perception d'un impôt en ne se plaçant pas dans les conditions qui en justifient l'application. (Voy. l'arrêt de la cour d'appel de Liège du 14 mars 1944 et la note d'observations, *Revue critique de jurisprudence belge*, 1948, pp. 187 et suiv.).

Cette conception repose sur l'idée que le droit fiscal est un droit d'exception et qu'il appartient au législateur seul d'améliorer ou de compléter les textes légaux.

III. *Mesures prises pour combattre la fraude.*

Aussi bien pour lutter contre la fraude *légale*, le législateur modifie souvent les textes afin de rendre inefficaces pour l'avenir, des procédés juridiques par lesquels on échappe à l'impôt, et de soumettre aux mêmes droits les actes et les conventions qui produisent les mêmes effets économiques.

Quant à la fraude *matérielle*, il s'efforce de la prévenir et il la réprime par diverses sanctions.

1. *Mesures préventives.*

Citons-en quelques-unes parmi les plus importantes:

a. L'aménagement de la législation de manière à éviter la fraude autant qu'il est possible: retenue de l'impôt à la source pour la taxe mobilière sur les revenus d'actions, d'obligations et de créances, ainsi que pour la taxe professionnelle et l'impôt complémentaire personnel sur les salaires et les appointements; mesures de surveillance, de protection et de garantie, prises pour les droits de douane et d'accise, etc . . .

b. L'obligation imposée à certaines catégories de contribuables (commerçants, titulaires de professions libérales, etc.) de délivrer des écrits et de tenir des documents qui faciliteront les vérifications de l'administration.

c. Les mesures comme celle-ci, qui permettent un contrôle par

le rapprochement de la déclaration souscrite par un contribuable avec celles qui sont souscrites par d'autres: les charges qui consistent en commissions, courtages ou honoraires ne sont admises, pour la taxe professionnelle, en déduction des revenus des exploitations industrielles ou commerciales, que s'il en est justifié par la désignation des bénéficiaires et l'indication des sommes revenant à chacun d'eux.

d. Les fictions qui ont pour but de déjouer la fraude et les présomptions qui tendent à dispenser le fisc de la prouver. (On les rencontre surtout en matière de droits de succession).

e. Les obligations imposées à des tiers, comme celles qui sont prévues par le code des droits de succession pour les loueurs de coffres-forts et les détenteurs de titres, sommes ou valeurs revenant aux héritiers.

2. *Mesures répressives.*

Les infractions aux lois de douane et d'accise sont réprimées par des peines d'emprisonnement, des amendes, confiscations et fermetures d'établissements.

Les contraventions aux autres lois fiscales ne donnent lieu qu'à des amendes fiscales ou à des accroissements d'impôts. Toutefois, des peines correctionnelles (emprisonnement et amendes pénales, avec, dans certains cas, affichage du jugement ou insertion de celui-ci dans les journaux) sont prévues pour les contraventions commises dans une intention frauduleuse.

IV. *Moyens de contrôle.*

Pour lui permettre de découvrir les contraventions, le fisc dispose de moyens étendus de contrôle.

a. Il peut exiger de l'assujetti aux impôts sur les revenus des explications verbales ou écrites; en outre, si celui-ci est un commerçant ou une autre personne astreinte à la tenue de livres, carnets ou journaux, il peut demander la communication des écritures et documents comptables.

Il est autorisé à requérir une expertise pour contrôler les valeurs déclarées pour la perception des droits d'enregistrement et de succession, etc . . .

Pour conjuguer l'action des divers services fiscaux de l'Etat dans

la recherche des contraventions, la loi autorise les agents d'une administration fiscale à user des pouvoirs d'investigation qu'ils détiennent, pour prendre chez une personne des renseignements qu'ils destinent à des agents d'une autre administration fiscale, qui ne sont pas dotés de pouvoirs analogues, pour autant que ces renseignements servent à contrôler la perception des impôts dus par *cette personne.*

Mais, sauf pour les droits de douane et d'accise, le fisc ne peut effectuer des visites domiciliaires et il n'a aucun service de police fiscale.

b. En règle, les *tiers* ne sont pas obligés de fournir des informations sur les opérations effectuées par un contribuable, ni de communiquer leurs documents pour permettre au fisc de rechercher ces opérations.

Cependant, les administrations, établissements et organismes publics — autres que l'Office des chèques postaux, l'Institut national de statistique et les établissements de crédit — sont tenus de soumettre la documentation qu'ils possèdent aux investigations de tous les services fiscaux de l'Etat.

D'autre part, les banquiers, les agents de change, les sociétés, etc., doivent fournir sur les opérations faites par le *de cujus* ou par d'autres personnes, les renseignements nécessaires à la vérification des déclarations de succession; ils peuvent être requis de communiquer les documents relatifs à leur activité commerciale ou professionnelle, aux fins d'enquêtes à charge de tiers, à effectuer pour assurer la perception des droits de timbre et des taxes assimilées au timbre . . .

c. La documentation recueillie par un service fiscal peut être *utilisée* par un autre service fiscal pour la recherche de toute somme due à l'Etat en vertu des lois d'impôts.
En particulier, les données puisées dans la déclaration aux impôts sur les revenus déposée par un contribuable quelconque ou recueillies à l'occasion de la vérification de celle-ci, peuvent servir au contrôle de la déclaration d'un autre contribuable.

En pratique, les administrations fiscales, qui souffrent d'une pénurie de personnel, n'utilisent pas suffisamment les abondantes sources de renseignements qui sont à leur portée et les larges pouvoirs d'investigation dont elles jouissent.

V. *La fraude au recouvrement de l'impôt.*

On la rencontre surtout dans le domaine des contributions directes, et elle se présente sous forme de négligences, de retards calculés, d'emploi des moyens dilatoires qu'offre la procédure du recouvrement forcé, d'insolvabilité provoquée . . .

Des mesures d'ordre divers ont été prises pour contrecarrer cette fraude: Les receveurs des contributions sont responsables des recouvrements; un privilège et une hypothèque légale grèvent les biens des contribuables; la procédure du recouvrement permet d'arriver rapidement aux voies d'exécution (saisie mobilière, saisie immobilière); les réclamations ne suspendent pas l'exigibilité de l'impôt. Les tiers qui détiennent des sommes ou valeurs revenant à un contribuable peuvent être poursuivis comme débiteurs directs de l'impôt dû par celui-ci. Des obligations, ainsi qu'une responsabilité personnelle, sont établies à charge des notaires qui vendent des biens, etc. . .

Mais l'Etat ne peut exercer une action paulienne *spéciale* contre les actes faits par les contribuables en fraude des droits du fisc.

VI. *L'évasion fiscale* [1]).

1. La limitation de la souveraineté fiscale de l'Etat belge offre au contribuable de multiples possibilités d'éluder l'impôt. Il fera des placements mobiliers à l'étranger pour échapper à la taxe mobilière, à l'impôt complémentaire personnel et aux droits de succession. S'il est établi à l'étranger et qu'il a en Belgique des succursales ou des filiales, il dissimulera à la taxe professionnelle des bénéfices réalisés dans le pays, en exagérant le prix des fournitures faites à ces succursales ou filiales, en stipulant toutes sortes de redevances et de commissions, etc . . .

Il se soustraira au recouvrement de l'impôt, ou bien par changement de domicile ou de résidence, ou bien par transfert de ses biens à l'étranger.

2. *a.* Les moyens mis en mains de l'administration par la *législation nationale* pour lutter contre l'évasion fiscale sont limités.

Ils tendent à éviter des dissimulations de la matière imposable par des mesures comme celles-ci: la défense faite aux intermédiaires

[1]) Ou autrement dit, la fraude fiscale internationale.

établis en Belgique d'intervenir dans le paiement de revenus mobiliers étrangers sans retenir la taxe mobilière; la fiction selon laquelle les avantages et profits qu'une entreprise étrangère retire d'exploitations en Belgique qui sont sous sa dépendance ou son contrôle, sont des bénéfices taxables produits par ces dernières; l'établissement d'un minimum forfaitaire de taxe professionnelle pour les personnes qui exercent leur profession en Belgique et qui n'y possèdent ni domicile, ni résidence, ni établissement fixe . . .

Ils visent, en outre, à prévenir l'évasion au recouvrement de l'impôt par la stipulation de garanties spéciales au profit de l'Etat, telles que la caution pour les droits de succession, qui est imposée aux étrangers, héritiers dans une succession mobilière, et les obligations que la législation relative aux impôts sur les revenus met à charge des entreprises étrangères qui ont un siège d'opérations dans le pays.

b. La coopération internationale par l'échange de renseignements et par une assistance mutuelle dans le recouvrement de l'impôt est un autre moyen de combattre l'évasion fiscale.

L'échange d'informations en matière de droits d'enregistrement et de succession est réglé par des conventions conclues par la Belgique, le 12 août 1843, avec la France, le 24 mai 1845, avec les Pays-Bas, et le 11 octobre 1845, avec le Grand-Duché de Luxembourg. L'effet pratique de ces conventions est toutefois fort réduit.

En ce qui concerne les impôts sur les revenus, la communication de renseignements „pour empêcher les fraudes ou appliquer les dispositions légales et réglementaires contre les abus du droit (*legal avoidance*)" est prévue par la convention qui a été conclue le 28 octobre 1948 avec les Etats-Unis d'Amérique, mais qui n'a pas encore été ratifiée. Par contre, il n'y a rien de pareil dans les conventions du 9 mars 1931, avec le Grand-Duché de Luxembourg, du 16 mai 1931, avec la France, du 11 juillet 1931, avec l'Italie, et du 20 février 1933, avec les Pays-Bas. Mais celles-ci comme celle-là, organisent, avec des modalités diverses, une assistance pour le recouvrement de l'impôt.

VII. *Les causes de la fraude fiscale.*

Comme la fraude fiscale est une réaction de défense de l'individu devant les exigences du pouvoir, elle est un phénomène psycho-

social qu'il faudrait analyser soigneusement pour comprendre l'attitude du fraudeur. Ce n'est pas le lieu ici de procéder à une telle analyse. Nous nous contenterons de citer les causes principales de la fraude en indiquant les événements et les situations qui, dans notre pays et en ce moment, provoquent ou stimulent particulièrement la fraude.

Il faut d'abord mettre l'accent sur les pratiques nées de la dernière occupation de la Belgique. L'habitude contractée pendant la guerre de traiter au „marché noir" et d'enfreindre systématiquement la réglementation, par patriotisme, nécessité ou intérêt, a laissé de profondes traces dans la mentalité publique.

Ensuite, la sévérité des taux, aggravée par la progressivité de l'impôt, est un puissant stimulant à la fraude, parce qu'elle place ceux qui sont durement imposés en état de „légitime défense" vis-à-vis de la confiscation déguisée dont ils se jugent menacés.

L'inégalité dans la répartition du poids de l'impôt encourage également le contribuable à la fraude en lui fournissant une justification de sa manière d'agir.

D'autre part, la complexité du régime actuel des impôts sur les revenus laisse à beaucoup de gens un sentiment d'insécurité; elle les porte à négliger de se documenter et à résoudre tous les doutes à leur profit.

Enfin, la rigueur des lois sur les bénéfices de guerre, l'esprit de fiscalité de certains agents et les campagnes de presse ont créé une crainte permanente d'arbitraire, une psychose d',,antifiscalité" et une tension aiguë dans les rapports entre les contribuables et l'administration, qui agissent comme autant de motifs pour ceux-là de se livrer à la fraude.

VIII. *Situation présente de la fraude en Belgique.*

Les données que l'on possède sur l'importance de la fraude fiscale en Belgique sont approximatives et elles ne sont pas nombreuses. Il est néanmoins certain que la fraude est sérieuse. Nous ne croyons pas qu'elle augmente, mais nous ne pensons pas non plus qu'elle diminue.

Pourtant, des mesures ont été prises récemment pour la combattre plus efficacement et d'autres viennent d'être proposées aux chambres législatives [1]).

[1]) Elles auront sans doute été adoptées lorsque cet article paraîtra

L'administration des Contributions a amélioré l'organisation de ses services afin d'augmenter leur efficience. Elle s'est efforcée — mais sans succès appréciable jusqu'à présent — de détendre les rapports entre les contribuables et ses agents.

L'administration de l'Enregistrement a accru les effectifs des services de contrôle de la taxe de transmission pour dépister les fraudes qui consistent en achats et ventes effectués par des commerçants sans factures. Cependant le volume des opérations irrégulières reste important.

Voilà pour les mesures prises. Celles qui sont proposées au parlement tendent à simplifier la législation relative aux impôts sur les revenus, à abolir l'inégalité de traitement dont se plaignent les titulaires de professions libérales, les industriels et les commerçants, à l'égard de la taxe professionnelle, et à accentuer la répression de la fraude.

Ces efforts aboutiront-ils finalement à des résultats tangibles? Ce n'est pas sûr. Poursuivre la réalisation de l'égalité fiscale, simplifier la législation, appliquer la loi avec compréhension, renforcer le contrôle et les sanctions, ce sont là, certes, des moyens qui, avec une patiente éducation des contribuables, pourraient amener à la longue un revirement dans l'attitude des Belges à l'égard de l'impôt. Toutefois, les réactions resteront vives aussi longtemps que subsisteront les taux actuels des impôts sur les revenus. Il faut malheureusement craindre que les circonstances ne permettent pas de renoncer de sitôt à une lourde fiscalité directe.

28 décembre 1950.

II

CHRONIQUE DE LA LEGISLATION FISCALE DES PAYS BENELUX

Belgique

LA LEGISLATION FISCALE DE 1950

Impôts sur les revenus.

L'année 1950 s'est ouverte sous le signe de la réduction des impôts sur les revenus réclamée par une partie de l'opinion publique et inscrite au programme du Gouvernement de l'époque.

La loi du 14 février 1950 a apporté *une diminution de la taxe professionnelle, de la contribution nationale de crise frappant les revenus professionnels et de l'impôt complémentaire personnel* (*sans distinction de revenus*).

Ces impôts sont diminués de 2, 4, 8 et 12 % pour les contribuables ayant respectivement 1 ou 2, 3 à 5, 6 à 9 ou 10 personnes à charge. La diminution est de 25 % pour les contribuables ayant plys de 10 personnes à charge ou dont le revenu imposable n'atteint pas le triple des minima exonérés.

Si le revenu taxable dépasse 250.000 frs., la réduction s'applique seulement à l'impôt calculé sur 250.000 frs.

Les centimes additionnels au principal de la taxe professionnelle sont réduits de 20 à 15 pour les salariés et de 110 à 100 pour les autres redevables (exploitants, professions libérales et indépendantes), à l'exclusion des sociétés. Les centimes additionnels spéciaux appliqués aux administrateurs, commissaires et liquidateurs de sociétés par actions sont réduits de 100 à 90.

Enfin, la réduction de la taxe professionnelle et, par voie de conséquence, de la contribution nationale de crise est portée des 3/4 aux 4/5, pour la partie des revenus taxables réalisés et imposés à l'étranger.

Un tempérament important est apporté à la *contribution foncière des immeubles donnés en location et utilisés à des fins professionnelles.* Jusqu'ici la contribution devait être établie sur le revenu effectif et non sur le revenu cadastral, du moment que le premier dépasse le second de 15 % au moins.

Comme le revenu cadastral n'a pas été péréquaté depuis la guerre, cette taxation d'après le revenu effectif était devenue d'application générale. Elle s'était aggravée anormalement par le jeu de l'augmentation drastique des centimes additionnels provinciaux et communaux, qui devait compenser l'immutabilité du revenu cadastral.

Désormais, la taxation sur base du revenu effectif est limitée aux cas où ce revenu effectif dépasse le triple du revenu cadastral.

Cette loi du 14 février 1950 devait, dans l'esprit du Ministre des Finances, M. LIEBAERT, être l'amorce d'une réforme importante des impôts sur les revenus, qui fit l'objet d'un projet de loi devenu caduc au moment même de son dépôt, par suite de la dissolution des Chambres législatives.

Après les élections de juin, le nouveau Ministre, M. VAN HOUTTE remit sur le métier le projet de son prédécesseur. Mais, par ailleurs, l'année ne s'était pas écoulée qu'il réalisait, par la loi du 27 décembre 1950, la réforme de l'hypothèque légale du Trésor en matière d'impôts directs.

Cette loi, *tout en maintenant l'hypothèque légale* du Trésor sur les immeubles du redevable, ainsi que les navires et bateaux, *a supprimé son caractère occulte*. Désormais, l'hypothèque ne prend rang, conformément au droit commun, qu'à partir de son inscription.

En prévision d'une aliénation de biens ou d'une affectation hypothécaire par le redevable, la loi prescrit un échange d'informations entre le notaire et l'Administration des Contributions.

Le notaire doit aviser le receveur de l'acte qu'il est appelé à passer et le receveur, si l'intérêt du Trésor l'exige, notifie à son tour, au notaire, le montant des impôts dus par le propriétaire. Cette notification vaut saisie-arrêt en mains du notaire sur les sommes qu'il détient pour compte du redevable en vertu de l'acte.

En outre, le notaire doit éventuellement informer le receveur que les sommes saisies-arrêtées entre ses mains sont inférieures au montant des impôts dont le notaire a eu notification.

En ce cas, la transcription ou l'inscription de l'acte d'aliénation ou d'affectation hypothécaire n'est pas opposable à l'Etat, si l'inscription de l'hypothèque légale du Trésor a lieu dans les huit jours après l'information donnée par le notaire.

Le notaire est personnellement responsable des impôts qui

seraient irrécouvrables, s'il s'est abstenu de donner à l'administration les informations requises. Cette responsabilité ne peut excéder la valeur du bien aliéné ou le montant de l'inscription hypothécaire, déduction faite des sommes arrêtées entre ses mains.

Les banques et les entreprises de prêts hypothécaires peuvent, moyennant accord du redevable, se substituer au notaire pour l'exécution de ces mesures; dans ce cas, leur responsabilité se substitue à celle du notaire.

Aucun acte passé à l'étranger et ayant pour objet l'aliénation ou l'affectation hypothécaire d'un immeuble, d'un navire ou d'un bateau ne sera admis en Belgique à la transcription ou à l'inscription dans les registres d'un conservateur des hypothèques, s'il n'est accompagné d'un certificat du receveur de la situation de l'immeuble et, s'il y a lieu, du receveur dans le ressort duquel l'intéressé a son domicile ou son principal établissement.

Ce certificat doit attester que le propriétaire ou l'usufruitier n'est pas redevable d'impôts ou que l'hypothèque légale garantissant les impôts dus a été inscrite.

Droits d'accise.

Dans le domaine des droits d'accise, la loi du 12 janvier 1950 a ramené de 312 frs. à 297 frs., à partir du 1er novembre 1949, le droit d'accise applicable aux *huiles légères* (*benzine*), tandis que la loi du 13 janvier a réduit le même droit à 219 frs. à partir du 16 janvier 1950.

En outre, la loi du 13 janvier supprime le droit d'accise sur la benzine utilisée à des usages industriels, sur les huiles moyennes (pétrole lampant), les huiles de graissage, gazoil et résidus liquides à 50° C.

Ces mesures sont le résultat des décisions prises à la conférence Bénélux d'octobre 1949.

Taxe de circulation.

Pour compenser la perte de recette résultant de ces réductions de droits d'accise, la loi du 10 août 1950 *a majoré d'environ* 50 % le taux de la taxe annuelle de circulation sur les véhicules automobiles.

La taxe s'élève graduellement de 720 frs. à 13.320 frs. pour les automobiles, autobus et autocars dont la puissance imposable n'est

pas supérieure à 30 HP. Elle est, par exemple, de 1830 frs. pour 10 HP, de 3600 frs pour 15 HP, de 6100 pour 20 HP et de 9350 pour 25 HP.

Lorsque la puissance imposable est supérieure à 30 HP., le taux, par HP, applicable à la puissance imposable entière est de 144 frs. plus 15 frs. par HP au delà de 30, sans que le taux par HP puisse dépasser 549 frs.

Pour les automobiles de place et véhicules donnés en location par course ou voyage, la taxe est fixée à 80 % du montant indiqué ci-avant.

Pour les motorcyclettes, la taxe est fixée à 135 frs. par tranche (ou fraction) de 150 cm^3 de cylindrée.

Pour les bateaux et canots de plaisance, elle est de 360 frs. par HP et pour ceux servant au transport rémunéré de personnes, à 225 frs. par HP.

Pour les véhicules servant au transport des marchandises, elle est fixée à 150 fr. par 100 kg. jusqu'aux 1000 kgs inclus. Au delà, le taux par tranche de 100 kgs., applicable au poids imposable total, est de 150 frs., plus 7 frs. par tranche de 100 kgs. au delà de 1000 kgs sans que le taux par 100 kgs. puisse dépasser 381 frs.

La taxe est réduite de 25 % pour tout véhicule dont le moteur a plus de 5 ans d'âge.

La taxe est réduite de 75 % pour les véhicules utilisés exclusivement dans l'enceinte des ports.

Elle est réduite au tiers du montant relatif à l'année entière, pour les véhicules affectés aux transports internationaux de marchandises, dont le poids imposable, remorques comprises, est d'au moins 7.000 kgs. et qui sont utilisés en Belgique pendant au plus 90 jours par an. La taxe ainsi réduite est payable en une fois avant tout usage du véhicule.

La taxe est augmentée de 40 % pour tous les véhicules dont le moteur est alimenté à l'huile lourde, même partiellement ou temporairement.

Les automobiles utilisées en Belgique par des personnes habitant à l'étranger sont assujetties, en raison de leur séjour en Belgique, à une taxe quotidienne, dont les taux ont été modifiés par le loi du 10 août 1950 pour les véhicules servant au transport de marchandises et pour les véhicules servant au transport rémunéré de personnes.

Les taux nouveaux sont les suivants:

1°) véhicules servant au transport des marchandises.

a) Lorsque le poids imposable n'atteint pas 5.000 kilogrammes: 120 frs. par jour;

b) Lorsque le poids imposable est de 5.000 kilogrammes et plus sans atteindre 10.000 kilogrammes: 180 frs. par jour;

c) Lorsque le poids imposable est de 10.000 kilogrammes et plus: 370 frs, par jour.

2°) Véhicules servant au transport rémunéré des personnes: 30 frs.

La taxe est supprimée en ce qui concerne les véhicules servant au transport non rémunéré de personnes.

La taxe quotidienne est augmentée de 40 % pour les véhicules dont le moteur est alimenté à l'huile lourde.

D'une manière générale, la taxe de circulation est réduite au tiers ou au douzième de son montant relatif à l'année entière pour les véhicules qui, en raison de leur nature, de leur destination ou de leur affectation spéciale, ne sont utilisés sur la voie publique que pendant 90 jours ou pendant 12 jours au plus par an, et ne sont employés qu'au transport de marchandises ou d'objets quelconques, à l'exclusion de personnes.

La taxe ainsi réduite est payable en une fois avant tout usage du véhicule.

Taxe de transmission.

La taxe de transmission a donné lieu à quelques modifications, affectant des secteurs limités de l'économie, qui ont fait l'objet de l'arrêté du Régent du 20 février 1950 et des arrêtés royaux des 26 août, 20 septembre, 30 octobre, 18 novembre, et 7 décembre 1950.

Ces dispositions ont notamment réalisé de nouvelles extensions de la taxe forfaitaire couvrant les différentes transmissions du même produit. Les derniers arrêtés cités rentraient dans le cadre de la lutte entreprise par le Gouvernement pour enrayer la hausse et favoriser la baisse du coût de la vie, notamment en réduisant de 9 à 4,5 % le taux de la taxe de transmission forfaitaire à la source sur certains produits alimentaires (café, riz, boulangeries, pâtisseries et biscuiteries, cacao, chocolat, chicorée, huiles, poissons préparés ou conservés, etc).

L'arrêté du 26 août en vue d'aider l'industrie cigarière, réduit de 9 à 4,5 % le taux de la taxe forfaitaire applicable à la vente du tabac servant à la fabrication des cigares et des cigarillos et respectivement de 3,80 à 1,90 % et de 4,40 % à 2,20 % le montant de la taxe de transmission forfaitaire sur la vente des cigares et des cigarillos.

De plus, la taxe de transmission forfaitaire sur le tabac non fabriqué est devenue une taxe forfaitaire à la destination, variant selon la qualité de l'acheteur.

L'arrêté du 20 septembre a fixé uniformement à 12 % le taux de la taxe de luxe frappant les automobiles, supprimant la distinction entre voitures de 19 HP et plus et les autres. Les autobus, les autocars et les véhicules servant au transport des marchandises restent soumis au taux de 10 %, qui demeure également applicable aux fournitures des pièces détachées, garnitures et accessoires et aux prestations se rapportant aux automobiles.

La taxe de transmission est supprimée dans le domaine des véhicules à moteur et est réputée couverte par la taxe de luxe perçue lors de la vente au consommateur. Les transmissions antérieures ne subissent donc plus que la taxe de facture de 4,5‰.

Le même arrêté établit, pour la taxation des voitures automobiles d'occasion, des minima de valeur imposables correspondant à une fraction du prix de catalogue variable suivant l'âge de la voiture. On a voulu ainsi mettre fin aux fraudes consistant à facturer les opérations à une somme inférieure au prix véritable.

Prof. EDGAR SCHREUDER.

Netherlands

SURVEY OF ALTERATIONS IN THE NETHERLANDS TAX LEGISLATION DURING 1950.

In 1950 many alterations have been brought about in the Dutch tax legislation, partly still as a consequence of the fact that during Worldwar II evolution in this field of legislation had no national source but was forced upon us by the occupators, and partly because it proved to be necessary to correct in some way or other several heavy burdening tax measures made forthwith after the liberation.

The total burden of all taxes did not change considerably; it remained (not including the extraordinary taxes, only once levied, on capital and on capital increments respectively) 31 pCt of the national income.

The basic principles of our tax legislation remained unaltered.

There has been a slight transfer of the tax burden from the personal taxes, notably the income tax, to the price-raising taxes, notably the turnover tax. There is a connection between this movement in the Netherlands and the Benelux-idea: in Belgium and Luxemburg the burden of price-raising taxes is relatively higher than in the Netherlands.

No new taxes were introduced.

Business tax was abolished; it amounted mostly to 12 pCt of business profits and to 0,48 pCt. of business capital. Since this tax was allowed to be deducted in computing the profits for income tax purposes the abolition gave the largest relief to the smaller taxpayers, whilst there is only a small advantage for the businessmen who earn big profits and pay an income tax to a high percentage on the highest part of these profits.

For corporations the abolition of business tax did not bring any relief, because the rate of company tax was increased simultaneously in such a way that the tax burden remained nearly the same. The company tax now amounts to 40 pCt. of profits (reduced to 37½ pCt. in any financial year where profits remain under D. Fl. 40.000).

The greatest part of the alterations are in the Tax-revision Act 1950, relating to a number of separate tax laws, and moreover in several new acts of smaller extent. It seems appropriate — also with regard to the continuity in the series of annual surveys of which we hope this to be the first from our hands — not to deal with these acts but to mention the alterations of each tax (irrespectively of their enactment) separately, apart from some general observations.

We think that it will suit our purposes to distinguish for each tax as far as possible between three kinds of alterations, viz.:

a. alterations regarding the social aspect of the tax, i.e. the way in which the total tax burden is spread over the taxpayers in accordance with their ability to pay;

b. alterations regarding the economic aspect (mainly the productivity of the nation);
c. alterations mainly of technical character.

In order to restrict the size of this survey we shall not mention the provisions of minor importance.

Income-tax.

In the Netherlands the backbone of the entire tax-system is a personal income-tax with very progressive rates, the proceeds of which (including those of the wage-tax, which is part of the income-tax, and those of the dividend-tax, which is also attached to the income tax) are about 35 pCt. of the proceeds of all Dutch taxes.

Social aspect.

The rates have been slightly decreased for all classes of taxpayers and a special relief has been granted to the middle classes. The maximum rate (for married people 75 % on the part of the income over D.Fl. 135.000) remained unaltered. As a result of the alteration the total proceeds of the income-tax will decrease by some 9 pCt. viz. from D. Fl. 1.470.000.000 yearly to D. Fl. 1.270.000.000.

An important reason for this alteration was the fact that landlords were allowed to increase the rents of dwelling houses by 15pCt. The increase of the cost of living resulting therefrom is now more or less counterbalanced by the decrease of income-tax.

Economic aspect.

The following alterations have been made in order to further industrialisation:

a. In principle depreciation of fixed assets is only allowed on the basis of cost. This rule was heavily attacked by authors and businessmen because of the devaluation of money, and they advocated depreciation on the basis of replacement-value. Though the Government in principle was not willing to adopt this view, nevertheless it has agreed to a provision which partly meets the objection: businessmen were allowed to revalue the bookvalue of their fixed assets (except immovable property) acquired before 1942 by multiplying it by a certain factor (in most cases : 2.) and to write off on the basis of the new bookvalue. The bookprofits resulting

from this revaluation may be brought to a special provisionally tax-free reserve. Losses sustained in any year must be written off from this reserve and in some special cases the reserve must be added to the normal profits.

b. The possibility has been created to depreciate fixed assets as from the moment that they have been ordered, even if they have not yet been delivered and the purchase price has not yet been paid; depreciation is permitted on the basis of this purchase price.

c. Computation of the profits of any financial year must be made as a rule in accordance with constant policy (Cf. Technical Aspect; under a). Now the law has laid down the rule that in respect of fixed assets purchased or ordered between 1st January 1950 and 31st December 1952 one third of the purchase price may be written off at will, provided that the writing off is done in advance (which means that at the end of any year in any case the normal depreciation must be provided for).

d. If fixed assets are lost or damaged and an indemnification is received (e.g. from an insurance company) this may result in a book profit. These profits may be brought to a replacement reserve. As soon as the asset is replaced the amount of the profit so reserved must be written off from the purchase price of the new asset. When it becomes certain that the asset will not be replaced, the profit so reserved must be brought to profit and loss account.

e. A special provision has been made for taxpayers who have sustained war damage. If fixed assets have been damaged the loss can be brought to profit and loss account and the compensation, received in respect of such damage, may be reserved on a special provisionally tax-free reserve. The last sentence of paragraph a. applies here.

Technical aspect.

a. The provisions regarding the computation of taxable profits have been revised, but it may be expected that no important practical consequences will result therefrom. All benefits (capital-gains included) accruing to the taxpayer from his business (including free professions) are taxable profits. The amount of any financial year is computed in accordance with sound business practice and constant policy.

When a taxpayer ceases his business or free profession (e.g. when

he dies) all benefits which not yet have been taxed in former years (e.g. taxfree reserves and secret reserves) will be considered as taxable profits of the last financial year. In the States-General it has been put forward that serious difficulties would arise from this provision; in most cases the heirs have already to meet financial difficulties (death duties, funeral expenses, etc.) and these difficulties would be increased by the said provision to an important degree. To meet these objections the Government proposed the following alterations in the act:

1. the rate of tax due under this special clause will never be higher than 20 pCt.
2. if the value of the business capital is not less than half the deceased's property the payment of the tax can be spread over five years.

b. The possibility existed to form a taxfree reserve, especially meant to meet future losses. The regulations for this taxfree reserve were very complicated; the calculation by the taxpayer and the checking by the tax authorities caused a lot of trouble. This possibility has now been abrogated and in stead thereof the set off of losses against future profits has been extended from two to four years.

c. The clause disallowing the wages paid to minor children, working in the business of their parents, as business expenses has been abolished. As a consequence thereof the children themselves have now to pay income tax.

d. In some cases businessmen try to get part of their private expenses allowed as business expenses. A well known example is the motorcar; all the costs of the car are booked as business expenses, though the car is also used for private purposes. This of course is not permitted but in most cases the inspector of taxes is not able to bring the necessary proof about. To set bounds to this abuse the rule is laid down that in any case where a car is used for private purposes the cost of such use in any year is deemed to be at least 10 pCt. of the catalogue-price of the car.

Company tax.

Economic aspect.

What under „Economic Aspect" has been said in respect of

income tax applies here. Moreover there is a new provision which is meant to further the construction of dwelling houses. For certain building companies and companies dealing in newly-built houses a reasonable amount for interest on the capital paid-in is allowable before computation of company tax. This interest is equal to the current normal interest on mortgages increased by ½ %.

Technical aspect.

What in respect of income tax has been said under Technical aspect, para. a and b, applies for company tax, except the observations regarding a deceased taxpayer which of course cannot apply to company tax.

Superdividend tax

When a limited company distributes more dividend than it is allowed to do under the dividend limitation law, superdividend tax must be paid. The rates are 100 pCt of the superdividend (i.e. the total dividend less the dividend permitted under the dividend limitation regulation) and 200 pCt of the superdividend in so far as it exceeds D. Fl. 300.000.

It goes from the aforesaid that this levy in reality is not a tax but a fine; the tendency of this law is not to give a yield but to prevent superdividends.

Since the dividend limitation is part of the Government's prices and wages policy and therefore lies outside the field of taxes, we donot go further into this subject.

Turnover tax

Most alterations in this tax relate to the rates of tax.

Social aspect.

To understand the alterations in the rates of tax one should distinguish between two kinds of events, viz. 1. deliveries of goods and 2. services rendered.

ad. 1. The turnover tax on deliveries is levied by the „cascade-system" which means that in principle each delivery of goods is taxable (in opposition to the system in which each good is only once taxable, e.g. when delivered by the manufacturer). The old

rates were: 3 pCt. when the goods are delivered by a manufacturer to another manufacturer or to a dealer; ½ pCt. when the goods are delivered by a wholesale dealer to a retailer and 3 pCt when the goods are delivered by a dealer to the consumer. When a manufacturer delivers straightaway to the consumer the rate was 6 pCt. The rate for deliveries from manufacturer to dealer has now been increased from 3 pCt to 4 pCt.; the other rates remain unaltered.

A special rate exists, viz. 15 pCt., for deliveries of so-called luxury goods by a manufacturer to a dealer or consumer. The number of these goods has been widely enlarged (e.g. several articles of furniture, strong boxes, magazines, piano's are now included).

Moreover a special rate for ,,semi luxury goods'' has been introduced, viz. 6 pCt. when delivered by a manufacturer to a dealer and 8 pCt. when delivered by a manufacturer to a consumer (apart from that the normal rates apply). The list of these goods includes a.o. wallpaper, linoleum, chocolate, dinner sets, teasets, plates, cups and saucers.

In principle first necessities of life are exempt; the list already included bread, flour, vegetables, fruits, milk, water, potatoes; several items are now added, a.o. margarine, eggs, meat, bacon, fresh fishes, newspapers, cheese, coffee, tea.

Several goods are only exempt on one degree of the cascade; e.g. butter and salad oil are exempt when delivered by a manufacturer, books are exempt when delivered by a retailer.

Ad. 2. When services are rendered a turnover tax of 4 pCt. is due on the basis of the consideration (formerly 3 pCt.).

Repair of shoes is exempt (this exemption has the same character as the exemption for first necessities of life mentioned under 1). The rate of 3 pCt. is maintained for services rendered in connection with the building of houses and for transport of persons and goods.

Economic aspect.

Cigars are exempt from turnover tax for a period of two years, in connection with the unemployment prevailing in the industry concerned. The loss for the Exchequer resulting therefrom is compensated by an increase of the rate of turnover tax on the more expensive brands of cigarettes.

When goods are imported an import tax (apart from the import duties) is levied in order to compensate the turnover tax, which would have been levied if the goods had been manufactured within the Netherlands. The rate of this import tax is equal to the rate of turnover tax on goods delivered by a manufacturer. This however does not fully compensate the turnovertax, because in most cases the raw materials have already carried turnover tax when the goods are manufactured in the Netherlands, whilst this is not the case when the goods are manufactured abroad and then imported in the Netherlands.

The rule has now been laid down that a Royal decree may increase the import tax on certain goods by 3 pCt.

Registration duty.

The alteration is rather unimportant; the normal rate of the duty (2½ pCt.), levied when immovable property is transferred, had temporarily been increased by 100 pCt. This increment has now been taken up in the normal rate, which now amounts to 5 pCt.

Stamp duties.

As a result of the devaluation of money the so called fixed rates and the exemptions have been increased; e.g. the duty for a receipt has been brought from 10 cents on 15 cents, and the exemption for receipt for D. Fl. 10 or less has been brought on D. Fl. 20 or less. Moreover the temporary increments of the so called proportional rates have been taken up in the normal rates.

Personal tax.

This is a tax levied on the basis of some symptoms of social circumstances of the taxpayer. The number of these symptoms, enumerated in the law, have since 1896 gradually lessened, and now only two have been left, viz. the rentable value of the house where the taxpayer lives in and the value of his furniture.

The law of 1896 has been replaced by a new law, the consequences of which are of small importance.

Social aspect.

As a consequence of the permittance given to landlords to increase the rents by 15 pCt. (Cf. Income Tax under „Social Aspect")

the personal tax has been slightly decreased. The tax is not levied if the rentable value of the house is under D. Fl. 300 p.a. (formerly D. Fl. 250) and the tax on the basis of the value of the furniture is not levied if the rentable value of the house is less than D. Fl. 335 p.a. (formerly D. Fl. 280).

Technical aspect.

The rentable value of houses built after 1940 is higher than that of old houses. For the purpose of this tax regulations can be laid down to the extent that the tax levied from taxpayers living in new houses proportionally will be the same as the tax levied from taxpayers living in old houses.

On 1st Januari 1951 bills regarding the following subjects were pending before the States General:

a. Revision of the entire legislation in respect of death duties (including gift taxes).
b. Temporary relief of income tax, levied from shareholders in limited companies, in case of recapitalisation of these companies (insertion of reserves in the capital).
c. Unification of the excises within the scope of the Benelux.
d. New regulations about the obligation of the taxpayers to furnish the tax-authorities with information and about the competence of these authorities to inspect the accounts.

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CHRONIQUE DE LA LÉGISLATION FISCALE LUXEMBOURGEOISE.

Sous l'occupation les autorités allemandes avaient abrogé les lois fiscales luxembourgeoises pour les remplacer par leur propre législation. C'est ainsi que de 1941 jusqu'à la Libération ce sont les lois allemandes en matière d'impôts directs, d'impôt indirects, de douane et d'accise, qui ont été en vigueur au Grand-Duché.

Après la Libération le problème de l'abrogation de la législation allemande et de la réintroduction des lois nationales s'est posé.

Quant aux impôts indirects un arrêté grand-ducal du 21 décembre 1944 a décrété que les lois qui avant la guerre avaient été de la

compétence de l'Administration de l'Enregistrement seraient de nouveau applicables. Une exception a cependant été faite. La législation de l'occupant concernant l'impôt sur le chiffre d'affaires a été provisoirement maintenue.

Pour la douane et les accises un arrêté grand-ducal du 28 avril 1945 a remis en vigueur l'Union Economique belgo-luxembourgeoise qui date de 1921. La conséquence pratique en a été la réintroduction de la législation belge en matière de douanes et d'accises communes ainsi que de la législation luxembourgeoise en matière d'accise non-commune (accise sur les alcools).

Dans le domaine des impôts directs le problème s'annonçait particulièrement difficile. L'occupant avait complètement bouleversé le système tant des impôts d'Etat que des impôts communaux luxembourgeois. La situation se compliquait encore du fait de la question monétaire. Début 1941 le franc luxembourgeois avait été supprimé et remplacé par le Reichsmark. Les contribuables se trouvèrent dans l'obligation d'établir un bilan d'ouverture en marks, qui était sans relation aucune avec le bilan précédent en francs. A la date du 17 octobre 1944 le mark a de nouveau dû faire place au franc. Abroger au même moment les lois allemandes concernant les impôts directs et réintroduire purement et simplement nos lois d'avant-guerre aurait conduit à une désorganisation complète des finances publiques. Dans ces conditions, une solution intermédiaire a dû être cherchée. Elle a été réalisée de la façon suivante: D'un côté un arrêté grand-ducal du 26 octobre 1944 a provisoirement maintenu en vigueur la législation de l'occupant, tout en la purgeant cependant de ses dispositions nazies. De l'autre côté l'établissement d'un bilan de clôture en RM au 17 octobre 1944 a été prescrit, cela en prévision des dispositions allant paraître pour l'établissement du bilan d'ouverture en francs au 18 octobre 1944.

Telle fut la situation de la législation fiscale du Grand-Duché après la Libération. Comment cette législation a-t-elle évolué dans la suite?

La question est examinée séparément pour les différentes catégories d'impôts et de droits.

I. *Douane et accises.*

Le statut douanier du Grand-Duché étant régi par la convention

d'Union Economique belgo-luxembourgeoise du 25 juillet 1921 et par la convention néerlando-belgo-luxembourgeoise du 5 septembre 1944, précisée et interprétée par le protocole signé à La Haye le 14 mars 1947, il n'existe aucune législation douanière spécifiquement luxembourgeoise. Jusqu'à l'entrée en vigueur du tarif Benelux (1er Janvier 1948), les différentes modifications intervenues en Belgique ont été rendues applicables au Grand-Duché. Depuis 1948 par contre ce sont les modifications arrêtées dans le cadre de la convention néerlando-belgo-luxembourgeoise qui régissent notre régime douanier dans la même mesure que les régimes de la Belgique et des Pays-Bas.

En matière d'accises communes l'évolution s'est poursuivie dans des conditions similaires. Toutes les modifications intervenues en Belgique tant dans le cadre de l'Union Economique belgo-luxembourgeoise que dans celui de la convention douanière néerlando-belgo-luxembourgeoise ont été introduites au Grand-Duché. A la date du 18 mars 1950 le Luxembourg, ensemble avec la Belgique et les Pays-Bas, a signé une convention à La Haye tendant à une unification complète de tous les droits d'accises entre les trois pays de Benelux.

En matière d'accise non commune (droit d'accise sur l'alcool) le Grand-Duché a suivi les différentes augmentations décrétées par la Belgique, sauf qu'en 1948 (12 mars) il a maintenu le taux de la taxe de consommation à 80 fr. par litre d'alcool pur, nonobstant la majoration belge à 110 fr.

II. *Impôts indirects.*

Parmi les modifications intervenues depuis la Libération il échet de relever:

la loi du 28 janvier 1948 tendant à assurer la juste et exacte perception des droits d'enregistrement et de succession,

la loi du 13 juillet 1949 ayant pour object de majorer certains droits d'enregistrement et de timbre et des taxes diverses, et

la loi du 16 mai 1950 modifiant le barème prévu par les lois des 18 août 1916 et 31 janvier 1921 en matière de droits de succession et de mutation par décès.

La loi de 1948 met à la disposition de l'Administration de l'Enre-

gistrement les armes nécessaires pour enrayer efficacement la fraude fiscale.

La section Ière édicte des mesures contre une fraude qui se pratique trés fréquemment en matière d'enregistrement: les dissimulations de prix dans les ventes immobilières.

La section II soumet à certaines obligations spéciales les marchands de biens par l'intermédiaire desquels se font de nombreuses transactions immobilières.

La section III a trait aux obligations qui sont imposées à des tiers en cas d'ouverture de la succession d'un habitant du Grand-Duché pour garantir les droits de l'Etat quant à l'impôt de succession qui peut être dû.

La section IV prévoit des peines correctionnelles contre quiconque se soustrait ou tente de se soustraire frauduleusement au paiement total ou partiel des impôts, droits et taxes dont la perception est attribuée à l'Administration de l'Enregistrement. Enfin, pour mettre les fonctionnaires à même d'établir les infractions à la loi fiscale la même section étend dans une large mesure le droit d'investigation de l'Administration.

Le but de la loi de 1949 a été de mettre certains droits et taxes en concordance avec la valeur actuelle de la monnaie. Ont été majorés notamment les droits fixes, les minima de quelques droits proportionnels, le droit de timbre ainsi que les taxes de plusieurs permis et autorisations. Les dernières fixations des dits droits et taxes remontent à 1938, voire même à 1920.

La loi de 1950 est, elle aussi, conditionnée par la dépréciation du pouvoir d'achat du franc luxembourgeois.

Le tarif des droits de succession et de mutation par décès, prévu par les lois de 1916 et 1921 est exprimé en un pourcentage de base variant de 2 à 15 p.c. suivant le degré de parenté entre le de cujus et l'héritier ainsi que la nature de la part recueillie (part ab intestat ou part excédentaire). Ces pourcentages ne valent que si la part n'excède pas un certain montant (20.000 fr. sous l'empire des lois de 1916 et 1921). Dans le cas contraire, le droit dû est majoré d'un nombre de dixièmes, allant en augmentant avec l'importance de la part recueillie et pouvant s'élever jusqu'à 22, ce qui pour les

successions importantes porte le taux minimum de 2 p.c. à 6,4 et le taux maximum de 15 p.c. à 48.

Pour mettre fin à l'aggravation de tarif due à l'augmentation numérique de la valeur des parts héréditaires exprimées en francs d'après-guerre, la loi de 1950 décrète que pour la computation des dixièmes le barème des lois de 1916 et 1921 est à multiplier par 5.

La conséquence pratique de cette mesure est une diminution considérable des droits de succession. Les taux de base (2 à 15 p.c.) valent dorénavant pour les parts n'excédant pas 100.000 francs. Quant aux parts supérieures, les dixièmes ne s'ajoutent qu'à une cadence moins accentuée. Une personne, non parente, héritant de 5 millions de francs, payait avant l'entrée en vigueur de la nouvelle loi un droit de 2.400.000 fr., soit 48 p.c.; aujourd'hui elle ne paye que 1.725.000 fr. soit 34,5 p.c.

III. *Impôts directs.*

La législation de l'occupant, provisoirement maintenue, est appelée à disparaître complètement. Un projet de loi portant réforme fiscale, élaboré par l'administration, est actuellement examiné par le Conseil d'Etat.

En attendant cette réforme générale, le législateur luxembourgeois a cependant modifié, à plusieurs reprises, les dispositions en vigueur.

Les principales étapes sont:

la loi du 16 août 1947 portant revision de la charge fiscale des contribuables au titre de l'impôt sur le revenu et de la retenue d'impôt sur les salaires,

la loi du 28 mai 1948 tendant au remaniement de certains taux de l'impôt sur le revenu,

la loi du 11 avril 1950 portant atténuation de certains impôts directs, ainsi que

les arrêtés des 21 novembre 1945, 28 décembre 1949 et 29 décembre 1949 concernant le bilan d'ouverture en francs.

Les trois susdites lois ont redressé dans une certaine mesure les majorations indirectes de l'impôt sur le revenu résultant de la dévaluation du franc luxembourgeois qui est allée de pair avec celle du franc belge. Par suite de revenus numériquement plus

élevés la progressivité de l'impôt a été faussée. Pour le maintenir à son niveau initial on aurait dû adapter les barèmes de l'impôt au pouvoir d'achat du franc. Comme les nécessités budgétaires se sont pourtant opposées à une mesure générale de ce genre, les lois en question ont réalisé l'adaptation susmentionnée pour les contribuables à revenus modestes ou moyens. A trois reprises les minima exonérés ont été considérablement majorés et un tarif réduit a été prévu pour les revenus ne dépassant pas certaines limites. Les forfaits pour frais d'obtention et pour dépenses spéciales ont été augmentés en conséquence.

La loi de 1947 s'est contentée d'instaurer une réduction de l'impôt sur le revenu des personnes physiques. La loi de 1948, tout en accentuant cette réduction, a ramené de 30 % à 20 % le taux de l'impôt sur les collectivités en faveur des sociétés dont le revenu imposable ne dépasse pas 400.000 francs.

La loi de 1950 a apporté une atténuation supplémentaire des taux de l'impôt sur le revenu des personnes physiques. Mais, en outre, elle renferme une réduction de l'impôt commercial communal. L'abattement à la base est majoré. Le barème est diminué en règle gènèrale de 20 %.

Les lois d'après-guerre ne se limitent cependant pas aux réductions d'impôt. Elles contiennent d'autres modifications.

Quant à la loi du 28 mai 1948, elle a rétabli d'une façon absolue un principe de la législation luxembourgeoise, l'imposition collective des époux, auquel l'occupant, pour stimuler le travail des femmes, avait apporté des exceptions considérables.

La loi du 11 avril 1950 mérite une attention toute spéciale.

Accentuant le caractère social de la législation fiscale, elle a, d'un côté, exempté de l'impôt les cotisations légalement obligatoires que les salariés payent à l'Etablissement d'assurances contre la vieillesse et l'invalidité ou à la Caisse de pension des employés privés. De l'autre côté elle a étendu en faveur des non-salariés la possibilité de faire, en exemption d'impôt, des assurances-vie auprès de compagnies privées.

En outre, la loi de 1950 ménage des transitions dans deux cas où la législation antérieure prévoyait des changements brusques.

En matière d'imposition agricole ou forestière les contribuables ayant un revenu ne dépassant pas 80.000 fr. avaient droit à un

abattement de 30.000 fr., alors que les contribuables disposant d'un revenu supérieur à 80.000 francs étaient imposables pour l'intégralité de leur revenu. La loi de 1950 a créé un abattement dégressif pour les revenus de 80.000 à 110.000 francs.

Quant à certains bénéfices de cession, ils étaient exemptés de l'impôt s'ils ne dépassaient pas 100.000 francs. Dans le cas contraire, tout le bénéfice de cession était soumis à l'impôt. La loi de 1950 a modifié ces dispositions dans le sens d'un abattement général de 100.000 fr.

L'innovation la plus importante de la loi de 1950 est l'institution de la possibilité d'un amortissement extraordinaire destiné à favoriser le rééquipement national.

Peuvent faire valoir l'amortissement extraordinaire les commerçants et les industriels, les exploitants de mines, minières et carrières, les agriculteurs et les sylviculteurs, ainsi que les titulaires de professions libérales.

L'amortissement extraordinaire qu'on ne peut faire valoir que pour les années d'imposition 1949 à 1952, se pratique à côté de l'amortissement ordinaire. Les deux peuvent être cumulés.

L'octroi de l'amortissement extraordinaire est subordonné à plusieurs conditions:

1) Il ne peut être pratiqué que pour des éléments d'actif acquis ou fabriqués depuis la Libération;

2) Pour chaque élément entrant en ligne de compte l'amortissement extraordinaire ne peut pas dépasser le tiers du prix d'acquisition ou de revient. En outre, il ne peut être supérieur, pour aucune des années 1949 à 1952, au dixième du revenu imposable, compte non tenu de l'amortissement extraordinaire;

3) Le contribuable doit disposer d'une comptabilité régulière et tenir des comptes distincts ou des tableaux synoptiques distincts au sujet des éléments d'actif pour lesquels il fait usage de la faculté de l'amortissement extraordinaire.

Les divers arrêtés relatifs au bilan d'ouverture en francs au 18 octobre 1944 tiennent compte des prescriptions ayant régi l'échange et la conversion monétaires effectués à la même date. En outre, ils rétablissent la liaison avec les bilans d'avant-guerre libellés en

francs tout en permettant une certaine réévaluation eu égard à la dégradation du pouvoir d'achat de la monnaie.

En ce qui concerne la réévaluation des valeurs actives, deux limites maxima d'évaluation sont prévues, à savoir la valeur d'exploitation et la valeur obtenue à l'aide de coefficients et taux dont il sera question plus loin. La moins élevée des dites limites ne peut être dépassée. D'autre part, quant aux éléments du passif envers les tiers, ces deux valeurs (valeur d'exploitation et valeur obtenue à l'aide de certains coefficients et taux) constituent des limites minima. L'exploitant ne peut évaluer au-dessous de la plus élevée de ces deux limites les éléments de son passif envers les tiers.

Les coefficients et taux prévisés se trouvent condensés dans un tableau dont les passages essentiels sont reproduits ci-après:

Coefficients maxima de réévaluation et taux de conversion.

A. Valeurs actives

	Multiplicateurs maxima et taux de conversion pour les éléments anciens en fr.	éléments nouveaux en RM.
I. *Immobilisé*		
1° bâtiments d'exploitation, maisons d'habitation, terrains, gisements	3	10
2° installations industrielles, machines fixes et mobilier	3	10
3° matériel roulant, outils, etc	3	10
4° autos et camions	2,5	10
5° concessions, brevets, licences, fonds de commerce, marques de fabrique et autres droits analogues	1,25	10
6° participations (classées comme telles au bilan du 17. 10. 1944)	2,40	7,5
II. *Réalisable et disponible*		
1° Matières premières, approvisionnements, travaux en cours, produits achevés et marchandises	la valeur en RM au bilan du 17. 10. 1944 multipliée par 12.50.	

2° Portefeuille: a) actions	1,80	7,5	le cours le plus bas entre le 17. 10. '44 et la date de la confection du bilan au 18. 10. '44. A défaut de cours, dernier cours connu.
b) obligations			

Pour la plupart des biens, le tableau distingue entre les éléments anciens et les éléments nouveaux.

Pour ce qui est des éléments anciens, c'est-à-dire des éléments ayant déjà figuré au dernier bilan de fin d'exercice établi avant le 1er janvier 1941, les coefficients et taux prévus par le tableau s'appliquent aux valeurs nettes inscrites au dernier bilan en francs, ces valeurs étant préalablement diminuées des amortissements postérieurs calculés sur ces valeurs aux taux d'amortissement admis par l'occupant.

Quant aux éléments nouveaux et aux éléments anciens des catégories pour lesquelles le tableau ne fait aucune discrimination entre éléments anciens et éléments nouveaux, les coefficients et taux s'appliquent en principe aux montants inscrits au bilan du 17 octobre 1944.

Postérieurement à la réévaluation, les amortissements fiscalement déductibles se déterminent d'après les dispositions valables dans ce domaine, sur la base des valeurs réévaluées inscrites au bilan d'ouverture en francs au 18 octobre 1944. Toutefois, ils doivent être échelonnés sur huit années au moins pour les machines et installations industrielles, et sur vingt années au moins pour les immeubles, sous réserve du droit pour les entreprises d'effectuer en une seule fois l'amortissement correspondant à la valeur résiduelle des éléments cédés, détruits ou mis hors de service au cours d'un exercice.

Quelles sont maintenant les différences d'évaluation au bilan d'ouverture en francs au 18. 10 1944 et quel est le sort que ces différences d'évaluation doivent subir au regard de l'impôt?

Les différences d'évaluation se subdivisent en trois catégories:

1. le gain ou la perte à l'échange et à la conversion monétaires du 18 octobre 1944;

2. la plus-value ou la moins-value de réévaluation;
3. le poste d'égalisation.

Le gain ou la perte à l'échange et à la conversion monétaires du 18 octobre 1944 se déterminent en tenant compte de la réglementation afférente édictée après la Libération.

Le gain est rapporté au bénéfice imposable par sixième dans les six premiers exercices entiers, postérieurs au 31 décembre 1944; la perte est déduite du bénéfice imposable par sixième dans le même délai de six ans.

La plus-value ou moins-value de réévaluation se détermine en faisant la somme des plus-values ou moins-values afférentes aux divers éléments de l'actif et du passif envers les tiers. En règle générale on fait abstraction des postes tombant sous l'échange et la conversion monétaires.

En ce qui concerne le sort fiscal de la plus-value de réévaluation, deux régimes sont prévus: le régime fiscal ordinaire et le régime fiscal préférentiel.

En régime fiscal ordinaire, la plus-value incorporée au capital ne devient pas imposable du fait de cette affectation; elle est, du point de vue fiscal, censée subsister à l'état incorporé.

Des dispositions spéciales règlent, dans le régime fiscal ordinaire, l'amortissement, au moyen de la plus-value des pertes compensables ou reportables.

En régime fiscal ordinaire, il est encore prévu que la plus-value de réévaluation devient imposable dans les cas de prélèvement, de distribution ou d'utilisation directs ou indirects; en outre, lorsqu'il s'agit d'une distribution directe ou indirecte par une société de capitaux ou par une société coopérative, la société doit la retenue d'impôt sur les revenus de capitaux, et les associés sont imposables à l'impôt sur le revenu du chef des distributions en question.

Le régime fiscal préférentiel de la plus-value de réévaluation assimile la plus-value à une réserve imposée, et cela moyennant l'imposition d'une portion de la plus-value au titre de 1949. La fraction imposable de la plus-value s'obtient en déduisant de la plus-value au 18 octobre 1944 un montant égal à 85 % de l'actif net du dernier bilan en francs, sans que ladite fraction imposable puisse être inférieure au dixième de la plus-value. L'imposition dont question consiste à englober dans le résultat de l'exploitation courante

de 1949 la fraction imposable préalablement diminuée d'un montant de 150.000 francs. Donc, lorsque la fraction imposable ne dépasse pas 150.000 francs, aucun impôt n'est dû. Remarquons que quelques autres atténuations sont encore prévues en régime fiscal préférentiel.

Le poste d'égalisation est alimenté des différences d'évaluation qui ne doivent pas contribuer à la formation soit du gain ou de la perte à l'échange et à la conversion monétaires soit de la plus-value ou moins-value de réévaluation. Le poste d'égalisation n'a aucune répercussion sur le montant du bénéfice imposable.

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IV

REVIEWS — COMPTES RENDUS

Economic Conditions and Banking Problems — Swedish Banks Association, Stockholm, 1950.

At the third International Banking Summer School, which was held in September 1950 at Saltsjöbaden, a series of lectures was delivered on the economic and banking problems of to-day. The lecturers were persons well-know within international financial circles and the subjects dealt with were all of the utmost importance. It has therefore been regarded as desirable to let the contents of the lectures be known also outside the circle of those participating in the school. The result appears in the book that the Swedish Banks Association has now published.

Considering the importance of the economic climate, nationally and internationally, for the activities of the banks, one should not be surprised to find that lectures on general economic conditions dominate. Prominent economists illustrate the problems in the international field, and such questions as the dollar-shortage, the Havanna Charter, the European Payments Union and the armament boom after the outbreak of the Korean war are thoroughly examined by European and American experts. National representatives also sketch in great outlines the economic and financial post war development in France, Great Britain, Western Germany and Switzerland as well as in Finland, Norway and Sweden. In glaring contrast to each other the difficulties to invest capital in Switzerland and the serious capital shortage in Western Germany stand out.

Hauptverband der Deutschen Holzverarbeitenden industrie:

1. *Kontenrahmen und Buchführungsrichtlinien für die Holzverarbeitende Industrie.*
2. *Anleitung für die Durchführung einer Betriebsabrechnung in der Holzverarbeitenden Industrie.*

The organization of the woodmanufacturing industry in Germany provides its members by means of pamphlets like those mentioned above, of important informations and tips.

The first mentioned pamphlet gives information as to the method of booking the costs and of other items.

The second pamphlet is a guide to bring into practice the principles of trading-accounts for the woodmanufacturing industry in particular.

HERBERT BRÖNNER: I. *Das Westberliner D. Markbilanzgesetz.* Verlag Berliner Steuer-Blatt.

II. *Die Umwandlungen der Kapitalgesellschaften nach D. Markbilanzgesetz.* Fachverlag für Wirtschafts- und Steuerrecht SCHÄFFER & Co. STUTTGART 1950.

The recent monetary provisions in Western Germany seem to be a repetition of the practice in the years 1923 and 1924. Western Berlin follows as to the monetary legislation the Federal government, with slight modifications.

The first mentioned booklet of Dr. BRÖNNER gives full information as to the consequences of the German Marklaw of West Berlin.

In the second booklet the author deals with the conversion of capital-

association after the afore-said monetary law of Western Berlin. The writer considers the conversion from the point of view of fiscal law as well as of commercial law.

J. H. BURTON, F.S.A.A., F.I.M.T.A., F.C.C.S., F.R.Econ.S.: *Wages and Salaries. Recording & Distributing methods*. Gee and Company (publishers) limited, London. 1950.

Dans une maniére pratique l'auteur démontre la méthode de porter en compte les gages et les salaires de toutes sortes d'industrie. Quelques formules illustrent le commentaire.

RUSSELL J. CLARK: *Cost control in the boot and shoe industry*. Gee & Company (Publishers)Limited, London, 1950.

Chaque industrie a sa propre demande quant à la manière de controler et vérifier les comptes.

L'auteur s'engage à exposer une méthode de comptabilité pour que les coûtes dans l'industrie cordonnière peuvent être controlés efficacement.

MARTIN DOMKE: *Some aspects of the protection of American property interests abroad*. Reprinted from the record of The Association of the Bar of the City of New York, Volume 4, Page 268 (1949).

L'article de M. DOMKE signale que depuis 1949 la protection des propriétés américaines et étrangères n'est plus basée sur le droit international seulement, mais qu'elle requiert un nouvel abord en face de nouvelles conditions.

J. H. BURTON: *Local government of everyman*. Pen-in-hand, Oxford, 1949.

Ce que tout le monde doit savoir du gouvernement local de l'Angleterre et son développement par tous les siècles est esquissé en grandes brosses dans cet opuscule.

I. NATIONAL ASSOCIATION OF TAX ADMINISTRATORS: *Revenue administration* 1949 *Proceedings of the seventeenth annual conference*. June 21—25, 1949.

II. NORTH AMERICAN GASOLINE TAX CONFERENCE: *Twenty-third annual report* September 7—10, 1949. Federation of tax administrators 1313 East 60th street, Chicago, 37

Les diverses associations constituant la Fédération des fonctionnaires fiscaux des Etats Unis d'Amérique ont l'admirable coutume de s'assembler annuellement et de discuter tant de sujets appertant à leur propres départements.

En parcourant les deux rapports sus-mentionnés nous remarquons que le fisc est confronté partout le monde à de mêmes problèmes.

La définition du terme légal „doing business" (faire le commerce) est assez intéressante pour etre citée, à savoir: „The conducting of systematic activities in the performance of charter purposes for economic benefit" (= La conduite des activités systématiques à la poursuite des buts statutaires pour le bénifice économique).

Prof. Harold M. SOMERS: *Public Finance and National Income*. The Blakiston Company, Philadelphia, Toronto, 1949.

C'est un trait général des écrivains d'outre-atlantique d'aborder les problèmes immédiatement au point de vue pratique. La situation actuelle en Amérique de nos jours est le point de départ du manuel si-dessus mentionné. Des statistiques bien sélectionnées nous instruisent l'importance des finances publiques en relation avec le revenu national. Dans ses commentaires l'auteur saisit l'occasion à critiquer mainte théorie courante.

Ad. GRAF & RUDOLF BORKOWSKY: *Die direkten Steuern der Kapitalgesellschaften*. No. 196 der schweizerische Handelstechnische Sammelstelle, Institution der schweizerischen Gesellschaft für kaufmännisches Bildungswezen, Minervastr. 14, Zürich, Juni 1949.

Il s'agit d'un ouvrage sous forme ronéographiée (13 pages) pourvu d'un grand nombre d'annexes et d'une importance capitale pour la détermination des impôts perçus sur une société anonyme ou sur une société à responsabilitée. Les bénéfices et l'actif imposables sont calculés d'une façon qui diffère du calcul dans le bilan commercial.

L'annexe I comprend les chiffres des trois dernières années. Ensuite on trouvera les déclarations sur deux années et les déclarations pour l'impôt de défense nationale; le „Revisionsbericht'' de l'administration fiscale; un perçu pour le calcul de l'impôt de défense nationale. Enfin, on a inséré la feuille d'impôt pour les impôts cantonaux et communaux.

Tout est pourvu d'une élucidation, de sorte que l'on n'a présenté au lecteur pas de considérations abstraites mais le lecteur est renvoyé directement, par des chiffres paraissant du bilan, de la déclaration et du calcul pour la cote, à l'importance pour la pratique des prescriptions légales en matière fiscale.

Régime douanier du Congo Belge (Décret du 29 janvier 1949).
Régime douanier du Congo Belge et du Ruanda-Urundi (Ordonnnance du 7 janvier 1950). —Belgique Coloniale et Commerce International, Bruxelles.

La première brochure contient le rapport sur le projet du décret pour la coordination et la réforme du régime douanier dans la colonie. La coordination elle-même est publiée dans les deux langues officielles, le français et le flamand.

La deuxième publication contient les décrets détaillés d'exécution.

FRIEDRICH WILHELM WILLEKE: *Das Finanzrecht der Gemeinden und Gemeindeverbände in der britischen Zone*. Mit Erläuterungen und einer Einführung. 3e und 4e Auflage. Asschendorffsche Verlagsbuchhandlung, Münster (Westfalen), 1948.

Depuis les jours de Bismarck on a considéré comme un probléme de donner aux finances locales leur propre et correcte place dans l'organisation de l'Etat. Les fluctuations importantes dans les environs de 1934 ont causé de grandes transformations dans ce domaine. On introduisit, pour tout le „Reich'', la „Deutsche Gemeindeordnung'' du 30 janvier 1935, et cette ordonnance est, pour une grande partie, restée en vigueur dans la zone brittanique en Allemagne. (Ordonnance du 1er avril 1946).

Cependant, il y avait d'importants changements. Ainsi, le „Führerprinzip'' selon lequel le bourgmestre avait une influence prépondérante, a complètement disparu, et en 1946 c'était le conseil communal qui redevenait l'organe chargé de prendre les décisions nécessaires. Le conseil communal doit transférer partie de ses droits et obligations à un „Kämmerer'' ou à une autre personne.

Ce sont ces organes, et d'autres encore, que l'on a traités au début de cet ouvrage. Aprés, l'auteur discute les différentes parties des travaux communaux, entre autres l'administration des biens communaux, la gestion des entreprises communales, le financement (emprunts?), etc.

Le „Kämmerer'' occupe une place importante dans cet ouvrage. La partie la plus étendue de l'ouvrage comprend le texte des prescriptions de la „Deutsche Gemeindeordnung'' relatives au sujet traité, avec les autres décrets et arrêtés d'exécution, pourvus de renvois au droit ancien et de citations des différentes prescriptions légales avec un grand nombre de commentaires.

PIERRE GROSHEINTZ: *Die eidgenössische Verrechnungssteuer*. Polygraphischer Verlag, A.G., Zürich, 1945.

Cet impôt suisse trouve son origine dans la lutte contre la fraude fiscale.

Il est stoppé à la source et compensé par les impôts fédéraux et communaux pourvu que les éléments de fortune et les revenus en provenant soient vraiment déclarés. L'impôt n'est pas restitué au contribuable qui dissimule les valeurs mobilières ou des soldes bancaires. La fraude n'est plus profitable!

L'impôt a été perçu depuis 1944. L'ouvrage sus-mentionné (135 pages) traite, dans son introduction, la réalisation de cet impôt ainsi que ses principes et sa technique. L'auteur donne des renseignements détaillés sur le recouvrement et la perception de l'impôt, et il examine plus spécialement les revenus qui sont frappés; ensuite il traite la compensation.

Dans la suite, le texte de la loi, avec des commentaires des différents articles est inséré, et enfin on y trouve une table détaillée donnant le rapport avec la droit fiscal cantonal.

GUIDO FEGER: *Holding-Gesellschaften.* Eine Orientierung über ihre wirtschaftlichen Missionen und über ihre privilegierte Stellung. Vergleiche in ihrer Behandlung. Verlag Rascher & Cie A.G., Zürich, 1931.

Cet opuscule (40 pages) remonte à une certaine date, de sorte que les données sur les pays ayant des règlements concernant cette forme de société, mais sans que ces règlements fassent partie de lois spéciales (Allemagne, Autriche, France, Italie, Pays-Bas, Royaume-Uni, Hongrie) et sur les pays où il existe une législation spéciale à ce sujet (Liechtenstein, Suisse, Luxembourg) ont vieilli.

Cependant il y a un motif pour attirer l'attention de nos lecteurs sur cet ouvrage, parce que l'auteur y a traité quelques problèmes généraux qui ont gardé leur actualité. Par exemple: la définition et le caractère de la societé holding; la forme passive et active de l'entreprise; la fonction de ce genre de société dans la vie sociale.

Ceux qui s'intéressent au développement de ce genre de société pourront trouver, dans cette publication, de nombreuses données importantes.

ALBERT A. EHRENZWEIG & F. E. KOCH: *Income tax treaties,* with a foreword by Rosswell Magill. Commerce Clearing House, Inc., New York, etc. 1949.

Tandis que, depuis la tournure du dernier siècle, l'impôt sur le revenu est généralement considéré comme le plus stabile et le plus équitable, cette stabilité et équité sont menacées par la double imposition, soit nationale, soit internationale, écrivent les auteurs dans leur préface. Afin de diminuer la double imposition internationale, les Etats Unis se sont engagés dans des conventions internationales, dont la plus importante est celle avec la Grande-Bretagne, laquelle est le principal sujet de cet ouvrage.

Abstraction faite d'une bibliographie étendue, d'une liste d'abbréviations, et, à la fin de l'ouvrage, de 2 tables et d'un index, l'ouvrage est divisé en quatre parties, à savoir: *Purposes and history:* On y trouvera un aperçu succinct du développement du système de solution des problèmes fiscaux internationaux par des conventions, avant et après la guerre mondiale 1914—1918, des conférences et des études faites dans ce domaine, des conventions conclues par l'Angleterre et par les Etats-Unis et leurs conséquences en ce qui concerne les lois nationales.

National relief from double taxation in the United States and in the United Kingdom, donne un aperçu des prescriptions dans les lois nationales concernant, entre autres, des non-résidents, la déduction d'impôts étrangers, des sociétés étrangères, etc. *The Convention:* Cette partie est subdivisée en XI chapitres; dans chacun d'eux les auteurs prennent comme point de départ la convention anglo-américaine, en mettant en lumière des comparaisons avec une certaine nombre d'autres conventions conclues entre les Etats-Unis et beaucoup d'autres pays.

Nous nous bornerons à donner ci-après un résumé des sujets traités dans cette section:

I. Principal methods of relief. II. Relief regarding specified items of income

(contenant entre autres, un tableau comparatif des conventions avec la Grande Bretagne et le Canada). III. Taxes covered by the convention; IV. Witholding of tax at source; V. Definitions ; VI. Construction: A: Construction rules of the Convention, B: The Convention and the National rules of construction; VII Classes of privileged income (elimination and alleviation of double taxation): il s'agit d'une vue d'ensemble des différentes classes de revenus, entre autres: bénéfices industriels et commerciaux, dividendes, rentes, ,,royalties,'' rémunérations de tous genres, etc. VIII. Mutual credit under Article XIII; IX. Additional privileges granted by the United States (equalization of taxes); X. Promotion of cultural exchange; XI. General provisions (collaboration des Etats en matière de recouvrement des impôts, prohibition d'établir des impôts discriminatoires, etc.).

La quatrième partie, se composant de huit appendices, contient les textes suivants: La convention elle-même; ,,regulations'' américaines y respectives; U.K. Regulations and other materials; les mêmes en ce qui concerne la convention entre les Etats-Unis et le Canada, ainsi qu'un tableau comparatif des conventions internationales conclues par les Etats-Unis.

F. E. Koch: *The double taxation conventions.* Supplement to Volume I: Taxation of income. Stevens & Sons Ltd., London, 1950.

Ceux qui se sont procuré l'excellent ouvrage de M. Koch dont nous avons publié un compte rendu dans ce Bulletin, Vol. II, p. 265, accueilleront bien vivement la publication de ce supplément.

Ce supplément contient, de la même manière claire et systématique que dans le principal ouvrage, des commentaires concernant les nouvelles conventions internationales en matière fiscale conclues par l'Angleterre.

l'Auteur a eu une trés bonne idée de mettre à jour son ouvrage qui est d'une importance pour tout fiscaliste se trouvant devant des problèmes fiscaux de caractère international, tant du point de vue théorique que pratique.

Maurice Bouskela: *Les impôts mobiliers en Egypte.*
Guide pratique du contribuable. Journal du commerce et de la Marine, Alexandrie, 1947.

In Vol. I, p. 211 of the "Bulletin", Mr. A. Forté has given a survey of the development of Egyptian Fiscal Law since 1939.

In his detailed work, Mr. Bouskela first gives the text of the tax on income from personal property with short notes quoting important tax cases.

Next follow the taxes on profits of commercial and industrial enterprises, on earned income and the extraordinary profits tax.

Further, stamp duty, death duties and the tax on Stock-Exchange dealings are dealt with.

It is very interesting that the 9th book contains definitions valid for all taxes in common. We find there provisions regarding the following subjects: professional secret, right of inspection, collection, payment, case law and the organization of the tax courts, and of the administration, fiscal evasion, etc.

H. Schmitt-Degenhardt & H. Gruss: *Grundriss des Bewertungsgesetzes.* Buchreihe Finanz und Steuern, Vol. 13. Schäffer & Co, Archivstrasse 12, Stuttgart, 1950.

The German "Reichsbewertungsgesetz" is a basic law like the ,,Reichsabgabenordnung". Both laws contain general provisions for the application of tax laws. Though the scope of the former is of a more restricted character (it contains valuation provisions applicable to the specific tax laws) it is of extreme importance for those who deal with all sorts of tax problems.

The reason why the authors published this extensive book (243 pages) is twofold: firstly because of some new measures taken by the German authorities with respect to the valuation of industrial enterprises, of property items

and of land property. Moreover this law will be of the utmost importance for the application of the "Lastenausgleich", a sort of capital levy.

The second reason is that the provisions of this law are of a general wording. For practitioners dealing with valuation problems cannot without more see the influence of the law on the specific taxes. In dealing with income tax, property tax etc, it is necessary to count with the general provisions of this valuation act.

The authors have set up their work systematically. The book consists of ten chapters arranged as follows:

1. General scope of the law; 2. object of valuation; 3. „Bedingung, Befristung und Verfügungsbeschränkung"; 4. valuation principles; 5. „Einheitsbewertung", uniform valuation applicable to all tax laws; 6—10. special rules concerning land agricultural property, real property, industrial property other property items (bonds, shares, etc.) Numerous cases are cited and an index concludes this book.

MARCEL WURLOD: *Forme juridique et réalité économique dans l'application des lois fiscales*. Thèse de licence et de doctorat présentée à la faculté de droit de l'Université de Lausanne. Librairie F. Bonge & Cie, S.A., Lausanne, 1947.

In the beginning of his study the author explains that the relation between the tax-payer and the Government is a legal relation, based on the law. Therefore: no analogous interpretation if this goes to the detriment of the tax-payer; however, an extensive interpretation is not to be excluded.

First, the juridical nature of the fiscal obligation is examined, next the economic nature and then the author attains his subject: as to how far the treasury can rest on economic criteria in assessing the tax. The author finds examples in case law, in which the treasury as well as the taxpayer put the economic importance above the juridical importance in judging the facts. After this introduction the taxes on legal relations are reviewed in the first chapter, thus those taxes which are applied to the relations treated by civil law.

The second chapter deals with the taxes in which the legislator applies to the economic relations.

The third chapter moves between the two: the tax legislator having intended to tax economic events makes use of civil law. Each subject is closed by an conclusion. It is evident that the fiscal evasion is reviewed repeatedly.

The final conclusion is, that the economic appreciation of the facts has to be restricted within the limits adjusted by the law; this economic interpretation is allowed only within the framework of the strictly interpreted provisions of the law; an extensive interpretation is only possible in exceptional cases, whereas analogous interpretation is never possible.

In this concluding word the author emphasizes that the contrast between the juridical and the economic contemplation makes the fiscal law as complicated and as difficult as it is.

Dr. J. LECERCLE: *Bilan et Monnaie*. Impôts et Sociétés, 16 rue Guyenemer, Paris 6e.

In this book of about 350 pages the author discusses the relation between accounts (balance sheets) and money. In the first part he discribes the general characteristics of the balance sheets and mentions already the effect of fiscal law. In the next chapters he completely deals with the fiscal aspects with regard to the value of the currency, especially its instability. Which measures did take the French legislator? He discusses the increase of value of real property, the development of the fiscal regime under various circumstances. Attention is paid to the depreciation and the allowable deductions. As to personal property the provisions of the "renouvellement des stocks" are under discussion and the way in which a certain part of the profits re-

mained provisionally free of tax in order to make it possible to replace old stocks in and just after the war. Which measures are taken with respect to the recovery of war damages? See page 203 and following. In the second part of the work (pages 233 and onwards) the revaluation- provisions are discussed. The method of application and the fiscal consequences. It is a valuable book.

Dr. H. BRÖNNER: *Die Besteuerung der Gesellschaften*. Fachverlag für Wirtschafts-und Steuerrecht Schäffer & Co, Stuttgart 1950.

In this work the author describes the fiscal consequences of any corporated body under German fiscal Law. He does not give an enumeration of the various tax acts, but he deals with the foundation, and exploitation of trades and businesses through partnerships, limited partnerships, limited companies, and other particular forms of German commercial law (G.m.b.H.). In his introduction regarding the choice of the enterprise-form he warns the reader, that one should not read the book in order to find tax advice. It is merely a description of the fiscal aspects of said company forms. In the first chapter the author gives a review of commercial law and a comparative table of fiscal charges in the Western, Eastern and Berlin zones of postwar-Germany.

The second chapter is wholly devoted to the existing fiscal laws, especially income- and company tax (Körperschaftsteuer), trade tax (Gewerbesteuer) and several other taxes of minor, though not neglectible, importance.

The third chapter deals with the taxation of family-corporations.

In the fourth chapter particulars are mentioned with respect to the "Doppelgesellschaft", that is to say the trade etc. is carried on in lease by one company for another. These chapters might be called the general part of the book. In the following chapters the attention is drawn to specific topics in company taxation; such as fiscal consequences on foundation and increase of capital-paid up (chapter V); diminution of capital either on complete liquidation or otherwise (chapter VI); partners (chapter VII) Chapter VIII includes mergers, reorganizations and creations of new forms to replace the old one. The last and ninth chapter deals with the effects of the revaluation of the German currency.

This book contains very important material, expecially if one should like to make studies in comparative fiscal law. Our Dutch readers will, when studying this book, observe that they are to a certain degree familiar with the matters described.

Prof. Dr. F. SAINZ DE BUJANDA: *El impuesto del timbre en la industria y e commercio*, published by Revista de Derecho Privado, Madrid, 1944, in the series "Monografias Practicas de Derecho Español."

It is the author's intention to describe in this book (474 pages) the effects of the Spanish stamp duty on commercial and industrial life. He has perfectly succeeded in this purpose. It is not a description of the law, but a treatise of the fiscal consequences of special juridical transactions. In the VI chapter it is the position of the corporations under the stamp duty act, which is dealt with: formation, the capital, the articles of association, management, accounts, furthermore liquidation and winding up and the forms of reorganization. A special chapter draws the attention to the accounts of any trade or business. From the XI chapter onwards particular contracts have been dealt with, such as sale, transactions at a regular stock exchange, banking, transports, and insurances; special kinds of trading enterprises are described in the final chapter (XVI): works supplying gaz, water and electricity, building societies, editorial enterprises, film produce and hotel-business.

In the first chapter the reader will find definition and nature and a historical review of the stamp duties. The origin of stamp duties is due to Philip IV in the years 1636 and 1637, the present stamp duties are incorporated in a law of April 18, 1932 and a Regulation of April 29, 1909.

The stamp duties are divided into proportional, graduate and fixed rates.

F. SAINZ DE BUJANDA *Introduccion al Derecho financiéro* (Madrid 1948).

In this booklet, published before as an article in the "Revista de Derecho Mercantil" No 15, 1948 page 313, the author discusses the problems of Public finance, its relations to civil law and the place which fiscal law should take up. Principally he had based his work upon Italian literature.

F. SEWELL BRAY, F.C.A., F.S.A.A. & H. BASIL SHEASBY, M.B.E., F.C.A., F.S.A.A.: *Company accounts under the Companies Act* 1948. Gee and Company (Publishers) Limited, London, 1948.

A fin de sauvegarder les interêts des actionnaires, le législateur anglais a réglementé depuis 1908 le contenu des bilans et des comptes des profits et pertes des diverses sociétés commerciales et industrielles.

Ainsi la loi de 1948 entrée en vigueur le 1er Juillet 1948 contient des obligations des sociétés à publier les résultats de leurs opérations de sorte que l'actionnaire soit informé aussi bien que possible.

Les auteurs de ce livret ont arrangé les dispositions légales dans le même ordre que les sociétés groupent les montants dans leurs comptes annuels.

FRANK H. JONES, F.L.A.A., A.C.I.S.: *The new accounting requirements for companies*. Barkeley Book Co, Ltd., Stanmore, Middlesex. 1949.

Un bref apercu des nouvelles dispositions de la loi de 1948 relative aux comptes des sociétés commerciales et industrielles est donné dans ce livret dans une manière compréhensible.

Successivement l'auteur traite le fond de la nouvelle loi, le bilan, le compte des profits et pertes, les droits, les devoirs et les responsabilités des experts-comptables, les provisions et les réserves, la comptabilité et la distribution et la composition du bilan et enfin les comptes groupés des sociétés mères.

ASSOCIATION NATIONALE DES SOCIETES PAR ACTIONS: No. 89 Juillet 1949. *Les dispositions économiques et financières de la loi du 5 Juillet* 1949. Paris.

As usual the ANSA informs its members in the monthly bulletin of the contents of the laws on financial and economic matters.

The law of July 5th, 1949, aims at the development of the export and the encouragement of the investment of capital, as means of the financial and economic recuperation of France.

DR. MAURICE HEIMANN: *La comptabilité publique en Suisse. Du budget au compte d'état.* Les Editions Radar, Genève.

As the author remarks in his preface this book is written not only on account of the recent reorganization of the public accounting and the ameliorated presentation of the budget, but also to fill a gap, because the commentaries on the budget are not so numerous.

In the first chapter the author gives a description of the accounting method of 1848 until 1947.

The budget and the budgetary accounting are treated in the second chapter, while a commentary on the balance sheet is given in the 3rd chapter.

J. H. BURTON: *Mechanising for control.* First edition. Gee & Company (Publishers) Limited, London, 1950.

L'auteur a résumé dans cet opuscule des discours donnés aux experts-comptables et étudiants-expert-comptable.

Dans la première partie sont traités les principes généraux du contrôle et dans la deuxième partie sont discutés les divers sujets à contrôler.

J. SNAITH: *Insolvency practice.* First edition. Gee & Company (Publishers) Limited, London, 1950.

Ce livre est composé pour tout le monde qui n'importe dans quelle qualité envisage dans la vie quotidienne le problème de mauvaises créances.

En six parties l'auteur traite successivement l'introduction au problème

et des principes généraux, la banqueroute, les actes d'arrangement, la liquidation volontaire, la liquidation forcée, et les collecteurs („receivers").

Maintes formulaires pratiques sont ajoutées comme annexes.

I. ELLSWORTH C. ALVORD et d'autres: *How shall business be taxed?* 1937.
II. ROY BLOUGH et d'autres: *Tax relations among governmental units.* 1938.
III. JAMES W. MARTIN et d'autres: *Tax exemptions.* 1939.
IV. LEO DAY WOODWORTH et d'autres: *Property taxes.* 1940.

TAX POLICY LEAGUE, NEW YORK.

Ces quatre volumes contiennent des contributions écrites dans la période avant que les Etats Unis d'Amérique s'engageait dans la deuxième guerre mondiale et qui ont ainsi perdu pour la grande partie leur actualité.

Néanmoins, certes, il y a des conclusions, qui ont une valeur théorique intrinsèque qui surpasse le laps de temps et des événements gigantèsques.

JORGE CAVERO ALAYZA: Codigo de impuestos, 3a edición, 4 vols. Buenos Aires, s.d.

JUAN E. BELLO, E. CARLOS M. GIULIANI FONROUGE: Código tributario. Compilación de las disposiciones impositivas con sus respectivas reglementaciones actualizadas, concordadas y anotadas con la jurisprudencia administrativa y judicial. Vol. I: Leyes Nacionales. Editorial Depalma, Uruguay 478, Buenos Aires, 1950.

M. G. DE BOER en D. J. MULLER: Besluit op de Inkomstenbelasting, deel X A der Vakstudie, Supplement VI. N.V. Uitgevers-Mij. AE. E Kluwer, Deventer.

ERNST PAUL BORUTTAU: Grundriss der Kapitalverkehrsteuer. Buchreihe Finanz u. Steuern, Band 14, Schäffer & Co. Stuttgart.

M. H. BREGSTEIN en A. PRAKKEN: Behandeling van de praeadviezen over „De onherroepelijke volmacht". Broederschap der Candidaat-Notarissen, 's-Gravenhage, 1950.

H. BURGER: Geschriften van de Vereniging voor Belastingwetenschap Nr. 75. Claim en Bonus en Inkomstenbelasting. N. Samson N.V. Uitgever Alphen aan den Rijn 1950.

ERYMA CARNEIRO: A Nova Lei de Imposto Sobre a Renda. Grafica Editora Aurora, LTDA. Rio de Janeiro 1948.

ERYMA CARNEIRO: O Balanço Fiscal no Direito E Na Contabilidade, Rio de Janeiro 1950.

ANDRÉ CHOURAQUI: La Condition Juridique de l'Israélite Marocain. l'Alliance Israélite Universelle, Paris 1950.

MARTIN DOMKE: Some aspects of the protection of American property interests abroad. Reprinted from the Record of The Association of the Bar of the City of New York, Vol. 4, 1949.

ALBERT A. EHRENZWEIG and F. E. KOCH: Income Tax Treaties. Commerce Clearing House, Inc. Chicago 1.

L. VAN DER ENDE: Vakstudie — De Algemene Wet. Supplement XXII, 4e druk. N.V. Uitgevers-Maatschappij AE. E. Kluwer, Deventer.

FRITZ HARTUNG: Das Steuerstrafrecht. Verlag für Rechtswissenschaft vorm. Franz Vahlen G.m.b.H. Berlin u. Frankfurt a.M., 1950.

J. & E. HENGGELER: Rechtsbuch der schweiz. Bundessteuern, nachtrag 14, April 1950, nachtrag 15, Februar 1951. Verlag für Recht und Gesellschaft AG., Basel, 1950.

J. & E. HENGGELER: Eidgenössische Wehrsteuer, Nachtrag 13, April'50, Nachtrag 14, Febr. 1951. Verlag für Recht und Gesellschaft AG., Basel.

HANS HEROLD: Praxis des Umsatzsteuerrechts. Verlag für Recht und Gesellschaft AG., Basel, 1951.

TUN YUAN HU: The Liquor Tax in the United States. Theo Gaus Sons Inc., New York, N.Y. U.S.A., 1950.

P. HUSY: Grundrisz der steuerlichen Buch- und Betriebsprüfung. Verlag des Schweizerischen Kaufmänischen Vereins, Zurich.

P. KARMELK: Statistiekwet en voorschriften betreffende de statistiek van de in-, uit- en doorvoer. J. Noorduijn en Zoon N.V., Gorichem, 1951.

P. KARMELK: Besluit op de vennootschapsbel. '42 en besluit op de vermogensbelasting 1942. De Belastingwetgeving serie D.B. No. 13, J. Noorduijn & Zn. N.V. Gorichem.

LEWIS H. KIMMEL: Taxes and Economic Incentives. The Brookings Institution, Washington, D.C., 1950.

ROLF KUHN: Reichsabgabenordnung. Schäffer & Co., Stuttgart, 1950.

HENRY LAUFENBURGER: Finances Comparées, 2ème édition. Recueil Sirey, 1950, Paris.

LITTMANN: Grundriss der Gewerbesteuer. Buchreihe Finanz u. Steuern, Band 16, Schäffer & Co. Stuttgart.

N. E. MUSTOE: Profits Tax. Sir Isaac Pitman & Sons, Ltd. 1950.

CH. Perret: Kommentar zur eidgenössischen Wehrsteuer 1951—1954. Polygraphischer Verlag A.G. Zürich, 1951.

P. H. PESMAN: Vakstudie- Motorrijtuigenbelastingwet. Supplement XXIV, 2e druk. N.V. Uitgevers-Maatschappij AE. E. Kluwer, Deventer.

T. B. ROBSON: Consolidated and Other Group Accounts. Gee & Company (publishers) Limited, London 1950.

F. SAINZ DE BUJANDA: Repercusiones fiscales de la depreciacion monetaria (Cronica del IV Congreso Internacional de Derecho Financiero.). Published in „Revista de Derecho Mercantil" No. 29, Sept./Oct. 1950, Madrid 1950.

K. G. A. SANDSTRÖM: Källskatten enligt nya uppbördsförordningen. B. Wahlströms Förlagstryckeri, Stockholm 1946.

K. G. A. SANDSTRÖM: De nya skatterna. B. Wahlströms Förlagstryckeri, Stockholm 1948.

K.G.A. SANDSTRÖM: Kvarlatenskapsskatten. B. Wahlströms Förlagstryckeri, Stockholm 1948.

K.G.A. SANDSTRÖM: Svenska dubbelbeskattningsavtal. I vad de avse skatt a inkomst eller förmögenhet. P.A. Norstedt & Söners Förlag, '49.

K. G. A. SANDSTRÖM: Den Internationella dubbelbeskattningen. Exportföreningens Förlag, 1950.

K. G. A. SANDSTRÖM: Om beskattning av inkomst av rörelse. P. A. Norstedt & Söners Förlag, '51.

W. P. VAN SIKKELERUS: Over het begrip „Gestort Kapitaal" in het civiele en fiscale recht. Overdruk uit De Naamloze Vennootschap, November 1950, No. 18

RONALD STAPLES and PERCY F. HUGHES: Staples on Back Duty. Gee & Company (Publishers) Limited, London 1950.

H. HEWARD STIKEMAN: Tax appeal Board Cases. Richard de Boo Limited, Toronto, Canada.

ANDRE THRIOREAU: Le tarif fiscal marocain, 3me ed. Fiduciaire marocaine d'éditions techniques Groupe des fiduciaires, 81. Rue Colbert, Casablanca.

C. P. TUK: Omzetbelasting. De Belastingwetgevingserie I. & A. No. 11. J. Noorduijn & Zn. N.V. Gorichem, April 1951.

GABRIEL DE USERA: Legislacion de hacienda espanola. Impresos Alonso, Fray de Leon, 13 Madrid.

GABRIEL DE USERA: Régimen Fiscal de los beneficios de empresas y participes. Aguilar, S. A. Ediciones, Madrid.

E. J H. VOLKMAARS: Vakstudie, Omzetbelasting, supplement XIII, deel XIX, derde druk. N.V. Uitgevers-Mij. AE. E. Kluwer, Deventer.

M. A. WISSELINK: Liquidatie — winst. Deel I van de Fiscale Monografieën N.V. Uitgevers-Maatschappij AE. E. Kluwer, Deventer.

ARGENTINE: Instituto de Derecho Internacional Revista de Derecho Internacional Y ciencias Diplomaticas. B. Orono 1261, Rosario.

AUSTRALIA: Memorandum from the taxpayers' Association of New South Wales (Inc.). Cathcart House, 11c Castlereagh Street, Sydney, November 1950.

BARBADOS: Schedule of Taxes, Duties, Fees and other Sources of Revenue, Sec. 1.

Income tax act 1921—6 with subsequent amendments up to and including 1950. Advocate Co., Ltd., Barbados.

BELGIQUE: Histoire des Finances Publiques en Belgique. Etablissements Emile Bruylant, Bruxelles, 1950.

De Nieuwe Inkomstenbelastingen Deel 111, Bedrijfsbelasting, No. 59. Documentatie VandeWinckele, 36 Koningin Elisabethlaan, Brugge.

BRAZIL: O Balanço fiscal no direito e na contabilidade. Rio de Janeiro, 1950.

CANADA: Reply of the Govetnment of Canada to the questionnaire on the tax treatment of foreign nationals, Assets and Transactions. Document E/CN. 8/46/Add. 18, 6-12-'50.

FRANCE: Annuaires Français et Listes d'Adresses susceptibles d'Intéresser le Commerce et l'Industrie; Vols 1a, 1b, 11. Bibliothèque de la Chambre de Commerce de Paris, 27, Avenue Friedland, Paris-VIII.
Conseil National du Patronat Français. Le versement forfaitaire sur les salaires, No. 3. Commission de la Fiscalité, 10 Rue d'anjou, Paris VIII, Jan. 19501.
Guide pratique pour souscrire les déclarations d'impôts sur les revenus réalisés en 1950. 20e Année, à jour au 1er février 1951, préparé par le Syndicat national des cadres des contributions directes et du cadastre. 16, Avenue de Châtillon, Paris (14), présenté à ses abonnés par „Impôts et Sociétés", Paris, 1950.
Bibliographie d'études et d'articles sélectionnés Vol. 21, No. 1. Bibliothèque de la Chambre de Commerce de Paris, 16, Rue Chateaubriand, Paris (8e).

GREAT BRITAIN: The Finance Acts of 1948, 1949 and 1950 relating to Profits

Tax and the Profits Tax Act, 1949. First Supplement to the Profits Tax Acts. Taxation Publishing Company Limited London 1950.

HONDURAS: Office consolidation of the Income Tax Ordinance. Government Printer.
Estate Duties Ordinance 1927 amended by the Estate Duty (amendment) Ordinance 1949.

ITALY: Relazione presentata all'assemblea del 28 novembre 1950. Associazione bancaria italiana, Piazza del Gesù, 49, Roma.

JAMAICA: Regulations under Customs Law (Law 34 of 1939). Printed by the Government Printer Duke Street, Kingston 1942.
Reprint of the Customs Tariff of Import and Export Duties and Exemptions from Duty.
Printed by the Government Printer Duke Street, Kingston, 1947.
Annual Report of the Collector General for the year ended 31st March 1949.
Printed by the Government Printer Duke Street, Kingston, 1950.
Received various Tax Laws as: The Stamp Duty Law, The Licence and Registration Duties Law, The Customs Law, 1939. The Legacy Duty Law, The Income Tax Law, The Tax Collection Law, The Quit Rents Law, The Valuation Law, The Property Tax Law and others.

LUXEMBOURG: Reply of the Government of Luxembourg to the questionnaire on the tax treatment of foreign nationals, assets and transactions. Document E/CN. 8/46Add. 17, 6-11-'50.

MEXICO: III Convention Nacional de Causantes; Memorial presentado al Secretario de Hacienda y Crédito Publico. Camara minera de Mexico, Gante 15—436, Mexico, D.F. 4 novembre 1950.

NETHERLANDS: Maandschrift Economie. Tijdschrift voor Algemeen Economische Bedrijfs-Economische en Sociale Vraagstukken. Uitgave. H. Gianotten, Tilburg, 1950.
Vijf en twintigste Jaarverslag. Geschriften van de Vereniging voor Belastingwetenschap, No. 77, N. Samson N.V. 1951.
Besluit op de Inkomstenbelasting. Deel X A der Vakstudie, 7e druk. N.V. Uitgevers-Maatschappij AE. E. Kluwer, Deventer.
Vakstudie — Omzetbelasting, Deel XIX, 3e druk, Supplement XII, 1-12-1950. N.V. Uitgevers-Maatschappij AE. E. Kluwer, Deventer.
Registratiewet 1917. Nederlandsche Staatswetten, Editie Schuurman & Jordens No. 83, 9e druk. N.V. Uitgevers-Maatschappij W. E. J. Tjeenk Willink, Zwolle, 1951.
Het Parlement, 1, Algemene Zaken en Financiën, Nos. 1—11. Landsdrukkerij, Den Haag.
Kluwer's Fiscaal Zakboek, Suppl. I. N.V. Uitgevers-Maatschappij AE. E. Kluwer, Deventer.
Periodiek woordenboek van administratieve en gerechtelijke beslissingen in zake van vermogensbelasting, registratie, zegel, hypotheken, successierecht, kadaster, notariaat, enz. F. J. Belinfante, 's-Gravenhage, 1951.
Verslag van de Mij. tot Financiering van het Nationaal Herstel N.V. over het boekjaar 1950.

NEW ZEALAND: Taxation Tables. 6th edition, October 1950, Financial Publications Ltd., G. P. O. Box 974, Wellington.

PERU: Fenix, Revista de la bibliotheca Nacional. S. A. Jiron, Lampa 277, Lima, 1949.
Memoria al Sr. Ministro de Educacion Publica del Director de la Biblioteca nacional. Lima 1950.

SINGAPORE: Reprint of the income tax ordinance 1947 (No. 39 of 1947) as amended by the income tax (amendment) ordinance, 1948 No. 20 of 1948). Government Publications Bureau, Fullerton building, Singapore,

SPAIN: Estadistica del Comercio Exterior de Espana. Ministerio de Hacienda, Direccion General de aduanas, Madrid.

STRAITS SETTLEMENTS: Estate Duty Ordinance (cap/227).

SWEDEN: Economic conditions and banking problems. A seiies of lectures delivered at the third international banking summer school Saltsjöbaden, Sept. 1950. The Swedish Banks Association.

TRINIDAD: Report of the Economics Committee. Trinidad and Tobago, 1949.

UNION OF SOUTH AFRICA: Act No. 35, 1950 to fix the rates of normal and super income tax in respect of the year of assessment ending the thirtieth day of June, 1950.

UNITED NATIONS: Treaty Series. U.N.O. publication Vol. 41, 43, 46. 1950. Statement of Treaties and International agreements. U.N.O. Publication St/Leg/Ser. A/45, New York.

U.S.A.: Schedule of Par Values. International Monetary Fund, Washington, D.C., 1950.
Municipal Technical Advisory Service. Gerald W. Shah, University of Knoxville, December 1950.
Revenue Administration 1950. Federation of Tax Administrators, 1313 East 60th Street, Chicago 37, Illinois, 1950.
State Taxes on natural Resources. Research Report No. 30. Federation of Tax Administrators, 1313 East 60th Street, Chicago 37, Illinois, January 1951.
Taxation of Public Utility Gross Receipts in Kentucky. Commonwealth of Kentucky Legislative Research Commission, Kentucky January, 1951.

V

UNITED NATIONS FISCAL COMMISSION

Third Session
New York, 7—16 May 1951
DRAFT PROVISIONAL AGENDA

1. Adoption of the Agenda
2. Election of Officers of the Commission
3. International Tax Problems
   a. Taxation of Foreign Business Enterprises.
   Documentation:
   1. „The Effects of Taxation on Foreign Trade and Investment", (February 1950. No. XVI. 1)
   2. „International Aspects of the Taxation of Corporate Profits and Dividends" (Secretariat Study to be distributed).
   3. „Taxation of International Air Transport" (Consultant's study jointly sponsored by the International Civil Aviation Organization and the United Nations; document AT-WP/154; 31 May 1950).

   b. Taxation of Foreign Nationals, Residents, Income, Assets and Transactions.
   Documentation:
   1. Questionnaire (document E/CN. 8/W.19; 1948) and Replies (documents E/CN. 8/46 and Addenda 1-21).
   2. International Agreements for the Avoidance of Double Taxation and Fiscal Evasion
   Volume II, „International Tax Agreements": texts of new agreements, 1948—1950 (to be published)
   Supplement to „International Tax Agreements": „List and Present Status (ratification, effective date, modification, termination, implementing laws and regulations, etc.) of International Tax Agreements, 1843—1950" (to be published)
   3. „International Aspects of the Taxation of Estates and Successions" (Secretariat Study; to be distributed).
   4. „Questionnaire and Replies on Financial Transfers for the Payment of Foreign Taxes on Blocked Income and Assets" (to be distributed)

   c. Unilateral Relief from Double Taxation.
   Item proposed by the International Chamber of Commerce.
   Documentation:
   Statement adopted by the Council of the International Chamber of Commerce (document E/CN. 8/NGO. 2) [1])

4. Government Financial Reporting.
   a. Problems of Comparability
   Documentation:
   „Budgetary Classification Problems" (Secretariat Study, to be published)

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[1]) See p. 113 of this issue.

b. National Accounting and Budgetary Practices
Item proposed by the International Chamber of Commerce
Documentation:
Resolution adopted by the Council of the International Chamber of Commerce (document E/CN. 8/NGO. 1)

5. Public Finance Information Service.
Documentation:
1. Public Finance Information Papers
2. Public Finance Surveys
3. Regional Surveys
4. Joint I.M.F.-U.N. Questionnaire on Periodic Public Finance Data
5. Public Finance Chapter of Statistical Yearbook
6. Revised Trusteeship Questionnaire

6. Government Finance and Economic Development.
Documentation:
„Mobilization of Domestic Capital Through Financial Institutions of the ECAFE Region" (document E/CN. 11/I & T/40).

a. Fiscal Problems and Budgetary Administration
Documentation:
„Problems of Planning and Execution of Programmes of Economic Development in Under-developed Countries"; Report of the Meeting of Experts, Puerto Rico, 15 May to 31 May 1950

b. Methods of Taxation
Documentation:
see under (a) above

7. Profits Taxes and Devaluation of Money.
Item submitted by the International Chamber of Commerce
Documentation:
(to be published as document E/CN. 8/NGO/3/Add.1)

8. Other Business.

INTERNATIONAL CHAMBER OF COMMERCE

74th SESSION OF THE COUNCIL

(January 9th—10th, 1951)

UNILATERAL RELIEF FROM DOUBLE TAXATION

Statement

adopted by the Council.

COMMISSION ON TAXATION

UNILATERAL RELIEF FROM DOUBLE TAXATION

Statement

adopted by the Comission[1])

at its meeting on 18th October, 1950

1. In spite of progress slowly and laboriously made in recent years through bilateral treaties, double taxation remains a dead-weight on the expansion of international trade and investment. Taking the 52 nations who participated in the negotiations for the Havana Charter as being representative of the main bulk of international trade, there are 1,326 possible bilateral treaties, and out of that number only 26 covering income generally have been concluded. At the present rate of progress it will take some twenty years to cover the major part of international investment and some parts will probably never be covered. It is clear, therefore, that speedier action is imperative.

2. Whilst continuing to urge the vital importance of the rapid conclusion of as many bilateral agreements as possible, the International Chamber of Commerce further proposes that each country should forthwith take unilateral action for the relief of double taxation. That is to say, the tax law should be designed to relieve residents of the home tax, or part of it, on income which has been taxed abroad, and to relieve non-residents of the home tax on certain sources of income arising within the country. Such action would remove by far the greater part of the impediment double

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1) Doc. 180/9, published with kind permission of the Netherlands Committee of the International Chamber of Commerce.

taxation places in the way of international private investment. It would leave the negotiation of treaties to the narrower field of completing the relief in particular instances arising out of a foreign tax system.

3. It is sometimes argued that by granting unilateral relief a government would weaken its bargaining position when negotiating bilateral treaties. This is equivalent to saying that the government should continue to discourage investment of capital by its residents in the other country and to hamper the expansion of trade until the other country is prepared to make the necessary concessions. The argument ignores the damage at present being suffered by existing investments, which cannot escape double taxation.

4. It is noted that the United States, which is actively negotiating bilateral treaties, had already provided in its law some thirty years ago for unilateral relief to its citizens in respect of foreign taxes.

5. The United Kingdom which has completed some forty bilateral treaties and has others in negotiation, has recently extended the existing unilateral relief from one-half to three-quarters of the home tax for Commonwealth taxes and granted a new relief of one-half of the home tax in respect of foreign taxes.

6. The broad purpose of the legislation contemplated should be to assure that as far as may be practical income should bear one tax and one tax only, either in the country where the income arises or in the country where the income is received. The final objective need not necessarily be reached at one advance. In accordance with the particular circumstances of each country progress can be made by steps. These steps can either select certain types of income for prior relief or they can relieve an increasing proportion of the home tax for all types of income.

7. To achieve this purpose each country should consider two aspects of its law on the taxation of income, viz. (A) that part of the law by which income is taxed because the income is deemed to originate in the country to the benefit of a non-resident, and (B) that part of the law by which income is taxed because the person who is entitled to the income is a resident in the country. The principles on which both parts of the law should be designed are as follows:

A. *As a country of origin*

8. As a country of origin the country should define the income which is taxable, the extent to which it is taxable, and the rate at which it is taxable in accordance with these rules:

a) Royalties, fees, and capital sums payable to a non-resident for the use of any copyright, patent, design, secret process or formula, trade mark or other like property, or for instruction in the use of such property, are exempt.

b) Interest paid to a non-resident is exempt reciprocally if the country of the non-resident similarly exempts interest payable by its residents to residents of the country of origin.

c) Remuneration of servants of a foreign government for their services to their government is exempt. Pensions and other compensation in respect of past services of that nature are exempt.

d) Foreign income of temporary visitors is exempt, whether such income is remuneration for services rendered on behalf of a non-resident employer or income from foreign investments. A temporary visitor is a person whose main abode is abroad and who is present in the country for less than 183 days in the fiscal year.

e) No profit should be attributed to the mere purchase of goods within the country for export from the country by a non-resident.

f) No profit should be attributed to any business or professional activity within the country unless the non-resident has a permanent establishment within the country, or is present within the country for 183 days or more in the fiscal year without having a permanent establishment.

g) Business and professional profits earned by a permanent establishment within the country should be deemed to arise within the country to the extent shown by the accounts of the permanent establishment drawn up on the basis of independent accounting. That is to say, the accounts should show, and if need be, should be modified for tax purposes to show, the profit, or loss, which would have been realized by an independent enterprise of a similar character.

h) A permanent establishment should be defined to include a branch, management, factory, or other fixed place of business,

but to exclude an agent or employee unless he has and habitually exercises a general authority to negotiate and conclude contracts on behalf of a non-resident or is in possession of a stock of merchandise for the purpose of fulfilling orders and not solely for the purpose of display or sampling. It should exclude the mere conduct of business dealings through an independent commission agent, broker, or custodian acting in the ordinary course of his business. It should exclude a place of business used exclusively for the purchase of goods.

i) A resident person should be defined, in the case of a corporate body, as one whose real centre of management is situated in the country, and in the case of an individual, one whose main place of abode is situated in the country.

j) In so far as income or profits arising within the country to a non-resident person are not exempt under the above rules, these should be taxed at a flat rate of tax which does not take into account any other income arising outside the country. This rate might be the proportion of the income which is adopted as a "standard" rate, or as the rate for a "real" tax on income, or as the rate adopted for corporate bodies, as may be appropriate to the system of taxation in force in the country. Where such rates do not exist, a special rate should be created which is about half-way between the highest and lowest rates in the progressive scale. The non-resident person might, however, be given the option to render a return of his income arising from all sources within the country and be taxed at the same rate and receive the same allowances as a resident person in receipt of that amount of income.

B. *As a country of residence*

9. As a country of residence the country should define the income which is taxable and define the method of taxing the income in such a way that the income arising in a foreign country bears one tax only, either the foreign tax or the home tax. The question whether an income has arisen in a foreign country should be answered according to the country's own legislation, as under 8 above.

10. In so doing, the country of residence can choose one of two alternatives. It may exempt the foreign income from tax and have

regard to the foreign income only for the purpose of fixing the rate of the tax on the home income. Alternatively, it may tax the foreign income but give a credit against the home tax in respect of the foreign tax. Though in several countries the adoption of the tax credit system would be an improvement, it should be stated that the exemption system is far more advisable.

a) *The exemption system.*

11. If the country of residence elects to exempt income accruing to its residents from foreign sources, it should define income from foreign sources in accordance with the same principles as it would adopt in defining the income arising within itself to a non-resident which are enumerated above in Section A. That is to say, it would tax that kind and amount of income arising to its residents from abroad which it exempted when such income arose whithin itself in favour ot a non-resident. It would exempt that kind and amount of income arising to its residents from abroad which it taxed when such income arose within itself in favour of a non-resident. The distinction between home and foreign income, called the tax frontier, would be the same when the country acts as a country of residence as when it acts as a country of origin.

12. The country of residence would levy tax on its residents at the proportion of the total tax which would be payable on his total income from home and foreign sources, if income from foreign sources were not exempt, which the income from home sources bears to his total income.

b) *The tax credit system.*

13. If the country of residence elects to tax income accruing to its residents from foreign sources, it would give a credit against the total of the home taxes levied on that income equal to the total of the foreign taxes levied on that income, limited to the total of the home taxes.

14. The taxable amount of the foreign income for the purpose of the home tax is the net amount of the foreign income after payment of all the foreign taxes plus a sum equal to the foreign tax credit to be made against the home tax.

15. The amount of the foreign taxes to be considered for the

foreign tax credit is the sum of the foreign taxes levied on the income from the moment it first arose, including taxes on the earning of the income, on its retention from distribution, and on its distribution. Taxes paid to a foreign subordinate government should be added to the taxes paid to the central government on the income. Annual taxes calculated by reference to capital which are normally paid out of income should be added to the taxes which are levied on the income itself.

16. The limit to the foreign tax credit is the sum of the home taxes chargeable on the foreign income on the person who first receives the income or for whose benefit it accrues. Annual taxes on capital which are payable out of income should be regarded as income taxes for this purpose.

C. Intermediate country.

17. A country may also be an intermediate country, that is to say, a country to a resident of which income accrues from a foreign country, but the income subsequently passes to a resident of a third country as a beneficiary of a trust or as a member of a corporate body, or as a party to an agreement for the disposal of the income.

18. In that case, when it received the income, its conduct would be governed by the principles applicable to a country of residence. Thereafter no further tax would be levied by it on the re-distribution of the income to the resident of the third country.

19. The International Chamber of Commerce submits this proposed scheme of unilateral action for the relief of double taxation to the earnest consideration of the Fiscal Commission of the United Nations and of the individual governments. A detailed analysis is contained in the attached report of its Commission on Taxation.

COMMISSION ON TAXATION
UNILATERAL RELIEF FROM INTERNATIONAL DOUBLE TAXATION

Report
adopted by the commission
of its meeting on 18th October 1950.[1])

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RESUME

Les mesures unilatérales qui doivent être prises par tout pays désireux de supprimer la double imposition ou d'en atténuer les effets comprendront des dispositions s'appliquant les unes au revenu né sur son territoire et perçu par des non-résidents, les autres au revenu né à l'étranger et perçu par ses résidents.

Pour que le dégrèvement soit complet et conforme au principe idéal: „un revenu-un impôt" il convient de tenir compte de l'impôt sur le revenu perçu à l'étranger, aussi bien par les autorités locales que par le gouvernement central, ainsi que du total des charges fiscales grevant ce revenu lorsque celui-ci est frappé de taxes multiples.

Tout pays sur le territoire duquel naissent des revenus qui seront perçus

1). This report was drafted by Mr. Frank BOWER, C. B. E., Rapporteur of the Commission. Doc. 180/10.

par des non-résidents doit établir une frontière de façon à déterminer quel revenu sera considéré comme né sur son territoire. Il exonérera les services fournis par des non-résidents, qu'il s'agisse d'un apport de compétences industrielles, de prêts ou d'une fonction assumée à titre provisoire. Il définira l'activité commerciale déployée sur son territoire de façon à exclure aussi bien l'achat de marchandises aux fins d'exportation que les bénéfices réalisés sur la vente de marchandises effectuée sur son territoire autrement que par l'intermédiaire d'un établissement stable. Il répartira les bénéfices réalisés par une entreprise exploitée en partie à l'intérieur, en partie au delà de ses frontières, en évaluant le montant des bénéfices que réaliserait une entreprise indépendante dont l'activité se limiterait à celle exercée sur le territoire national. Il se confinera dans ses frontières et se bornera à appliquer aux non-résidents un taux uniforme qui le dispensera de chercher à connaître leur revenu global.

En tant que pays de résidence percevant des impôts sur ses résidents, tout pays peut soit exempter le revenu de source étrangère, soit l'imposer, après avoir accordé un dégrèvement compensateur des impôts acquittés sur ce revenu à l'étranger.

Si ce pays opte pour la méthode qui consiste à exempter le revenu né à l'étranger, il devra adopter à cet effet la même frontière que celle tracée par lui pour déterminer le revenu réalisé sur son territoire par des non-résidents. Pour sauvegarder le principe d'après lequel l'impôt doit être assis en fonction de l'aptitude du contribuable à payer, il taxera les autres revenus réalisés sur son territoire au taux moyen appliqué au revenu global comprenant les revenus nés à l'étranger.

Si ce pays opte pour la méthode de dégrèvement, il devra s'efforcer d'observer le principe général selon lequel il faut éliminer l'impôt le moins élevé des impôts intérieurs et étrangers successifs, y compris les taxes perçues par les autorités locales. Pour ce faire, il lui faut comparer d'une part le revenu qu'il a imposé au revenu imposé à l'étranger, de l'autre les impôts nationaux auxquels est assujetti le bénéficiaire du revenu aux impôts étrangers qui frappent le revenu depuis sa naissance.

La méthode d'exemption permet d'éviter la double imposition d'une façon plus radicale et moins compliquée que la méthode de dégrèvement. Toutefois, c'est à chaque pays en particulier qu'il appartient de choisir la méthode qu'il désire adopter.

REPORT

1. CIRCUMSTANCES GOVERNING THE REQUIRED LEGISLATION

This note attempts to analyse and to define the principles which should be observed by a State which spontaneously initiates legislation for the purpose of avoiding the double taxation of income which accrues to its own residents from foreign sources. This involves consideration also of the principles which should govern the taxation of income which arises within its jurisdiction in favour of non-residents, because its jurisdiction contains a source of income which from the point of view of the nonresident owner is income from a source which is foreign to his own country. The principles should be of general application and therefore should harmonize the taxation at the source of the income with the taxation at the place of receipt of the income, with the broad purpose of ensuring that the income bears one tax only but does not escape taxation in transit from source to receipt.

The legislative action to be taken by the State is assumed to be spontaneous and not to be conditioned by any contract with or reciprocal action by another State. It would be a code of conduct which could be adopted for the sake of benefits expected to arise to the State which adopts it, without ignoring

the fact that the benefits would be greater and the legislation would need to be less guarded if all States were to adopt the same code.

Such legislative action is described for short as unilateral relief of international double taxation.

II. OTHER KINDS OF DOUBLE TAXATION

At the outset it is necessary to refer to two other types of double taxation, in order to clarify the terms which are used. In themselves they are at variance with the broad principle denoted by the expression "one income, one tax", but it would lie somewhat outside the purpose of this note to propose a particular remedy to bring them in closer conformity with that broad principle which would be appropriate in the variety of circumstances.

They are, however, immediately relevant to a study of the relief of international double taxation because they enter into the measure of the total foreign tax or the total home tax on the income which has to be set one against the other for the purpose of calculating the foreign tax credit.

a) *Local double taxation*

This type of double taxation arises when income is taxed by a subordinate taxing authority such as a municipality, province or state, and again by a superior taxing authority such as the central government. The repetition of taxation varies with the form of the constitution, and with the numbers of authorities in the chain which have an independent right to tax income as a means of raising revenue.

Similar problems to those which arise in international double taxation can also arise in this type of repetitive taxation, especially when the territories are states or provinces in a federal form of constitution. They concern conflicts of definitions of sources of income, of allocation of profits, and of residence or domicile. But in most cases these problems have been specifically or tacitly settled, leaving only the feature of cumulative local taxation of income.

While this feature is primarily a domestic question to be settled in accordance with the constitution of the territory, it has an important bearing on the problem of relief of international double taxation. When the country of residence adopts the principle of taxing foreign income and of giving a credit for the foreign taxes levied on the income, it is desirable that all the foreign taxes should be brought into account. At present where credit is given by virtue of a bilateral treaty it is comparatively rare to find the taxes of subordinate taxing authorities included in the credit.

In some countries local taxation has been avoided by the subordinate authorities vacating the field of income taxation and leaving it to the central government. The duplication can also be avoided without depriving the subordinate authority of its taxing powers by the central government permitting the taxpayer to set off the taxes paid to the local authorities against the tax levied by the central government. Either of these methods is a step towards the ideal of "one income, one tax".

b) *Separate entity double taxation*

Many countries tax the same income each time it changes ownership; some tax the same income in the same ownership twice, once to a proportionate tax at a flat rate and again to a progressive personal tax. There are several forms of duplicated taxation and it is not easy to classify them according to principles. It will serve to indicate the types by listing several systems and tracing the income from one company to another in order to note double company taxation, and then from the second company to the shareholder.

It is not intended by this review to imply any criticism of any particular system which may be in force. It is recognized that there may be sound reasons of fiscal policy to support the system in one country which may not

be shared by other countries. The review is intended to be factual in order to see if any common principle is apparent which may be useful in designing a credit for foreign taxes.

ba) In France, the income bears first a profits tax, then on distribution a dividend tax which is deducted from the dividend. The dividend passing to the second company is again taxed to the profits tax but a rebate is allowed in respect of the dividend tax paid. When the income is again declared as dividend by the second company its dividend is charged to the dividend tax unless the company owns at least one-quarter of the shares in the first company. The net dividend after tax is again taxed on the shareholder in his personal taxation on a progressive scale.

bb) In Belgium the income bears a dividend tax when it is distributed by the first company. The net dividend bears profits tax to the extent of one-twentieth on the second company but no dividend tax when distributed by it. The net dividend is taxed on the shareholder in his personal tax on a progressive scale.

bc) In Germany and Holland, the income is taxed on the first company, pays no dividend tax, and is not taxed on the second company if the latter owns at least one quarter of the share capital (In Holland this proportion is often reduced by special decision of the tax authorities). The dividend by the second company is taxed on the shareholder in his personal tax on a progressive scale.

bd) In Norway, Sweden and Finland, the regulation is identical to that in Germany and in Holland, except that the income is not taxed on the second company, irrespective of the amount it owns in the sharecapital of the first company; in Denmark the income is fully taxed on the second company.

be) In U.S.A. the income is taxed on the first company, pays no dividend tax, and is taxed again as to fifteen per cent of it on the second company. The dividend by the second company is taxed on the shareholder in his personal tax on a progressive scale.

bf) In Canada, the income is taxed on the first company, pays no dividend tax, and is not taxed on the second company. The dividend is taxed on the shareholder in his personal tax on a progressive scale but a rebate of 10 % of the income is allowed as a set-off to recognize that the income has been taxed on the company.

bg) In India the income is taxed on the company twice, namely to income tax and supertax. The net dividend paid is notionally increased by the income tax applicable to it, and the gross sum is again taxed to super-tax on the second company but not to income tax. The dividend paid by the second company, also increased by the income tax applicable to it, is taxed to super-tax on the shareholder on a progressive scale but not to income tax. If the shareholder's income is small he can claim repayment of all or part of the income tax.

This system is a mixture of the two ideas. The income tax is paid once only by the first company and the income is deemed thereafter to be exempt from income tax, but the income, before deducting income tax, is charged anew to supertax each time it changes hands.

bh) In South Africa the income is charged to income tax on the first company, and is not charged on the second company, if both are public companies. If both companies are private companies no tax is charged on either but the income is apportioned to the shareholder and there taxed to income tax and super-tax both on progressive scales. If the first company is a private company and the second a public company, no tax is levied on the first company but the income is taxed on the second company. The net dividend paid by the second company is not charged to income tax on the shareholder but is charged to super-tax on a progressive scale.

bi) In New Zealand the profits are taxed on the first company at a high rate of tax and thereafter they are disregarded for tax. There is no dividend tax; the second company excludes the dividend from its taxable income; the shareholder excludes the dividend from his taxable income and cannot claim any repayment if his income is small.
bj) In the United Kingdom the income is charged twice on the company, once to Profits Tax and again to Income Tax. The income is not charged again on the second company. The net dividend paid by the second company is increased by the Income Tax applicable to it and is taxed on the shareholder to super tax but not to income tax. If the shareholder is not liable to pay the full rate of income tax because his income is small, the income tax (or part of it) paid by the company is repaid to him.
bk) In most of the British Colonies the system is the same as in the United Kingdom except that there is no Profits Tax.

From the foregoing typical examples it appears that they are variations on two entirely separate ideas. One is to tax the income again each time it changes hands on a sum reduced by the tax previously paid on it. The other is to tax the income once only, at the personal rate of tax applicable to the shareholder, although usually a provisional payment may be levied at the point where the income is first earned.

In many countries the non-resident shareholder is taxed at a special rate because his personal rate is unknown, but this variation does not affect the principle.

In addition to taxes on the earning of income and on its distribution there are taxes levied because the income is not distributed. In some cases the undistributed profits tax is repaid or set-off against other taxes when the income is distributed at a later date. In other cases (and these are the usual) no rebate is given for subsequent distribution.

In considering relief from international taxation it would be wrong to take account only of the last tax levied on the income before it passes the frontier on its journey out, or only the first tax charged on its journey in, when there may be a series of taxes previously paid on the income. Whatever the tax system may be in any country, there can be no complete relief from international double taxation unless all the taxes borne on the income are taken into account in fixing the amount of the foreign tax credit.

III. DUALITY OF THE FIELD FOR RELIEVING ACTION

Since international double taxation is caused by the country of origin and the country of residence of the recipient of the income both levying tax on the same income, relief from such double taxation can be given by either of those countries taking some action. A definition of the principles to be followed in granting unilateral relief can therefore be divided into two parts to begin with, namely action by the country of origin and action by the country of receipt (i.e. residence). One could consider the appropriate treatment of a sum of income in the country of origin in order to define the principles which should govern that treatment and then go on to consider the treatment of that income in the country of receipt in order to define the principles appropriate to that treatment, with the tacit assumption that the income had been previously dealt with in the country of origin in accordance with the defined principles.

The subject can also be approached from the standpoint that since international investment is, or may be, a two-way traffic, one country may be both a country of origin of income accruing to non-residents and also a country of receipt of income accruing to its residents from foreign sources.

Since the type of relief here considered is unilateral relief, it would be more prudent to adopt the latter standpoint. Unilateral relief pre-supposes action by one country only, without any exchange of information with any

second country, without any reciprocal action by any other country, and with only tho resources for obtaining information and for enforcement of taxes which its own laws give it. The principles on which unilateral relief should be given have largely been pre-determined by the original studies of relief of double taxation generally and by the precedents of bilateral treaties in particular. It is therefore necessary to adopt almost a standpoint of insularity in order to avoid assuming that something which is workable on a bilateral basis will also prove to be workable by unilateral action.

The suject still falls into the same two parts but with a slight difference of emphasis. Consideration can first be given to the treatment to be given by a country to income accruing within its jurisdiction to non-residents. That involves defining its tax frontier and keeping inside it; the question of giving relief from double taxation is practically absent here, except that the adoption of a code of good neighbourly conduct would facilitate similar action by other countries from which income arises to its residents.

Next in order comes the treatment of income accruing to its residents from foreign sources. Here the obligation to provide relief arises directly. The country can choose either of two widely different courses, namely, either it can exempt such income from its own taxes, or it can tax such income and give credit against its own taxes for the taxes paid abroad on that income

IV. ACTION AS A COUNTRY OF ORIGIN

The country of origin can contribute by unilateral action to the relief of double taxation in four distinguishable ways, first by selecting and exempting types of income in respect of which its claim to economic allegiance is weaker than that of the country of residence, second by defining its share in the allocation of income which arises partly within and partly outside its borders, third by avoiding extra-territorial taxation, and fourth by confining its tax to a flat rate proportionate tax on the income of non-residents:

a). *Exemption of services provided by non-residents*

In the first class there should be exempted royalties and fees for the use of any copyright patent, design, secret process or formula or other like property or for instruction in the use of such property because they are remuneration for the use of the fruit of expenditure on discovery and publicity in the country of residence.

As regards interest on borrowed moneys, the general rule should be to exempt interest paid to non-residents on the footing that the source of the income is at the place of residence of the creditor. But this rule cannot be admitted without exception in all cases because it would permit of the financing of business enterprises owned by non-residents by means of loans where share capital would be more appropriate. The country of origin can reasonably pay regard to the laws in force in the country of residence of the creditor and withhold exemption unless those laws grant similar exemption to interest payable to non-resident creditors.

Remuneration of foreign government servants and the remuneration and other foreign income of temporary visitors are not proper subjects for tax by the country visited.

Practically all other types of income are proper subjects for taxation by the country of origin, although it may refrain from taxing some on administrative or policy grounds such as profits on dealings by non- residents on recognized exchanges which are international markets, the remunerations of visiting teachers and the maintenance payments of students.

b). *Allocation of business income*

Under the second head it would be proper to tax something less than the entire difference between the cost of production and the sale proceeds of

imported goods and to admit that part of the profit had arisen outside the country. The ascertainment of the proportion of the profit which is deemed to arise in the importing country can be ascertained by any of the alternative methods outlined in the Model Convention for the allocation of business profits drafted by the League of Nations, but as a practical measure in the absence of exchange of information with the exporting country, the method most appropriate to unilateral action would be an estimate of the profit which would be earned by an importing enterprise purchasing at arm's length from the non-resident.

c) *Definitions*

Under the third head the definition of "income", of "doing business" in the country as distinct from with the country, of "agency" and "representation", of "purchasing", and of "an establishment", of "residence" and of "domicile", should be drawn with regard to equitable principles which the country would wish to see applied to its residents if they had foreign interests, seeing that it is pledged to relieve its own residents in respect of income taxed abroad. To go beyond these principles in defining its own taxing legislation would be to impose extra-territorial taxation by means of faulty definitions.

d) *Rate of tax*

Under the fourth head, as a country of origin it should not endeavour to enforce a personal tax on non-residents by applying an ascending scale of taxation by reference to total income, both because that is administratively unworkable and because, as a country of origin, it has no equitable claim to consider income arising to the non-resident from sources outside its territory even for the purpose of fixing the rate of tax to apply to income arising from its own territory. Assuming that the income has been classified for taxation or exemption as under a) above, and that, if taxable, it has been quantified equitably as under b) above, it should be taxed at a flat rate which is equal to about the middle rate of tax levied on residents, or at the rate of the proportionate tax for that type of income, if such a rate is prescribed by the existing system.

V. ACTION AS A COUNTRY OF RESIDENCE

There are two methods by which the country of residence can relieve double taxation. It can exempt from the home tax all income which arises and which has been taxed abroad. Alternatively, it can tax the income and give a credit against its home tax for the foreign taxes which have been levied on the income.

If the measure and definition of income were parallel in the country of origin and in the country of residence, and if the rate of tax abroad were equal to or higher than the rate of tax in the country of residence, the two bases produce the same result, namely that there is no tax to levy in the country of residence.

The two methods are materially different in their consequences:

A. *The system of exemption for foreign income*

1. Definition of the tax frontier:

The first consequence of a decision to exempt foreign income from the home tax is the need to define what income is deemed to arise from home sources and what income from foreign sources. That is to say, the tax frontier must be defined.

This task, however, will have been done in defining, as indicated above in § IV, the frontier for non-residents who are entitled to income which arises from sources within the country. Incomes of the types which (under IV. a) above) are regarded as foreign when they accrue to a non-resident would

be regarded as taxable when they accrue to a resident from a foreign country, namely income from royalties for the use of industrial property, interest on money lent, temporary employment abroad, remuneration of government employees working abroad, and government pensions.

Business income which is apportionable (under IV.b) above) because the business is carried on partly at home and partly abroad would be apportioned by reference to the profit which an independent enterprise would earn if it conducted that part of the business inside the country. The other part of the income would be income from a foreign source.

2. Effect on the rate of tax on income from home sources:

The second consequence of adopting the exemption system for foreign income is the need to decide whether the existence of the foreign income should influence the rate of tax levied on income from home sources of the same taxpayer when the system embodies a progressive rate of tax on total income. For the purpose of fixing the rate of tax on home income, the foreign income can be regarded either as the last bracket of the total income (which is the same as ignoring it), or as the first part, (in which case the home income bears the highest rate of tax), or as being spread over all the income. It is necessary to preserve as far as possible the principle of taxing according to ability to pay. The foreign income has borne foreign taxes and the principle must recognize this. It would be consistent with the principle of taxing income from home sources accruing to a non-resident at a middle rate (under IV d) above) to adopt the third assumption which partitions the total income vertically instead of horizontally. By this method the home income would be aggregated with the foreign income (less foreign tax) and the home tax would be calculated on the total income. The resultant tax would then be divided in the proportion which the home income bore to the total income to find the tax payable on the home income.

3. Beneficiaries of the exemption:

The third decision to be made is which person should benefit by the exemption of the foreign income. The answer would appear to be at first sight the person who is entitled to the income. But it was noted above under the heading of separate entity double taxation that income can suffer more than one tax as it changes ownership.

It was observed that there are two conflicting principles present in existing systems of taxation. One is to tax the income again each time it changes hands on a sum reduced by the tax previously paid on it. If the foreign income is exempted in the hands of the first recipient in the country of receipt, say in the hands of a company, the next recipient, the shareholder, will receive a greater sum than if the foreign income had been taxed. The shareholder will automatically pay more tax on that greater sum. That is the normal working of the separate entity double taxation system and there is no method of avoiding this result.

The other principle present in existing systems of taxation is to tax the income once only and to regard that income as having been definitely taxed in the hands of later recipients. To apply this principle to foreign income which has been exempted would involve preserving the exemption. The method of doing this would require to be fashioned to fit the existing system of taxation, but is is possible to carry out the principle by regarding the income as having been definitely taxed to the standard or proportionate tax; but liable to super-tax, or to the general personal tax so far as it exceeds the proportionate tax.

B. *The tax credit system*

1. The broad principle:

The principle of the tax credit system is that the country of residence taxes all income accruing to its residents wherever that income arises and

then reduces its tax on the income from foreign sources by granting a foreign tax credit which is equal to the lower of the home tax or the foreign tax. It leaves the taxpayer to bear any excess of the foreign rate of tax on that income over the average rate of the home tax, but treats such unrelieved foreign tax as a deduction from the taxable income.

The statement of the principle of the tax credit method furnishes the criterion which should govern the machinery of granting the relief and by reference to which the adequacy of the relieving provisions can be judged. Anything which falls short of this is a mark of failure to be set against the tax credit system compared with the exemption system. If a tax administration selects the tax credit system in preference to the exemption system, the onus lies on it to solve the technical problems which follow from the choice and to devise the methods which are appropriate to its own tax system so as to make the relief complete.

2. Implied limitation of the tax credit:

It should be recalled that unilateral action may involve a limitation of relief which can only be removed by negotiating a treaty. Regard must be paid to the tax treatment which has been given to the income by the country of origin. If the taxes levied there can be considered to be extra-territorial or discriminatory in any of the methods mentioned above under the heading of action as a country of origin, it would be difficult to expect the country of residence to acquiesce in this and to bear the extra tax by allowing its residents to reduce their taxes by that amount. If it were acting unilaterally it would not undertake to give unlimited credit for foreign taxes which it believed to be discriminatory or extra-territorial. The tax authority of the country of residence would give credit for those foreign taxes which it considered to be reasonable, using its own practice for the interpreation of the word "reasonable".

3. Correlation of the foreign with the home taxes:

It is more difficult to ensure complete relief from double taxation by means of the tax credit system than by the exemption system because of the need to correlate the foreign taxes with the home taxes. Some of the consequential problems which arise from a decision to follow the tax credit system are examined below.

The problem is to relate the foreign taxes to the home taxes in such a way as to give a complete set-off, until the home tax is completely extinguished by set off if the foreign taxes are greater, or until the foreign tax is extinguished if it is less than the home tax.

The comparison falls into four parts: First, the definition and measurement of the income; second the relation of the foreign tax to the home tax as regards time; third, the rate of the home tax on that income; and fourth, the rate of the foreign tax on that income.

a) Definition and measurement of the income

It would be a rare, in fact almost an impossible thing for the definition and measurement of income which has been adopted for the assessing of the foreign tax, to coincide with the definition and measurement of income adopted for the assessing of the home tax. Therefore a choice must be made between them and inevitably the home definition and measurement which has been adopted for the purpose of assessing the income must be used for the purpose of calculating the relief.

If the comparison of income were carried out in great detail the relief could be substantially reduced. If certain expenses were disallowed in the foreign computation of income but allowed in the home computation, such expenses could be excluded from relief. Also, if certain expenses were allowed in the foreign computation and disallowed in the home computation, those expenses could similarly be excluded from relief in that year. This would result in the relief being confined to those items of income which had been

taxed in both computations by being included in the profits for the same basis period for assessment. But if regard were paid to more than one year it would be demonstrable that some items, e.g. depreciation of fixed assets which did not coincide in that one year did coincide over a greater period, e.g. the life of the asset. Merely on practicable grounds it is preferable to avoid meticulous comparison of the computation of the assessment of the foreign tax with the computation of the assessment for the home tax, but if regard is to be paid to the overriding principle mentioned above such meticulous comparison is quite vetoed.

Differences in the method of computing the income for the purpose of assessing taxes on the income should be ignored. The only requirement is to identify the source of income as a whole without regard to its composition.

b) The relation of the foreign and the home tax to the income

The next point to consider is the comparison of the foreign taxes and the home taxes. Taxes are normally levied annually. The bases can vary. The tax may be levied on the actual profit after the close of the year (with or without a provisional payment on account) or it may be levied on a notional profit based on the profits of the preceding one year, or of an average of years. The basis period of the foreign tax may differ from the basis period for the home tax.

Whatever the basis of assessment may be it is usually possible to indentify the accounting period of the business or the fiscal year of the income, and from this to trace the foreign taxes which have been or will be levied on the profit of that period. Having fixed this side of the comparison then the home tax on that income can be established whether the tax falls in the same assessment year as the foreign tax or in another year.

Where there are taxes on distribution a particular difficulty of timing arises which can lead to a re-opening of foreign tax credits which have been admitted and settled.

The foreign tax on the earning of the profit, and the foreign tax (if any) on the retention of the profit from distribution usually become due at the same time. The foreign tax on distribution, however, arises at a later date, either in the following year or even many years later, possibly not until the liquidation of the company. Nevertheless that tax needs to be related to the income which is taxed in the home country for the purpose of the foreign tax credit.

Where the foreign income has been taxed directly on the home resident, as in the case of a branch of a business, and the home assessment is also based on accrued profits, the initial foreign tax credit would be calculated without reference to foreign distribution taxes. A subsequent foreign tax on distribution would logically require a revision of the foreign tax credit in a case where the home tax was not fully discharged by the original credit. To avoid the practical difficulty of making this adjustment after the lapse of a long period of time, the distribution tax could be credited against the tax on the income earned in the year when the distribution tax is imposed.

Where the home tax is levied on the amount of the foreign income declared or remitted, the levy of the foreign distribution tax coincides in time with the levy of the home tax on the income. It is necessary then to ascertain the rate of foreign tax which was levied on the profits when they were earned in a prior period in order to include that tax in the calculation of the foreign tax credit.

As with foreign taxes, so with home taxes there can be a first levy on the earning and retention of income from distribution and then a later levy when the income is distributed. The timing of the foreign taxes will not coincide with the timing of the home taxes because the foreign distribution tax attaches to the foreign profits earned by means of a branch or subsidiary company, whereas the home distribution tax attaches to the distribution of

the profits of the entire undertaking or of the immediate home parent company For instance, the distribution of bonus shares by a foreign subsidiary may give rise to a foreign tax at the moment of distribution, but there may be no home tax on the receipt of the bonus shares. On the other hand, there may be a home tax on the subsequent capitalisation by the parent company of the profits represented by the bonus shares received or, alternatively, on the liquidation or reduction of capital of the parent company.

The only guiding principle to follow is to attach the tax to the profits because the profits are the one consistent link in the variety of possible assessments.

c) The rate of foreign tax

To produce a result which can be said to be at all comparable with the exemption of income from foreign sources, no foreign tax can be omitted from the aggregation of foreign taxes which is to be compared with the aggregate of the home taxes for the purpose of calculating the foreign tax credit. All types of taxes should be aggregated. This works both in the direction of adding different types of taxes levied on the income by the same authority, and also in the direction of adding taxes on the same income which have been levied by other taxing authorities.

The only complete way to compute the rate is to commence with one hundred units of income before any tax and then to trace the incidence of each tax in sequence which falls upon the income in the course of its passage to the frontier of the country of residence. Annual taxes on capital should be turned into terms of a percentage of income by dividing the capital tax by the amount of the income remaining at that point in the sequence. This addition of the different types of taxes by different authorities will automatically take care of the cumulative effect of local double taxation.

It remains to add into the summation the separate entity double taxation. So long as there is a substantial participation in the foreign corporate body it is possible to trace the income back to the first company in the chain and to calculate the total of the cascade of taxes on the income as it passes through the chain. Where the participation is a minor holding it is not possible to get the necessary information and although in theory the investigation should trace the income through to the first body which earned it, practical considerations suggest that the enquiry should not go beyond a minority holding. The income from the minority holding should be deemed to have borne one earnings tax only before passing into the possession of the company in which the majority holding is owned.

d) The rate of the home tax

In the same manner as the rate of the foreign tax is calculated so the rate of the home tax should be calculated by ascertaining the sum of the different types of taxes which fall upon the income at home. Commencing with a hundred units of income before tax, the percentage of each tax in sequence should be worked out on the reducing balance of income if necessary but by reference to the income before tax. Annual capital taxes should be converted into income taxes by dividing the tax payable before foreign tax credit by the income remaining at that point on the sequence of taxation.

The home taxes to be considered for relief do not, however, go beyond the taxes borne by the first recipient of the income in the home country. It is not practicable to bring into account taxes which may be imposed later on a subsequent recipient of the income.

e) The beneficiary of the foreign tax credit.

The person whose home taxes should be reduced by the credit for foreign tax is the first beneficiary of the income in the country of residence, because whatever other beneficiaries may have rights to participate in that person's income by virtue of shareholding or contract, it is that person's income which has first been reduced by the imposition of foreign taxes.

The question then arises whether that person should in some way pass on the benefit of the foreign tax credit by way of a reduction of the tax on the income of the person next in benefit. A shareholder in the equity of a corporate body participates in the benefit which the corporate body gets by virtue of the foreign tax credit and can expect in due course to receive larger dividends of profits.

The question of whether the grant of a foreign tax credit to the first recipient of the income should affect the taxation of persons next entitled to receive that income, is similar to the question discussed under § V. 3. regarding the effect of exempting the foreign income. The answer is the same.

In systems where income is taxed anew each time it changes ownership, (the separate entity double taxation principle) there is no way of avoiding taxing the new recipient on the increased income he receives as a result of the first recipient obtaining a foreign tax credit.

In systems where income is taxed once only the benefit of the foreign tax credit can be preserved to the next recipient by regarding the increased income as having been definitely taxed to the standard or proportionate rate of tax on the income but as being liable to super-tax or to the general personal tax so far as it exceeds the standard or proportionate tax.

C. Comparison of the exemption with the tax credit system

As a method of relieving double taxation the exemption system is superior to the tax credit system.

It is more complete. It obviates the difficulties of comparing the income taxed abroad with the income taxed at home and the difficulties of comparing the aggregate of the foreign taxed levied on the income with the aggregate of the home taxes charged on the income in the hands of the first recipient. It avoids the need to examine how the income from foreign sources has been treated in the foreign country.

The exemption system has not found general acceptance because the tax legislators aimed primarily at taxing all income accruing to their residents and were not impressed by the fact that the income had already been taxed. The absolute need for relief has not been admitted if it affected the immediate yield of the home tax, and even when the need for relief has been admitted in principle, it has been given grudgingly. The tax credit method affords a means of giving partial relief whereas the exemption method is complete. The tax credit method only appears to eliminate the lower of the two taxes and to preserve the principle of taxing according to the ability to pay. Unless it is complete, which it very rarely is, it fails to do this. If the foreign rate of tax is higher than the home rate the tax credit system actually offends the principle of taxing according to ability to pay.

Provided that the rate of tax on other income arising from home sources is raised so as to acknowledge the existence of the income from foreign sources and to avoid obtaining reliefs for low income by having the total income divided between home and abroad, the exemption system is superior on all counts to the tax credit system. A method of raising the rate is suggested in § V.2. above.

But a conclusion that the exemption system is better than the tax credit system can only be incidental to a study of the principles of granting relief from double taxation by unilateral action. The principles should be defined for both systems, leaving the choice of the alternative systems to the legislature of the country concerned.

VI. ACTION AS AN INTERMEDIATE COUNTRY

It is possible for a country to be intermediate between the country of origin and the country of ultimate residence in the sense that income arises

abroad to a resident in the country but that resident distributes the income to a beneficiary resident in another foreign country. For example, a company resident in country B may do bussiness in country A but be owned by shareholders in country C. If country B is desirous of initiating unilateral legislation to avoid double taxation it would need to pay regard to the fact that the foreign income accrues to its resident company but does not stay within the country but passes in due course to country C.

In these circumstances country B can adopt either the exemption system or the tax credit system.

If country B adopts the exemption system it would not tax the income arising in country A whether received in isolation or together with income from sources within country B. The income would pass to the shareholders in country C undiminished by taxes of country B.

If country B adopts the tax credit system it would tax the income accruing from country A and give credit for the taxes paid in country A on that income. If the taxes of country B are not greater than the taxes of country A there would be no tax payable in country B and the income would pass in due course to the shareholders in country C undiminished by taxes of country B. If the taxes of country B are greater than the taxes of country A the foreign tax credit given against the tax of country B would not completely cancel the taxes of country B. The income of the shareholder in country C would be reduced by the residue of taxes left payable in country B. In that event, it is reasonable to expect that in due course the company in country B would be liquidated and a new company be created in country A in order to escape the tax of country B.

BRITISH ROYAL COMMISSION ON THE TAXATION OF PROFITS AND INCOME

Heads of Evidence [1])

For the guidance of intending witnesses, the Royal Commission on the Taxation of Profits and Income have drawn up the following list of the main heads under which they will be pleased to receive evidence. Witnesses who propose to put in evidence covering a number of matters will help the Commission if they will, so far as possible, arrange their evidence unde the heads set out.

Evidence supplied to either of the two committees presided over by Mr. J. MILLARD TUCKER, K.C., will be available to the Commission and need not be repeated.

A. *General Social and Economic Questions*

1. Is the present system of taxation satisfactory, or could it be improved, in relation to:

(*a*) incentives,
(*b*) risk bearing,
(*c*) encouraging savings,
(*d*) the control of inflationary or deflationary tendencies,
(*e*) the balance of payments, including the inflow and outflow to and from this country of capital for investment,
(*f*) its effect on the distribution of personal incomes,
(*g*) other economic and social objectives?

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[1]) Reprinted from *"The Accountant" of January 27th, 1951.*

These questions can be considered in relation to the taxation of:
(i) salaries and wages (P.A.Y.E.),
(ii) profits of businesses and self-employments,
(iii) dividends and other sources of income.

2. Would it be advantageous to link income-tax with social security payments and contributions?

3. Is the present treatment of companies for taxation purposes satisfactory or should it be altered?

B. Particular Matters

4. Is the taxation net drawn too widely or too narrowly in relation to:
(*a*) the taxation of United Kingdom residents (companies or individuals) on overseas profits;
(*b*) the taxation of non-residents on United Kingdom profits;
(*c*) the definition of residence etc?

5. (*a*) Are there any kinds of profits or income which are not charged but should be; or wich are charged buth should not be? In particular:
(*b*) Is the present distinction between profits liable to charge and those not liable to charge as being capital profits satisfactory?

6. Is the basis of computing income from property under Schedules A and B satisfactory?

7. Should the present rules about deductions for outgoings and expenses be altered?

8. Are the provisions for relief in respect of double taxation satisfactory?

9. Should the present system of graduation by means of the exemption limit, personal allowances, reduced-rate relief and sur-tax be altered?

10. Should the existing differentiation between earned and unearned income be extended or reduced?

11. Are alterations necessary in the rules governing personal and other allowances?

12. Should the rules about the taxation of husband and wife be altered: (*a*) as regards aggregation; (*b*) in any other respect?

13. Should P.A.Y.E. be altered or abolished?

14. Should the principle of deduction at source be extended or restricted?

15. Should the method of assessment to sur-tax be altered, and in particular should it be deducted from salaries?

16. Are any alterations desirable in the system of administration and the functions of the various statutory bodies or persons connected with taxation?

17. Are any changes in the provisions against avoidance and evasion desirable?

18. Is any alteration necessary in the rules governing the taxation treatment of special classes of taxpayers (e.g. public corporations, co-operative societies, charities)?

The list is not necessarily exhaustive and witnesses may put in evidence on questions not specifically mentioned, provided that they fall within the Commission's terms of reference, which are as follows:

"To inquire into the present system of taxation of profits and income, including its incidence and effects, with particular reference to the taxation of salaries and wages: to consider whether for the purposes of the national economy the present system is the best way of raising the required revenue from the taxation of profits and income, due regard being paid to the points of view of the taxpayer and of the Exchequer; to consider the present system of personal allowances, reliefs and rates of tax as a means of distri-

buting the tax burden fairly among the individual members of the community; and to make recommendations consistent with maintaining the same total yield of the existing duties in relation to the national income."

It is hoped that written evidence on matters falling under A (that is, on questions 1 to 3) will be sent in as soon as possible and in no case later than May 15th, 1951. Written evidence on matters falling under B (that is, on questions 4 to 18) should be sent in by December 1st, 1951.

All communications should be sent to Mr E. R. BROOKES, Royal Commission on the Taxation of Profits and Income, New Wing, Somerset House, London, WC2.

VI

DICTIONARY OF FISCAL LAW
DICTIONNAIRE DE DROIT FISCAL

La Rédaction du Bulletin s'est adressé à quelques experts pour leur demander leur collaboration au dictionnaire sous sa nouvelle forme. Pour donner aux lecteurs une idée du nouveau projet, nous reproduisons ci-après une partie de la lettre que le Rédaction a écrite à ces experts.

Vous saurez sans doute que dans les quatre premières années de sa parution, le ,,Bulletin de Documentation Fiscale Internationale'' a publié un ,,Dictionnaire de Droit fiscal'', reproduisant une liste de termes techniques en quatre langues: Anglais, Français, Allemand et Néerlandais.

Après avoir procédé à la composition de ce Dictionnaire pendant quatre années, la Rédaction du Bulletin s'est décidée à lui donner dorénavant une plus grande extension et une nouvelle forme.

En composant ce Dictionnaire, nous nous sommes heurtés constamment à des difficultés dues à différentes causes. Nous pouvons citer entre autres: les nuances quant à la signification linguistique, les différences dans les conceptions juridiques et économiques, et la différence dans les systèmes fiscaux des divers pays.

Jusqu'à présent, les termes dans les quatre langues étaient placés les uns à côté des autres horizontalement. On a cependant constaté que ce n'était pas suffisant et que cela pouvait même produire des confusions par suite des multiples significations que peuvent avoir certains termes. C'est pour cette raison que la Rédaction a recherché une solution dont j'ai le plaisir de vous donner un schéma ci-dessous.

Pour réaliser ce schéma, il faut absolument que l'on agisse de concert avec quelques experts par excellence d'un certain nombre de pays et qui soient disposés à assurer leur collaboration à ce travail scientifique.

La composition d'un Dictionnaire doit rester le point de départ, et il s'agira alors de placer les uns à côté des autres les termes équivalents. Quant à cela, on peut travailler sur le même pied qu'auparavant, c'est-à-dire continuer de ranger chaque terme par langue et alphabétiquement, tout en le munissant d'un numéro. Ensuite les termes sont rangés par numéro et par langue, pour faciliter les recherches.

Comme cette façon de procéder donne lieu à des ,,traductions'' qui ne sont pas tout à fait justes, on a cherché une méthode propre à éclaircir chaque terme dans le cadre d'une pensée encyclopédique. On trouvera dans l'annexe quelques exemples de cette manière de procéder.

Cette méthode donne un caractère encyclopédique à la publication d'un Dictionnaire et procure en même temps une encyclopédie de droit fiscal comparé. Cela deviendra un travail de grande envergure, mais à mon avis d'une trés grande importance pour le développement des sciences fiscales, parce qu'il crée la possibilité d'approfondir un grand nombre de questions.

En travaillant à ces éclaircissements encyclopédiques, on constatera en même temps, que quelques-uns des termes signalés ne sont pas tout à fait justes en soi, entre autres parce que la signification diffère dans les divers pays où l'on parle la même langue. La mise au point permettra d'y apporter les corrections nécessaires.

Afin d'exécuter le travail avec le plus de précision possible, la Rédaction

a l'intention, pour les quatre langues, de s'assurer des collaborateurs dans les pays suivants:

Anglais: L'Angleterre et l'Amérique
Français: La France, la Belgique et la Suisse
Allemand: L'Allemagne et la Suisse
Néerlandais: Les Pays-Bas et la Belgique

En outre, il est désirable de s'adresser également à l'Espagne et à l'Italie, et on invitera pour cela des collaborateurs d'Espagne, du Mexique, de l'Argentine et de l'Italie.

Les collaborateurs devront avoir des connaissances approfondies du droit fiscal tant au point de vue juridique qu'au point de vue économique. Par la nature des choses, il est désirable mais pas absolument indispensble qu' ils soient au courant de la législation fiscale des autres pays. La Rédaction se propose notamment de rassembler en un tout les notes qu'elle espère recevoir des collaborateurs, ce qui lui permettra d'établir le rapport qui existe entre les différents termes. Cet ensemble, formulé en anglais, constituera la partie encyclopédique.

Voici comment je me propose de procéder:

1. La liste établie dans les quatre années écoulées doit servir de point de depart.
2. Afin d'arriver à former un tout qui soit aussi systématique que possible, je voudrais reproduire les termes se rapportant au même sujet, c'est-à-dire placer l'un à côté de l'autre, dans l'ordre numérique, le plus de termes possible en rapport avec le même sujet.
3. Les termes qui figurent sur la liste cumulative ci-jointe, seraient alors munis d'un nouveau numéro.
4. Dans chaque numéro du Bulletin, je voudrais reproduire de 20 à 30 termes avec commentaires.
5. Ces termes vous seraient adressés avec prière de les munir de quelques *très courtes annotations*. La Rédaction réunirait toutes les annotations et les soumettrait à votre jugement avant de les publier.

Il me serait agréable de recevoir une réponse aux 12 questions qui se trouvent au verso de la présente, et qui ont rapport aux termes reproduits.

Questions:

1. D'après la conception générale, le terme a-t-il la même signification dans toute la législation fiscale? Si oui, laquelle? Si non, voir question 6.
2. Trouve-t-on des conceptions divergentes dans les décisions administratives, la jurisprudence ou les publications fiscales? Si oui, lesquelles? et sur quoi sont basées ces divergences d'opinion?
3. La signification donnée au terme — soit celle qui est généralement répandue soit celle qui offre une divergence — est-elle influencée par la signification du terme corresponant dans le *droit civil*?
4. ou bien cherche-t-on plus un rapport avec l'usage général?
5. ou bien tâche-t-on de rester en accord avec la terminologie en usage dans l'économie et spécialement aussi dans la technologie économique?
6. Le terme n'a-t-il pas la même signification dans tout le droit fiscal? Pour quels impôts et dans quelles circonstances le terme prend-il une signification spéciale? Quelle est alors la signification du terme pour *chaque sorte* d'impôt (ou subdivision)?
7. A quoi faut-il attribuer la divergence constatée dans 6? L'a-t-on introduite expressément dans la loi ou bien est-ce la jurisprudence qui l'a fait naître?
8. En rapport avec cette divergence, mêmes questions que sous 3
9. " " " " " " " " " " 4
10. " " " " " " " " " " 5

11. Pour votre propre langue, y-a-il des différences à signaler, par exemple entre la France, la Belgique et la Suisse, ou entre l'Angleterre et l'Amérique, ou entre l'Allemagne et la Suisse, etc.? Dans ces cas, l'enquête n'a pas lieu seulement *par langue*, mais au besoin *par pays*.
12. En ce qui concerne votre propre langue, les termes mentionnés ci-dessus sont-ils justes? Pouvez-vous en outre indiquer si — et dans l'affirmative à quel point — le terme correspondant d'une autre langue reproduit dans le Dictionnaire, peut être considéré comme juste ou non?

I

THE CANONS OF TAXATION AND THE JAPANESE TAX REFORM OF 1950—51 [1])

by

Dr. HENRY LUDMER,
Univ. of Toledo, USA

Honorable Faculty, Ladies and Gentlemen:

I am grateful to the University of Kyushu for giving me this opportunity to make a progress report on the Principles of Taxation and the Japanese Tax Reform of 1950-51.

That sublect is of particular interest to the Japanese taxpayer and to me who studied the new tax system for some time and also published two studies on the old Japanese tax system (see "Japan's Financial Authorities and Tax Structure" in the Bulletin of the National Tax Association, Chicago, Volume 31, May, 1946, and "Japan's Tax Structure" in the Bulletin for International Fiscal Documentation, Amsterdam, Volume 1/7, July, 1947).

On the basis of the Shoup Reports and the advice of the Internal Revenue Division, ESS, GHQ, SCAP, the Japanese Government started a tax reform of great magnitude last year. Since 31 March 1950, 21 tax laws were enacted (see Appendix A) supplemented by hundreds of cabinet orders, tax ordinances, regulations, rules and rulings. Other tax laws are still in the Diet. Since 5 September 1950, the chiefs of Taxation Division and Finance Division are authorised to issue tax instructions in a series separate from those of the Chief Executive and Chairman of the Local Finance Commission. As of 10 November 1950, the latter had issued 288 notifications, and 32 (!) tax decisions, the former 83 (!) tax instructions. Although some of them involve only minor changes in the Japanese tax system, the others are of far-reaching importance. Especially, the income tax provisions and the local tax laws include fundamental changes.

The decrease in income tax rates, the increase in the basic

1). Text of a speech delivered on 20 April, 1951 at the University of Kyushu.

exemptions, taxpayers' representation, improved determination of tax liability, the new "blue returns", better collection and administration of the national income tax, the new net worth tax, the revaluation of assets, the repeal of the excess profit tax, and the reduction in the oriental habit of arbitrary assessments, negotiation, compromise and bribery in tax matters are the major changes in the national tax field.

The separation of tax sources, the establishment of the Local Finance Commission, the partial replacement of subsidies by equalization grants and the new value-added tax are the more important changes in the prefectural tax system.

The municipal revenues were radically increased by the completely revised property tax, the inhabitants tax and by promotional grant — the achievement of local autonomy being the main goal.

The entire tax reform was a great surgical operation badly needed to achieve a self-supporting Japanese Government. The patient — the Japanese tax system — has survived the surgical operation, but is not well yet.

While this tax reform is being implemented it might be of some value to consider for a while the goals of taxation — the Canons of Taxation. They were developed by COLBERT, SMITH, WAGNER, BASTABLE, SELIGMAN, KEYNES, and improved by other fiscal scientists. They are recognized as the basic principles of taxation and underlie all modern tax systems.

COLBERT:

It is attributed to Colbert that "the art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of squawking" (1665). This is a famous though cynical tax rule. There is always a certain amount of squawking about taxes. But such squawking, if justified and not remedied, may become a reason for a revolution as in the case of the American and French Revolutions. In Japan, it might lead to the loss of an important nation to communism.

A. SMITH:

All fiscal scientists agree that Adam Smith's *Wealth of Nations* in 1776 presented the most influential statement of the goals of

taxation: "The subjects of every state ought to contribute toward the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state."

"The tax which such individual is bound to pay, ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person . . .

"Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it . . . .

"Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury . . . though vexation is not, strictly speaking, expense, it is centainly equivalent to the expense at which every man would be willing to redeem himself from it". [1]).

Could the taxes prescribed by the Local Tax Law of 31 July 1950 stand the text of these canons? Most of them are not equal on the basis of abilities and revenues. Some are not certain nor convenient to pay nor economical in collection.

A. WAGNER:

Adolf Wagner (1877) the most outstanding German fiscal scientist, insists on taxes being "general, proportional, appropriate, harmless to the economy, adequate, elastic, certain, convenient and economical".

BASTABLE:

Bastable (1892), the British fiscal scientist, insists, somewhat differently, on taxes being just, proportional, harmonious, harmless, productive, elastic, certain, convenient and economical.

SELIGMAN:

E. R. A. Seligman (1909), the American fiscal scientist, went further. His first three canons oft axation are "universality", "uniformity" and "enforceability". Under "universality", he demands that taxes be not levied specifically on named individuals or on narrow and

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1) ADAM SMITH, The wealth of Nations, Book V, Ch 2.

special classes, but that they should be extended to the entire normal population in the broadest possible categories and groups.. After excluding all special rates, fees, assessments, and taxes levied to pay for measurable or recognizable benefits from the definition of taxes, he said that taxes levied for the general support of government be distributed in accordance with the "faculty" of the several taxpayers. He defined "faculty" by applying the marginal utility theory for both consumption sacrifice and for the ability to produce income, and thereby formed the first firm theoretical basis for progressive taxation. The popularity of progressive taxation in recent years is also traceable to the opportunity it offers in a democratic state to place added burdens upon the group which, while economically strong, is often politically weak. Seligman's uniformity of the tax burden through progressive taxation went rapidly around the world and today even the man of large income in a capitalistic society accepts the notion that steeply progressive taxation is fair and equitable. This was not true 50 years ago in the United States and still is not true in Japan with regard to local taxes. Adult tax education should help to alleviate this status.

J. M. KEYNES:

J. M. Keynes (1935) and his followers here and abroad stress the point that taxes be levied in a counter-business cyclical manner supplemented by compensatory spending of the national government. For the first time the direct influence of taxes on employment, prices, wages, sawings and investments was shown. Now Great Britain and many other countries are following the Keynesian economics of taxation. Time and space prohibit a detailed discussion on them. If we intend, however, to maintain private capitalism and to increase production and progress, we need to make certain that we do not, through arbitrary taxes, inadvertently destroy the possibility to save and the incentive to invest. Savings must equal investments to ensure fully employment. If this is not the case, the government may use mass spending as energizer of the economy. The canon „adequacy" of taxation has all but gone into eclipse at the national level. But at the lower levels of government, the problem of adequacy of tax revenue is extremely acute, especially in Japan, partly, because of the pains caused by the inflation brought on by national fiscal mismanagement during and after the war.

Thus, while deficit spending by the national government may have appeared to solve its tax revenue problems, such spending has come home to roost in local government tax revenue shortages so pressing in character as to threaten the survival of local self-government, and has at the same time wrecked havoc in the private sector of the economy.

Keynes also advocates cyclical rather than annual budget balancing. The wide acceptance of the Keynesian analysis, with its thesis that taxes should not restrain mass expenditures during depressions, should skin off the unspendable income during periods of war, and should cut the peaks of expansion sprees during any postwar inflation, has greatly spurred this type of fiscal policy and tax elasticity. The "inflationary gap" is the gap between expenditures and taxes, and could always be closed by flexing the taxes upward. This was done during World War II and is being done in the U.S. now to sop up excess private spending power and to meet increased government expenditures. But the downward revision of taxes in time of depression may not be possible because of the incessent demand for more revenue to finance more public activities to make more jobs. The establishment of genuine tax stabilization funds may be the answer to this problem. These reserve funds represent taxes collected beyond current needs and impounded to meet requirements in time of a recession. Such tax policies have been accepted by the public in New York, California, and Rhode Island because they believe that high taxes now are to be preferred to high taxes in the event of a depression. A translation of all income taxes in Japan including inhabitant's taxes to a current basis could also be used as an immediate stimulating or restricting force on disposable income. Both are economic planning through taxes, like it or not.

This brings me to the last canon of taxation, i.e., enforceability. Already Seligman expressed the idea that the practical enforceability of taxes is more significant than theoritical perfection. But it was Dr. LUTHER GULICK who emphasized this canon at the recent Tax Institute symposium (1950). Especially local taxes are poorly enforced. Without a well-trained, better paid, efficient, certain, even-handed, and vigorous tax administration there is no such thing as universality, uniformity, harmlessness, adequacy, elasticity, etc. of taxes. Everyone of the canons of taxation is conditioned

by the available techniques of enforcement and administration.

Confusion exists in prefectural and municipal fiscal circles as a result of the local tax laws and curtailment of national equalization grants. But would not the U.S. local tax administration be in the same state of confusion if hundreds of new laws, by-laws, L.F.C. Regulations, rules, etc. would have been thrown in its lap for immediate enforcement at virtually the same time? It is comparatively easy to translate equity goals into appropriate laws, rules and regulations, but it is not as easy to embody them into consonant administrative structure, official and taxpayer behavior.

The purpose of taxation is not its administration though some bureaucrats seem to think so, but without an audited tax administration, none of the purposes of taxation can be achieved. Neither home sovereignty in prefectures nor home rule in cities, towns and villages can long be maintained if prefecture or city becomes dependent upon the annual budget action of a superior governmental unit. What happens to the prudential motive if the voter finds that somebody in Tokyo or Uncle Sam will foot the bill, and that the tax burden falls on so distant and so undefined an economy that there is no benefit to the voter from voting for careful governmental management in his home town, schools, city or prefecture? A tax reform which makes such dependence inevitable is inadvertently beginning the disintegration of local self-government. In self-government, we depend upon the voters to decide, both directly and indirectly, what governmental services they want and how much they are willing to pay for those services. Unless the great mass of voters pay more taxes when they vote for more governmental services, the democratic system cannot function as a system of democratically belanced decisions. If this be true, then it must be the main goal of Japanese taxation to make certain that the tax reform conforms with this principle of democratic self-government, so that local taxation will contribute to, rather than thwart the operation of this new democracy.

Great progress has been made not only in the democratization of the Japanese tax system but also in the reduction of the tax burden. The Japanese people should never forget their tax burden during World War II, when Japan's national government alone spent 83 percent of the nation's income in the FY 1944—45, 72 per-

cent in 1943-'44, 55 percent in 1942-'43, and 51 percent in 1941-'42.[1]). These figures show that the Japanese Government has spent for war and destruction more than Japan's economic potential was able to bear. They also explain the great poverty after World War II, because almost all income was taxed away for war purposes. Japanese militarism had burdened the Japanese people with heavy taxes for many years. The average Japanese was and still is glad that we have liberated him from a costly military machine. During the most humanitarian Occupation in history, the Japanese people have used all revenues for the reconstruction of Japan. The statistics submitted by the Finance Ministry to the Upper House Finance Committee on 22 February 1951, the bax burden per capita including local taxes is only 22.6 percent of the national income of 1950—51 while it amounts to 26.6 percent in the United States and 36.8 percent in Great Britain. These figures prove that the tax burden has been greatly reduced from 1945 to 1951. Further reductions in the tax burden are possible only by:

1. Increased citizen interest in efficient local government.

2. Improvements in the internal organization, methods and morale of the tax administration to obtain better voluntary taxpayer compliance.

3. Continuous research on all phases of local government to cut down expenditures to a minimum.

4. Better and regular training of all tax officials.

These four points can be achieved by:

a. The creation of a tax committee in every community with representatives from the Chamber of Commerce, Agricultural Cooperatives, Labor Union Council, Parent-Teacher Association, etc. on it.

b. Accurate budgeting, tax accounting and auditing.

c. Scientific research conducted by this and other universities, and by the citizens' groups mentioned.

d. The establishment of a Local Tax Institute at the University of Kyushu to train the tax officials of Kyushu. I urge the Governors of Kyushu to create such an institute soon. It will be of benefit to them and the people of Kyushu.

Thank you.

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1). Japan's Government Expenditures and National Income, Bulletin International Fiscal Documentation, Amsterdam, Vol. 1/7, July, 1947, p. 313

JAPANESE TAX REFORM 1950 LIST OF LAWS

	Title	Promulgation
1.	Income Tax Law, Enforcement regulation and rules	31 March 1950
2.	Corporation Tax Law, Enforcement regulations and rules	31 March 1950
3.	Accessions Tax Law, Enforcement order and regulation	31 March 1950
4.	Travelling Tax Law, Enforcement regulations and rules	31 March 1950
5.	Liquor Tax Law. Enforcement regulations, rules and orders	31 March 1950
6.	National Tax Collection Law, Enforcement regulations and rules	31 March 1950
7.	Anti-National Tax Evasion Law, Enforcement regulations and rules	31 March 1950
8.	Law and Cabinet Order concerning reduction, etc. of tax for sufferers from calamities	31 March 1950
9.	Asset Revaluation Law	25 April 1950
10.	Gasoline Tax Law and enforcement regulation	2 May 1950
11.	Special Taxation Measures Law	2 May 1950
12.	Net Worth Tax Law and Enforcement order	4 May 1950
13.	Stamp Tax Law.	11 May 1950
14.	Registration Tax Law	11 May 1950
15.	Local Finance Commission Establishment Law	30 May 1950
16.	Local Finance Equalization Grant Law	30 May 1950
17.	Law for the Temporary Measurement concerning the partial allocation of the L. F. equalization grant in a rough estimate	30 May 1950

18. Law concerning exceptions to the charge on the treasury for disasters rehabilitation works for the Fiscal Year 1950—51	30	May	1950
19. Cabinet Order for Conference Group of TAA. and of TAB	30	June	1950
20. Asset Revaluation Cabinet Orders and ordinances	17	July	1950
21. Local Tax Law	1	August	1950

TAXES LEVIED ON INDUSTRIAL AND COMMERCIAL ENTERPRISES IN THE NETHERLANDS

by

Prof. Dr. P. J. A. ADRIANI.

Introduction

Before proceeding to deal with the questions [1]) put by the International Bureau of Fiscal Documentation we must make some introductory remarks.

For a long time individuals carrying on a business have been taxed on their profits. At first a special tax was levied upon trading revenue and other income (1893), but in 1914 this tax was replaced by a general income tax, levied upon individuals, with business profits forming one of the items of taxable income. During the German occupation the law enacting this was replaced by an income tax ordinance which bore a close resemblance to the German income tax in force at the time. After the liberation this ordinance remained operative, though it was repeatedly amended. For the computation of profits the most important laws are the Tax Reform Acts of 1947 and 1950 which are dealt with below.

For a long time limited liability companies and similar bodies corporate were taxed not according to the profits made but only on the profits distributed so that reserves — unlike those made by individuals — remained untaxed.

In 1941 a company tax levied on the entire profits was introduced. During the occupation a trade tax was introduced as well, which was imposed upon enterprises conducted by individuals as well as by limited liability companies. This tax was repealed by the Act of 1950 and has not been levied beginning from the fiscal year 1950. The tax on (the limited liability companies' corporate property has been repealed as well.

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[1]) See questionnaire in: Bulletin Vol. IV p. 197.

I. *Survey of fiscal legislation concerning the taxation of profits*

1. The following will taken into account: income tax, company tax and (for the fiscal years before 1950) trade tax.
2. For income tax only individuals are assessed, company tax is levied on:
   a. Companies whose capital is entirely or partly divided into shares (limited liability company and limited partnership).
   b. co-operative societies and other societies on a co-operative basis.
   c. mutual insurance companies etc.
   d. foundations, associations (whether incorporated or not), in so far as they conduct a business, and
   e. (in theory) enterprises of public bodies (with the exception of agricultural undertakings).

Trade tax is levied in behalf of municipalities, upon enterprises in so far as they carry on their business within the Netherlands.

From company tax are exempted: the State Postal Service, the National Savings Bank, the State Lottery, State Forestry Commission and the Bank of the Netherlands. Moreover, bodies managing estates, whose upkeep is desirable in view of their natural beauty (for which a special law provides, The Nature Protection Act of 1928) and pension funds etc. in behalf of employees. The same bodies are exempted from trade tax, from which, moreover, are exempted enterprises for sea or coast fishery, provided that not more than 10 persons are employed.

3. The Netherlands income and company tax acts affect individuals resident in the Netherlands and limited liability companies which have their seat there. They are taxed for the entire income, the entire profits, irrespective of the country where the gains or profits arose. The law provides that the question where a person lives or where a limited liability company has its seat is judged according to circumstances.

Thus the provisions of civil law are eliminated; the actual relation to the taxlevying country is of greater importance than the legal relation.

In the case of company tax there is a difference: if the limited liability company has been founded according to Netherlands law,

the Netherlands will be considered as the country where the company has its seat.

The Income and company taxes extend further. Non-resident individuals or limited liability companies established in a foreign country managing agricultural or non-agricultural undertakings through a permanent establishment or a permanent representative within the Netherlands are liable to taxation in the Netherlands for the profits made there. Thus apart from the principle of domicile the principle of territoriality also applies.

4. For income tax the fiscal year coincides with the calender-year. The system is as follows. Income for 1950 is taxed in the fiscal year 1950. By means of provisional assessments payment takes place in 1950. Naturally, a final assessment cannot be made until the end of the year 1950. If the final assessment shows an amount higher than that paid upon the provisional assessment, the difference is claimed, whereas in the reverse case the difference is refunded.

This does not apply to company tax. Here tax is computed per accounting period, that is to say for those companies who keep proper books. Nevertheless, provisional assessments occur here too.

5. The system of income tax involves difficulties for enterprises which have an accounting period deviating from the fiscal year. Originally the law had a complicated regulation, but with the Tax Reform of 1950 a provision was made to the effect that the taxpayer with proper books has to compute the profits per accounting period.

II. *The conception of "Profit".*

1. In general it may be said that one method for determining profits applies to both individuals and corporate bodies. In the company tax ordinance the provisions of the income tax ordinance are declared applicable. So it was in 1941 and so it remained in 1950, when the provisions dealing with the determination of profits in the Income Tax Regulation were replaced by others. There are differences however, because in a limited liability company facts and circumstances may occur which do not arise with individuals and vice versa.

2. Since 1941 a clear distinction was made between the commercial

and the fiscal balance-sheet and profit and loss account. Yet "good accounting practice" played an important role in the fiscal computation of profits and the commercial accounts had to show this "good accounting practice". The causes of the difference between the fiscal and the commercial balance sheet were mainly to be found in the valuation rules which, in imitation of German law, were inserted in the Income Tax ordinance and in the binding rules concerning writing off.

The 1950 Act has dropped the binding valuation rules and provides that profits are to be determined according to good accounting practice, with due observance of a consistent line of conduct, which is independent of the presumable result. Does this mean complete liberty within these limits? No. There are still binding regulations concerning writing-off, concerning the computation of profits if the enterprise changes owners and on some other points. In any case an approach to the commercial balance sheet is possible.

3. The term "profit" has not always taken in the same sense in the Netherlands. Originally, under the law of 1914, the Courts held that "profit" meant benefits and disadvantages arising from carrying on business. The act from which profit or loss arose had to be — as the Supreme Court of the Netherlands put it — in the line of the business.

Gradually this conception was widened, so that finally all benefits and disadvantages arising in the business were considered as profit. The direct connection with the actual carrying on of business was no longer adhered to and so the way was clear for the system of determination of profits by means of comparsion of property introduced by the ordinance of 1914. Irrespective of the cause, any change in the property of the business was considered as profit or loss. The law of 1950 broke with this system and considers as profit the joint advantages which in any form whatsoever are obtained from business or from any profession practised independently. It remains to be seen whether or not the broader conception which ruled the law of 1914 will again be applied by the Courts. I shall deal with some special regulations below.

First the question: what is understood by "property"? Is it only that which is understood by property in civil law, i.e. goods

and rights by which another person is liable to give or to do something, and so-called absolute rights like copyright, patent-rights etc? Or is the conception broader where the determination of fiscal profits is concerned? The latter is undoubtedly the case whenever fiscal profit is determined by means of comparison of property. For instance if goodwill has been bought by an enterprise, a determination of profit by means of comparison of property would be impossible if the goodwill was not activated with the amount paid for it. Under the 1914 Act, the Supreme Court of the Netherlands already admitted such activation by allowing writing off on the amount paid for goodwill.

When profits are determined by means of comparison of property, the cause of the increase or decrease of property is eliminated; in the case of taxation of the results of the enterprise it is the cause which is decisive. With either method it has to be decided first whether there is an enterprise. Here many points of doubt arise and on these points there have been various judicial decisions. For instance there is the question how to discriminate between enterprise and investment of property. In jurisprudence the answer has often been sought in the question whether labour or property predominates. The result has not been satisfactory and it has been asked whether the criterion is sought in the right way. There is also uncertainty concerning the determination of the moment at which the enterprise should be held to have been started. Is there an enterprise already in the period of preparation? Under the law of 1914 there were already differences of opinion as to the taxability of the surplus value of capital goods used in the enterprise. Jurisprudence worked it out to the effect that the capital gain realised was taxable. This conclusion also held for the 1941 ordinance. The law of 1950 leaves the enterprise free; it is only bound to good accounting methods. Under III below it will appear that at present non-realised surplus value is also taxed as soon as the entrepreneur (individual or body) ceases to be so. This also applies to retiring partners. Profits made on winding up a business are taxed like business profits.

If company A owns shares in company B, it is a rule that the profits made by A as well as the profits made by B are taxed. The dividends paid by B to A form part of A's profits. So these

are taxed twice. An exception is made for the case that A has a controlling interest in B, that is to say if at least ¼ of B's share capital is in A's hands. In that case the dividends received by A from B are not considered in so far as these dividends are not deducted from the book-value of the shares. This also holds good if B is established oudside the Netherlands and is subject to a similar tax in the other country. These measures can be applied by the minister of Finance to investment companies as well. An extensive ministerial decree in which rules are laid down refers to this. Otherwise the provisions of the company tax apply to all companies etc., large or small; for private companies no special regulations are in force.

III. *Computation of profits.*

The ordinance of 1941 contained binding rules concerning the determination of profits; comparison of property was prescribed for all enterprises which had proper books. Here all property-elements were to be valued at purchase price. Thus profits was the difference between the proceeds of sale and the purchase price. In times of rising prices this led to the taxation of imaginary profits. There were some particulars, but we need not go into them as all these regulations were abolished in 1950. At present, there is great liberty in the method of determining profits; the law confines itself to providing that profit is the amount of the joint advantages, which under any name and in any form whatsoever are obtained from business and adds that the year's profits are determined according to good accounting methods, with due observance of a consistent line of conduct, which is independent of the presumable result and which can only be altered if particular circumstances justify it.

It remains to be seen whether jurisprudence will share the opinion of the Minister that essentially there is not much difference between the provisions now in force and those of the ordinance of 1941.

In one respect the former method can be found in the new regulations; if the taxpayer ceases to carry on business, e.g. if he tranfers his enterprise to others or if he dies, all profits and gains of the business, which were not taxed beforehand, are considered to

be profits of the last year in which the now retired or deceased enterpreneur performed his function. Among the advantages meant here the law mentions "differences between the money value and the fiscal book value of the goods belonging to the working capital". In that case non-realised surplus-value is taxed. If one considers that the members of a partnership are taxed individually and that the profit of each of them can be determined by another method and on other standard, it will be apparent that the unrealised surplus value can also be taxed when the partnership ceases to exist through the retirement or death of one of the members.

2. Also as regards writing-off, the system of the 1941 ordinance has been maintained. As formerly the depreciation has to be calculated on the cost of acquisition or production, irrespective of an increase of decrease in value. But the law provides that with regard to business assets which have been acquired, improved, repaired or given out by contract after December 31st 1949 but before 1 January 1953, one third of the initial expense incurred after 31st December 1949, can be written off at will, provided this takes place at an accelerated date.

3. Under the law of 1947 it is permitted to reserve a part of the profits tax free; such reserves are for the even spreading of costs and charges and for self-insurance against risks. For companies reserves had been permitted earlier, but during the German occupation the regulations relating to them were abrogated. In 1947 they were introduced for private enterprises and reintroduced for companies.

By the law of 1947 other tax-free reserves were permitted; these reserves were important because with them later losses could be compensated. This was of importance in view of the short period for compensation of business losses. The legal provisions concerning these untaxed reserves disappeared when the law of 1950 came into force which also extended the period for carrying forward losses.

This law permits an increase in the fiscal book value of the means of the business which were part of the working-capital in 1941 already. This increase applies to the fiscal year beginning from 1950 and the new value amounts in general to twice the old book value

Different rules apply to buildings, because there the period of use is taken into consideration. The increase in the business property thus found is reserved. This reserve is combined with that arising from the law of 1947 mentioned above and another reserve permitted by the law of 1950 arising from compensations for war damage. This untaxed reserve is used for the writing off of losses. The taxpayer can voluntarily add this to the profits and in that case he is only liable for $^3/_4$ of the amount. It is impossible to go into the numerous details of the regulations within the compass of this paper. It can only be stated that, in case compensations for loss or damage of tangible means of business exceed the fiscal bookvalue, the difference can be reserved if and as long as the intention to replace them exists. This reserve serves as first writing- off on the cost of replacement and repairs. Depreciation of book debts may be charged to profit, also in the form of a reserve for bad and doubtful debts.

A reserve for fluctuations of the value of the goods belonging to the enterprise is not allowed. It has been said above that the Netherlands law has adopted the principle of guilder = guilder.

The ordinance of 1941, which — as has been said — provided that the fiscal profit should be computed by means of comparison of property contained a provision concerning liability items which could be deducted. Except for the reserves already mentioned liabilities to persons or bodies, or those which arise from existing legal relations could be deducted.

This provision was abrogated in 1950 together with the prescribed determination of profit by means of comparison of property. The entire deduction is ruled by the above mentioned provision, that the yearly profit is determined according to good accounting practice. It remains to be seen how this will be applied in legal practice as regards the deductible items.

It may be assusumed that deductions will be permissible for:

a. payment of pensions, whether compulsory or not. Also contributions to pension funds may be deducted in so far as they serve to cover pension liabilities.
b. payments for technical assistance rendered or for the use of patents.
c. paid interest of debts.

d. rewards, also in the form of bonuses, in so far as they are due for services rendered to the enterprise.

e-g. all expenses, including taxes in so far as they concern the carrying on of the business.

5. As stated above the period during which losses can be brought forward has been extented to 4 years.

6. The tax free reserve introduced in 1949 but abolished in 1950 has already been dealt with.

CRÉANCES GARANTIES PAR DES HYPOTHÈQUES SUR DES BATEAUX

Selon des principes généralement reconnus un bateau est un bien meuble. Quelle influence faut-il attribuer à l'établissement d'une hypothèque sur un bateau? Cette question s'est posée quelques fois dans le droit fiscal, dans le cas où la perception d'un impôt s'étendait en dehors de la compétence territoriale du pays imposateur.

En 1939 la Cour d'Appel de Gand devait juger de cette question (arrêt du 16 mai 1939, Bulletin des Contributions Directes No. 147). Un résidant de Belgique avait prêté une certaine somme. Ce prêt fut garanti par une hypothèque sur un bateau de nationalité néerlandaise, hypothèque inscrite dans le registre maritime néerlandais.

La convention belgo-néerlandaise tendant à éviter les doubles impositions contient des prescriptions concernant un certain nombre d'impôts belges et néerlandais, lesquels sont énumérés limitativement dans la convention.

Quant aux impôts belges on peut citer les suivants:

„1e . . .

2e. la taxe mobilière sur les revenus:

a) des immeubles situés à l'étranger;

b) des créances hypothécaires grevant lesdits immeubles."

Si, dans le cas cité ci-dessus, le contribuable peut se référer à cette prescription, ce sont les Pays-Bas qui peuvent imposer les revenus provenant de cette créance garantie par une hypothèque sur le bateau néerlandais, et cela parce que, s'il s'agit de biens immeubles, on part du principe de la territorialité, selon lequel les revenus de biens immobiliers et les créances garanties par hypothèque sur ces biens sont exclusivement imposables dans l'Etat où ces biens sont situés.

Au début de l'année courante un pareil problème — en principe le même que le problème précité — se présentait en Suisse. Il

s'agissait de la perception du droit de timbre sur une hypothèque sur des bateaux. La question était de savoir si ce droit pouvait être perçu conformément à la loi fédérale sur la „Eidgenössische Stempelabgabe" ou bien à la loi du Canton de Bâle-Ville.

On saura probablement qu'en Suisse, tant la confédération que les cantons peuvent lever des impôts. La démarcation entre les compétences est precrite comme suit dans l'article 41 bis de la „Bundesverfassung";

„Der Bund is befugt, Stempelabgaben auf Wertpapieren, „Quittungen für Versicherungsprämien, Wechseln und Wechsel- „ähnlichen Papieren, auf Frachturkunden und andern Urkunden „des Handelverkehrs zu erheben; diese Befugnis erstreckt sich „nicht auf die Urkunden des Grundstückverkehrs und des „Grundpfandverkehrs. Urkunden, für die der Bund die Abgabe- „pflicht oder die Abgabefreiheit festsetzt, dürfen von den Kan- „tonen nicht mit Stempelabgaben oder Registrierungsgebühren „belastet werden.

„Vom Reinertrag der Stempelabgaben fällt ein Fünftel den „Kantonen zu.

„Der Vollzug dieser Bestimmungen erfolgt durch die Bundes- „gesetzgebung."

En vertu de l'article 11c de la loi sur le droit de timbre fédéral ce droit est perçu sur les „Darlehensguthaben im Betrage von mehr als dreissigtausend Franken, sofern die vertraglichen Bestimmungen dem Darlehen eine Mindestdauer von mehr als zwei Jahren gewährleisten . . .".

On peut se demander si une hypothèque à long terme sur un bateau tombe sous l'article 11c cité ou sous § 2, alinéa 2 de la loi cantonale sur le droit de timbre de Bâle-Ville, ainsi conçu:

„Als Schuldverschreibung gilt jedes Schriftstück, in dem eine „gegenwärtige oder zukünftige Geldschuld begründet oder „anerkannt wird, soweit er nicht der eidgenössischen Stempel- „abgabe untersteht".

La thèse du canton était la suivante: le canton a le droit de percevoir le droit de timbre en vertu de l'article 41 bis de la constitution fédérale, parce que l'établissement d'une hypothèque sur des

bateaux peut être censé appartenir au „Grundstück und Grundpfandverkehr" mentionné dans cette loi. Bienqu'un bateau soit un bien meuble, il est traité comme un bien immeuble.

Le Tribunal Fédéral suisse — comme d'ailleurs la Cour d'Appel de Gand dans le cas de l'application de la convention belgo-néerlandaise — n'était pas à même d'admettre ce point de vue. Après avoir considéré que la délimitation de la compétence fiscale avait eu lieu d'une telle façon „dasz der Verkehr mit Liegenschaften derart lokalisiert ist, dasz hier kantonale Besteuerung grundsätzlich vor der bundesrichtlichen den Vorzug verdient", le tribunal jugeait qu'un bateau ou une hypothèque sur un bateau ne tombent pas sous le „Immobiliarverkehr im traditionellen Sinne". Même le principe: beateau = territoire, ne peut pas attribuer la compétence fiscale au canton où le bateau est situé. Un bateau, selon le tribunal, est un bien meuble, et bienqu'il y ait analogie avec le traitement juridique de biens immeubles, rien ne change dans cette hypothèse: „es beläszt den im Register eingetragenen Schiffen bewuszt die Eigenschaft von Mobilien, in dem es sie nur in gewissen Beziehungen, aus Gründen der Zweckmässigkeit, den für die Grundstücke maszgebenden Regeln unterwirft".

La Cour d'Appel de Gand arriva à la même conclusion:

> „que ni dans le droit belge, ni dans le droit néerlandais, il n'est „trouvé trace d'une fiction légale suivant laquelle les bateaux „hypothéqués sont assimilés à des biens immobiliers; que cette „fiction n'est d'ailleurs nullement indespensable pour permettre „la constitution d'une hypothèque sur des bateaux, que l'hypothè- „que sur bateaux constitue simplement une exception au principe „de droit que considère l'hypothèque comme un droit réel „sur biens immobiliers".

Le lecteur intéressé peut trouver la décision du Tribunal Fédéral suisse (arrêt du 2 février 1951) dans le „Schweizerisches Zentralblatt für Staats- und Gemeindeverwaltung", 52e année No. 9, p. 184.

A. van Keulen.

II

SURVEY OF BRITISH TAX LEGISLATION 1949—50 AND 1950—51 [1])

I. Taxes Considered

The following taxes will be dealt with in this survey:

Income tax
Surtax
Death duties (including corporation duty)
Stamp duties
Profits tax
Land tax
Mineral rights duty.

The death duties were simplified during the year. The estate, legacy and succession duties were consolidated into a single estate duty as from 31st July, 1949, the legacy and succession duties as such being terminated.

The Board of Inland Revenue were also responsible for a number of duties which had terminated in previous years, of which the most important was the excess profits tax, which in the year under review produced £36.2 million, and the special contribution which produced £19.6 million. Small amounts still continue to be received from the excess profits duty and the corporation profits tax.

The 90th Report contains an account of the duties in force in 1946—47 and of the excess profits tax. Each subsequent Report contains particulars of the further legislation in the year relating to the Inland Revenue duties.

An account of the special contribution, which was imposed by the Finance Act. 1948, for the year 1948—49 only, appeared in the 92nd Report.

The collection of the war damage contribution was also in the hands of the Department. Small sums continue to be received from this source.

The Board are also responsible for the Valuation Office, which provides valuation services, not only for the Inland Revenue, but also for other Government Departments and for Local Authorities. The work of the Valuation Office has greatly expanded with the enactment of the Town and Country Planning Acts, 1947, and the Local Government Act, 1948.

Under Part III of the Local Government Act, 1948, the work of preparing and amending Valuation Lists for the purpose of local rating was transferred from local Authorities in England and Wales to "Valuation Officers of the Commissioners of Inland Revenue". A new organization has been set up within the Valuation Office to deal with this work (see paragraph V on page 160). The adminstrative responsibility for the work rests with the Board, but major questions of policy likey to lead to new legislation are primarily for the Ministry of Health.

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[1]) The following is partly a reproduction of material published in the 93rd Report of the Commissioners of Inland Revenue. It is acknowledged that permission was given by the Controller of H.M. Stationery Office, London.

II. Tax collected and cost of collection

The gross receipt of Inland Revenue duties during the year was £2.310 million: repayments amounted to £202 million, leaving a net receipt of £2,108 million. In the previous year (1948—49) the gross receipt was £2,254 million, repayments amounted to £199 million, and the net receipt to £2,055 million.

In addition, income tax deducted from excess profits tax post-war refunds amounted to £11.9 million and war damage contribution to £0.5 million, compared with £8.8 million and £0.6 million respectively in the previous year.

The cost of collection for the year amounted to £24.9 million, equal to 2.6 pence in the £ (1.07 per cent) on the gross Inland Revenue receipt. This compared with a total cost of £ 23.5 million for the previous year, equivalent to 2.5 pence in the £ (1.04 per cent).

III. Taxation of trade profits

In his 1949 Budget Speech the Chancellor of the Exchequer announced that he proposed to set up a Committee to enquire into the taxation of trading profits. In June, 1949, a Committee was accordingly appointed with the following terms of reference:—

"To enquire into the method of computing net trade profits for the purpose of charging them to income tax and to consider the question of the basis period to be taken in assessing the tax on the profits so ascertained; to enquire into the method of computing net profits for the purpose of charging them to profits tax; and to report upon any alterations of the tax law which may be desirable."

The members of the Committee were as follows:

Mr. JAMES MILLARD TUCKER, K.C., J.P. (Chairman);

Mr. W. S. CARRINGTON, F.C.A., Member of Council of Institute of Chartered Accountants.

Sir JOHN J. CATER, formerly Chief Inspector of Taxes,

Mr. H. WESTON HOWARD, C.B.E., Chairman of Hayward-Tyler & Co. Ltd., Chairman, Eastern Regional Board for Industry,

Mr. W. W. F. SHEPHERD, Chairman of Turner & Newall Ltd.,

Mr. GEORGE WOODCOCK, M.A., Assistant General Secretary of the Trades Union Congress.

The Committee issued through the Press an invitation to make written representations[1]) and subsequently held a number of public meetings for the purpose of hearing oral evidence. The Board have furnished the Committee with a number of memoranda.

Its Report has been published in April, 1951.[2])

IV. United States Bureau of Internal Revenue: Exchange visit

Two senior officers of the United States Bureau of Internal Revenue, carrying out a Management Appraisal Review for their Department, Mr. Fred S. MARTIN, Assistant Commissioner, and Mr. Justin F. WINKLE, Senior Tax Advisor, were guests of the Board in July, 1949, when they studied the British income tax system with particular reference to management and administration.

At the invitation of the American Government, Sir Eric BAMFORD

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[1]) See *Bulletin* Vol. V, No. 2, p. 131.

[2]) Report of the Committee on the Taxation of Trading Profits, H.M. Stationery Office, London. (Cmd. 8189).

Chairman of the Board and of the Organization Review Committee, and Mr. E. H. RITSON, Deputy Chairman of the Board, paid a return visit to the United States in October, 1949. Much interesting information was obtained in the course of the visit and correspondence has continued since.

V. Transfer of rating valuation to the Commissioners of Inland Revenue

On 1st February, 1950, the responsibility for making valuations for rating purposes in England and Wales was, under the provisions of the Local Government Act, 1948, transferred from the Local Authorities to Valuation Officers appointed by the Commissioners of Inland Revenue. The collection of rates remains a matter for the Local Authorities.

The new Rating Valuation service, which is under the control of the Chief Valuer, has 14 regional and 270 area offices and there will be gradually built up in these offices, and at head office, a staff of approximately 5,500 to keep up to date the existing valuation lists and to complete a revaluation of the whole country.

VI. Reorganization of the Valuation Office

On 7th March, 1950, a staffing Reorganization Agreement covering England, Wales and Scotland was signed by the Board and representatives of the Inland Revenue Staff Federation.

The Valuation Office, which is a regional organization, has a technical staff of Valuers assisted by clerical staff. The Reorganization Agreement was concerned exclusively with the latter, and provided that the Clerical grades of the Valuation Office will remain a Departmental Class with entry to the basic grade by direct recruitment from the General Clerical Class Examination or by promotion from the Clerical Assistant or Typing grades.

Complements, grades, salaries, leave and overtime provisions were agreed, the duties of the grades were defined, and provision was made for the continuation of the selection and training scheme whereby members of the Clerical grades are selected annually for professional training.

One result of the Agreement is that Clerical grades of the Valuation Office will be the same as those in the new Rating Service, and officers will be readily interchangeable.

VII. Integration of General Accounting Division and Collecting Division

On 1st February, 1950 ,the General Accounting and Collection Divisions of the Accountant and Comptroller-General's Office were merged to form a single organizational group to be staffed in due course by a common Departmental Class of officers graded as in the present Collection Service.

Hitherto the General Accounting Division, a Headquarters unit, had been staffed by about 430 members of the General Service grades, mainly Clerical, but with some of the higher posts filled by members of the Executive Class. The work performed was closely related to that of the Collection Division, a much larger organization with offices scattered over the country and staffed by some 5,500 members of a mobile Departmental (Clerical) Class.

It is expected that the organization of the Accountant-General's Branch will be improved as a result of combining the two Divisions into a self-contained unit with full integration and interchangeability of staff.

VIII. Under-assessment of profits

During the war the tasks falling on the Tax Inspectorate greatly increased, the number of traders assessable under Schedule D grew rapidly, and the computation of excess profits tax liabilities absorbed much of the energies of the staff. At the same time the difficulties of wartime recruitment resulted

in a fall in the number of trained Inspectors from 1,700 in 1939 to 1,480 in 1948. The effect of these factors was to reduce severely the time available for tackling cases in which evasion was suspected either by way of non- assessment or under-assessment.

Before the war ended the Board had laid plans for the reinforcement of the Inspectorate and these plans are now bearing fruit. There will be a steady increase in the number of trained officers during the next few years. It is estimated that by the end of 1952 the trained staff will increase to 1,750. With this reinforcement in sight, the Board appointed a Committee in February, 1949, to consider how best the under-assessment problem could be tackled. As interim measures three Districts were specially strengthened in order that a practical test could be made to discover the best method of tackling the problem, and the attention of Inspectors was drawn to the importance of taking all possible steps within their own Districts to combat evasion.

The Committee had not presented its final Report by the end of the year under review.

Statistics are given below of investigations into cases of evasion of tax. These statistics relate to investigations completed in the respective years and cover all the taxes on income. It was too soon for the result of the action described above to be reflected in these figures:

Year ended 31st March	*Number of cases*	*Total charges raised* £
1939	2,774	3,131,410
1948	1,411	4,190,479
1949	1,802	4,432,384
1950	1,886	5,054,070

IX. Arrears of tax outstanding

The arrears of tax outstanding have iucreased considerably since 1939. This increase has been the subject of adverse comment by the Public Accounts Committee.

In May, 1949 the Board appointed a Departmental Committee "To examine the balances of Inland Revenue duties outstanding at the end of the latest accounting periods; to analyse the causes which lead to large amounts of outstanding tax; and to ascertain what steps can be taken to reduce the amounts in the future". The Committee presented an Interim Report in September, 1949. In that Report they dealt with a certain type of arrear, included in the total of £769 million non-collectible arrears at the end of the 1948 account. A large part of this £769 million would in due course be discharged as it related, in general, to assessments which were in dispute or which for one reason or another could not be finally determined. It is estimated that only some £309 million of the total amount outstanding will be finally recovered.

The Committee pointed out in their Interim Report that within this non-collectible category there were large amounts which even at the time of the Report could be safely discharged, as the assessments to which they related were in excess of any possible maximum liability after all disputes had been settled or all the facts ascertained. They therefore recommended that these excess amounts should be discharged forthwith. The Board approved of the proposal and steps were taken which resulted in the discharge of some £169 million of arrears.

The committee had not made its final Report at the end of the year under review.

X. Legislation

The income tax is an annual tax in the sense that it expires on 5th April and has to be reimposed each year by Act of Parliament. The necessary legislation is contained in the annual Finance Act, which imposes the tax for the coming year at a specified standard rate and applies to the tax so imposed the provisions of the existing income tax code, modified as may be by the Finance Act itself. The gap between 5th April and the date of Royal Assent to the Finance Bill is bridged by the Machinery provided by the Provisional Collection of Taxes Act of 1913. The surtax, in law, merely comprises the higher rates of the income tax graduation. The other Inland Revenue duties are "permanent duties" in the sense that they continue from year to year without the necessity for annual reimposition, but their terms may be and often are varied by the annual Finance Act.

On occasion, provisions relating to the Inland Revenue duties are contained in Acts other than the Finance Act. The Income Tax Acts of 1918 and 1945 are notable examples. In the year under review (1949—50) the Profits Tax Act, 1949 increased the rate of duty on distributed profits, and provisions relating to Inland Revenue were also contained in the War Damage (Public Utility Undertakings, &c.) Act, 1949, the Married Women (Maintenance) Act, 1949, and the Superannuation Act, 1949.

Details of the legislation in 1949-50 affecting the Inland Revenue duties are given below.

INCOME TAX AND SURTAX

Legislation about income tax and surtax was contained in the Finance Act, 1949, the War Damage (Public Utility Undertakings, &c.) Act, 1949, the Superannuation Act, 1949, and the Married Women (Maintenance) Act, 1949.

Finance Act, 1949

The Finance Act, 1949, imposed income tax for 1949—50 (*a*) at the standard rate of 9s. in the £; and (*b*) in respect of the excess over £2,000 of incomes above that limit, enjoyed by individuals, at such higher rates [1]) as Parliament might thereafter determine.

The Act prescribed the higher rates for the purposes of surtax for 1948—49 (payable 1st January, 1950): the rates of surtax so prescribed were the same as those for the previous year.

The Act increased the initial allowance for capital expenditure on machinery or plant incurred on or after 6th April, 1949, from 20 per cent to 40 per cent of the expenditure. The system of allowances for capital expenditure on scientific research incurred on or after that date was also improved, provision being made for 60 per cent of such expenditure to be allowed in the first year and 10 per cent in each of the next four years, instead of 20 per cent of the expenditure being allowed annually for five years.

The Act included provisions as to the calculation of annual allowances in respect of machinery or plant. These provisions require such allowances to be computed by the application of percentage rates on one of two conventional bases — the "normal method" (reducing balance) or the "alternative method" (straight line) — or, where machinery or plant is used in connection with mines, etc., on a prescribed "special method", and thus give statutory effect to previous practice. The provisions include, *inter alia*, rules as to the determination of the appropriate percentage rates, variations to meet special cases, and rights of appeal.

The Act also made provision for certain miscellaneous amendments of

[1]) The "higher rates" for the purposes of surtax for 1949-50 (payable 1st January 1951) were prescribed by the Finance Act, 1950.

the law relating to initial allowances, annual allowances, balancing allowances and balancing charges in respect of machinery or plant.

The Act made provision for annual allowances, etc., to persons engaged in working mineral sources outside the United Kingdom in respect of capital expenditure incurred on the acquisition of the mineral rights.

The Act gave relief to concerns controlled in the United Kingdom and operating abroad by permitting them to deduct, in computing their profits for income tax purposes, certain payments of annual interest made abroad in cases where the concern might be unable to deduct United Kingdom income tax in paying interest to a non-resident because of local law governing the payment. The Act exempted from income tax payments of unemployment, sickness, and maternity benefit under the national insurance scheme and reduced the income tax allowances made in respect of contributions under the scheme by so much of the oontribution as is referable to those benefits.

Provision was made in the Act against the avoidance, by means of a special contract devised for the purpose, of income taxation on purchased life annuities.

The Act provided that, where a trader pays interest, etc., from which income tax is deductible at the standard rate, out of dividends from a company which has received double taxation relief, and an assessment is made under Rule 21 of the General Rules, Income Tax Act, 1918, to recover the difference between the tax deducted from the interest, etc., and the net United Kingdom tax appropriate to the dividends, the amount of the assessment shall not be carried forward and set off against future profits liable to income tax.

The Act provided for a measure of relief from surtax to be given to Lloyd's underwriters in respect of payments into trust funds, set up to provide reserves to meet underwriting losses, under arrangements approved by the Inland Revenue and certified by the Board of Trade to be in the public interest. While an underwriter takes part in the arrangements he is liable to profits tax on his underwriting profits.

The Act contained provisions making it unnecessary to bring before the General or Special Commissioners of Income Tax or the Board of Referees, for a purely formal determination, appeals against assessments to, and certain decisions of the Revenue with respect to, income tax and surtax (and also profits tax, excess profits tax and special contribution) if the appeal is settled by agreement between the Revenue and the taxpayer. These provisions were retrospective in effect so as to cover agreements reached both before and after the passing of the Act.

Other Acts

The War Damage (Public Utility Undertakings, &c.) Act, 1949, (i) reenacted the prohibition in the War Damage Act, 1943, of claims to relief from income tax (or profits tax or excess profits tax) in respect of payments of war damage contribution, or premiums payable under policies of insurance against war damage to goods issued under that Act, or expenditure incurred in making good war damage in respect of which a payment is provided for by that Act, and (ii) extended that prohibition to the comparable contributions, payments and expenditure falling within the scope of the Act of 1949.

The Married Women (Maintenance) Act, 1949. Under the Finance Act, 1944, weekly payments under any order of a United Kingdom Court for the maintenance of a married woman not exceeding £2 a week or for the benefit, maintenance, or education of a person under 16 years not exceeding £1 a week, were taken out of provisions for collection of tax by deduction at the source and put under direct assessment. In the case of orders of Magistrates' Courts in this country, the Married Women (Maintenance) Act,

1949, substituted £5 a week, 21 years and 30 s. a week respectively for the limits set out above.

The Superannuation Act, 1949, provided that contributions made under the Act should not qualify for income tax relief.

SPECIAL CONTRIBUTION

The Finance Act, 1949, provided that Part V of the Finance Act, 1948 (which imposed the special contribution) should extend to Northern Ireland. Doubt had arisen whether the provisions of the Finance Act, 1948, had this effect.

The provisions of the Act making it unnecessary to obtain formal determinations of appeals settled by agreement between the Revenue and the taxpayer (see alinea 6 on page 163) also apply to special contribution.

DEATH DUTIES

The Finance Act, 1949, abolished legacy duty on legacies derived from a testator or intestate dying after 30th July, 1949, and succession duty on successions conferred after the same date. It also abolished them on other legacies and successions when either duty became payable in connection with certain events happening after the same date.

The Act also amended the scale of rates of estate duty. (The new rates, which are chargeable in respect of deaths occurring after 30th July, 1949, will be found in Table 50 on p. 63 of the 93 rd. Report of the Commissioners of Inland Revenue).

The Act also charged to estate duty lands and chattels settled inalienably by Act of Parliament or royal grant in the same way as other settled property.

The Act also exempted from estate duty maintenance funds given, devised or bequeathed to the National Trust as a source of income for the upkeep of land given; devised or bequeathed to the Trust by the same person.

The Act also continued, with modifications, until 1st January, 1954, the relief given by the Finance (No. 2) Act, 1945, where land which was valued for estate duty purposes as at a date later than 31st March, 1939, was subsequently, within five years from 17th November, 1944, acquired for public purposes at a price lower than the estate duty valuation.

The Act also exempted from estate duty out-and-out *gift inter vivos* which, in the case of any donee, do not exceed in the aggregate £500 in value or amount.

STAMP DUTIES

Finance Act, 1949, *and Solicitors, Public Notaries, &c., Act*, 1949

The Finance Act, 1949, abolished the charge of stamp duty which had been imposed by Sections 60 to 62, Finance Act, 1947, upon bonus issues of securities.

The Act also abolished a number of stamp duties which were obsolete, archaic or unproductive. Included in these duties were those on a number of commercial documents — letters of allotment, scrip certificates, proxies, bills of lading and so on. The repeal also extended to, *inter alia*, marriage licences, passports, birth, marriage and death certificates.

The Act also exempted from stamp duty sea insurance policies taken out outside Great Britain and insuring only baggage, personal and household effects.

The Finance Act, 1910, and the Finance Act, 1947, provide that conveyances and transfers (excluding sales of stocks and shares) for considerations of less than £1,950 shall be charged at less than the full rates of stamp duty where the instrument contains a certificate that the transaction does not form part of a larger transaction for further consideration. The Finance Act,

1949, contained a provision that for the purposes of such a certificate consideration for property of a non-dutiable nature (i.e., goods, wares or merchandise) should be disregarded.

The Solicitors, Public Notaries, &c., Act, 1949, abolished the charge of stamp duty on solicitors' practising certificates.

PROFITS TAX AND EXCESS PROFITS TAX

Finance Act, 1949, *Profits Tax Act*, 1949, *and War Damage* (*Public Utility Undertakings, &c.*) *Act*, 1949

The Finance Act, 1949, contained provisions giving a measure of relief from surtax to Lloyd's underwriters, who make payments into certain trust funds set up to provide reserves for meeting underwriting losses (see alinea 5 on page 163). The Act also provided that while an underwriter participates in this arrangement he is liable to profits tax on his underwriting profits.

The Finance Act also contained provisions making it unnecessary to bring before the General or Special Commissioners of Income Tax or the Board of Referees for a purely formal determination appeals against assessments to and certain decisions of the Revenue with respect to profits tax or excess profits tax (and also income tax, surtax or special contribution) if the appeal is settled by agreement between the Revenue and the taxpayer. The Act further provided that claims to relief from excess profits tax in respect of a deficiency of profits need not be formally determined by the Board of Inland Revenue if the claim is settled by agreement with the taxpayer. These provisions were retrospective in effect so as to cover agreements reached both before and after the passing of the Act.

The Profits Tax Act, 1949, increased the rate of the profits tax with effect from 1st October, 1949, from 25 per cent to 30 per cent, and made a corresponding increase from 15 per cent to 20 per cent in the rate of relief on profits not distributed.

The provisions of the War Damage (Public Utility Undertakings, &c). Act, 1949, described in alinea 7 on page 163, prohibit claims to relief from profits tax or excess profits tax as well as from income tax.

LAND TAX

The Finance Act, 1949, provided for the extinguishment of land tax by a process of compulsory redemption spread over a period of years.

The Act made the land tax on any property compulsorily redeemable when the property on which it is charged first changes hands (e.g., on sale or death or on the grant of a lease for 21 years or more) on or after 1st April, 1950. The Act also provided that in the case of property owned by corporate or unincorporated bodies any land tax which remains unredeemed on 1st January, 1954, is to be redeemed then.

The Act provided that the amount of land tax to be charged annually on a property shall no longer be subject to variation from year to year, but that for 1949—50 and subsequent years (until the tax is redeemed) it is to be fixed at the amount charged on the property for the year 1948—49.

The Act fixed the capital sum to be paid to redeem the tax at twenty five times this fixed charge.

The Act included provisions exonerating certain properties from the tax. Under these provisions:

(i) where the annual charge of land tax on property would have been less than 10s., the tax was abolished outright; and

(ii) where a property which changes hands on death forms part of an estate below the estate duty exemption limit of £2,000, the redemption

money is not chargeable and the property is exonerated from any further liability to land tax.

Statutory Instruments

The Finance Act, 1949, which included provisions concerning the assessment and redemption of land tax empowered the Board to make Regulations on certain matters of procedure relating thereto. In exercise of these powers, the Land Tax (Assessment) Regulations, 1949, were made prescribing the procedure regarding the assessment of land tax, appeals, and other matters incidental to or arising out of the making of assessments. The Land Tax (Redemption) Regulations, 1950, were also made prescribing the procedure for the redemption of land tax and matters incidental thereto.

The Income Tax (Application for Increase of Wear and Tear Percentages) Regulations, 1950, were made by the Board in exercise of powers conferred by the Finance Act, 1949. These Regulations prescribe the time within which and the manner in which application may be made for an increase in any percentage used in calculating annual wear and tear allowances, and the procedure to be followed in dealing with any such application.

The Board are empowered by the Income Tax (Employments) Act, 1943, and the Finance Act, 1946, to make Regulations relating to income tax under "Pay-as-you-earn". The Regulations which had been made under these powers were consolidated, subject to certain minor modifications, by the Income Tax (Employments) Regulations, 1950.

Double Taxation agreements

The Finance (No. 2) Act, 1945, enables comprehensive arrangements to be made for the avoidance of double taxation. The arrangements which were made before 6th April, 1949, were listed in the Board's 92nd Report. During the year further arrangements were made for the avoidance of double taxation of income with Burma, Denmark, Israel, Basutoland, Bechuanaland and Swaziland. The agreement with Burma has not yet been ratified. An arrangement was also made during the year with the Republic of Ireland, covering corporation profits tax in that country and profits tax in the United Kingdom; relief from double income tax was already allowable under existing agreements.

(To be continued).

THE FISCAL LAW OF INDONESIA

by

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The impopularity of the tax-collector seems to be due to the economic basis of modern life. When human beings are still depending on real mutual aid, there is not a marked antithesis between the individual and the community, and the various contributions on behalf of the wellbeing of the community, which is in fact the own wellbeing of the individual, are given without grief.

In this natural state of affairs the task of the public body is also clear and comprehensible, i.e. to secure and maintain law and order so as to enable the individuals to engage themselves to their proper pursuits. Under such conditions it is conceivable that the community is able to accomplish its task by mutual aid (a more accurate expression after my opinion than "compulsory service") of its members only supplemented if necessary by a poll-tax.

Though in one or other isolated region small communities may exist under aforesaid conditions, generally we have to reckon with more complicated relations between the individual and the community. Moreover in any country there are always a whole pattern of public bodies, executing a part of the task of- and dominated by the state as the most powerful form of human society. The state and all those public bodies are on account of their function entitled to levy tax from the citizen.

In the past we have known private companies, like the Dutch and the Britsh East Indian Companies, which in their operations after commercial profits were invested with rights and duties as if they were parts of the state.

Nowadays we have the reverse situation. Any state or other public body under its control, has one or more enterprises by which

it engages itself to get some profit as an addition to their tax-revenues.

Generally the state or the public body holds a monopoly in some or other business, like the postservice and so on, but still there are state-enterprises which are managed along the same principles as private enterprises and by which the state engages itself in competing with the latter.

So in fact the state and other public bodies under its control have other revenues than tax revenues only, and their tasks are not anymore limited to qualified "public services" only. On that account it is difficult now to get a clearcut conception of tax and of taxation. If the state and the other public bodies under its control limited themselves to maintain law and order and if they had but to rely on contributions form the citizens, we might consider any contribution of the citizen to the state or any other public body as tax.

For tax is the contribution of the citizen to the state as such and not in exchange for any service which the citizen might get from a private enterprise. Under modern conditions however it is rather difficult to discriminate between services rendered by the state as such and services rendered by the state as a trader. Moreover in the case, that the state has a monopoly in the supply of some or other commodity the state might employ a price-policy as part of its tax-policy.

So we have to content ourselves with a rather vague conception of tax, i.e. the contribution levied by the state (or any other public body charged with a part of the task of the state) from the citizen for which the state (or that public body) does not render any specified service.

This definition does not cover the payment of the citizen disguised as an additional charge on the price of any commodity (or service) he gets from the state (or other public body), nor the reduction of the price for that commodity (or service), which really is a reduction of the tax he has to pay.

As anywhere in the world tax is collected and paid in Indonesia from times immemorial up to now. In any period of Indonesian history the paying of tax is held as a token of loyalty to a lord or a king. The neglect of paying tax in due form and in due time means

rebellion. Moreover the Islam religion is more explicit as to the duty of paying tax than Christendom, which but prescribes to "render unto Caesar the things which be Caesar's" (St Luke Chapter 20), whereas aforesaid duty is one of the five "pillars" of the Islam faith.

There is enough evidence that in the pre-European period of Indonesian history there was an elaborate administration of the tax-revenue and of the public expenditure. Nevertheless one is still inclined to confound the person of the king with the public body (i.e. the kingdom, the state) he represented. In that idea taxation is considered as a levy on behalf of the king (and his family) instead of as a contribution of the subject to the state, of which the king is the most respected representative.

It is true, that the king and his lords had not seldom some private business rather mixed up with state-affairs, and that the personal views of the king or of his lords had more influence on state-affairs than now.

On the other hand the conception of the impersonal state, accomplishing a public task, acting by means of and represented by its government, has never and nowhere had a pure realization.

Though there is not any trace, that in ancient times in Indonesia taxes were fixed after certain principles, it is sure, that the lord or the king could not but fix the tribute in such a way, that the subject could afford to pay it. Furthermore personal services ("compulsory services") and mutual aid played a substantial part in meeting public needs.

Under the Dutch East Indian Company the situation was rather more confused. It remained so until recent times. As a matter of fact it is but from Januari 1st, 1920 onwards that we can get a more clear idea of tax and taxation in Indonesia. By that time farming of public revenues did not exist anymore. On aforesaid date furthermore the legal distinction of the several groups of the population is abolished as to taxation. The public revenues consist then of tax-revenues of all kinds, and of revenues from government, monopolies and enterprises.

Moreover modern theories begin to exert a more conspicious influence in the fiscal legislation eversince.

When the government of the United States of Indonesia assumed responsibility on December 27th, 1949, in consequence of the trans-

fer of the sovereignity by the kingdom of the Netherlands, in Indonesia there was in force a whole of fiscal legislation that did not need any essential alteration. There was in that legislation not any reminiscence to racial discrimination peculiar to colonial administration.

The death-duties levied — for technical reasons of assesment and collection — on "European" estates only, are repealed before the transfer of the sovereignity (law of 1949 no. 48).

Since the United States of Indonesia are replaced by the Republic Indonesia, matters are somewhat simplified as far as the taxlevying public bodies are concerned.

With the republic (the state) on top, there are various kinds of public bodies entitled to levy tax, but these latter public bodies do not levy but taxes with a local character, like tax on amusement (a surcharge on cinema- and theatertickets and the like) and tax on vehicles. In any case the tax-system of municipalities and other public bodies may not harm the tax-system of the republic.

The main resources of these public bodies consist of revenues from public services, like the distribution of drinking water, of electricity, from the letting of marketstalls, abattoir-facilities, from the lease of land and so on, and a grant in aid from the state.

The village has a special position in that it mainly rests upon mutual aid of the villagers. The chief and his assistants are remunerated by means of the use of the village-rice-field for the duration of their service.

The fiscal legislation of Indonesia is therefore mainly concerned with the state only.

On the above mentioned date of January 1st, 1920 was introduced in Indonesia a general income-tax, levied from everybody without discrimination. Theoretically the legislator could have maintained the principle of taxation according to the ability to pay in the most eqiutable and purest way by limiting himself to the income-tax only. For considered from the standpoint of the individual all possible ability to pay might be reckoned with in that tax. Moreover all tax by means whatsoever will but be a burden to individuals.

Like in any country the fiscal legislation of Indonesia now in force is the result of historical development rather than the outcome of rational planning.

The introduction of the income-tax 1920 did not mean the complete repeal of the galaxy of tax-laws come into being in different periods of the past, which contain principles contrary to those of the income-tax.

The income-tax-law 1932, which replaced the law of 1920 is a more modern piece of legislation than the latter.

More details are inserted in order to bring in practice the principle of taxation according to the ability to pay. The rate is strongly graduated; reduction is allowed for children and there is a different rate for single and married persons.

The revenues of the income-tax however will not suffice to meet all needs of the state. Furthermore, peculliar to society in Indonesia, an income-tax alone will let free dividends paid out by companies to stockholders, who are mostly domiciled abroad.

In the income-tax-law of 1920, limited companies were listed among the persons liable to tax! This is of course not wholly consistent with the principle of an income-tax. In the law of 1932 the companies could be left out since some years before (1925) the limited companies and other corporations are subjected to the company-tax. This tax aims at levying a proportional tax on profits (actually 10 % + 300 % surtax = 40 %) made by means of an enterprise or other business undertaking in Indonesia. Shareholders where-soever domiciled pay through this company-tax their tribute to the Indonesian fisc.

Whereas in the rate of the income-tax there is not made any distinction between "earned" and "unearned" income there came in force at the same time as the income-tax-law a tax on property (1932).

This tax may be considered as an addition to the income tax as far as "unearned" income is concerned. It is levied on the base of the money-value of all property, immovable and movable.

Like the income-tax the property-tax is levied from physical persons only. Non-residents who have a. landed property, b. debenture secured by way of mortgage, c. a share in a limited partnership (company) having an enterprise in Indonesia, d. an enterprise and e. a right on the revenues of an enterprise in Indonesia, are liable to the property-tax.

The rate is rather mild; it amounts to 0.25 % for properties be-

tween 25.000—120.000 rupiah and 0.2 % for properties surpassing 120.000 rupiah + surcharge 100 % = respectively 0.5 % and 0.4 %.

Technically the company-tax and the property-tax may be considered as modifications of the income-tax in order to levy a tax from stockholders abroad and an addition as far as "capital" (corresponding with „unearned" income) is concerned.

Still there are more taxes which could have been repealed on occasion of the introduction of the income-tax, but nevertheless survive for budgetary or other reasons.

During the British interregnum (1811-1816) Sir STANFORD RAFFLES introduced a tax on landed property held by Indonesians under the wrong name of "landrent". Virtually this tax is a mixture of income-tax and revenue-tax. It would be more consistent with the principle of income-tax to repeal the "landrent" by introducing the former, but that would destroy a strongly rooted tradition in the Indonesian agricultural communities. By a practice of nearly a century and a half the technique of the "landrent" was wholly integrated in the social structure of the Indonesian villages. So the tax was maintained despite of the income tax. Yields already taxed by "landrent" were exempted from income tax.

It is but very recently that „landrent" is repealed as (from January 1951).

During the march of time the income- tax 1932 had to be adapted to social conditions in Indonesia. There are even modifications which are confined to local practice without sanction of the legislator. For instance in the region of Minangkabau the reduction for children was to be adapted to the matriarchal system. According to this system the children are not on the charge of the father. Husband and wife do not always form a social unit in that region, but the "family" consisting of all sisters living under one roof supervised by the most authoritative brother (or other male relative). This brother has to care for all children of his sisters. Now in one way or other the reduction for children is calculated according to a formula suitable to the special conditions in Minangkabau.

In another region (Western Java) there might have developed a practice in connection with the matrimonial system in a special case of marriage. According to the private law of that region an old but rich woman will be the head of the family in case she

marries with a young but poor man. The tax law providing only for marriages according to the conception in which the husband is to be considered as the head of the family could have been interpreted for that special case in this way, that the wife should be assessed in lieu of the husband.

Still there are modifications which are introducted in the law itself. The idea of income derived from a certain source proved to be unsuitable for the smaller incomes. According to the practice there was introduced the estimate on the basis of "outward signs of social welbeing", in other words the tax is not fixed on the basis of a calculation of revenues derived from several sources and deduced with various costs, but fixed by way of a rough estimation on "first sight" of the ability to pay. Nevertheless in this estimation in one way or other will be calculated elements which determine that ability; like a small trade, some cattle ready for hire and so on. That estimation "on first sight" is valid for incomes not surpassing 2400 rupiah per annum. The lowest rate is now 2 rupiah for incomes between 400 and 500 rupiah per annum and is the highest at 93 rupiah for incomes between 2200 and 2400 rupiah per annum.

Another departure from the sound principles of the income-tax 1932 was the introduction of the wage-tax (payroll-tax), levied on the same rate (3 %) of all wages. Later on the tax is slightly modified and suited to the principle of taxation according to the ability to pay in that the rate is graduated, being actually 3 % for an annual wage up to 1500 rupiah, 4 % for annual wages between 1500 and 2400 rupiah, 5 % for annual wages between 2400 and 4800 rupiah and is highest at 15 % for wages of 12000 rupiah or more. Bonusses and thelike are taxed with a more detailed rate (varying from 7 to 50 % plus 75 % for any amount surpassing 81000 rupiah).

The wage-tax is meant to be paid by the wage-earner. For technical reasons of collection however the employer is charged with the tax and is entitled on that account to deduct the amount from the wage he has to pay, but he is not obliged to do so.

Wage-earners who are liable to income-tax (for having other resources) are entitled to deduct the wage-tax from the income-tax. In such cases the wage-tax does not encroach upon the principle of taxation according the ability to pay.

So generally the wage-tax is at least an administrative burden to the employer.

Employers who are considered unable to observe the law accurately are assessed by commissions appointed for every region separately.

Those two modifications are inserted in the "transitory-tax" 1944, which came in force after the second world war and which replaced the income-tax 1932.

Virtually the transitory-tax is an income tax resting mainly on the same principles as the income-tax 1932 and is rather a simplification of the latter.

Residents are liable to the tax for income derived from "labour" and "capital" (corresponding with "earned" and "unearned" income).

Non-residents are liable under the same conditions as to the above-mentioned property-tax 1932.

The source "labour" comprises not only paid services but also enterprises and partnerships. Liability of the partners to the income ("transitory") tax means non-liability of the company (corporation) to the company-tax. So the partnership, the limited partnership and the private limited company are not liable to any tax as such, for its members are liable for their shares in the profit of the corporation.

The source "capital" comprises all kinds of property producing income, in kind or in money.

Though the law is not more explicit on this point in practice any person having an income surpassing 2400 rupiah annually is invited to fill up a return.

Persons having a less income are taxed by way of estimation of the tax-commission.

To secure the collection of the tax from the hunderds of thousands of petty-traders there is invented an ingenuous method. The notice of assessment is legally connoted as a licence required for trading So any small trader will discharge of his fiscal obligation in due time in order to exercise his job!

The rate is revised very recently. To cite two extremes: a single person pays 156 rupiah for an annual income of 2400 rupiah and 42690 for an annual income of 81.000 rupiah, and a married person respectively 104 rupiah and 39.488.— rupiah.

As a novelty — connected with monetary provisions — can be mentioned the deduction for the costs of "deviezen-certificaten" i.e. negociable certificates for obtaining foreign exchange).

When the Republic Indonesia supplanted the United States of Indonesia an amalgamation is effected as to the fiscal legislation of the Republic of Jogjakarta and of the former East Indies.

The Republic of Jogjakarta brought in so to speak a law on the radio-tax and a law on the reconstruction tax (a turnover-tax for consumptions in hotels and so on).

Nearly all the tax-laws of the former East Indies are maintained with some modifications.

Besides the laws on custom-duties and excises to be dealt with later on, the aggregate of the fiscal legislation is composed of the above mentioned company tax 1925, the property-tax 1932, the wage-tax 1934, the income (transitory) tax 1944 and several other taxes.

These last mentioned taxes, some of which are of ancient origin, are of different nature.

The "slaughter" tax collected by means of a licence relative the slaughter of cattle (cows), buffalos, horses and pigs is evidently a consumption-tax.

The tax on autocars (automobiles), motorcycles and motor-tricycles is rather a tax on luxury.

Motorists driving on petrol-engines pay every-time they tank petrol a proportional tax, generally announced in an advertisement on a filling-station. Owners of motorcars driving on combustibles others than petrol would be able to enjoy touring much cheaper if there was not a special tax for their engines („motorvoertuigen-belasting). This tax is levied in proportion to the weight of the vehicle.

There is some interrelation as far as registered landed and immovable property is concerned between the stamp duty the transfer tax and the succession tax.

Registered landed and other immovable property left behind by a non-resident devisor is liable to succession tax, amounting to 3% in the case the property is left to a spouse, to children or their descendants and otherwise 8% of the value.

Transfer of registered landed and other immovable property

is taxable with 5 % of the price. In this case the tax is a pure turnover (purchase) tax.

When registered landed and other immovable property are put in a limited company the tax is reduced by 2½ % being this the stamp duty due on account of the bringing in or enlarging of capital of the limited company.

To limit the creation of "one-house-companies" the legislator has fixed a minimum of the stamp duty in case for 3/4 or more of the capital is put in as registered landed or other immovable property at 2000 rupiah (corresponding with the value of 80.000 of the property put in).

The stamp duty has the character of a turnover (purchase) tax as far as it is levied on the purchase of shares and debenture-stocks with the interference of brokers and other agents.

For the rest the stamp duty is due for all kinds of deeds dressed in order to be used as documentary evidence. The rate is rather diversified. There are fixed amounts due for some kinds of documents and in other cases the duty is proportional corresponding with the interest concerned.

From the viewpoint of the tax-administration the stamp duty has many advantages. The taxapyer himself has to determine the amount he is due, the way and the moment he has to pay without the intervention of any tax-officer. The tax-administration can limit itself to a repressive control.

Import- and export duties and excises have nearly the same advantages as the stamp duty, but have the inconvenient to charge everybody without discrimination. It is possible that the poorest pays most and the richest least.

For the government however these taxes are not seldom instruments to promote inland production and exportation. The masses of the Indonesian population are not affected by import duties and excises on spirits and the like, for the consumption of these articles is limited mostly to non-Islamic consumers.

Excise on cigarettes, cigars and carved tobacco however burdens any smoker induscriminately only with this variation, that the fastidious smoker pays the most.

After some hesitation the Indonesian government has introduced at the beginning of this year a general turnover tax levied according

the so called "cascade"-system. (Law of 1950 no. 80). Any business-like transfer of merchandise and the rendering of paid services is taxed with 2½ %.

Many commodities will be taxed several times before they reach the customer. This tax proofs to influence substantially the price of the taxable commodities.

The assessment- and collection system is devised along the same lines as the income- and the wage tax.

Besides the above mentioned taxes, the Indonesian government has the opportunity to levy an addition on the price of several commidities and services it renders to the public.

In fact the Indonesian government has a monopoly of the fabrication and distribution of salt. Any profit made on that branch is really a tax paid by the consumer. In the same way is to be considered any profit made on the pawnshop monopoly.

Summing up we may state that — import- and export duties and excises taken apart — the fiscal legislation of Indonesia is influenced more strongly than elsewhere by social conditions and that problems of assessment and collection play a peculiar part.

Moreover the sound idea of taxation according to the ability to pay contained in the income-tax is overrun by the growing indirect taxes.

Jutphaas post Utrecht March 1951.

IV

GENERAL REVIEW OF NEW FISCAL LITERATURE
REVUE DES NOUVELLES PUBLICATIONS FISCALES

JOHN F. DUE: *Provincial Retail Sales Taxes in Canada*

Canadian Tax Papers No. 1. — Canadian Tax Foundation, 4 Carlton Street, Toronto, 2 February 15, 1951.

The Canadian Tax Foundation expects to publish, under the title "Canadian Tax Papers" short studies of specific tax problems in addition to its larger studies.

This study of Professor DUE is published in view of the proposed constitutional amendment resulting from last December's Dominion-Provincial Conference by which the provincial taxing power to the extent of allowing the imposition of an indirect sales tax at the retail level is aimed at.

In Canada, there has been a discussion about the constitutionality of Provinces levying sales taxes. Under the Canadian constitution the Provinces are denied the right to levy indirect taxes, indirect taxes being held taxes demanded from the very person who is intended should pay it (definition of John Stuart MILL).

The author shows the way by which the Provinces discovered other means to impose sales taxes, viz., by placing the tax liability for payment upon the consumers. Because of the various constitutional difficulties arising possibly from this procedure, many actions have been taken to bring amendments in Canada's constitution.

In this booklet the author discusses the various plans as well as the development of the taxes, the attitudes toward them, the structure of the sales taxes as levied up till now. Some tables show the yield of the sales taxes as well as the use of revenue out of them.

The subject discussed in this booklet is of importance in connection with the problem of the jurisdiction to tax in federal states and the distribution of taxing power between the federal and the state governments, which problem has been discussed earlier in this Bulletin.

Economic Bulletin for Europe.

A United Nations Publication, prepared by the Research and Planning Division of the Economic Commission for Europe.

It is a pleasure to mention in these columns this Quarterly, No. 3 of Vol. 2 (January 1951) of which is in our hands at present.

The Economic Bulletin for Europe, according to the Editors' communication, is intended to provide a regular review of the economic situation of Europe and it is meant as kind of supplement to the annual ,,Economic Survey of Europe''.

The issue under review contains, *inter alia*, an extensive article dealing with the changes in the structure of taxation in Europe, to which article, elucidated by a number of tables and statistics, we gladly draw the attention of our readers.

The Editors of the Economic Bulletin for Europe hope that future issues will include more detailed analyses of taxes on income and consumption in European countries.

UNESCO : Bulletin International des Sciences Sociales
Publication trimistrielle — Unesco, 19, Av. Kléber, Paris 16e.

Le Bulletin international des sciences sociales fait connaître aux spécialistes les travaux des institutions nationales et internationales et des chercheurs isolés. Il est consacré à l'étude objective et scientifique des relations internationales dans l' acceptation large du terme.

Les problèmes d'intérêt international et les questions de méthodologie font l'objet d'un certain nombre d'articles du bulletin. Ce dernier assure en outre une large diffusion aux travaux des réunions d'experts et permet de présenter les activités du Département des sciences sociales. Les diverses associations internationales des sciences sociales y publient articles et communiqués, et l'utilisent comme organe de liaison et d'information générale. On y trouve également une chronique régulière consacrée à l'enseignement et à la recherche et des informations sur les travaux de l'Organisation des Nations Unies et des institutions spécialisées dans le domaine des sciences sociales.

Le bulletin dépasse donc par son contenu le domaine de la simple information.

UNITED NATIONS: International Tax Agreements, Vol. II — U.N. Publication Sales No. 1951 XVI. 1. Available from all authorized Sales Agents for U.N. Publications.

International Tax Agreements is prepared by the Fiscal Division of the Department of Economic affairs of the United Nations Secretariat. The first volume, published in 1948, brought up to date the six-volume „Collection of International Tax Agreements and Internal Legal Provisions for the Prevention of Double Taxation and Fiscal Evasion", published by the League of Nations from 1928 to 1936. Volume II in the *International Tax Agreements* series contains the agreements signed since 1948, as well as the texts of a few earlier agreements not previously published, either in this series or in the League of Nations Collection. The texts of all agreements are reproduced in official versions transmitted by the Contracting Governments or in translations prepared by the Secretariat of the United Nations or the Secretariat of the League of Nations.

The desire to protect trade and investment from the burdens of double taxation has given strong impetus to the conclusion of international tax agreements between the various countries of the world, and the present volume contains over 100 agreements concluded since the publication of Volume 1. From the contents of Volume II it appears that the British Commonwealth and the United States continued to be most active in the field of international tax agreements, but the European countries also participated in this movement. However, apart from a few agreements, independent under-developed countries continue to remain outside the network of international tax agreements. This is due largely to the lack of economic balance between capital-exporting and capital-importing countries, which allows less scope to the „give and take" essential to tax agreement negotiations.

The agreements are grouped by subject categories, the most important of which deal with general income and property taxes, death duties, and maritime and air transport taxes. There are a number of agreements providing for reciprocal assistance among the tax administrations in the assessment of taxes and their collection. There is also a series of agreements designed to prevent double taxation under the postwar capital levies which were introduced in a number of European countries for the combined purposes of confiscating wartime profits which, in certain cases, were derived from collaboration with the enemy, combating runaway inflation, and obtaining added funds for reconstruction and compensation of war damages.

K. LUTZ: *Zürcher Steuergesetze*, 2 vols. — Polygraphischer Verlag A.-G. Zürich, 1948.

The first volume of this book deals with the direct taxes existing in the Canton of Zürich.

In his extensive introduction the author gives a survey of the general principles upon which the taxes are based; tax liability, intercantonal and international double taxation, rates, assessment, collection. In the second part of the introduction the commercial taxes are dealt with in the same way.

Apart from this introduction, this volume contains the texts of all legislation concerning direct taxes.

The second volume deals with the death and gift duties levied by the Cantor of Zürich. The problems indicated above are set forth in the same, clear way.

HANS GERBER: *L'impôt sur le chiffre d'affaires en Suisse*. — Son développement et sa structure; sa signification dans l'ensemble du régime fiscal; charge qu'il impose au consommateur. — Les Editions Radar, Génève. s.d.

In this booklet (42 pages) the author gives a short but very clear survey of the Swiss turnover tax. He divides his study into three parts, the first of which deals with the development and the structure of the Swiss tax. The author studies his subject from a dual point of view: the juridical and economical side of the tax is clearly exposed.

In the second part, some interesting pages deal with the problem: direct or indirect taxes. Dr. GERBER makes a comparison with some foreign taxes of this kind, in Russia, France, Belgium and the United Kingdom.

In the third part the author occupies himself with the social aspect: the charge laid upon the consumer. The shifting of the tax, its influence on household expenses, desirability of a luxury tax and its significance in Switzerland etc. The author finally gives a survey of the charges of the tax compared with income taxes in some cantons.

His conclusions and a bibliographical note concludes this study.

Technical Assistance for economic development. Plan for an expanded co-operative programme through the United Nations and the specialized agencies. — United Nations. Lake Success. N-York, May 1949, Sales No. 1949. II. B. 1

This report prepared by the Secretary-General of the United Nations in consultation with the executive heads of interested Specialized Agencies presents the first comprehensive, international programme of technical assistance for the economic development of under-developed countries. It was prepared at the request of the Economic and Social Council for consideration during its ninth session.

The first of the report deals with the objectives and nature of the programme, with the fields of work covered, forms of technical assistance, and organization and finance. The second part describes the kinds of technical assistance which the Secretary-General of the United Nations and the executive heads of the Specialized Agencies believe their organizations can undertake to provide, if the necessary funds are made available, during the first and second years of ,,an expanded co-operative programme of technical assistance for economic development''.

FRITZ HARTUNG: *Das Steuerstrafrecht*. Kommentar zu den Bestimmungen des III. Teiles (Abschnitt I) der Reichsabgabenordnung — Verlag für Rechtswissenschaft vorm. FRANS VAHLEN, GmbH, Berlin/Frankfort, 1950.

Le droit fiscal pénal allemand ne fut pas, comme dans d'autres pays, réglé par une seule loi, et il ne fut pas traité comme une seule unité mais on

pouvait en trouver des dispositions dans différentes lois fiscales. L'administration fiscale en éprouvait les conséquences désavantageuses. Il est évident que lorsqu'aprés la première guerre mondiale le droit fiscal ainsi que l'administration fiscale furent pris dans leur ensemble, on dut procéder à une condensation du droit fiscal pénal. Cela se faisait dans la „Reichabgabenordnung" de 1919.

L'auteur de l'ouvrage sus-mentionné constate que néanmoins on pouvait encore trouver des traces de l'ancienne réglementation; en outre, on avait maintenu en vigueur la loi de 1869 concernant le régime pénal douanier. Il y avait donc beaucoup de choses contraires aux principes du droit pénal général. Il s'ensuivit que peu à peu on fit rentrer les réglementations spéciales dans la R.A.O., et, par conséquent, les dérogations au droit pénal général ont disparu. Deux lois de 1929 et de 1939 ont été très importantes pour ce développement.

Après la dernière guerre on apporta beaucoup de modifications: les peines sont aggravées, on a étendu la possibilité d'éviter les poursuites par des avertissements volontaires, etc.

L'auteur a beaucoup d'expérience dans cette matière. En premier lieu, son ouvrage a pour but de favoriser la coopération entre les organes de l'administration fiscale et ceux de la justice criminelle, et plus spécialement de favoriser la compréhension mutuelle des points de vue.

L'auteur a exposé ses thèses sous la forme de commentaires aux articles de la „R.A.O." traitant le droit fiscal pénal (§§ 391—419). Ces commentaires sont pourvus de titres afin que le lecteur puisse y trouver facilement ce dont il a besoin. Un index très bien fait termine l'ouvrage.

VASCO NUNES PEREIRA FORTUNA: *Théorie sociométrique de la répartition de l'impot.*

Sous ce titre, l'auteur a composé un résumé français d'un ouvrage qu'il a écrit en portugais et dans lequel il développe une formule relative à un impôt sur le revenu qui serait juste et équitable à son avis.

Voici cette formule (dans laquelle x représente le revenu imposable et y le pourcentage de l'impôt sur le revenu):

$$y = b - \frac{a^2}{(c - d) + x}$$

L'auteur a basé cette formule sur un certain nombre de considérations, dont il a donné le résumé suivant:

1. la formule doit satisfaire aux exigences de ce qu'il appelle la théorie sociométrique, dans laquelle est élaborée la condition sociale que l'impôt soit un instrument pour réduire des disparités;
2. l'impôt doit contribuer à niveler les fluctuations de la conjoncture.
3. l'impôt doit être un moyen d'arriver au „plein emploi".
4. l'impôt doit satisfaire aux exigences de la théorie de la discrimination, selon laquelle les revenus de travail doivent être frappés d'un autre impôt que ceux provenant des capitaux.
5. l'impôt doit satisfaire à l'exigence d'après laquelle l'Etat peut obtenir un certain revenu total.

N'ayant pu lire que le résumé publié en français nous ne pouvons pas clairement nous rendre compte comment l'auteur aboutit à sa formule. Nous nous contenterons de faire remarquer qu'à notre avis, se sont plutôt les valeurs qualitatives de la fonction mathématique choisie que la valeur exacte des coefficients que l'auteur déduit directement des théories qu'il applique.

Prof. Dr. J. TINBERGEN.

HEINRICH TROEGER: *Steuerstrafrecht,* 2ième édition — Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Stuttgart, 1950.

La première édition de cet ouvrage parut en 1943. Bienqu'elle fût épuisé en trés peu de temps on a remis une nouvelle édition à plus tard vu les modifications importantes en Allemagne, modifications d'importance aussi pour le contenu de cet ouvrage.

Comme de livre précité de HARTUNG, cet ouvrage donne des commentaires aux articles de la Reichsabgabenordnung allemande. L'auteur n'a pas seulement pris en considération la loi du 20 avril 1949 introduisant de nouvelles dispositions concernant la perception d'impôts, mais aussi les dispositions des autorités militaires concernant les droits douaniers.

Le sujet a été continuellement mis en rapport avec le droit pénal général.

Puis il est à remarquer que l'auteur a cité la jurisprudence de l'ancien „Reichsfinanzhof" et d'autres „Reichsgerichte" de l'ancien régime. Depuis 1945 il n'y avait plus de tribunal de dernière instance en Allemagne.

Une table détaillée termine l'ouvrage.

United Nations Economic Commission for Europe: Economic Survey of Europe in 1950 — U.N. Publications Sales No. 1951 II.E.1. Available from all authorized Sales Agents for U.N. Publications. Department of Public Information, Sales & Circulating Section, Geneva, Switzerland.

This is the fourth annual Survey of the European economy to be undertaken by the Secretariat of the Economic Commission for Europe.

The Survey contains a discussion of world economic developments affecting Europe. It shows the dominant influence of the United States on world production. There is an extensive discussion of inflationary prospects in the United States and of their probable consequences for Europe.

The Survey reviews the progress of European production in the past year and analyses the factors which cause this progress to be more stable in some countries than in others. It contains a detailed discussion of the raw material problem.

After reviewing trade developments since devaluation, the Survey continues to discuss what it considers to be the most serious problem facing Europe this year: inflation coming from the outside world. After an analysis of the way in which rising import prices are working through into the internal cost structure of European countries, the Survey examines the different weapons available to individual countries in their efforts to maintain the value of money.

It concludes with a strong plea for a general appreciation of European currencies and a return to a system of more flexible exchange rates.

A French editions is in preparation.

J. B. J. PEETERS: *Beschouwingen over het op* 29 *October* 1948 *tussen Nederland en Amerika gesloten verdrag ter voorkoming van dubbele belasting.*
Weekblad der Belastingen, 's Hertogenbosch 1950.

L'Administration fiscale ainsi que les contribuables ont eu besoin d'un commentaire détaillé relatif à la Convention néerlando-américaine en vue d'éviter les doubles impositions. L'auteur, qui est parfaitement an courant de tout ce qui touche cette convention parce qu'il occupe une fonction officielle très élevée, a publié une série d'articles dans une revue professionnelle néerlandaise, articles maintenant publiés dans un opuscule de 118 pages. Cet opuscule comprend les textes anglais et néerlandais de la convention, tandis que l'auteur en écrivant son commentaire a pris en considération le droit fiscal néerlandais et américain. Chaque article de la convention est suivie d'un commentaire plus ou moins détaillé, selon l'importance de l'article en question.

OTTMAR BUHLER: *Bilanz und Steuer bei der Einkommens-Gewerbe und Vermogens-Besteuerung*. 4ième édition, avec une contribution de EMMY KUHL, Cologne. — Verlag für Rechtswissenschaft vorm. Franz Vahlen, G.m.b.H., Berlin/Frankfort, 1950.

Dans cette nouvelle édition l'auteur n'avait pas seulement à prendre en considération la jurisprudence depuis 1937, l'année de publication de la 3 ème édition, mais aussi le développement récent après la loi concernant la „DM-Eröffnungsbilanz auf 21. Juni 1948". Comme ce développement n'a pas porté atteinte aux principes d'où on était parti dans les éditions précédentes, le lecteur trouvera bien des choses rencontrées déjà dans les trois premières éditions.

L'auteur a tenu compte du développement de l'écomonie professionnelle. Aussi peut-on trouver dans la bibliographie détaillée, à côté des ouvrages fiscaux et de ceux qui concernent le droit commercial, des ouvrages sur l'économie professionelle.

La doctoresse EMMY KUHL dans son article sur „la technique du bilan fiscal et la possibilité de le faire concorder avec le bilan commercial", traite plus spécialement l'aspect pratique du problème.

L'ouvrage est systématiquement arrangé: 1. Principes généraux; 2. Bilan commercial comme base pour le bilan fiscal, sauf exceptions; 3. Fonds commercial: comment le faire figurer à l'actif et en passif: 4. Evaluation, amortissements, continuité du bilan; 5. considérations sur le bilan pour autant qu'il concerne l'impôt sur la fortune et la „Gewerbesteuer"; l'auteur y traite la soi-disant „Einheitsbewertung". Ensuite on traite le développement récent, à savoir: l'influence de la période de guerre et d'après guerre sur le bilan fiscal, d'abord jusqu'au 20 juin 1948, ensuite au 21 juin 1948 et enfin selon le „DM-Bilanz-Gesetz" du 21 août 1949. On a inséré, à la fin de l'ouvrage, les textes de lois les plus importants.

Vu l'accroissement des relations internationales, il est important de connaître la façon dont le bénéfice imposable est calculé dans les divers pays. L'ouvrage détaillé de M. BUHLER met en lumière les problémes, ce qui est important aussi pour ceux qui ne s'intéressent pas directement à la solution trouvée en Allemagne. On y trouve de nombreux exemples, beaucoup de citations de la jurisprudence, et tout cela peut éclaircir la connaissance des problèmes qui se présentent dans tous les pays.

EDMOND N. CAHN, E. ADAMSON HOEBEL, A. ANTON FRIEDRICH, PAUL W. TAPPAN AND JEROME NATHANSON: *Social Meaning of Legal Concepts*, I: *Inheritance of Property and the Power of Testamentary Disposition*. — New York University School of Law, New York, 1948.

Le premier cahier dans la série: Social Meaning of Legal Concepts, commence par une introduction générale de ARTHUR VANDERBILT, Chief Justice of the Supreme Court of New Jersey, qui défend la grande importance des sciences sociales pour la science juridique, et inversement. La conférence annuelle dont cet opuscule donne un aperçu, veut établir ce rapport indispensable entre ces sciences.

Le professeur EDMOND N. CAHN, qui en a pris l'initiative, a écrit un bref article intitulé „Outline of three great systems", comprenant un court aperçu des dispositions légales en New York, en France, et dans l'U.R.S.S. Ensuite on trouve les articles des auteurs sus-mentionnés, sur: „The Anthropology of Inheritance", „The Economics of Inheritance", „The Sociology of Inheritance" and „The Ethics of Inheritance". Il n'y a pas de lien direct avec le droit fiscal; néanmoins, cette étude peut étre importante pour le droit fiscal, à savoir pour ceux qui veulent connaître l'influence du droit de succession du point de vue social, économique et éthique.

V

INTRODUCTION TO THE INCOME TAX ORDINANCE OF ISRAEL[1])

by
G. ALON (EICHELGRUEN)

EIL = Encouragement of Investments Law.
CTO = Company Profits Tax Ordinance.

IMPOSITION AND RATES OF TAX.

Israel's *fiscal year* starts on 1st April. Income tax is payable on the profits of the year preceding the *„year of assessment"* (sect. 6) or the *"chargeable accounting period"* (CTO, sect. 5). In extraordinary circumstances, the tax authorities are ready to accept any other period of 12 months (sect. 7 and CTO, sect 7).

Tax deduction at source exists in the case of wage earners and pensioners (sect. 48 and Deduction Rules, p. 28) and in the case of dividends and debenture interest (sect. 31). Three different *rates of tax* apply, one for individuals (sect. 29 and Absorption Tax Law) at progressive rates between 13 % and 80 %; one for limited companies, i.e. 50 % (for the first IL. 250 income of a company only 25 % tax is payable (CTO, sect. 6)), and a flat rate of 25 % for individuals or firms approved under the EIL and foreign specialists, (cf. EIL, s. 13). One half of the tax paid by companies (25 %) may be deducted from dividends distributed and set off against the tax payable by the shareholders, if any (sect. 32).

Local residents may deduct *personal allowances* as shown in a special table. *Husband and wife are* assessed together (sect. 23). In many cases, this means a penalty on marriage unless the wife is earning only a modest income from employment. If the taxable income (total income less personal allowances) exceeds IL. 1,200, the *personal allowances are "frozen* . This means that taxpayers with an income of this amount and above have their personal allowances charged not against their incomes, as is the case in the U.K., but against the tax payable by them, as is the case in the U S.A. (sect. 16A) For chargeable incomes above IL. 2,100, the amounts deductible for personal allowances are still further reduced. Borderline cases receive special treatment. No personal allowances are allowed to nonresidents. No clear Israel ruling exists on the definition of *residence*, but in general the U. K. interpretation applies: if no abode is kept within the country a stay of at least six months is necessary to assume residence, or habitual annual calls must be made to this country; if an abode is kept in Israel, even short stays may attract taxability (cf. 2 and U.K. Tax Convention).

TAXABLE INCOME AND EXPENDITURE

"Income" for tax purposes is in no way defined by the law (sect. 5). As there is no "sweeping clause" any income not specifically mentioned in sect. 5 remains tax free. This refers to the so-called "windfall" profits, non-recurring receipts which cannot be specified as derived from a trade or profession, occasional fees, profits of a speculative nature, prizes, or certain

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[1]) Reprintred from Business Digest (B.D.) (Haifa), Vol. IX, No. 134, October 1950.

income from property apparently not included under section 5 (h), such as rents received by tenants, etc., gifts inheritances. etc.

Originally, only tax accruing in or derived from Israel was taxable to income tax here. This principle of the *Remittance Basis* has been abandoned in favour of two types of foreign profits: the foreign profits of all firms whose "control or management" is situated in Israel are liable to local tax (sect. 5 (4)), and so are the profits from the sale abroad of local produce, provided such produce is sold abroad by the producers themselves. It would appear that the section does not apply to the same sale if carried out by a separate exporter. In all other cases, foreign profits are taxable only if actually remitted to this country (sect. 5 (1)). No tax at all is payable on such profits remitted by new residents during the first seven years of the newcomer's stay in this country (EIL, sect. 13). Under the Finance Regulations, local residents are bound to remit the yield from their foreign securities and other foreign income (authors' fees, royalties, etc.). A special tax relief is provided for these cases (Finance Regulation 6 (6).

With regard to *non-residents*, the provisions of the U.K. law have, in general, been embodied in the Law (sect. 35). The mere purchase of goods in Israel does not attract tax, (following U.K. case law), while a very lenient view is taken in the assessment of profits from manufacture and sale in the country. The tax authorities have the usual power to fight tax avoidance by means of a ledger transfer of profits between different countries (sect. 35 (3)). There is no provision similar to the U.S.A. sect. 131, whereby tax relief is given to Israel citizens on their foreign income. As a matter of administrative practice, however, foreign tax paid is deductible from the foreign gross income. As the amounts of foreign profits transferred to Israel are *usually* not very considerable, the same procedure would in most cases be chosen by the U.S.A. taxpayer. Tax credit is provided for, however, under the tax conventions (sect. 73). The country has so far concluded one agreement against double taxation, with the U.K. Special relief exists for local shareholders in companies operating in Israel but registered and resident in a foreign country, such as, e.g. the Palestine Electric Corporation (sect. 34), while the EIL provides for the possibility of tax rebates for such companies themselves. A tax agreement with the U.S.A. has been negotiated, but not yet signed.

Just as in U.K. law, Israel tax law does not mention the term *"established accountancy practice"* although this, of course, forms the basis of the assessment of trade profits. The double entry method of bookkeeping is considered the proper basis of accounts, except in the case of professional men, where the cash receipts were held to form the basis of taxability (ITA 9/42 Horowitz). *Consistency of accounting practice* is also based on judicial ruling only (ITA 3/43, Frutarom, and cf. sect. 7).

There is no ruling as to the *date* when receipts or expenses must be charged for tax purposes and, in general, the Israel taxpayer is free to submit a receipt as early or an item of expenditure as late as he chooses. In the absence of administrative rulings, the same applies to the debit of trade losses (sect. 13). This state of the law, of course, provides the taxpayer with ample possibilities to equalize his income over a number of years in order to pay the lowest possible tax.

No provisions exist with regard *to stock valuation* except those in sect. 27 with regard to the outright sale of stock-in-trade against considerations other than cash. In the absence of clear legal rules, accepted accountancy methods are applicable although the law does not mention the term (cf. ITA 3/43).

With regard to *depreciation*, the straight line method applies, contrary to U.K. law (sect. 11 (1) (i) and Rules). Increased rates of depreciation are provided for under the EIL (sect. 10). Depreciation, however, is optional and if the taxpayer's gains do not allow him to deduct the full amount in

any one year he may carry forward the unused portion to future years without limitation (sect. 11 (1) (i)).

Items of expenditure which are not admissible are *key money* (cf. ITA 6/50, BD. 132/298), *donations* (which may to some extent be claimed in the same way as personal allowances, cf. sect. 16 (1) (c)) and *capital losses* of any kind (sect. 12 (c)). F*ares from residence to place of work* are not deductible, similar to U.S.A. or U.K. law. The authorities are very careful with regard to *Allowances* granted by employers to employees. Although these allowances are specifically mentioned in section 5 (1) (b), in practice great difficulties are made. The entertainment allowance, 10 % of the salary ,with a maximum of IL. 200 per annum is generally granted to managing directors of large concerns only, while travelling allowances must normally be substantiated by vouchers, in the same way as in the U.S.A. and the U.K. It is usually much more advantageous, instead of receiving such lump sum allowances, to deduct every single item direct in the firm's ledgers.

Special provisions exist for the assessment of *Insurance Companies* (sect. 19) while *Foreign Shipping Companies* (sect. 20) have so far in all cases been considered as exempt from tax (sect. 8 (k) although returns of income are now demanded.

ASSESSMENT, PAYMENT, APPEAL

Income Tax and *Company Profits Tax* are assessed together, and the necessity for two different sets of forms merely means much unnecessary work for the tax authorities. On 15th June and 15th August of each year, all taxpayers (except those who have 75 % or more of their tax deducted at source) have to *pay* 50 % of their last assessed tax as an advance on the current year's tax (only 40 % of last year's Company Profits Tax, cf. sect. 62 (3) and Order thereunder). There are no written provisions for taxpayers who claim that their tax for the current year is less than one half of the previous year's tax. The authorities, however, are ready in such a case to accept the whole tax for the current year as declared by the taxpayer, instead of one half of the previous year's tax. To simplify matters, it is best in such cases to attach a cheque to the completed income tax return for the current year of assessment.

At a later date, the Assessing Officer sends to all taxpayers *income tax returns* — one of the many superfluous procedures by which the Government wastes the country's manpower and money. These forms could just as well be obtained at the post offices, as is the practice in the U.S.A. These forms must be returned within thirty days, although prolongations are usually obtained without difficulties. Tax payers who have not obtained returns but who are taxable are bound by law to apply for forms up to the 20th September; in actual fact, however, this provision is never enforced (sect. 42). After the return is received by the Assessing Officer, a *"provisional assessment note"* is sent to the taxpayer under sect. 55(2)(c). Tax *is payable* within thirty-five days after despatch of the notice of assessment; if the amount of the tax is in excess of IL. 50.—, it may be paid in two equal instalments, the second instalment due four months and five days after despatch of the notice of assessment(sect. 63 and Rules). In administrative practice, other instalments are generally allowed by the Assessing Officer on application by the taxpayer. In cases of delays in payment, 20 % penalty is imposed. The taxpayer could of course just as well attach his cheque to a return form obtainable from the post office. But the Israel Government prefers to increase employment by superfluous administrative work.

After the taxpayer has paid the tax indicated in his return, the *final assessment* is made, sometimes a year or more after payment of the original tax. Almost all taxpayers are summoned to appear in person — again a singular waste of time and money. The inspector does not often take advan-

tage of his rights under sect. 45 (2) to call on the taxpayer and check his books and business transactions. If discrepancies are detected, *additional tax* is demanded but, contrary to U.S.A. practice, *no penalties* of any kind are imposed even in cases of apparent fraud.

The taxpayer may *object* under sect. 59 against the final assessment and can lodge an appeal with the Court under sect. 60 or to the Commissioner under sect. 56 There have been cases in the past when the taxpayer was allowed to file a suit in Court long after the prescribed period in case of such an application to the Commissioner for revision : the safer way is, of course, to file a suit at the time when the Commissioner is asked to revise the assessment.

The Israel Courts, in deciding *income tax appeals* so far appear to follow the Mandatory tradition of considering U.K. cases as binding. Under the Mandatory, this interpretation was obligatory on the Jerusalem Court because appeals against its decisions could be lodged with the London Privy Council. Now, the Israel Supreme Court is the final Court of Appeal. The Israel Courts, therefore, should be entirely free to decide on the basis of precedents from any country or without precedent at all, and even the binding force of Palestine Mandatory Income Tax Appeals may be subject to question once the binding force of U.K. precedent is no longer acknowledged by the Israel Courts (Court Rules).

TAX AVOIDANCE (LEGAL) AND EVASION (ILLEGAL)

Israel is at present a paradise for *tax evaders*. While tax evasion is very widely practised, nobody has so far ever been penalised, although the penal sections give the same wide powers to the Israel administration as are conferred upon the U.K. administration. *Tax avoidance* by legal means is fully acknowledged both by the administration and the judiciary (see ITA 8/49, BD. 126/92). The Israel law contains many loopholes, from *personal allowances* which are deductible in full, whatever the length of time during which the deduction may have been in force, to the large concessional rebate given to *working mothers* (sect. 15(2)(a)), from the substantial possibilities of tax avoidance by means of registrations of new limited companies and revaluation of assets (ITA 8/49, BD. 126/192) to that most fertile field of tax avoidance, *capital profits*, which need not be taxed in this country (sect, 8, ITA 6/50, BD. 132/298). Of course, *capital losses* cannot be deducted from chargeable income either, a provision which is both unfair and imprudent, with a rate of income tax of 50 % for limited companies and 80 % for individuals. With regard to the exclusion of capital profits from chargeable income, the time necessary to derive capital profits is of no import for the Israel law and capital profits remain tax free even if they are derived in as short a time as one or two minutes, merely by the signing of legal documents. Finally, the far-reaching exemption of most *cooperatives* (sect. 8) cuts a hole in our tax revenue.

Apart from the specific legal loopholes which have been mentioned above, tax can be reduced mainly by two means, by the formation of a *limited company* taxable at the flat rate of 50 % or by *splitting the income* over a family by actual transfer of the property (no gift tax exists in Israel). Under the former device, 75 % of the chargeable income of a company must be distributed amongst the shareholders unless the company proves that it needs the funds for the maintenance or development of the business (sect. 26). Apart from this provision, *every company is acknowledged as a separate entity* and Israel jurisprudence has no example of an attempt to deny the company its existence on the lines of Swiss, French or German cases. The *transfer of property to minors* is subject to the provisions of sect. 24. This section can, however, hardly apply to *non-residents* in view of the material difficulty in applying its provisions in an area outside the local jurisdiction

of the Israel administration. The provisions against *revocable dispositions of property* (sect. 25) are of little practical importance due to the fact that there is no explored *law of trusts* in Israel. Sect. 28, referring to artificial or fictitious transactions, is extremely difficult to apply as the burden of proof will most probably fall on the Assessing Officer. It is this same onus which makes the application of criminal prosecutions against tax evaders difficult — even if the tax authorities were less reluctant to take advantage of their powers under sect. 79.

THE ISRAEL INCOME TAX SYSTEM

The Israel Tax Law has been taken over from the *mandatory adminsitration* without material change. In general, it follows the lines of the U.K. *tax system* including many of its antiquated provisions. The *Israel Government* has made a number of minor changes which, on the one hand, tend to increase the rates of tax by special war surtaxes and, on the other hand, allow sometimes very far-reaching concessions, as in the case of "approved investments", of profits derived from exports or the exemption of savings from income tax, concessions which are intended to provide economic incentives but which can well destroy the whole tax system.

The Israel Government has, so far, hardly succeeded in an equitable *collection of tax* (cf. BD. 124/159). Less than 5 % of the national income is collected in income tax, compared with an average of 10 %—20 % in North American and European countries (cf. BD. 126/194).

The administrators of the Israel Income Tax Law are doing their best to bring the Israel statute on a par with the doubtful standard of the U.K. Acts without, however, emulating the U.K.'s earnest attempts at tax reform, or, at least, re-codification. As a special indication of this lack of efficiency, we cite CTO sect. 5, embodying principles which should, to all intents and purposes, be included in the Income Tax Law proper, but which, two and a half year after establishment of the State, have not yet been incorporated into the basic law.

Rates of tax are so high that they seriously disturb the incentive to earn profits while every citizen is tempted to evade his national duty. Workers refuse to work overtime or, alternatively, demand that wages for overtime should not be recorded in the accounts but should be paid out of receipts from black market operations — thereby again strengthening the trend towards a breakdown in the morale of the country — while it is hardly worth while for any entrepreneur to take upon himself the extraordinary risks connected with the establishment of new enterprises in this country as long as the tax on individuals is 80 % — unless he manages to decrease his tax obligations by legal or illegal devices. Here, of course, the *Encouragement of Investments Law* has done some good, but by reducing rates of tax below those prevailing in the U.S.A. and the U.K. the real beneficiary is, in many cases, the foreign Treasury and not the individual investor. The whole set-up of the EIL reveals lack of understanding on the part of the administrators and legislators.

By its failure to tax away the large amounts of money printed by Government in its attempt to absorb a million newcomers, our present tax system is pushing the country into a state of *uncontrolled inflation* similar to that experienced in Central Europe during the twenties. What the country needs is a system of tax with moderate rates never in excess of those in force in the U.S.A., collected at every phase where money changes hands, by means of a sensible system of tax deductions. The task of the tax authorities under such a system should normally be confined to the making of tax refunds in all cases of over-deductions.

GREAT-BRITAIN

Extra-statutory concessions [1])

in operation at 31st December, 1949.

The concessions described below are of general application, but it must be borne in mind that in a particular case there may be special circumstances which will require to be taken into account in considering the application of the concession.

INCOME TAX

1. AGRICULTURAL DEPRESSION.

Relief from tax under Schedule A is granted in respect of remissions of rent of farm land on account of agricultural depression.

2. UNOCCUPIED LAND.

Relief from income tax, Schedules A and B, is allowed on waste and unenclosed land, and on agricultural land which the owner is unable to let or to farm himself.

3. LOST RENT.

Relief from income tax, Schedule A, is allowed in respect of rent which is wholly and irrecoverably lost or waived owning to the bad financial circumstances or absconding of the tenant. (In Northern Ireland the relief is statutory.)

4. UNWORKED MILLS AND FACTORIES.

Relief from income tax, Schedule A, is allowed under the head of "empty property" where mills or factories are unworked, notwithstanding that they contain machinery and that the machinery is turned occasionally for the prevention of rust.

5. MAINTENANCE OF PROPERTY.

Rule 8 of No. V of Schedule A, Income Tax Act, 1918, provides that, if the owner of land or houses proves that the cost to him of maintenance, repairs, insurance and management, on the average of the five years preceding the year of claim, exceeds the flat rate repairs allowance for that year, he can claim repayment of the Schedule A tax on the property up to the amount of tax on the excess. The following relaxations are allowed:—

(*a*) Where the claimant owns both lands and houses, the claim may be based on aggregate expenditure on lands and houses taken together, irrespective of the actual seperate expenditure on each of the two classes of property.

(*b*) Where a new owner is unable to obtain details of previous owners' maintenance expenditure, a claim is admitted on the basis of his actual expenditure in the year of claim (provided that the expenditure is not

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[1]) Reproduced with the permission of the Controller of H.M. Stationery Office, London. The concessions have been published as an appendix to the 93rd Report of the Commissioners of H.M. Inland Revenue for the year ended 31st March, 1950. (Document Cmd. 8103).

exceptionally heavy) until a five years' average is available, if the claimant undertakes to accept the "actual year" basis for five complete years.

(*c*) The estimated cost of repairs obviated by alterations is allowed, provided the alterations have not created a new subject of assessment.

(*d*) Where plant or machinery is employed for property maintenance, the actual expenditure on renewals of the plant or machinery as and when incurred qualifies for inclusion in a maintenance claim. As an alternative to this basis of claim, however, the claimant may charge, in place of the actual outlay on renewals, the normal allowances for initial allowances, wear and tear, etc., which would be due under the Income Tax Act, 1945, if the plant or machinery were employed in a trade or business.

6. BUSINESS PASSING ON THE DEATH OF A TRADER.

The death of a trader and the consequent passing of his business to his successor is an occasion for the application of the discontinuance provisions of the Income Tax Acts. Where, however, a business passes on death to the trader's husband or wife who has been living with her or him, the discontinuance provisions are not enforced unless claimed. But, in any case, losses and capital allowances for which the deceased had not obtained relief are not permitted to be carried forward.

7. PARTNERSHIP CHANGES.

Under Rule 11 of the Rules applicable to Cases I and II of Schedule D, Income Tax Act, 1918, the introduction or withdrawal of a partner may, at the partnership's option, be made the occasion for the application of the discontinuance provisions of the Income Tax Acts. Where there are two successive changes of partnership in respect of only the second of which the discontinuance option is exercised, an additional assessment for the penultimate year of assessment can only be made on the partnership as constituted at the time of the second change, and in respect of the period during which the partnership, as so constituted, carried on the business.

In such cases, the additional liability of a partner who was carrying on the trade for an earlier part of the year than that to which the additional assessment extends, is restricted so that his total liability for the year does not exceed his share of the actual profits of the year, or his share for the whole year of the original assessment, whichever is the greater.

8. MACHINERY OR PLANT: CHANGES FROM A "RENEWALS" TO A "WEAR AND TEAR" BASIS.

Expenditure on machinery or plant which has been the subject of a "renewals" deduction does not technically qualify as capital expenditure for the purpose of annual ,,wear and tear" allowances or balancing allowances (Section 64(1) (*a*), Income Tax Act, 1945). Taxpayers who change from a "renewals" to a ,,wear and tear" basis are, however, permitted to claim such allowances as if the expenditure did so qualify.

9. STOLEN MACHINERY OR PLANT: BALANCING ALLOWANCES.

Balancing allowances are given in respect of the loss of machinery or plant by theft.

10. RELIEF IN RESPECT OF LOSSES.

Under Section 34 of the Income Tax Act, 1918, relief in respect of a loss in any trade, etc., may be given against any income of the trader chargeable for the year for which the loss was incurred, i.e., against the trader's income from other sources or against the assessment on the profits of the trade based on the profits of the preceding year.

Capital allowances in respect of machinery or plant, industrial buildings, etc., rank in law as deductions from the assessment and not as deductions in

computing the profit or loss. Such allowances due for the year of claim are, however, permitted to be deducted in computing a loss for the purposes of relief under Section 34, to the extent that they have not been allowed in the assessment for that year and subject to an undertaking being given by the claimant to regard such a deduction as constituting effective relief for the allowances for all tax purposes.

11. MANAGEMENT EXPENSES.

Under Section 33 of the Income Tax Act, 1918, life assurance companies, etc., which are charged to tax on interest, etc., by deduction or otherwise, and not on profits under Case I of Schedule D, are entitled to claim repayment of tax on management expenses.

The initial and annual depreciation allowances which would be given under the provisions of the Income Tax Acts on office machinery and motor cars used for trade purposes, if the trade were assessed under Case I of Schedule D, are treated as management expenses for the purposes of a claim under Section 33. Similarly, the net annual value of premises owned and occupied for trade purposes is also treated as management expenses.

12. FLAT RATE ALLOWANCES FOR COST OF TOOLS AND SPECIAL CLOTHING.

An employee who has to bear the cost of providing tools or special clothing necessary for his work is entitled, under Rule 9 of Schedule E, to an allowance for the expenditure incurred. For most classes of trade flat rate allowances have been agreed with the trade unions concerned, and these allowances are given without enquiry as to the expenditure actually incurred in the individual case. The existence of a flat rate allowance does not, however, debar an individual employee from claiming as a deduction the actual expenses he has incurred.

13. CHRISTMAS PRESENTS IN KIND TO EMPLOYEES.

Christmas presents in kind given by an employer to his subordinate employees are not treated as taxable remuneration, and this treatment has been extended to the presentation of Savings Certificates or Savings Stamps and deposits in the Post Office or Trustee Savings Banks in lieu of such presents.

14. MINERS: ALLOWANCES IN LIEU OF FREE COAL.

Income tax is not charged on cash payments received by miners from their employers in lieu of the free coal which they have been entitled to receive by virtue of their employment.

15. PENSIONS TO POLICE OFFICERS AND FIREMEN.

The amount by which the special pension awarded on retirement through disablement from injury on duty (or from war wounds) exceeds the pension which would have been awarded if retirement had been on ill-health grounds is not treated as income for income tax purposes. Similarly, a disability pension awarded in addition to a retirement pension is not treated as income.

16. CHILDREN OF WAR WIDOWS.

(*a*) The exemption form income tax given by Section 27, Finance Act, 1922, to payments made by the Ministry of Pensions to widows of members of the Forces in respect of their children is applied to similar payments in respect of children made to "unmarried wives", and also to similar payments in respect of children made to widows and "unmarried wives" of members of the Mercantile Marine and to widows of civilians who have died from war injuries.

(*b*) The same exemption is also applied to similar payments in respect of children which are made to war widows (or "unmarried wives") by Commonwealth governments.

17. DIRECTORS' TRAVELLING EXPENSES: PART IV, FINANCE ACT, 1948.

The general rule is that the cost to a taxpayer of travelling to and from his place of business is not allowable as a deduction in computing his tax liability; consequently, the full amount of an allowance paid by a company to a director of senior employee in respect of such expenses is chargeable to tax under Part IV, Finance Act, 1948. The rule is modified in the following types of case:

(*i*) A director (whether whole or part time) of two or more companies within a group of parent and subsidiary or associated companies, whether or not entitled to separate remuneration from each of the companies of which he is a director, is regarded as having one place at which he normally acts as a director of companies within the group, and as entitled to a deduction (or a dispensation from assessment under Section 42, Finance Act, 1948) for expenses necessarily incurred in travelling from that place to other places on the business of the group in the course of his duties as a director. The same principle is applied to an individual who is an employee of one company and a director of another company within the same group of companies. (By "associated company" is meant a company on whose board the group is represented because of the group's shareholding or other financial interest.)

(*ii*) A director who gives his services without remuneration to a company not managed with a view to dividends (e.g., a company owning a hall or sports ground, or running a club) is not treated as assessable in respect of any travelling expenses paid to him.

(*iii*) Where a directorship is held as part of a professional practice (and not, for example, because of some direct or indirect financial interest in the company), expenses incurred by the director in carrying out his duties are allowable as deductions in assessing the profits of the practice under Schedule D, whether the practice is carried on alone or in partnership. Reasonable expenses paid to the director by the company are accordingly not assessed upon the director under Schedule E, provided no claim is made to a deduction under Schedule D.

"Travelling expenses" includes in all cases reasonable hotel expenses necessarily incurred.

18. EXPENSES ALLOWANCES AND BENEFITS IN KIND: PART IV, FINANCE ACT, 1948.

Under Part IV of the Finance Act, 1948, expenses allowances and benefits in kind received by directors and (with certain exceptions) by senior employees are assessable to tax as emoluments of the director or employee, subject to a deduction for expenses incurred which satisfy the conditions laid down in Rule 9 of Schedule E. The following relaxations are made in practice:—

(*a*) No assessment is made in respect of removal expenses borne by the employer where the employee has to change his residence as a result of transfer to another post within the organisation, provided that the expenses are reasonable in amount and their payment is properly controlled. ,,Removal expenses'' includes such related items as a temporary subsistence allowance while the employee is looking for accommodation at the new station.

(*b*) Where the benefit assessable consists of a rent-free house, the director or employee is chargeable on the annual value (or the rent paid by the employer) and on expenses borne by the employer, such as rates. The amounts charged on the employee are restricted in the case of a patently old-fashioned and too large house.

(*c*) Under Section 39(3), Finance Act, 1948, living accommodation provided for an employee (as distinct from a director) in part of the employer's

business premises is exempt from charge under Part IV where certain conditions are satisfied. In practice the exemption is also allowed in the case of a full-time director of a company whose beneficial share-holding does not exceed 5 per cent of the ordinary share capital, unless his emoluments (including the value of benefits within the scope of Part IV) exceed £2,000.

19. DEPENDENT RELATIVE ALLOWANCE.

Where a dependent relative (within the meaning of Section 22 of the Finance Act, 1920) does not reside with the claimant and receives from him less than £50 per annum, a deduction is allowed of the actual amount of the contribution, though in strictness the requirement that the relative should be "maintained" by the claimant is not fulfilled. Where contributions are made by two or more persons, though not amounting to £50 in all, a deduction is allowed to each of his actual contribution.

20. MEMBERS' CONTRIBUTIONS TO TRADE UNIONS.

So much of a member's contribution to a trade union (whether registered or not) as is allocated to superannuation benefits, in addition to any portion allocated to funeral benefits or life assurance, is treated as qualifying for life assurance relief.

21. RESIDENCE IN THE UNITED KINGDOM: YEAR OF COMMENCEMENT OR CESSATION OF PERMANENT RESIDENCE.

For the income tax year in which a person comes to the United Kingdom to take up permanent residence his income from abroad is not assessed on the basis of the income for a full income tax year but is computed by reference to the period of his residence here during the year. A similar practice is adopted for the income tax year in which a person ceases to reside in this country if he has left here for permanent residence abroad. (This concession does not apply to changes of permanent residence between the United Kingdom and the Irish Republic.)

22. MINORS AND CONTINGENT INTERESTS.

Section 21(3), Finance Act, 1936, provides, in general, that sums paid under an irrevocable settlement of capital to a child of the settler, being a child who is an infant and unmarried at the commencement of the year of assessment in which the sum is paid, are to be treated for income tax and surtax purposes as income of the settlor and not of the child. Sums which have been accumulated under such a settlement contingently on the child attaining the age of 21 or marrying and which are handed to the child on the happening of either contingency are not treated as caught by the sub-section.

23. INTEREST, ETC., PAID OTHERWISE THAN OUT OF TAXED INCOME: GENERAL RULE 21, INCOME TAX ACT, 1918.

Under Rule 21, tax deducted from interest, annual payments, etc., paid otherwise than out of taxed income has to be paid over to the Revenue.

Where interest, etc., is so paid in a later year than the due year, but in the due year could have been paid wholly or partly out of taxed income, an allowance is made, in fixing the amount to be paid over under Rule 21, for the tax which the payer would have been entitled (under General Rule 19) to deduct and retain if the interest, etc., had been paid at the due date.

If hardship would otherwise be caused, a similar allowance is made in the case of a trust or other non-trading institution paying interest, etc., at the due date out of the taxed income of past years.

24. DOMINION INCOME TAX RELIEF UNDER SECTION 27, FINANCE ACT, 1920: EFFECT OF EXCESS PROFITS TAX.

If the United Kingdom income tax assessment for any year differs in amount from the corresponding Dominion assessment, Dominion income tax relief is allowable under the law only on the lower of the two assessments. In practice, however, where the United Kingdom assessment for a particular year is reduced below the corresponding Dominion assessment by the deduction of United Kingdom excess profits tax, and that excess profits tax is subsequently repaid on account of a later deficiency, thus increasing the United Kingdom assessment for a later year to a figure in excess of the relative Dominion assessment, relief is allowed on the amount which would have been relieved if the refunded excess profits tax had not been payable. Similarly, where profits tax displaces excess profits tax as the effective charge, the relief is computed as though the profits tax alone had been deducted year by year.

25. DOMINION INCOME TAX RELIEF UNDER SECTION 27, FINANCE ACT, 1920: SURTAX PAYER.

The appropriate rate of a surtax payer comprises his income tax appropriate rate for the year of claim plus his surtax appropriate rate for the year preceding the year of claim.

(*a*) If the taxpayer is resident in the United Kingdom for one year only, and his surtax appropriate rate for the previous year is nil, he is not entitled under the law to any relief in respect of surtax paid for the year of claim. In such circumstances, the surtax appropriate rate for the year of residence is added to the income tax appropriate rate.

(*b*) Where a person is not liable to surtax for a particular year, his appropriate rate in that year is, in strictness, the appropriate rate for income tax only, even though he may have paid surtax for the previous year. The appropriate rate for all years is, however, computed in practice as the sum of the appropriate rate of income tax for the year of claim plus the appropriate rate of surtax for the preceding year.

26. DOUBLE TAXATION RELIEF: DEDUCTION OF UNRELIEVED OVERSEA TAX.

Where oversea tax is credited against United Kingdom tax under a double taxation agreement, any excess of oversea tax which cannot be so credited is deductible in computing the amount of the oversea income for income tax and profits tax purposes. Where there are relevant distributions chargeable to profits tax at the higher rate, the effect of the deduction is ordinarily to increase total tax liability, and, where this is so, no deduction is made for income tax or profits tax purposes.

27. DOUBLE TAXATION RELIEF: NON-RESIDENT DIRECTOR OF A UNITED KINGDOM COMPANY.

A director of a United Kingdom company is liable to income tax under Schedule E on any fees voted to him. If resident abroad, he may also be charged to tax in the country of residence. For tax credit purposes, the source of the income is deemed under double taxation agreements to be in the country where the services are performed. If that country is also the country of residence, he can claim credit under the agreement neither in that country nor in the United Kingdom (paragraph 3 of Part I, Ninth Schedule, Finance Act, 1947). In practice, in these and comparable circumstances (e.g., civil servants recruited locally abroad) the United Kingdom gives credit for the oversea tax.

28. DOUBLE TAXATION RELIEF: UNITED KINGDOM BRANCH OF NON-RESIDENT BANK.

Tax credit relief under double taxation agreements is available under the law only to persons who are resident in the United Kingdom. Where, however, the United Kingdom branch of a non-resident bank has in the past received Dominion income tax relief on its investment income, but owing to the conclusion of a double taxation agreement such relief is no longer available, tax credit relief is given on the same income as though the bank were resident in the United Kingdom.

29. BANK INTEREST, ETC., RECEIVED BY CHARITIES.

The exemption from tax under Schedule D in Section 37 (1) (*b*) of the Income Tax Act, 1918, in favour of charities extends to yearly interest or other annual payments forming part of the income of a charity. In practice this exemption is extended to bank interest, whether yearly or not, received by charities and to discount on Treasury Bills held by charities.

30. INCOME OF ROMAN CATHOLIC RELIGIOUS COMMUNITIES OR OF THEIR MEMBERS.

The precise legal position as regards the title to such income, which is in fact treated by the community as belonging to the common fund, is often difficult to ascertain. In practice in the case of certain Orders (such as those engaged in charitable work among the poor) relief is given under the provisions relating to charities; in the case of the Contemplative Orders and other Orders which are not in law capable of being regarded as charities, a proportion of the aggregate income not exceeding £50 per monk or nun (as representing the amount applied for the maintenance of each individual) is regarded as his or her income for the purpose of relief from tax.

31. BUILDING SOCIETIES.

Building societies may enter into a special income tax arrangement, of which the main features are as follows:—

(*a*) The society accounts on a conventional basis for income tax in respect of the dividends and interest credited to its investors.

(*b*) Dividends and interest are credited without deduction of tax, and are not subject to tax at the standard rate (but are subject to surtax) in the investor's hands.

(*c*) Interest is paid by borrowers without deduction of tax, and borrowers are relieved of the tax applicable thereto, the tax being charged on the society.

32. LOAN AND MONEY SOCIETIES.

A loan or money society is granted such relief as will restrict the net income tax liability to tax on the amount of dividends and interest paid or credited to members or depositors having taxable income, less, as regards members, an appropriate deduction for management expenses,contributed by them. The tax is calculated at the reduced rates on dividends and interest accruing to members and depositors who are liable only at the reduced rates.

33. HOLIDAY CLUBS AND THRIFT FUNDS.

Clubs formed annually for the purpose of providing facilities for saving towards holidays are allowed such relief as will restrict the net income tax liability to tax on the proportion of liable income applicable to members having taxable income. Similarly, in the case of a thrift fund the relief allowable is such as will restrict the net income tax liability to tax on the amount of profits or interest paid or credited to members having taxable income. The tax is calculated at the reduced rates on income accruing to members liable only at those rates.

34. "SPECIALLY AUTHORISED" SOCIETIES REGISTERED UNDER THE FRIENDLY SOCIETIES ACTS.

The income tax exemption conferred by Section 39 (1), Income Tax Act, 1918, on a registered friendly society (i.e., a society registered under Section 8 (1) of the Friendly Societies Act, 1896) is also granted to a "specially authorised" society registered under Section 8 (5) of that Act if the only object of the society which precludes registration as a registered friendly society under Section 8(1) is the provision of "provident benefits" within the meaning of Section 39(2), Income Tax Act. 1918.

35. REGISTERED TRADE UNIONS.

The exemption of registered trade unions under Section 39 (2), Income Tax Act, 1918, from income tax under Schedules A, C en D in respect of interest and dividends applicable and applied solely for the purposes of provident benefits is in practice extended to rents. It is also extended to interest, dividends and rents of any year in so far as they are actually applied to provident benefits within that year (although not "applicable solely" to such benefits).

SURTAX

1. DEDUCTION FOR MINERAL RIGHTS DUTY AND ROYALTIES WELFARE LEVY.

Payments of mineral rights duty and royalties welfare levy are not allowable as deductions in computing total income for taxation purposes. For surtax purposes, however, for the years 1941—42 and onwards an individual whose income includes mineral rents and royalties is allowed a deduction, in computing his total income, in respect of mineral rights duty or royalties welfare levy borne by him on the rents, etc., receivable for that year. The deduction allowed in respect of mineral rights duty is 1/- in the £ of the gross mineral rents and royalties receivable (less any amount on which repayment of income tax in respect of management expenses has been made under Section 26, Finance Act, 1922); an additional 1/- in the £ is allowed for any royalties welfare levy.

2. ADMINISTRATION OF ESTATES: DEFICIENCIES OF INCOME ALLOWED AGAINST INCOME OF ANOTHER YEAR.

Under Section 31, Finance Act, 1938, a person who has an absolute interest in the whole or part of the residue of the estate of a deceased person is treated, during the administration period, as entitled to the residuary income of the estate (i.e., the gross income less certain deductions, e.g., in respect of annuities payable) or to the appropriate proportion thereof. If for a particular year the deductions allowable are greater than the gross income of the estate, the excess is allowed as a deduction in computing the net income of the preceding or succeeding years.

ESTATE DUTY

1. MOURNING.

A reasonable amount for mourning for the family and servants is allowed as a funeral expense.

2. DUTY PAYABLE IN COMMONWEALTH COUNTRIES.

Where no double taxation relief (under Section 20, Finance Act, 1894, or Section 54, Finance (No. 2) Act, 1945) is available in respect of duty payable in another part of the Commonwealth on property situated there, the duty is deducted from the capital value of the property in question in order to ascertain the value thereof chargeable with British estate duty. In strict law such a deduction is only admissible where the property is situated in a foreign country.

3. ROMAN CATHOLIC RELIGIOUS COMMUNITIES.

The property of Roman Catholic religious communities whose purposes are charitable is treated as trust property held for a charitable purpose even where there is no enforceable trust, with the result that estate duty is not claimed on the death of one of the nominal owners of the property.

4. PENSIONS, ETC., TO POLICE WIDOWS AND DEPENDANTS.

Estate duty is not claimed on pensions and other payments made upon a policeman's death to his widow or dependants under the Police Pensions Act, 1921, or the Police Pensions Act, 1948.

5. SURRENDER OR DISCHARGE OF LEGAL RIGHTS IN A SCOTTISH ESTATE.

Where a surviving spouse or child within five years before his or her death unconditionally surrenders or discharges certain legal rights in a Scottish estate (*jus relicti*, *jus relictae* or *legitim*), estate duty is not claimed, although it could be claimed under the provisions of Section 45(2), Finance Act, 1940.

6. SPECIAL CONTRIBUTION ATTRIBUTABLE TO GIFTS INTER VIVOS.

Where a death occurs before the end of the year 1947—48, Section 64, Finance Act, 1948, provides for a measure of relief from special contribution in respect of assets on which death duties are payable. Where the death occurs after 1947—48, Section 64 affords no relief, but if by reason of such a death estate duty becomes payable in respect of a gift *inter vivos* and the income from the gift has been taken into account in an assessment to special contribution on the donee, the proportion of the special contribution attributable to such income is allowed as a deduction against the value of the gift for estate duty purposes.

7. LOANS TO THE TREASURY FREE OF INTEREST.

Certain British Government securities are exempt from death duties so long as they are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom. In similar circumstances, exemption is allowed in respect of moneys loaned to the Treasury free of interest.

8. VALUATION OF HOUSE OWNED AND OCCUPIED BY THE DECEASED.

The general rule of valuation of property for purposes of estate duty is to take the market value at the date of death.

(*a*) In the case, however, of a house owned and occupied by the deceased, where a near relative of the deceased who was ordinarily resident with him at the date of death remains in the house and has no other place of residence available, any increase in the market value above the pre-war value is disregarded in so far as it could only be realized by a sale with vacant possession. The valuation made on that basis would, however, be reviewed if the house were sold or let within a reasonable period of (say) two years after the death.

(*b*) In the case where a house to which the concession at (*a*) above has been applied is sold within two years of the death and the proceeds of sale are wholly utilized by the relative of the deceased in the purchase of another house for his own occupation, the basis of valuation at (*a*) is not disturbed. Where, however the proceeds are only partly so utilized, the second house costing less than the amount realized on the sale of the first house, estate duty is charged on the proceeds subject to a deduction to the extent to which the purchase price of the second house is attributable to the premium for vacant possession.

9. VALUE PAYMENTS UNDER THE WAR DAMAGE ACT, 1943.

Where the payment of duty on value payments under the War Damage Act, 1943, is postponed under the terms of Section 6 (3), Finance Act, 1894, the taxpayer is given the option of paying duty either—

(*a*) on the statutory basis, viz., on the value at the deceased's death of the sum received, with interest on the duty from the date of death; or

(*b*) on the actual sum received, with interest on the duty from the date of receipt.

10. INTER VIVOS GIFTS TO CHARITIES.

Where, at the donor's death, there is no existing fund which has been and continues to be directly benefited by the gift, the claim to duty is not pursued against the charitable institution.

11. SETTLED FUNDS: ALLOWANCE FOR, OR REPAYMENT OF, LEGACY OR SUCCESSION DUTY.

Section 29 of the Finance Act, 1949, provides that where estate duty (at the new consolidated rate imposed by that Act) becomes chargeable for the first time on settled property by reason of its passing on the death of the life tenant, an allowance for any legacy or succession duty already paid on the capital value of the settled property shall be given against the charge of estate duty. It is a condition of relief that the property has not previously passed on the death, after the commencement of the Act, of a person not competent to dispose. In practice, this condition is treated as satisfied where the only previous passing under the settlement after the commencement of the Act was one on the occasion of which no estate duty was payable.

12. PPOPERTY HELD IN JOINT TENANCY, ETC.

Property which is so disposed of as to be enjoyed by persons in succession on death, although technically it may not be "settled property" for estate duty purposes, is treated in the application of relieving sections as "settled property" where it is to the interest of the taxpayer so to treat it, e.g., property held in joint tenancy, or a Scottish entailed estate to the extent to which a life rent is imposed upon it.

13. REVERSIONARY INTERESTS.

Technically these are ,,settled property'', but in substance they are free estate in the reversioner and in the application of relieving sections they are, if it is to the interest of the taxpayer, so treated.

CORPORATION DUTY

1. TEMPERANCE SOCIETIES.

Where the work of a temperance society is solely the propagation of temperance principles corporation duty is not claimed from it.

STAMP DUTIES

1. STAMP ALLOWANCE ON LOST DOCUMENTS.

Allowance of the stamp duty on lost documents is made either by repayment, where replicas have been stamped, or by free stamping of the replicas.

2. GROUP LIFE AND PENSION POLICIES.

Documents which assure to the members of a fluctuating body of unnamed persons (e.g., all the employees of a company) capital sums on death before retirement and/or pensions on retirement are assessed to stamp duty on the total at risk in one sum instead of on the individual amounts, no further duty

being charged if a member withdraws without taking benefit and a new member enters in his place and takes a similar benefit.

3. PARTIAL RELEASE OF MORTGAGE.

The correct duty is 10s. deed duty, but *ad valorem* duty at 1s. per cent is accepted if such duty be less than 10s.

4. TRANSFER AND RECONVEYANCE OF COLLATERAL SECURITY.

The correct duty is 1s. per cent. The practice is to limit the duty to 10s. if the transfer of the original security is duly stamped.

5. CHEQUES.

The Stamp Act, 1891, exempts from stamp duty cheques used for pay and other purposes connected with H.M. Forces. The exemption is treated in practice as extending to cheques used for the purposes of Allied Forces in this country.

PROFITS TAX

1. DIRECTORS' REMUNERATION FROM DIRECTOR-CONTROLLED COMPANIES.

Rule 11, Fourth Schedule, Finance Act, 1937 (as amended by Section 45, Finance Act, 1947) provides that in the case of a director-controlled company the deduction to be allowed, in computing profits for profits tax purposes, in respect of the remuneration of the directors (other than whole-time service directors not owning or controlling more than 5 per cent of the ordinary share capital) is to be restricted to £2,500 per annum or 15 per cent of the profits, whichever is the greater, up to a maximum of £15,000 per annum. Where a company is director-controlled for part only of a chargeable accounting period any disallowance of directors' remuneration is restricted to so much of the excess remuneration for the full period as bears the same proportion to the whole amount of the excess as the period of control in the chargeable accounting period bears to the full period.

THE SIXTH INTERNATIONAL CONGRESS ON ACCOUNTING, 1952

The Council of The Sixth International Congress on Accounting, 1952, announces that the following subjects will be discussed during the period of the Congress, Monday, 16th June, 1952 — Friday, 20th June, 1952. As previously announced the sessions will be held in the halls of the Royal Horticultural Society, Westminster, London, S. W.1.

1. Fluctuating price levels in relation to accounts.
2. Accounting requirements for issues of capital.
3. The accountant in industry.
4. The accountant in practice and in public service.
5. The incidence of taxation.

The provisional programme of events is as follows:

1952	*Morning*	*Afternoon*	*Evening*
Monday 16th June	Service at Westminster Abbey followed by tours of the Abbey	Address of Welcome at Royal Horticultural Hall	Reception
Tuesday 17th June	First Session	Second Session	Theatre entertainment for delegates and visitors
Wednesday 18th June	Third Session	(a) Fourth Session (b) First tour of London for ladies of delegates and of visitors	Banquet at Guildhall
Thursday 19th June	Visits to various places of interest		Dinner parties
Friday 20th June	Fifth Session	(a) Sixth Session (b) Second tour of London for ladies of delegates and of visitors	Ball

Invitations to attend the Congress have now been issued to accounting bodies in the following countries:

Africa, Argentine, Australia, Austria, Belgium, Bolivia, Brazil, Burma, Canada, Chile, Costa Rica, Cuba, Denmark, Ecuador, Egypt, Finland France, Germany, Guatemala, Honduras, India, Israel, Italy, Japan, Malta, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Portugal, Salvador, Spain, Sweden, Switzerland, United States, Uruguay, Venezuela.

As already announced, the following professional organizations will be hosts:

The Institute of Chartered Accountants of Schotland
The institute of Chartered Accountants in England and Wales
The Institute of Chartered Accountants in Ireland
The Society of Incorporated Accountants and Auditors
The Association of Certified and Corporate Accountants
The Institute of Municipal Treasurers and Accountants
The Institute of Cost and Works Accountants

I.

SOME VIEWS ON THE METHOD OF SETTLING DISPUTES ON QUESTIONS OF DOUBLE TAXATION[1])

by

STEN F. W. BILLE, Stockholm.

For the avoidance or the alleviation of double taxation that arises as the result of one and the same taxpayer's being subject to taxation on the same income or property during the same period in more than one State, agreements have been concluded between various States regarding some specific apportionment as between them of the right to levy a tax or regarding exemption from taxation of income or property of a particular kind or kinds in the one or the other of the contracting States.

In the Conventions that have been come to between a number of foreign States, regulations have, generally, been introduced to the effect that where a taxpayer who is a citizen or a corporation in one of the States shows proof that the action of the revenue authority has resulted in real double taxation in conflict with the principles of the Convention, he shall be entitled within a certain period to lodge a claim with the State in which the citizen is resident or the corporation is organized. Should the claim be upheld, the highest financial authority in that State may open negotiations with the competent authority of the other State with a view to equitable avoidance of double taxation.

Double taxation in conflict with the principles laid down in the Conventions not infrequently arises owing to the divergences of view held in the various States upon how to interpret or apply the provisions of the Convention. In particular, the question of how to interpret the terminology used in the Conventions and also the question of the scope of the personal and material entities to which

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1) Published in the Bulletin at the request of the author, instead of in the Series of Reports which will be issued in connection with the assembling of the 5th International Congress of Fiscal Law in Zürich in Sept. this year.

the Conventions are applicable have given rise to double taxation and to disputes in consequence thereof.

Thus, all Conventions deal with the taxation of income from business, but they do not give any clear definition of "business" and what may be included under that term. In consequence, owing to the lack of a defenite and clear international terminology this important term is interpreted by the different States in the light of their own domestic legislation. The same is the case with the term "permanent establishment", which occurs in all the Conventions, and which, in spite of its being illustrated by detailed examples in the Conventions, gives rise to various interpretations in all cases not specifically mentioned. Generally, moreover, some doubt arises as to what is to be included under various kinds of permanent establishment, such as e.g. "storage depot", "shop", "permanent agency" etc. The same applies to the expressions "company", „interest", „securities of a similar nature", and so on, which are given varying interpretations, generally in association with the specific States' domestic legislation and practice based thereon. Nor do the Conventions always indicate clearly to what person and to what taxes they are to be applied, and particularly in regard to newly imposed taxes, doubt frequently arises as to whether they are to be included under the Conventions or not. In these and similar cases there is considerable confusion in interpretation, and this not infrequently gives rise to unnecessary disputes on questions of double taxation.

For the benefit, therefore, of the private individual, who after all is intended to profit by the Conventions entered into between States, it is necessary that the terms and expressions used therein should be clearly defined and made internationally current in connection with the settlement of any disputes that may arise. In this way it would be possible substantially to reduce the number of causes of dispute in future, and losses incurred by the individual in legal proceedings could be largely avoided.

How far, in the event of double taxation being imposed, is the private individual able for an interpretation or application of the provisions of the Convention to refer to the fact of double taxation and to obtain redress?

If we, first of all, examine whether, in practice, the private indi-

vidual has any prospects of success, upon making application to the State of which he is a resident, in getting negotiations opened through the latter's intermediary with a foreign State, we shall find that the chances of his being able to do so are at present somewhat illusory. In the majority of cases such an application does not lead to any action on the part of the State. Often this may be due to the fact that the State does not deem it expedient to concern itself with a private individual's claim in a matter which — in proportion to the commitments and obligations which the State, in its capacity of protector of its citizens' legitimate interests, is in that case bound to undertake — is very often considered to be, from the State's standpoint, of relatively minor importance or else may conceivably be settled in some other way — and in that case generally in a wider connection. The interests of the private individual have then to be subordinated even if, materially speaking, his claim is fully justified. A further contributory cause of the unfavourable position of the individual in this respect, in many quarters, is apparently the fact that the relative authority in the various States is somewhat imperfectly organized in this field owing perhaps to the regulations' having not yet to any great extent become operative in practice.

The consequences are that the individual's prospects of obtaining with the support of the State in which he is resident, international recognition of his claim on the ground of his having had to pay double taxation are not very promising and will depend entirely upon whether the State in which he is resident considers that it is capable of or justified in taking up the individual's cause. Without the State's ability or willingness to sanction the individual's claim and to give it its support and assistance, thereby investing the dispute with the character of an international matter leading up to negotiations and a possible inquiry in an international forum, the individual probably has no possibilities at present, in personal legal disputes of this kind, of himself negotiating with the opposite party or of instituting independent legal proceedings in his own name before an international court.

Would it not, then, be possible for the individual by taking advantage of such legal methods as the laws of the foreign State offer him to bring his case direct before an internal forum in that State and

there seek to obtain a settlement of the dispute? And, if his plea is refused or his claim is for any other reason not allowed, would he not be able subsequently with greater prospects of success to demand of the competent authority in the State in which he is resident that that authority take up his case and endeavour to settle the dispute? If nevertheless the State should reject his request therefor, should the indivudual be afforded an opportunity of instituting direct independent proceedings against a foreign State before an international forum of some kind?

On this point it must first of all be observed that, since he himself is not a party to the Convention by virtue of which he makes his claim, the individual cannot exercise any right of disposal of the object of the dispute, this alone being reserved to the States in their capacity of contracting parties. In this respect the physical person or corporate body materially interested cannot be given the position of plaintiff. Moreover, generally in such cases the competent internal authority in the foreign State is likely to declare itself either disinclined to take up the case and apply to it standards of international law or else prevented by law from doing so.

Then, as to the possibilities of the individual in disputes of this kind having direct access to an international forum and there in his own name pleading an independent cause against a foreign State, the question of establishing international legal protection for private individuals has long been an object of considerable attention both in doctrine and in legal practice. In this respect weighty reasons have been adduced in different quarters in favour of ensuring to the private individual a fixed and regulated system of legal protection of an international character by setting up an international court of justice in which, besides States, not only private individuals but also physical and corporate entities might appear as parties entitled, in contrast to what is customary at present, to plead their own cause against a foreign State under certain conditions and guarantees, which ought to be prescribed in detail and carefully defined in order to avoid abuse. On this point it has been expressly pointed out that in such cases, before being afforded access to an international forum, the private individual should either have exhausted or made an effort to exhaust all the legal means which the laws of the foreign State afford or else have endeavoured by

negotiation and possibly by the procedure of conciliation to have the dispute settled.

These points of view have also won, in principle, the support of the highest institution for international jurisprudence, L'Institut de Droit International, which has dealt thoroughly with this question and has found that the possibilities exist of implementing the idea of establishing an organ of international jurisdiction in which the private individual's claim to international legal protection in various kinds of disputes with a foreign State could be promptly and objectively examined. However, a practical solution to the problem has yet to be found, though it may be mentioned in this connection that The Commission on Human Rights set up by the United Nations in Geneva has presented proposals for the establishment of a system of international legal protection for private individuals and also for an international agreement thereon for ratification by the States Members of the United Nations. The Commission recommends that a private individual's claim to international legal protection in disputes touching the interpretation and application of Conventions concluded between the State in which he is resident and a foreign State shall be brought before either an international court set up especially for the purpose, called The International Court of Human Rights, or else a Division of the International Court of Justice.

In considering, then, the questions here under discussion it can be stated that under the prevailing conditions the private individual can only make internationally good a claim against a foreign State by reason of a Double Taxation Convention concluded between the said State and the State in which he is a resident provided the State in which he is resident takes up his case and opens negotiations with the foreign State with a view to settling the dispute. Here the question arises whether to this end the private individual would be able, by producing weighty reasons for his application, to induce the State in which he is resident to take up his claim for consideration. In that case he might be able to adduce either procedural arguments such as, e.g., a refusal to take up for examination a case that is sub judice, or else technical reasons based on an opinion given by experts.

If, then, in order to obtain redress the private individual has

brought his case before a domestic court of law in the foreign State and that court has declined to take up his cause for examination (déni de justice), or if for other reasons his claim has not been upheld, he should be able under reference to that circumstance to submit to the competent authority in the State in which he is resident a request that the State intervene and endeavour to settle the dispute. Similarly, the private individual should be afforded an opportunity of preliminarily obtaining advice from an international body of experts in this field — say The International Fiscal Association (IFA) at The Hague — and, then, if their opinion is not adverse to the plea of the private individual, under reference thereto submitting to the competent authority in the State in which he is resident a request that the State take up his case. In both these instances the private individual should be deemed to have produced weighty reasons in support of his application for the assistance of the State in which he is resident in settling the dispute.

If the State in which he is resident resolves to take up a private person's case, it is the duty of the authority concerned immediately to arrange for the opening of negotiations with the foreign State with a view to settling the dispute. Should the negotiations not lead to any result, the State of residence should be able to make the individual's case its own, giving a guarantee that the latter's interests will not be prejudiced and taking over direct (and thereby putting on a higher plane) the individual's claim by instituting proceedings against the foreign State, or else, in support of the individual in his capacity of intervenor in the suit, merely pleading his cause without becoming a party in the case, thereby causing the rules of international justice to be applied to the solution of the dispute. In the latter event, then, the private individual would be considered competent, with the support of the State in which he is resident in its capacity of an international legal entity and guarantor that the private individual's claims are well founded, to institute proceedings before an international forum in his own name and to plead his cause against a foreign State.

How, then, would this action by the State in taking charge of the private individual's legitimate interests be regulated in detail?

As mentioned above, the Double Taxation Conventions and the ordinances appended thereto defining their application contain

quite briefly worded provisions to the effect that in such cases negotiations are to be taken up between the highest financial authorities in the States concerned. On the other hand, no rules have generally been laid down as to the procedure in the event of failure of the negotiations. However, it is highly necessary that, should the negotiations break down, the parties should be afforded an opportunity of seeking a settlement of the dispute in some other way. To this end it might conceivably be advisable for the parties to be afforded an opportunity of jointly calling for a decision by arbitration, and, if such a procedure could not be agreed to, for one or both of the parties to be entitled to refer the dispute to some kind of international jurisdictional body for decision. The question of whether this body would be connected with the International Court of Justice — and in that case more specifically attached to one of its Divisions or Chambers — or whether its work should be entrusted to a special Court or else to an international arbitral tribunal of a more specific character was discussed to some extent when the general principles were drawn up to govern the granting of international legal protection to private persons, particularly in cases where the State of residence is not prepared or is not in a position to fulfil its duty of protecting the legitimate interests of its citizens.

Advocates of a permanent international court as the highest international tribunal have argued that a court of such a kind, whether it is considered that it should consist of the International Court of Justice, and, in that case, more specifically of a Chamber thereof, or of an independently instituted claims tribunal, would be able to develop a permanent system of judicature, with experts on common law always available, entirely different from an arbitral tribunal or arbitration commission which has to be appointed each time at the instance of the parties themselves, and which — even if it were to be given a certain permanent structure — could not be as fully qualified as a permanently established international court to make decisions with binding effect and to see that they are duly carried out.

On the other hand, many authorities have emphasized the value — particularly in disputes on questions of a more or less uniform, special nature — of an international arbitral tribunal or arbitration commission of a less rigid character or of a claims tribunal of some

kind consisting of a limited number of experts with a special knowledge of the subject and who might be appointed by some international technical body suitable for the purpose and quite independently of the parties to the dispute. Such a tribunal could thus combine a thoroughly impartial attitude with the possibility of meeting at a place decided upon by the parties and there making a rapid decision, for the due observance of which the parties would give a joint guarantee in the form of a lasting general agreement or of an undertaking *in casu* in respect of each specific controversial issue, and which could be put into effect abroad.

Proposal for a processual procedure of settling disputes arising on questions of double taxation.

Each State shall appoint a representative and a deputy to assist private legal entities belonging to that State in actions against a foreign State when international disputes arise by reason of double taxation conventions entered into between the States.

For that purpose the representative of the State will be able to give the private person or the corporate body his support and his sanction in their efforts to obtain redress from a foreign State for having been made liable to double taxation without his having to appear — unless the State finds it necessary in order to safeguard its own interests — as a party to the dispute and as assumer of the private individual's claim.

The private individual shall thus be entitled, if he holds that he has been subjected to double taxation in two or more States, to make objection thereto to the highest financial authority in his own State within a certain period after such taxation has been found to have taken place, with a request that action be taken by his own State for the avoidance of double taxation. For this purpose the private individual shall also be entitled to append to his petition a report on the particular circumstances in the case and shall, if the necessity arises, be able either to produce and cite statements obtained from experts in regard to IFA or other international technical body, or else to prove that his objections are well founded.

Thereupon the financial authority at once delivers the application to the representative of the State for an expression of his views. The latter institutes inquiries as to whether the objections put

forward by the private individual are justified, and for that purpose he obtains the necessary information from the applicant as well as, should the circumstances require, from the tax authorities concerned and from IFA.

After completing his inquiries, the State representative reports the result to the financial authority with recommendations as to what action should be taken. If the private individual's objections are found to be justified, the State shall through its highest financial authority instruct its representative to open negotiations with the foreign State concerned, at the same time informing the latter's highest financial authority that it is intended to open negotiations for the avoidance of double taxation. The representative of the State then at once gets into touch with the representative appointed by the foreign State concerned with a view to opening negotiations.

Negotiations shall always be opened unless the objections put forward by the private individual are manifestly unfounded or unless the double taxation dispute can be settled without negotiations merely through action taken by the competent authority in the State of residence or otherwise.

Representatives of the States shall be authorized, if it is deemed necessary, to appoint a delegation of experts and secretaries to assist them in the negotiations. The private individual shall attend them either in person or by proxy. The negotiations shall be held, unless otherwise arranged, at an agreed place in the State against which the private individual's claim has been lodged. Any objections reaching the competent authorities in the respective States in the course of the negotiations from private persons in the two States to the imposition of double taxation may also be taken up for consideration.

Should the negotiations not lead to a settlement of the dispute, the parties may jointly resolve to call upon a representative of a third, neutral, State to mediate in the dispute and to make proposals for conciliation.

If conciliation proves impossible or, in cases where an agreement could not be come to for conciliation procedure, if the negotiations break down, each one of the parties is entitled to refer the dispute to an international forum for decision by applying therefor to the Executive Council of IFA at The Hague or other appropriate

international body concerned with such matters and already in existence. A competent organization, which shall possess a list of the representatives appointed by the States and of their deputies, shall immediately appoint three (3) representatives taken from neutral States not concerned with the dispute to set up an arbitral tribunal or a claims tribunal for the settlement of the dispute. The tribunal shall meet either at The Hague if at the same time notice is given of matters in dispute affecting more than two States, or in one of the States affected by the dispute, or else, upon the application of either party, in a third State. The tribunal shall elect a chairman from among its own members.

The parties shall be entitled to present their views to the tribunal either orally or in writing, to cite the statements of experts, etc. If proposals have been made for conciliation, the tribunal shall also take note thereof and, if it is considered necessary, shall grant the conciliator a hearing; further, the tribunal shall obtain such information and statements of view as the tribunal may consider called for.

The tribunal shall announce its decision within a certain fixed brief period, e.g. three months. The judgment, against which there shall be no appeal, shall be passed by a majority of votes. There shall be appended to the judgment an account of the costs of the proceedings together with a statement of the manner in which they are to be paid.

In the course of its work the tribunal shall endeavour to create and establish through its judgements an authoritative international terminology on this subject.

Double Taxation Conventions should, further, contain a clause to the effect that in the event of legal proceedings before a court the parties shall undertake to give due observance to the decisions of the court.

These proposals, given here in main outline only, are accordingly based on the principle that, if a satisfactory result is not obtainable by negotiation or, possibly, a conciliation procedure, court proceedings of this kind instituted for settling disputes on questions of double taxation are more calculated to bring about a prompt and objective decision on the special problems under discussion here than any action brought before a permanent arbitration commission

or before a permanent international court with its more unwieldy organization, rigid procedure and — if it were to be set up within the framework of the United Nations — its unconsciously political background, all of which would give the parties the feeling that they would have to take more comprehensive measures and assume heavier obligations than the case requires; besides, the parties to the dispute would probably be less inclined to bring disputes of this particular character before a world forum of that kind. The setting up of such a tribunal would thus be likely in many cases to weaken the States' interest in taking up the cause of private individuals and, should the latter conceivably be afforded an opportunity of pleading their own cause on an international level, in obtaining, likewise upon the private individuals' own efforts, redress in disputes of this kind with a foreign State.

On the other hand, it might perhaps be asked whether, in disputes on double taxation questions of major interest as matters of principle or of interest to several States or groups of States, and maybe also in cases where condiserable economic values are at stake, appeals against decisions of the proposed tribunal might not appropriately be lodged within a certain limited period by one or both of the parties with the International Court direct, there to be decided in the last resort by a Division or Chamber of the Court specially set up to deal with questions of this nature.

IMPOTS ET TAXES GREVANT LES ENTREPRISES INDUSTRIELLES ET COMMERCIALES AU PORTUGAL[1])

par

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I. RESUME SUCCINCT de la LEGISLATION FISCALE.

1. Les impôts grevant les entreprises sont[2]):
— la contribution industrielle[3]); et,
— l'impôt complémentaire[4]).

La première est due par le simple exercice d'activité industrielle ou commerciale, et n'a aucun rapport direct avec le bénéfice.

Le deuxième, étant établi à partir de la contribution industrielle, n'a — lui non plus — un rapport avec le susdit bénéfice.

2. Les contribuables sont toutes les personnes, singulières ou collectives, nationales ou étrangères, exerçant dans le territoire métropolitain ou des iles adjacentes (Madère et Açores) un commerce, industrie, art ou métier.

Les formes juridiques rentrant dans la catégorie de personnes morales ou collectives contribuables sont: les sociétés, les associations et les corporations ou institutions.

Les personnes morales exonérées sont: l'Etat, les groupements locaux, les associations de secours mutuels, les associations et institutions de bienfaisance, les caisses d'épargne, les coopératives de production et de consommation et les syndicats agricoles quant aux transactions avec leurs associés, etc.

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1) Une réforme fiscale a été déjà annoncée.

2) Dans cette réponse au formulaire dont le texte est publié Bulletin IV, no 1-2, p. 43 nous n'avons pas envisagé que les impôts perçus par l'État.

3) Voir l'article *Impôts directs portugais*, au numero 8-9 (1950) du „Bulletin", pp. 363 et 364.

4) Idem, idem, pp. 367 à 369.

3. La condition à laquelle est subordonnée la qualité de contribuable est l'exercice d'activité industrielle ou commerciale dans le territoire métropolitain ou des iles adjacentes[1]).

4. L'impôt est établi par années économiques qui (depuis 1936) coïncident avec les années civiles.

5. L'impôt doit être payé d'avance, et concerne l'activité exercée dans l'année du recouvrement.

II. LA MATIERE IMPOSABLE.

1. Quant à la contribution industrielle, seulement les sociétés anonymes ou en commandite par actions peuvent être objet de distinction dans la détermination de la matière imposable[2]).

Quant à l'impôt complémentaire, des distinctions sont établies pour les personnes physiques et collectives[3]).

2. On ne prend pas le bénéfice commercial comme base de l'impôt.

3. Il n'y a pas de bénéfice à déterminer. La matière imposable est calculée comme suit:

a) Contribution industrielle[4]):

Dans le groupe A, qui concerne les activités indiquées dans une liste officielle, le montant de l'impôt dû par l'exercice de chaque modalité est fixe.

Dans le groupe B, qui concerne les sociétés anonymes ou en commandite par actions, la matière imposable est la valeur nominale du capital social, ou sa valeur calculée en fonction du cours des actions et des dividendes distribués, ou fixée par le Ministre des Finances.

Dans le groupe C, qui concerne tous les autres contribuables, la matière imposable est le „revenu présumable" fixé annuellement par estimation.

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[1]) Les territoires portugais en Afrique, Asie et Océanie ne sont pas soumis au système fiscal métropolitain.

[2]) Voir l'article indiqué, p. 364.

[3]) Idem, idem, pp. 367 et 368.

[4]) Idem, idem, pp. 363 et 364.

b) Impôt complémentaire[1]):

La matière imposable est calculée à partir des quantitatifs considérés dans le calcul de la contribution industrielle.

4. Il n'y a pas de dispositions particulières pour les concerns holding companies, sociétés de placement ou sociétés de famille.

1) Idem, idem, pp. 367 et 368.

TAXATION OF INCOME IN NEW ZEALAND [1])

by

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The following Article is a resumé of the main features of present Income Tax Law and Practice in New Zealand. The New Zealand Government has recently appointed a Committee to report on suggested changes, and material alterations in the Income Tax Law may be made in the near future, though it is doubtful whether such changes will take effect before 1953.

Taxation on income is levied in New Zealand under two headings:

1. Social Security Tax.
2. Income Tax.

Social Security Tax:

This tax is levied to finance the country's Social Security programme and in fact, does so to the extent of approximately 75 %. The present rate of Social Security Tax is 1/6d in the £ (7½ %) on all income derived whether from within New Zealand or from overseas.

This tax is payable by all individuals resident in New Zealand who have reached the age of 16 years, by all Companies domiciled in New Zealand in respect of all their profits and by Companies domiciled outside of New Zealand but who carry on business in New Zealand in respect of profits derived from their New Zealand business, but dividends received by individuals from all such Companies are exempt, seeing that the Companies have already paid Social Security Tax. As to what constitutes income liable to Social Security Tax, in general the same principles apply as to Income Tax.

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[1]) See questionnaire in: Bulletin Vol. IV p. 197.

Income Tax:

General Liability: New Zealand Income Tax is payable by the following:

a. Individuals domiciled in New Zealand in respect of all their income whether derived from within New Zealand or from other countries, but excluding dividends and income from British Commonwealth countries which has borne tax at its source.

b. Trustees of Estates and Trusts. The Tax Liability of Trustees of Estates and Trusts for income which is not paid or credited to individual beneficiaries is the same as that of individuals, the Trustees being treated as one taxpayer in respect of the whole Income of the Estate not so paid or credited. Any part of the income of an Estate or Trust credited or paid to beneficiaries is treated as income of such beneficiaries, and they and not the Trustees are assessed in respect thereof, together with any income they may have from other sources. Beneficiaries resident in New Zealand of Estates in Trusts domiciled overseas are liable in full for any income credited or paid to them on the principles applying to individuals. Absentee beneficiaries of Estates or Trusts domiciled in New Zealand are assessed on income credited or paid to them by Trust or Estate together with their other New Zealand Income, except where Double Taxation Agreements provide otherwise.

c. Partnerships are not assessed with income tax as such but each partner is assessed separately in respect of his share from the partnership business together with any other income he may have.

d. Absentees are assessed for income tax in respect of all their income received from New Zealand sources except where Double Taxation Agreements provide otherwise. Such Agreements have so far been concluded with Great Britain and Canada. Agreements with Australia and the United States of America are at present being negotiated.

e. Temporary Residents are assessed in respect of their earnings in New Zealand during their temporary residence.

f. Companies resident in New Zealand are assessed for income tax on the same principle as are individuals, though at different rates.

g. Companies domiciled overseas but carrying on business in

New Zealand are taxed in New Zealand on income derived from their New Zealand business.

h. Companies domiciled overseas and not carrying on business in New Zealand but owned by New Zealand residents and controlled from New Zealand, are taxed in New Zealand in respect of all their income, whether from within New Zealand or from without.

i. Companies (and individuals) carrying on business overseas but selling goods in New Zealand through Agents, are taxed on a special basis on such sales.

General Exemptions: The following are the main groups entirely exempted from Income Tax in New Zealand.

a. Charitable, religious or educational Trusts & Institutions.

b. Co-operative Associations and Friendly Societies (on profits derived from dealing with their members).

c. Superannuation Funds.

d. Sports Organisations (not carried on for profit).

e. Diplomatic Corps.

The following are the main groups of income exempted from Income Tax in New Zealand.

a. War Pensions.

b. Alimonies.

c. Social Security Benefits and Sickness Benefits.

d. Bursary and Scholarships.

Dividends:

Dividends from Companies whether domiciled in New Zealand or not, and any income from British Commonwealth countries which has borne tax there receive special treatment for taxation purposes. While not directly liable to tax they are included in a taxpayer's assessment to increase the rate payable on his taxable income. The process is rather complicated but for the purpose of this Article, it is sufficient to state that the receipt of large dividends from anywhere or substantial income from British Commonwealth countries (called non-assessable income) results in a substantial rise of the tax payable by the taxpayer on his taxable income (called assessable income). "Dividend" includes any distribution of bonus shares and also any distribution on a winding up in excess of the par value of shares.

Personal Exemptions:

Absentees are allowed a personal exemption from their income of £200, but no further exemptions. Resident taxpayers, other than Companies, are also entitled to a personal exemption of £200. Where the Income of husband and wife exceeds £200 each, their income is aggregated and the total personal exemption is £400.

If a taxpayer resident in New Zealand is married and the spouse's income is less than £100, he or she is entitled to a further exemption which is graduated with a maximum of £100. An exemption of £50 from the taxable income for each dependant relative (including children of the taxpayer) is also allowed. However the tax saving resulting from the exemptions granted for a spouse or other dependant relatives must not exceed £26 for each dependant.

Each individual taxpayer is also allowed an exemption of up to 15% or £150 (whichever is the lower) in respect of premiums paid during the year on an Insurance policy on his own life or in respect of payments into an approved Superannuation Fund.

Financial Year:

The fiscal year ends March 31st and the financial year of most taxpayers ends on the same date. With the consent of the Commissioner of Taxes a taxpayer may adopt a different Balance date. Where such a balance date ends between the 31st March and the 30th September of any year, it is, for taxation purposes, treated as ending 31st March preceding the balance date. If the balance date ends between October 1st and March 31st of any year, it is treated as ending on March 31st following the balance date. The annual Taxing Act is usually passed in September of each year in respect of the Income for the year ending the preceding March 31st and the Tax does not become payable until approximately March 1st following the passing of the Taxing Act.

Definition of Income:

The following are the main headings of the Definition of Income:

a. Profits from any business carried on by the taxpayer.
b. Salaries and wages and other emoluments.
c. Profits from the use or occupation of land or from the extraction, removal or sale of any mineral or timber, oils.

d. Royalties and similar revenues, interest, annuities and pensions.
e. Any other Income derived from any other source whatsoever.

Income includes any gains from the sale of trading stock on the liquidation or the sale of a business, and also includes a profit on the sale of fixed capital assets other than buildings to the extent depreciation has been deducted in the past from the taxpayer's taxable income in respect of such assets.

Profits on the sale of land and buildings or on the sale of shares and other securities are taxable only if the business of the taxpayer comprises dealing in properties or shares and securities.

The question whether or not the profit made on a single transaction is taxable depends upon the circumstances of each case, but generally any profit from assets acquired for the purpose of resale and not for the purpose of investment is liable to tax.

Profit on the sale of a patent may be spread over six years, on the sale of leases by the owner of the land over the term of the lease and the profit on livestock on the sale of a farm may be spread over four years.

Annuities for fixed terms are only taxable in respect of that part which constitutes interest, but annuities for life are taxed in full, even if paid out of a capital sum.

Capital profits are free from Income Tax and there is no Capital Gains Tax.

Proprietary Tax:

As the maximum rate levied on individuals exceeds the maximum rate for Companies and as dividends are treated as non-assessable income only, a system of Proprietary Taxation was introduced in 1939 with the aim to prevent individuals from obtaining tax savings by converting their income producing assets into a Limited Company. The tax levied called Proprietary Tax is based on the following:

a. Any company which is under the control of not more than 4 shareholders — and four shareholders in this connection means 4 families — is a Proprietary Company.
b. If any single shareholder in a Proprietary Company is entitled to 20 % or more of the profits of such Company, he becomes

liable to Proprietary Tax. A company may be controlled by one family only and thereby be a Proprietary Company, and yet no shareholder may be liable to Proprietary Tax because no individual shareholder holds 20 % or more of the shares of the Company entitling him to 20 % or more of its profits. On the other hand, if a shareholder holds all the ordinary shares with no voting rights attached to them and the preference shares — to which all the voting rights are attached — are held such that 4 families cannot exercise control, the Company is not a Proprietary Company and the holder of all the ordinary shares could not be assessed with Proprietary Tax.

c. If a Company is a proprietary shareholder in a proprietary company the same principles apply. Therefore a company is liable to Proprietary Tax in respect of the income of its subsidiaries.

d. The method of taxation differs in the case of companies from that adopted in respect of individual shareholders. If the proprietary shareholder is a Company, based on the shareholding of the Holding Company in the Proprietary Company a proportionate share of the income of the latter Company is added to the Holding Company's income and credit is given for the same proportion of tax paid by the Proprietary Company. The difference between the rates applicable to the Holding Company's total income(including the Proprietary Income) and the rate which has been paid by the Proprietary Company is levied on the whole income of the Holding Company, Company tax rates in New Zealand being graduated.

In the case of individuals the Proprietary Company's income after tax and not the income before tax is added to the income of a proprietary shareholder and a tax credit is given based on the net income so added.

If a proprietary shareholder has a small taxable income of his own, while the company in which he is a proprietary shareholder pays a high rate, no Proprietary Tax will in fact be payable.

Special Assessments:

There are special provisions governing the assessments of Mining Companies, Insurance Companies and Film Exhibitors.

There is also a special assessment in respect of the Company or

individual who does not carry on business in New Zealand but sells goods into New Zealand through an Agent. The Commissioner of Taxes has fixed a schedule of estimated profit percentage (varying from 5 % to 20 %) for each item imported into New Zealand. Unless a supplier shows that his profit is less, he becomes liable to pay tax on that percentage. The Agent in New Zealand becomes jointly liable with the overseas exporter though he may not have received any monies belonging to the latter. If an overseas exporter proves that a similar tax would not be levied on New Zealand exports into his country, an Order in Council may be issued exempting imports from that country from this non-resident trader tax. Such orders have been issued in respect of Great Britain, Canada, Belgium, Switzerland, Indonesia, Japan and Czechoslovakia. This tax is not levied on direct imports of goods into New Zealand not sold through an Agent.

Computation of Profits:

Profits from business are ascertained from the annual accounts of the taxpayer to which such adjustments are made as are required under the principles set out hereunder.

a. *Trading Stock:*

For the purpose of ascertaining profits, trading stock is to be taken into account at the option of the taxpayer at cost, market value or replacement value. The taxpayer may adopt for one part of his stock one method of valuation and another for the remainder, and he is entitled to vary the method of valuation as long as he remains within the main principles of cost, market or replacement value. Stock which is obsolete may be written off.

In the case of livestock, a farmer may adopt what is called a Standard Value. Such value per head of cattle or sheep once fixed may only be changed with the consent of the Commissioner of Taxes, and is used for ascertaining the farmers income throughout the time he continues to farm the property. On the sale of the farm or on the death of the farmer, the difference between the standard value and the true market value at date of death or on a sale, becomes taxable profit or a deductible loss as the case may be, even though in the case of death the farm may remain in the family.

b. *Depreciation of Fixed Assets:*

In the case of buildings, depreciation rates are allowed equal to 2½% on cost in respect of wooden buildings, 1½% on cost in respect of brick buildings and 1% on cost in respect of reinforced concrete buildings. Various other percentages are allowed on other types of buildings, the rates of depreciation being at the discretion of the Commissioner. Since 1945 a special depreciation allowance of a total of 30 % spread over five years is allowed in addition to the ordinary depreciation. No further depreciation or other deduction is allowed for obsolesence if a building has been demolished.Similarly if a building is damaged or destroyed by fire, earthquake or other inevitable accident, any loss or cost of repairs is not deductible from the taxpayer's income. On the sale of a building, the profit is a tax free capital profit and no allowance is made for any loss.

c. *Depreciation on Plant, Machinery, Vehicles, etc:*

The depreciation rates applicable to plant, machinery, etc., vary from 7½% for general plant to 20% for motor vehicles. Ordinary depreciation is allowed on the diminishing value only and not on cost, but the special depreciation allowance of 30 % spread over five years is allowed on cost. Losses on plant, machinery, vehicles, etc., sold or discarded are deductible from the taxable income. Any profit made on the sale to the extent that such profits represent a recovery of depreciation previously deducted, is treated as taxable income, but any profit in excess of the original cost is a tax free capital profit.

d. *Reserves:*

No true reserves are allowed as a deduction from a taxpayer's taxable income. Provision may be made for liabilities and claims incurred before the balance date, but not settled until after. For instance, a provision for discounts on sales made during a financial year, but not paid for until after, is allowed.

Bad debts are deductible only if they are actually written off in the books of the taxpayer. This does, of course, not prevent him from continuing his effort to collect the written off debts. While Insurance premiums paid to Insurance Companies are deductible, amounts set aside as Insurance reserves where the taxpayer is a self insurer are not.

If owing to the shortage of labour and materials a taxpayer was

not able to execute the required maintenance of plant and buildings, he may deduct the amount of the unexecuted maintenance from his taxable income, provided he deposits interest free with the Treasury Department the amount of such unexecuted maintenance. In the year the taxpayer withdraws the money from Treasury it forms part of his taxable income, and when the maintenance is actually executed the cost thereof is deducted.

On a similar basis, to prevent the full impact of the high wool prices on the country's economy, farmers for the income tax year ending March 31st 1951, were required to deposit 30 % of their wool sales interest free with their Bankers, and they could do so voluntarily up to 50 %. The amounts so deposited are not included in the farmer's taxable income for the year they were earned but they will be included during the year the money is withdrawn under a scheme approved by the Government.

e. *Deductions:*

Deductions allowed from a taxpayer's taxable income in New Zealand are generally more limited than in most countries, because the Land & Income Tax Act provides that expenses shall only be deductible if they have been incurred exclusively in the production of assessable income and exclusively for the income year in which they have been incurred. Therefore, in general, deductions are not allowed for expenditure, the benefit from which is to extend over a number of years, unless payment can be clearly apportioned to a definite number of years.

There are certain expenses which are allowed on account of their continuity rather than on account of their effect on the one income year. The main item under this heading is Advertising.

Legal Expenses are not deductible in respect of any matters of a capital nature nor are any donations for political, charitable, educational or similar public purposes.

No deductions are allowed for the payment of goodwill or for the cost of trade marks, but the cost of patents may be written off over the unexpired period of the patent. Deductions are allowed for technical assistance, scientific research and Royalties.

The remuneration of Directors, Managers, and other Executives, including amounts paid under any profit-sharing arrangements, are generally allowed as a deduction, so also are pensions paid to an

employee who is not a major shareholder, and contributions to a Superannuation scheme approved by the Commissioner. In general, contributions to such schemes may not exceed 10 % of the annual wage or salary of such employee or £150 (whichever is the higher). Lump sum payments out of a Superannuation fund are tax free in the hands of the employee. Lump sum payments made by an employer direct are not deductible from his taxable income, and 5 % of such sum is added to the taxable income of the employee.

Interest is allowed as a deduction if the money borrowed is utilised for general business purposes.

Claims an employer has to pay for the negligence of his employee may be deducted from his taxable income, but no such deduction is allowed for claims resulting from his own negligence or for claims against a Company for the negligence of its Managing Director.

Losses:

A taxpayer's losses may be carried forward for three years and are permitted as a deduction from his taxable income during that three year period. There is no provision for carrying back losses over past years or for averaging of profits.

A Company loses the right to carry forward losses if a change of shareholding takes place to the extent that 25 % of the shares are held by persons who were not shareholders at the end of the year in which the loss was incurred. Similarly, the losses made by a deceased taxpayer during his lifetime are not deductible after his death from the income of his Estate.

Special Adjustments:

There are various provisions in the Land & Income Tax Act and its Amendments, providing for adjustments where transactions are influenced by special relations between the contracting parties. The following are the main provisions under this heading:

a. Where the Commissioner is of the opinion that a business controlled by a Company or person not resident in New Zealand, is not producing the Income which may be reasonably expected therefrom, he is entitled to assess such business with tax based on the profit he considers should be the normal profit from such business. Objections against such special assessment may be taken before a special Committee.

b. In the case of Proprietary Companies, the Commissioner may treat part of the remuneration paid to shareholders and their relatives as profits earned by the Company and as dividends received by the recipients if he considers the remuneration paid to be excessive. Similarly, advances made to shareholders in a Proprietary Company may be treated as a dividend paid to the extent such proprietary Company has undistributed profits. A re-assessment is made if such advances are repaid.
c. If the Commissioner considers that any allowance paid to an employee of a Company is excessive, he may treat all or part of such allowances as taxable income of the employee.
d. Where assets of a Company are sold at a price below the market value, the Commissioner may treat the difference between the selling price and the market value as a profit made by the Company. The same applies to an individual taxpayer if the assets were employed in his business.

Objections:

Any taxpayer who does not agree with an assessment made may lodge an objection, but such objection does not exonerate him from payment at the date stated in any Demand Notice. If the Commissioner does not allow the objection the taxpayer may ask that a case be stated for decistion by the Court. There is no special Board of Review for tax disputes in New Zealand.

Penalties:

If a taxpayer wilfully or negligently makes false returns or fails to furnish returns or to give information, he is liable to a fine. In the case of evasion he may be charged with penal tax in addition to the ordinary tax payable by him, the penal tax being equal to three times the amount of the tax ordinarily payable by him and which he evaded.

LE TROUBLE DANS LE DOMAINE FISCAL

Le mathématicien français CANARD, dans un ouvrage paru en 1801 a posé la thèse suivante: „Tout vieil impôt est bon". Selon cette idée, chaque impôt est incorporé dans la vie sociale pourvu qu'il existe depuis une période suffisante. Les législateurs en peuvent tirer cette leçon que la fiscalité doit subir aussi peu que possible de modifications. Le mal ne concerne pas l'impôt comme tel mais il concerne le fait que la législation fiscale se modifie.

On peut être d'accord sur un point indiscutable: les législateurs n'ont pas suivi le conseil de CANARD. Il n'est pas nécessaire de prouver cette thèse — chacun sait quelle est la situation dans son propre pays. Pourtant il peut-être intéressant de donner une impression du grand trouble qui règne dans la fiscalité de notre temps.

A cet effet j'ai pris des notes, pendant six mois environ, au sujet des modifications fiscales survenues pendant cette période. Après en avoir rassemblé 400 le matériel me semblait être suffisant. Je ne garantie pas que ces données soient complètes, et je n'entre pas dans les détails. Les modifications notées ne concernent pas seulement les modifications apportées dans les lois mais aussi celles apportées dans les décrets d'exécution etc. et qui ont quelque importance pour le public.

En premier lieu j'attire l'attention des lecteur sur les

I. *Droits d'entrée*. Dans trois conférences, Genève (1947), Annecy (1949) et Torquay on a travaillé beaucoup pour prévenir une guerre de tarifs. La dernière conférence, celle de Torquay, prit fin en avril 1951; les négociations entre les 30 pays participants ont mené à la conclusion de près de 150 accords. Avant la guerre déjà différents pays ont negocié les tarifs. Un réseau de traités a été tendu sur toute la terre. La clause de la nation la plus favorisée en formait le point principal. Maintenant on a essayé de rendre plus rationnel le fonctionnement jusqu'à présent désordonné de ce système, et

cela dans le cadre de la Convention Générale en matière des tarifs et du commerce (G.A.T.T.). Après la signature des gouvernements les nouvelles concessions entreront en vigueur; on peut s'y attendre en 1951, à partir du mois de mai.
C'est en prenant ce point de vue comme base qu'il faut considérer les renseignements suivants sur les droits d'entrée. Je me bornerai à faire un choix de l'abondant matériel; la désignation des articles n'est pas complète, je ne donnerai que des exemples.

A. *Modification des tarifs.*

France: on a apporté de maintes modifications dans la législation, souvent d'ordre général, souvent seulement pour certains articles, comme par exemple fibres de textile.

L'Afrique Occidentale Française a modifié fréquemment ses tarifs de droit d'entrée, entre autres pour les sortes de papier, les spiritueux, le tabac, abstraction faite d'une réforme plus générale.

La Tunisie: apéritifs et vermouth.

Réunion: bois

Guyane: tabac, allumettes, et une réforme plus générale.

Mozambique: tarif nouveau.

Territoires brittanniques: beaucoup de modifications, souvent pour quelques articles, souvent pour de grand groupes d'articles, entre autres:
en *Australie*, au *Canada*, à *Ceylon*, dans *l'Inde*, dans la *Jamaique*, dans la *Nouvelle-Zélande*, au *Pakistan*, au *Tanganyika* et en *Afrique du Sud*.

Le Congo Belge a modifié les tarifs pour le sucre et le coton.

En ce qui concerne les pays européens, il faut attirer l'attention sur *l'Allemagne* (extrait de café etc.), *La Finlande, la Grèce* (beaucoup d'articles), *l'Italie* (le plus souvent une diminution des tarifs), *le Portugal, l'Espagne, la Suède* (où l'on a apporté plusieurs modifications).

Les *Etats-Unis* ont modifié les tarifs pour divers articles,

après avoir modifié auparavant ceux du linge et des chapeaux.

Dans les Etats de l'Amérique Centrale et de 'lAmérique du Sud les modifications sont nombreuses: *l'Argentine, la Bolivie, le Brésil, Cuba, la République Dominicaine, l'Equateur, le Guatémala, le Mexique, le Pérou.*

Des pays asiatiques on peut citer: *Israel, Birma, les Philippines.*

B *Tarifs nouveaux ou rétablissement de tarifs supprimés auparavant.*

Cela a eu lieu à plusieurs reprises en *France* (entre autres coton, linge, etc.) et en *Italie* (beurre).

C. Peu de *suppressions:* on a noté *la France* (papier), *l'Italie, l'Australie* (maisons préfabriquées), *l'Inde* (machines agricoles).

D. Par contre, il y a eu beaucoup de *suspensions temporaires:* en *France,* en *Belgique* et aux *Pays-Bas,* en *Afrique du Sud.*

E. *Modifications dans l'administration* (importantes pour le public) *et dans le mode de calcul* ont eu lieu en *France* et dans les *possessions d'Outre-mer,* en *Suéde,* en *Allemagne* et aux *Etats-Unis.*

II. *Droits de sortie.* Les droits de sortie traversent une période florissante. J'ai noté les pays suivants, où ils ont été introduits ou modifiés: *La France, l'Afrique Occidentale Française, la Tunisie, le Congo-Belge, la Norvege, la Suisse, l'Inde, l'Indonésie,* (beaucoup de modifications successives) *l'Iraq, le Malakka, le Pakistan, le Siam, l'Egypte, le Soudan, Cuba, la Guatémala, le Nicaragua, le Pérou, le Salvador.*

III. *Taxe sur le chiffre d'affaires.* Cette taxe, également réapparue après la première guerre mondiale, ne peut rester stable. Les modifications sont nombreuses. Dans beaucoup de pays une modification succède à l'autre. Je citerai les pays suivants: *La Grande Bretagne, la France, l'Afrique Occidentale Française, la Belgique, le Congo Belge, l'Allemagne, l'Italie, les Pays-Bas, la Suisse, la Norvège, la Finlande, le Danemark, les Colonies Portugaises.* En outre: *l'Australie, l'Indonésie, Israel,*

la Turquie, Cuba, la Chile, le Pérou, les Bermudes, la Georgie, le Guadeloupe, Maryland.

IV. *Taxes de consommation.* Les modifications ne sont pas si nombreuses que celles de la taxe sur le chiffre d'affaires, mais le nombre en est néanmoins important, vu la brève période de six mois. J'ai noté: *la Grande Bretagne, la France, la Belgique, les Pays-Bas, l'Allemagne, l'Autriche, le Danemark, la Suède, le Canada, la Chile, le Guatémala, l'Egypte, la Nouvelle-Zélande, Singapore.*

V. *Impôts sur le revenu et sur les salaires* ne sont guère plus stables. On a pu noter pas mal de modifications dans les pays suivants: *la Belgique, le Congo Belge, les Pays-Bas, l'Allemagne l'Italie, l'Autriche, la Suède, le Danemark, les Etats-Unis, l'Argentine, l'Egypte, l'Arabe, Israel, l'Indonésie, le Pakistan, l'Australie, la Nouvelle-Zélande.*

VI. *Impôt sur les sociétés.* Des modifications en *France,* en *Belgique, en Allemagne,* aux *Etats-Unis,* au *Canada,* en *Argentine* en *Indonésie,* au *Malakka.*

VII. *Impôt sur la fortune.* Peu de modifications, excepté en *Allemagne.*

VIII. *Droits de timbre et de l'enregistrement etc* Ces droits aussi sont restés à peu près stables. Des modifications en *France* en *Belgique,* aux *Pays-Bas,* en *Allemagne,* en *Finlande,* en *Chile.*

IX. Les *Droits de succession* sont plus stables encore; des modifications en *France* et en *Egypte.*

X. *Prélevements de guerre.* Ceux-ci doivent subir de temps en temps des modifications d'ordre technique, par exemple aux *Pays-Bas,* en *Belgique,* en *Norvege* et en *Chili.*

XI. *Autres impôts.* On peut encore citer d'autres impôts et taxes qui ont subi des modifications, entre autres les taxes de circulation, par exemple en *Allemagne,* en *Belgique,* en *Israel,* etc.

XII. *Traités.* Les traités nombreux pour éviter la double imposition internationale présentent, outre les prescriptions autonomes, encore d'autres qui compliquent la situation. En ce moment je n'y insisterai pas.

Ce qui précède avait pour but de mettre en lumière à quel point les législations fiscales nationales ont été continuellement modifiées. Les matériaux rassemblés pendant six mois et qui sont loin d'être complèts, me semblent être déconcertants. Le trafic commercial international doit en subir les conséquences.

Dans un prochain numéro du Bulletin j'espère pouvoir donner des chiffres qui permettront de se faire une idée du glissement de la pression fiscale par suite des modifications apportées dans les dernières années.

Au programme figure encore un aperçu des impôts d'ordre extra-fiscal et les prélèvements récents destinés à des buts spéciaux.

P.J.A.A.

II

LA LEGISLATION FISCALE FRANCAISE
(1949—1951)

Au lendemain du vote de la loi de finances de 1951 (L. 24 mai 1951) et au moment où s'achève la première législature de la IVème République, il est particulièrement indiqué de préciser l'orientation de la fiscalité française, telle qu'elle apparaît depuis l'entrée en vigueur de la réforme fiscale de 1948.

On sait que dans le cadre général de cette réforme, le système fiscal français des impôts d'Etat est réparti, par le nouveau *Code général des impôts* (Décr 6 avr. 1950), en quatre groupes: Impôts directs et taxes assimilées, Taxes sur le chiffre d'affaires et taxes assimilées, Contributions indirectes et monopoles fiscaux, Enregistrement, hypothèque et timbre. Cette nouvelle présentation a voulu estomper l'opposition traditionnelle de l'impôt direct et de l'impôt indirect. La tendance actuelle de la législation fiscale néglige en effet cette vieille opposition, qu'il devient de plus en plus difficile de fonder sur un critère certain depuis que se sont multipliées les perceptions d'impôts directs par voie de retenue ou stoppage à la source, ce qui supprime l'établissement des rôles. Le rapprochement des deux impôts s'est en même temps affirmé sur le plan du recouvrement, et il est entièrement réalisé dans le contentieux des poursuites (Code gén. imp., art. 1846). Cette assimilation plus ou moins complète ne fait pas disparaître, toutefois, les différences que présentent les problèmes de droit fiscal, et les caractères économiques ou sociaux de l'impôt, selon qu'un impôt est établi par voie de rôles ou non, et, à ce titre, la distinction de l'impôt direct et de l'impôt indirect ne doit pas être tenue pour périmée. Mais, du point de vue de la présentation du système fiscal français, elle ne saurait être tenue pour essentielle.

Dans le cadre général de cette présentation, une place particulière doit être faite, en revanche, aux impôts sur le revenu. Ce sont ces impôts que la réforme fiscale de 1948 a modifiés dans leur structure,

et c'est pourquoi leur évolution, jusqu'à la dernière loi de finances mérite de nous retenir plus spécialement.

Le système des impôts sur le revenu établi en 1914 et 1917 reposait sur la discrimination des revenus: sur cette base réelle la fiscalité était adaptée aux différentes catégories de revenus, atteintes par des cédules distinctes. Cette formule n'empêchait pas un aménagement personnel, affirmé notamment pour les personnes physiques par l'impôt général. Le nouveau système fiscal en vigueur depuis 1949 repose au contraire sur la discrimination des contribuables, c'est-à-dire sur une base personnelle, en adaptant la fiscalité à la personnalité physique ou morale du contribuable. Ceci ne l'empêche pas, à son tour, de tenir compte des catégories différentes de revenus, grâce à la taxe proportionnelle qui reprend les anciennes distinctions cédulaires (1).

Cette structure générale de l'impôt sur le revenu n'a pas été modifiée, et l'impôt sur le revenu français demeure établi sur la distinction de deux impôts: *l'impôt sur le revenu des personnes physiques*, qui réunit en une seule imposition, sous une cote unique, et selon la formule de l'imposition par foyer, une *taxe proportionnelle* et une *surtaxe progressive*, et *l'impôt sur les sociétés*, qui atteint les sociétés et autres personnes morales définies par le législateur pour l'ensemble de leurs revenus, soumis à une imposition proportionnelle. Dans ce cadre général, des dispositions importantes ont toutefois modifié le régime de l'imposition tel qu'il avait été fixé en 1948 aussi bien au regard de l'assiette qu'au regard de la liquidation et du revouvrement de ces impôts.

I-MODIFICATIONS SUR L'ASSIETTE DES IMPOTS SUR LE REVENU.

Les dispositions les plus importantes qui intéressent l'assiette des impôts sur le revenu se rapportent à la lutte contre la fraude fiscale, qui tend à assurer une meilleure assiette de l'impôt et à des considérations économiques et sociales, qui ont conduit à certains allégements fiscaux.

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1) V. sur cette opposition notre „Chronique" au *Dalloz* 1951, p. 1, et Min. des Finances, *Statistiques et Etudes financières*, Paris 1949, n° 1 (Suppl. Finances comparées).

A. — *Lutte contre la fraude fiscale.* Ce problème demeure une des préoccupations majeures du législateur français, qui a proclamé, à partir du 1er janvier 1950 et pour une durée qui ne saurait être supérieure à trois ans, un „plan de lutte contre la fraude fiscale" (L. 31 janv. 1950 et Décr. 10 fév. 1950). A la vérité, il serait puéril de fonder trop d'espoirs sur ce texte, et de croire que, grâce à ce plan, qui n'a d'ailleurs jamais été publié, toute fraude fiscale aura disparu pour le 31 décembre 1952. L'étude des textes montre même que les pouvoirs du fisc pour lutter contre cette fraude n'ont pas été modifiés depuis que la loi du 6 janv. 1948 a substitué à la formule ancienne des contrôles multiples et spécialisés la formule nouvelle du contrôle unique et généralisé, conçu sur la base du „casier fiscal". Mais si l'Administration des Finances n'a pas vu ses pouvoirs s'accroître, il y a du moins quelque chose de changé, depuis ces dernières années, dans ce domaine, car elle a procédé à des réformes intérieures qui lui permettent une utilisation plus efficace de ses pouvoirs. C'est ce qu'elle a réalisé en mettant sur pieds deux méthodes de contrôle, dont elle éprouve et compare l'efficacité depuis 1950: le *contrôle simultané*, d'une part, qui permet une réunion des directeurs des différentes administrations fiscales et qui est confié à des brigades comprenant des vérificateurs de ces administrations, opérant soit par régions soit par nature d'entreprises; — le *contrôle polyvalent*, d'autre part, qui confie à un seul agent le contrôle d'ensemble d'une entreprise, et qui s'appuie sur les trois directions de „polyvalence": l'Enregistrement, pour la documentation, les Contributions indirectes pour la constitution préliminaire des dossiers, et les Contributions directes pour les recherches, principalement auprès des banques. Ce sont ces „brigades polyvalentes" qui ont ému l'opinion publique par leurs vérifications inopinées, spécialement dans le département de la Seine, et qui ont eu à plusieurs reprises les honneurs de la tribune parlementaire (V. Ass. Nat., 23 mai 1950, J.O., *Débats*, p. 3795 et s.; 3, 24 et 30 avr. 1951, *ibid.*, p. 2586, 3954 et 4353 et s.-V. aussi la réponse du Min. du Budget à M. E. Hugues, Ass. Nat., 4 juil. 1950, J.O., *Débats*, p. 5357). On trouvera d'ailleurs dans ces débats les informations les plus précises sur l'activité de ces brigades et sur leurs pouvoirs.

N'oublions pas de noter, en terminant, que la forme nouvelle de ce contrôle, unique et généralisé, étend ses effets à l'ensemble du

système fiscal, bien que ce problème ait été abordé à propos des seuls impôts sur le revenu: les observations qui précèdent sont donc valables pour tous les impôts. Il en est de même pour les mesures *d'amnistie fiscale*, prévues par l'art. 8 de la loi de finances du 24 mai 1951, qui peuvent être présentées comme une forme indirecte de contrôle, puisqu'elles ont pour fin la rentrée des contribuables dans la légalité fiscale, par souscription volontaire d'une déclaration rectificative ou par versement anonyme des compléments d'imposition.

B. — *Considérations économiques et sociales.* Ces considérations, qui ont toujours influé sur le régime fiscal, sont plus justifiées que jamais en raison des aspects économiques et sociaux de l'impôt actuel. Elles se sont manifestées particulièrement, au cours de ces dernières années, dans la détermination des bénéfices industriels et commerciaux et des revenus fonciers.

1°) ***Bénéfices industriels et commerciaux.***

a) *Régime de l'évaluation directe.* Dans ce régime, qui est le régime général de l'impôt sur les sociétés, mais qui concerne aussi certains contribuables personnes physiques, la disposition nouvelle la plus importante intéresse la *constitution des stocks.* Elle est due à la loi du 8 janv. 1951.

Il s'agit ici du vieux problème posé depuis que la période d'inflation et de hausse des prix a détruit l'équilibre économique de l'imposition des bénéfices industriels et commerciaux, qui détermine le bénéfice imposable d'après le prix de revient, et non d'après le prix de remplacement. Pour les amortissements, le problème a été résolu par la réévaluation des bilans et par les récentes dispositions qui admettent un *amortissement accéléré* pour certains investissements (L.8. janv. 51, art 1er-1d, 1°, et Décr. 8 Mars 1951). En ce qui concerne les stocks, l'application de la loi fiscale conduisait à imposer comme bénéfice l'augmentation de valeur des stocks, bénéfice purement apparent dû à l',,illusion inflationniste''. Cette solution mettait les entreprises devant une alternative: accroître le poids de l'impôt sur le bénéfice réel, qui tendait ainsi vers 0, ou renoncer à maintenir le stock de renouvellement à son niveau normal, en vidant l'entreprise de sa substance. Pour éviter ces conséquences, également regrettables pour le rendement économique

des entreprises, le législateur a imaginé, depuis plusieurs années, une série de dispositions particulières qui permettent d'investir une partie du bénéfice dans les stocks en franchise d'impôt, sans revenir sur la définition fiscale du bénéfice. Cette solution peut-être obtenue par la formule des provisions déductibles, qui peut s'appliquer, pour la constitution des stocks, au titre de „provision pour fluctuation des cours", en faveur des entreprises de transformation de matières premières provenant des marchés étrangers, et qui avait été généralisée depuis 1941, avec les „provisions pour renouvellement des stocks". Elle a été recherchée ensuite par le régime fiscal des „approvisionnements", qui a d'abord prévu l'application d'un tarif réduit en faveur du bénéfice investi dans les „approvisionnements normaux" (1947), et qui a conduit à la „dotation d'approvisionnements techniques" (1948 et 1949). Les dispositions nouvelles permettent de tenir compte de la fraction du bénéfice imposable investi dans les stocks au cours de l'exercice 1950, en réduisant l'assiette de l'impôt sur cette fraction, dans la mesure où l'investissement est commandé par la hausse des prix et ne constitue pas un accroissement quantitatif des stocks (V. pour les détails d'application le 2ème Décr. du 8 mars 1951).

b.) *Régime de l'évaluation forfaitaire.* On sait que le régime des bénéfices industriels et commerciaux imposés au nom des personnes physiques varie d'après l'importance du chiffre d'affaires: les considérations économiques, par la hausse des prix, interviennent ici pour élever, une fois de plus, la limite qui sépare l'évaluation forfaitaire et l'évaluation réelle. La loi de finances du 24 mai 1951, art. 5, a porté cette limite de 5 à 8 millions et de 1.200.000 frs à 2 millions de francs, selon la nature de l'entreprise (V. Code gén. imp., art. 50).

2°) ***Revenus fonciers.***

Malgré le principe posé par la réforme fiscale, qui déterminait les revenus fonciers par évaluation directe, les revenus fonciers des propriétés rurales avaient retrouvé, après la réforme fiscale, le privilège d'une évaluation forfaitaire, fixée d'ailleurs *ne varietur* „au double du revenu ayant servi de base à la contribution foncière" de 1948 (Code gén. imp., art. 33). Ce privilège ne subsiste plus que pour la taxe proportionnelle, le revenu des propriétés rurales de-

vant être désormais imposé à la surtaxe pour son montant net réel (L. fin. 24 mai 1951, art. 69).

II — MODIFICATIONS SUR LA LIQUIDATION DES IMPÔTS SUR LE REVENU.

L'orientation de la législation fiscale française marque une tendance très nette à l'aggravation des tarifs.

Cet accroissement est particulièrement sensible, dans l'impôt sur le revenu, pour *l'impôt sur les sociétés*, qui passe de 24 à 34 p. 100 (L. 8 janv. 1951). Ce nouveau taux a d'ailleurs un effet rétroactif, puisqu'il doit s'appliquer aux bénéfices de l'année 1950, alors que le recouvrement de cet impôt assure sa liquidation sur le revenu de l'année. Cette augmentation prend la suite, au titre de l'exercice 1951, de la taxe additionnelle de 10 p. 100 perçue en 1950 sur les bénéfices réalisés au cours des exercices clos en 1949 et non distribués (L. 31 janv. 1950, art. 14). Citons aussi, à côté de cette augmentation importante, la *cotisation additionnelle à la contribution foncière des propriétés non bâties*, perçue au profit du budget annexe des prestations familiales agricoles, portée de 32 à 70 p. 100 du revenu imposable. Cette cotisation est à la charge du locataire ou fermier.

Le remaniement du tarif de la *surtaxe progressive* est plus intéressant à signaler, au point de vue de la science des finances, que ces simples majorations de taux, alors surtout qu'il se présente comme un adoucissement de la progressivité. Ce tarif a été remanié pour chacune des années 1949 (Décr. réf. fisc. 9 déc 1948, art. 72), 1950 (L. 31 juil. 1949, art 4) et 1951 (L. fin. 24 mai 1951, art. 6), et ces modifications successives marquent, dans l'ensemble, la volonté du législateur de ralentir la progressivité. C'est ce qu'il a fait à la fois en augmentant l'abattement (et la pratique administrative a encore accru les dispositions légales en renonçant à mettre en recouvrement certaines cotes: v. Cons. Rép., 6 fév. 1951, réponse du min. à une question orale, et Ass. Nat., 6 fév. 1951, rép. quest. no. 15. 708, J.O., *Débats*, p. 826), en élargissant les tranches, et même en abaissant le taux. Mais l'amélioration que ces tarifs successifs ont apportée au contribuable, est, au moins en partie, apparente. Il faut en effet tenir compte de l'augmentation nominale des revenus, qui atténue, et peut-être dépasse, l'adoucissement des tarifs. Pour s'en tenir

aux seuls revenus du travail, l'augmentation moyenne des salaires est, depuis 1949, de l'ordre de 13 p. 100, et elle a pour effet d'élever d'autant la position des salariés devant l'échelle de progressivité. En considérant, d'autre part, l'aménagement des tranches, on observe que l'amélioration découlant de la revision des tarifs n'est pas constante pour tous les contribuables; elle se transforme même en aggravation pour certains d'entr'eux. C'est ainsi que si le taux de la 3ème tranche d'imposition est abaissé, pour 1951, de 25 à 20 p. 100, le plafond de cette tranche est simultanément abaissé de 800.000 à 750.000 frs.: les revenus compris entre 750.000 et 800.000 frs (par part), loin d'être ramenés au nouveau taux de 20 p. 100, passent du taux ancien de 25 au taux supérieur de 30 p. 100. Pour saisir exactement la portée de ces modifications de tarifs, il ne suffit donc pas d'en considérer l'expression légale: il faut pouvoir apprécier le poids réel de l'impôt, en déterminant notamment son „taux d'accroissement", comme permettent de le faire les études graphiques présentées par M. Folliet (*Les tarifs d'impôts*, Lausanne, 1947).

III — MODIFICATIONS SUR LE RECOUVREMENT DES IMPOTS SUR LE REVENU.

Il suffira de mentionner quelques dispositions particulières relatives au recouvrement de *l'impôt sur les sociétés*, qui résultent soit de dispositions spéciales (Décr. 12 aout et 6 oct. 1950), soit de l'augmentation de cet impôt, applicable à des périodes pour lesquelles le recouvrement était déjà effectué par les versements d'acomptes (V. *supra*). Mais, pour *l'impôt sur le revenu des personnes physiques*, une modification des règles de recouvrement, en apparence modeste, mérite quelques observations, parcequ'elle touche au régime général de cet impôt.

La réforme fiscale de 1948 avait posé le principe nouveau que l'impôt sur le revenu serait désormais assis *sur le revenu de l'année*, et cette règle est d'ailleurs toujours inscrite dans l'art. 12 du Code général des impôts. Pour en assurer l'application, le recouvrement de l'impôt avait été établi sur la base de recouvrements anticipés qui poursuivaient le prélèvement de l'impôt sur les revenus de l'année, par une sorte de généralisation du stoppage à la source. Mais les dispositions ainsi prises ont été d'abord suspendues pour

1950 (L. 31 déc. 1949, art. 18), puis définitivement supprimées par un retour pur et simple au régime ancien des versements anticipés, fixé à l'époque où l'impôt sur le revenu était assis sur les revenus de l'année précédente (L. 31 déc. 1950, art. 17). De fait, le contribuable français a fait, en 1951, la déclaration de ses „revenus de 1950", et les „tiers provisionnels" qu'il a dû acquitter au titre des versements anticipés ont été perçus „à valoir sur ses impôts sur le revenu pour l'année 1951", c'est-à-dire sur les revenus de 1950. Il en résulte avec évidence que la règle toujours inscrite dans l'art. 12 du Code ne signifie plus rien. Ce qui est le plus curieux dans cette histoire, c'est qu'une réforme de fond, portant sur l'assiette de l'impôt, a été réalisée à l'occasion d'une réforme présentée comme un simple changement des dates de recouvrement, sans avoir été justifiée, ni discutée (V. pour plus de détails la Chronique au *Dalloz* 1950, p. 33).

Les modifications du système fiscal étrangères à l'impôt sur le revenu sont assez nombreuses dans le détail, mais elles sont moins importantes pour les données générales de l'imposition. Il suffira de relever, comme un signe des temps, leur objet principal, qui est une augmentation quasi générale des tarifs. Celle-ci résulte d'abord de l'incorporation dans ces tarifs des décimes créés par les lois des 31 déc. 1948 et 31 janv. 1950, ce qui consolide une situation qui avait été présentée comme provisoire (L. 8 janv. 1951, art. 7). Elle résulte ensuite de plusieurs augmentations effectives, dont les plus sensibles portent (en dehors de l'impôt sur les sociétés, déjà mentionné), sur les droits d'enregistrement, qui se trouvent majorés de 20 p. 100, et sur la taxe à la production, dont le taux général est porté à 14,50 p. 100 (*ibid.*, art. 1er, I, *c*). Et l'on notera encore, comme un autre signe des temps, l'autorisation donnée au gouvernement de procéder à une nouvelle augmentation des tarifs *par décret*, si l'équilibre prévu par la loi du 8 janvier n'est pas assuré par des économies suffisantes (*ibid.*, art. 1er, II) La loi de finances du 24 mai 1951 ajoute à ces taux majorés, pour la taxe à la production, une „cotisation" de 0,30 p. 100 au profit du budget annexe des prestations familiales agricoles. Elle marque en outre un retour à la formule de la *taxe unique*, pour les viandes et les vins, amorce, peut-être, d'une simplification des taxes sur le chiffre d'affaires (V. les

déclarations du min. du budget, Ass. Nat., 18 mai 1951, J.O., *Débats* p. 5.500).

Sans entrer dans plus de détails, il est maintenant permis de conclure que l'analyse de la législation fiscale française, au cours de ces dernières années, laisse une impression plutôt décevante. Si la réforme de 1948 n'était pas considérable, du moins avait-elle marqué une nette volonté de simplicité. Les dispositions nouvelles que l'on relève depuis lors se ramènent presque toutes à l'établissement de régimes spéciaux, soit pour l'assiette, soit pour la liquidation, ou même le recouvrement de l'impôt. Aussi notre législation fiscale, que l'on avait essayé de rajeunir, a-t-elle rapidement retrouvé, par cette complexité, la physionomie des législations vieillies. Si l'on dressait, par exemple, le tableau exact des taux différents qui sont applicables à la taxe proportionnelle pour les diverses catégories de revenus, on serait certainement surpris de voir ce que devient le taux de 18 p. 100 qui détermine, en principe, la liquidation de cette taxe.

Malgré la réforme fiscale, si laborieusement acquise en 1948, nous nous retrouvons donc en face d',,une législation rendue incohérente par sa complexité et aboutissant à un régime d'expédients au jour le jour''. C'est en ces termes sévères qu'une sous-commission de la commission des finances de l'Assemblée nationale définissait récemment le système fiscal actuel, auquel elle proposait de substituer, dans un ,,climat de *paix fiscale*''; ,,quelques impôts à grand rendement, stables, aisément compréhensibles, facilement contrôlables, et conformes à la psychologie des Français'' (V. la proposition de résolution de M. Truffaut, Ass. Nat., 25 avr. 1951, Annexe n°12.962). On croit rêver à l'annonce de cette fiscalité classique, si éloignée des formules chères au législateur contemporain... Mais peut-être la sous-commission de réforme fiscale na-t-elle pas tort quand elle célèbre certains mérites de l'impôt indirect, voire de l'impôt de répartition. L'avenir nous dira si la nouvelle Législature voudra recueillir l'héritage que lui lègue ainsi sa devancière, en s'inspirant des principes retenus dans ce rapport de la Sous-commission de réforme de l'impôt.

Prof. L. Trotabas

SURVEY OF BRITISH TAX LEGISLATION
1949-50 and 1950-51 [1])

Legislation 1950-51.

The main source of tax legislation for the year 1950—51 is the Finance Act 1950 (14 Geo. 6. Ch. 15), whereas other provisions are contained in the Administration of Justices (Pensions)Act, 1950 (14 & 15 Geo. 6. Ch. 11).

INCOME TAX AND SURTAX

Finance Act, 1950.

The Finance Act, 1950, imposed income tax for 1950—51 (*a*) at the standard rate of 9 s in the £; and (*b*) in respect of the excess over £ 2.000 of incomes above that limit, enjoyed by individuals, at such higher rates as Parliament might thereafter determine. According to s. 17 of the Finance Act, 1951, these rates are the same as were charged for the year 1949—50, which are the same as for 1948—49 (F.A., 1950, s. 23).

The so-called reduced rate relief, introduced by s.40 (2) of the Finance Act, 1927, as amended, is increased and consequently the marginal relief for small incomes has been altered. [2])

S.25 provides for a relaxation of conditions for grant of age relief. Till sofar this relief was granted where the taxpayer (or his wife) had attained the age of 65 years at the commencement of the year of assessment. As from the year under review this will be if they attain said age at any time during the year of assessment.

An important section is s. 26 introducing a surtax on consideration for certain restrictive covenants, etc.

We are reproducing the full text of this article.

26. — (1) Where:

(a) an individual who holds, has held or is about to hold an office or employment gives, in connection with his holding thereof, an undertaking (whether absolute or qualified and whether legally valid or not) the tenor of effect of which is to restrict him as to his conduct or activities; and

(b) in respect of the giving of that undertaking by him, or of the total or partial fulfilment of that undertaking by him, any sum is paid either to him or to any other person; and

(c) apart from this section, the sum paid would neither fall to be treated as income of any person for the purposes of income tax for any year of assessment nor fall to be taken into account as a receipt in computing, for the purposes of income tax for any year of assessment, the amount of any income of, or loss incurred by, any person,

the same results shall follow in relation to surtax for the year of assessment in which the said sum is paid as would have followed if the said sum had been paid to the said individual (and not to any other person) as and for the

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[1]) Continued from Bulletin V,. No. 3.
[2]) See table at the end of this survey.

net amount of an annual payment to which the said individual was entitled, being an annual payment chargeable to income tax from the gross amount of which tax at the standard rate for that year had been duly deducted under Rule 19 or Rule 21 of the General Rules:

Provided that where the individual has died before the payment of the said sum, so much of the preceding provisions of this subsection as relates to the results which are to follow from the matters specified in paragraphs (a) to (c) of this subsection shall have effect as if the said sum had been paid immediately before the death.

(2) Where valuable consideration atherwise than in the form of money is given in respect of the giving of, or of the total or partial fulfulment of, any undertaking, the preceding provisions of this section shall apply as if a sum had instead been paid equal to the value of that consideration.

(3) The preceding provisions of this section shall apply to surtax for the year 1949—50 or any subsequent year of assessment and, in relation to surtax for any of the said years, shall be deemed always to have had effect, and all such assessments and additional assessments shall be made as are necessary to give effect to the provisions of this subsection:

Provided that:

(a) the said preceding provisions shall not apply to any sums paid or consideration given if either:

(i) the undertaking in question was given on or before the sixth day of April, nineteen hundred and forty-eight; or

(ii) the sum or consideration is or was paid or given at or after the time of the retirement of the individual in question from the service of the person under whom the office or employment in question was held and is or was so paid or given in pursuance of a provision in that behalf which expressly provides for the payment or giving thereof at or after that time and is embodied in a contract made in writing on or before the eighteenth day of April, nineteen hundred and fifty, or reduced to writing on or before that date; or

(iii) the sum or consideration is or was paid or given in pursuance of an express provision in that behalf embodied in a contract made in writing on or before the eighteenth day of April, nineteen hundred and fifty, or reduced to writing on or before that date, being a contract the main purpose of which was to provide for the transfer of a trade or part of a trade or for the transfer of the controlling interest in any body corporate; and

(b) no person shall be liable to any penalty by reason that, in any return or particulars of income made or furnished before the passing of this Act, any amount had not been included which ought to have been included in view of the said preceding provisions.

For the purpose of this subsection, a director of a company shall be deemed to be in the service of that company and to hold his office as such under that company.

(4) Where any sum is paid or valuable consideration given to any person in any year of assessment in respect of the giving of, or of the total or partial fulfilment of an undertaking given after the sixth day of April, nineteen hundred and forty-eight, and satisfying the conditions specified in paragraph (a) of subsection (1) of this section (not being a sum from which tax is duly deducted under any provision of the Income Tax Acts), it shall, subject to the provisions of this subsection, be the duty of the person paying over the sum or giving the consideration to deliver particulars thereof in writing to the surveyor not later than one month after the end of that year,

identifying the recipient of the payment or consideration, the undertaking in connection with which it was made or given and the individual who gave that undertaking; and the provisions of section one hundred and seven of the Income Tax Act, 1918 (which relates to failure to deliver lists, declarations and statements) shall apply in relation to the particulars required to be delivered under this subsection as they apply in relation to any list, declaration or statement required to be delivered by any such notice as is referred to in that section.

This subsection applies to any sum paid or consideration given in the year 1949—50 or any subsequent year of assessment, but where the payment or giving of the sum or consideration took place during the year 1949—50, the time for delivering the particulars shall not expire until one month after the passing of this Act.

(5) In this section, the expression "office or employment" means any office or employment whatsoever such that the emoluments thereof, if any, are or would be chargeable to income tax under Schedule E for any year of assessment; and references in this section to the giving of valuable consideration do not include references to the mere assumption of an obligation to make over or provide valuable property, rights or advantages, but do include references to the doing of anything in or towards the discharge of such an obligation."

The Act extended (under certain conditions) the provision of s. 21 (1) of the F.A., 1934 (charging certain rents to tax under Schedule D and providing for the deduction of tax therefrom on payment thereof) to rents in respect of easements enjoyed in the United Kingdom in connection with electric wire or cable.

The Act provided for a continuation of period for which mills, factories etc. allowances may be given.

Relief from income tax shall not be allowed to any person under section thirty-two of the Income Tax Act, 1918 (which provides relief for, amongst other things, contributions to secure deferred annuities to widows and provision for children) or under any other provision of the Income Tax Acts providing for relief for income tax purposes, in respect of any contributions made by him under any enactments of the Parliament of Northern Ireland corresponding to Parts I and II of the Superannuation Act, 1949, and, in particular, under Parts I and II of the Superannuation Act (Northern Ireland), 1949.

With respect to the income tax on husbands and wives the Act contains a number of new provisions. S. 30 of the Act establishes the general rule in this respect, replacing General Rule 16 of the Income Tax Act, 1918. The first paragraph reads as follows:

"Subject to the following provisions of this Part of this Act, a woman's income chargeable to income tax shall, so far as it is income for a year of assessment or part of a year of assessment during which she is a married woman living with her husband, be deemed for income tax purposes to be his income and not to be her income:

Provided that the question whether there is any income of hers chargeable to income tax for any year of assessment, and, if so, what is to be taken to be the amount thereof for income tax purposes, shall not be affected by the provisions of this subsection."

The following sections contain provisions in connection with the main rule, viz., consequences with respect to personal allowances etc., the collection from wife of tax assessed on husband, attributable to her income, the right of husband to disclaim liability for tax on deceased wife's income, and the construction of references to married women living with their husbands, and special provisions as to certain spouses geographically separated.

(We hope to have an opportunity to discuss more deeply these new provisions as compared with the situation in other countries.).

Section 36 introduces provisions for unilateral relief for double taxation. In a few words it can be said that at present the relief granted with respect to taxes levied in commonwealth countries is limited to three-quarters of the sum of U.K. income and profits tax attributable to the doubly-taxed income, and with respect to other countries, to one half of this sum. These reliefs are granted where there does not exist a double taxation agreement with the countries concerned.

Other reliefs are granted with respect to charities. Firstly, this relief is extended to certain bodies as respects past periods. Moreover, certain scientific research associations are granted this relief.

The Act contained certain provisions with respect to the treatment for taxation purposes of enemy debts, etc., written off during the war. Section 39 of the Act provides that where, in computing profits in the period 1939—1946, a deduction was allowed to write off debts, claims, etc, owed by or on a person resident in ennemy territory or value of property in such territory, and where a recovery therefore is made and the amount of the recovery is greater or less than the amount or value of the debt, etc. as is stial not written off after effect has been given to the deduction, this deduction shlll be deemed to have been improper to the extent of such excess.

Special reference is made in the Act to recoveries by assignees and in certain cases of subsidiary companies (s. 40).

The above-mentioned provisions have effect with respect to income tax, profits tax and excess profits tax.

Another important provision (sect. 41) refers to income or profits which cannot be remitted to the United Kingdom as a result of action of the government of a foreign country. In these cases the Commisioners of Inland Revenue allow the tax in respect of profits or income arising in such other country to remain uncollected, whereas the interest on said tax shall cease to run for the period in question. This provision shall apply in relation to all assessments made either before or after the passing of the Act, and shall be deemed always to have had effect. No sums paid in respect of interest before June 27, 1950, shall, however, be repaid.

Other legislation.

As will be known generally, no relief from income tax on insurances etc. made before 1916 and certain other payments is granted with respect to contributions under the Superannuation Act 1949. The same provisions applies for contributions under s. 8 and s. 9 of the Administration of Justice (Pensions) Act, 1950.

PROFITS TAX AND EXCESS PROFITS TAX

For the provisions relating to these taxes, see above under Income tax.

ESTATE DUTY

The provisions of the Finance Act, 1950, with respect to Estate Duty concern the following subjects: s. 43 (1) and (2) of the F. A. 1940, relating to the disposition or determination of life interests etc. was amended. The 7th Schedule to the F.A., 1950 contains the full text of the amended provisions. Furthermore, the Act introduced a provision with respect to the collection of duty from trustees after disposition or determination of life interest etc.

S. 45 of the Act concerns Parliamentary estates, whereas s. 46 refers to dispositions in favour of relatives, amending s. 44 (1) of the F.A., 1940.

S. 51 of the same Act was amended. This section relates to the charge

for estate duty under the provisions of the F.A., 1940 about companies, and contains provisions for preventing duplication of the charge. This section was amended to the extent that is inserted a subsection 1 A, reading as follows:

"(1A) Where the following conditions are satisfied, that is to say, that the deceased has, within five years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then:
(a) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the said consideration, duty on the said proportion shall not be payable;
(b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration:

Provided that, in the case of any shares or debentures,

(i) this subsection shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty; and
(ii) for the purpose of determining to what extent, if any, the disposition of them satisfies the conditions of this subsection, section fifty-six of this Act (which relates to transactions through the medium of a company) shall apply as it applies for the purposes of section three of the Finance Act, 1894."

Furthermore the Act provided for special rules with respect to objects of national, scientific, historic or artistic interest. These objects shall be exempt if they pass on a death occurring after the date of passing of the Act, only if an undertaking is given that the objects, until they again pass on a death or are sold, will be kept in the U.K., will be preserved by appropriate means, and if facilities will be allowed to the Treasury to examine the objects for control.

CUSTOMS, EXCISE AND PURCHASE TAX

Part I of the Act contains provisions with respect to hydrocarbon oils (the rate of customs duty is brought from 9d à gallon to 18d a gallon; the provisions relating to rebates are amended, and an excise duty is introduced apart from some other minor amendments); petrol substitutes (introduction of an excise duty on petrol substitutes which are sent out from the premises of a person producing them or dealing in them); power methylated spirits (increase of excise duty from 9d tot 18 d.).

The Act contains other provisions about the following duties or articles: Beer (customs and excise, s. 6); spirits (allowances on export s. 7); sugar (increase of quota for colonial certificated sugar, s. 8); iron and steel goods (extension of special power to remove or 1educe additional import duties thereon, s. 9); amendments as to relief from import duties of certain machinery (s. 10); duty free importations for industrial research (s. 11); amendments of powers to allow drawback of import duties (s. 12); tractors (excise licences, s. 13); entertainment duty (reductions, ss. 14—16); pool betting

duty (s. 17); road vehicles and chassis thereof (purchase tax, s. 18); war memorials (exemption from purchase tax, s. 19).

Two general provisions relate to the supply of duty free goods to H.M. ships, and to the repayment of customs duty where goods are returned or destroyed by the importer.

It is brought to the attention of the readers of the Bulletin, that the F.A., 1951 (14 & 15 Geo, 6 Ch. 43) provides for an increase of rates of the following taxes:

Income Tax (increase from 9 s tot 9 s, 6 d in the £)
the personal allowance for married persons was increased from £ 180 to £ 190 and the child allowance from £ 60 to £ 70.

Surtax the rates remain the same: however the 10.6 rate on incomes from 20.001 upwards chargeable for 1950/51 is repealed for 1951/52 and replaced by a 10.0 d rate for all incomes over £ 15.000.

Profits Tax (increase from 30 to 50 % if profits are distributed; at the same time the relief for non-distribution is increased from 20 to 40 %).

(For further details see: extracts from the budget speech made by the Chancellor of the Exchequer, Mr. Gaitskell, this issue, p. 256)

RATES OF TAX [1])
1948—49 to 1951—52

	Standard rate in £	Reduced Rate		Personal allowance		Children	
		on first	at	single	married	first child	each other child
1948-49	9/-	on first 50 on next 200	3/- 6/-	110	180	60	60
1949-50	9/-	on first 50 on next 200	3/- 6/-	110	180	60	60
1950-51	9/-	on first 50 on next 200	2/6 5/-	110	180	60	60
1951-52	9/6	on first 50 on next 200	3/- 5/6	110	190	70	70

Other allowances: earned allowance: for all years 1/5th with a maximum of £ 400
age allowance: 1/5th
wife's earned income a: 4/5ths
Exemptions: £ 135; for incomes between £ 135 and £ 160 tax may be reduced to 3/10ths of excess over £ 135; for 1950-51 only to 1/4 excess.

[1]) Source: *Key to Income Tax and Surtax*, edited by Ronald Staples, F:A. 1951 edition, Taxation Publishing Company, Ltd., London.

H. J. HOFSTRA: *Het vraagstuk van de heffingen ineens* — Elsevier, Amsterdam, 1945.

Cet opuscule, écrit par un membre connu de la Chambre des Députés néerlandaise a perdu son actualité, parce qu'un impôt sur l'accroissement de la fortune et un impôt extraordinaire sur le patrimoine ont été introduits il y a quelques années déjà. Les difficultés afférentes à ces deux impôts donnent toujours beaucoup de travail aux fiscalistes néerlandais, et cela plus spécialement parce que de nombreuses décisions judiciaires donnent souvent lieu à de nouvelles possibilités et questions.

L'opuscule en question contient des opinions en cours dans la période qui a suivi la libération des Pays-Bas, période dans laquelle il y avait pas mal de discussions sérieuses concernant la question de savoir comment on pourrait rétablir la situation désespérée dans les finances publiques. Il est intéressant de faire une comparaison entre les lois définitives d'une part et les idées de l'auteur ainsi que le projet de loi qu'il a formulé dans son étude, d'autre part.

The American Academy of Political & Social Science: Government Finance in a stable and growing economy — The Annals, November, 1949.

„Le financement des autorités américaines est la financement de notre démocratie" écrit, dans sa préface, le professeur ALFRED G. BUEHLER. Il fait remarquer comment la tâche des Gouvernements a pris de l'extension. Le but n'est plus exclusivement le maintien de l'appareil gouvernemental, ce sont plutôt des intérêts économiques et sociaux qui à présent sont gérés par les Gouvernements. Cependant, on peut discuter la question de savoir jusqu'à quel point doivent aller ces soins des Gouvernements.

Aux Etats-Unis on a le sytème d'une économie mixte, dans laquelle les entreprises officielles développent leurs activités à côté des entreprises capitalistes.

Comment cette coopération pourra-t-elle aboutir à la plus grande prospérité et à la meilleure distribution de cette prospérité?

C'est cette question que traitent les nombreux articles dans cet ouvrage. M. ALFRED G. BUEHLER a écrit une introduction générale traitant les finances publiques et l'économie. Suivent cinq articles sur les différents problèmes du budget. Une quinzaine d'articles ont pour objet les relations entre la fiscalité et l'économie et les nombreux aspects de ce problème. On y trouvera des considérations sur les relations de ces sujets avec la consommation, le travail, le commerce et l'industrie, l'investissement etc., et sur la pression fiscale.

Trois auteurs s'occupent de la politique fiscale, deux autres de la dette publique.

Dans un espace limité on trouve une abondance de matériaux. Une bibliographie détaillée et un index bien fait terminent l'ouvrage.

RONALD STAPLES: *Key to Income Tax and Surtax* — Taxation Publishing Co. Ltd., London, 1951.

Voici une nouvelle édition de ce guide pratique et bien connu pour l'impôt

sur le revenu anglais. Le système de ce guide est bien fait et on peut y trouver n'importe quel sujet d'une façon extrêmement commode.

PETER MEYER: *Die steuerfreien Abzüge vom Erwerbseinkommen unselbständig Erwerbender.* — Juris Verlag, Zürich, 1949.

Le système des déductions accordées aux contribuables exerçant une profession dépendante diffère tellement d'un canton à l'autre que l'auteur a eu besoin d'écrire un ouvrage très détaillé (227 pages) pour traiter ce sujet pour autant qu'il concerne la Suisse. Si l'on étendait ses études à plusieurs pays, on trouverait sans doute beaucoup d'autres différences de système encore.

Telle est l'importance de cette étude intéressante. Partout on trouve le travail exercé dans un emploi et partout le revenu provenant de ce travail est frappé d'un impôt. Les différences entre les pays ne proviennent pas seulement des taux différents mais surtout des différentes manières dont on détermine le revenu imposable, et pour cette détermination il faut tenir compte des déductions accordées aux contribuables. L'importance en augmente dans la mesure où les taux d'impôt s'élèvent. C'est pourquoi l'ouvrage de M. MEYER est intéressant également pour les fiscalistes hors de la Suisse parce que les problèmes traités sont des problèmes d'ordre général.

On pourrait s'imaginer que les systèmes fiscaux nationaux se rapprochent les uns des autres. Seulement, pour cela, il faut connaître quels sont les problèmes et quelle peut en être la solution. L'ouvrage précité contient beaucoup de données pour une telle étude.

Nous nous contenterons d'attirer l'attention sur quelques points seulement. L'auteur fait une distinction entre les déductions *organiques*, nécessaires pour pouvoir réduire le revenu brut au revenu net (frais professionnels, amortissements, pertes, etc.) et les déductions *spéciales*, le plus souvent basées sur des considérations politiques, fiscales ou sociales. Comment, se demande l'auteur, faut-il décrire le revenu comme facteur de la capacité contributive?

Après avoir parlé d'une façon générale des frais professionnels, l'auteur traite, entre autres, le rapport avec l'exercice fiscal, la démarcation des investissements, des frais d'entretien, etc. Ensuite: les frais de voyage, les frais spéciaux (par exemple, ceux qui concernent un cabinet de travail, la profession de la femme mariée, etc.) et beaucoup d'autres sujets intéressants ont attiré l'attention de l'auteur.

KARL DÜRR: *Aktie und Aktiegesellschaft. Ihre Bewertung und Besteuerung in der Schweiz.* — Verlag Steuerprobleme, Bern, 1949.

D'abord, l'auteur considère le problème en question du point de vue de l'actionnaire, et il s'occupe de la méthode d'évaluation des actions. Même s'il s'agit d'actions cotées il y a beaucoup de questions à résoudre: cours „suranné", quel cours doit-on prendre en considération (cours local, par exemple), dividendes courants, etc. Mais ce sont surtout les actions non-cotées qui donnent lieu à beaucoup de difficultés.

L'administration fédérale des contributions a donné des directives détaillées que l'auteur a insérées dans son ouvrage. La pratique fiscale dans les divers Cantons n'est pas toujours conforme à ces directives. La plupart des Cantons prennent comme base d'évaluation la valeur vénale, mais la difficulté est de savoir comment il faut fixer cette valeur. Il faut prendre en considération de nombreux facteurs, mentionnés par l'auteur, qui s'occupe, d'ailleurs, également des actions de jouissance, droits de „claim".

Ensuite, M. DÜRR traite l'influence de l'engagement des actions sur leur valeur, et enfin, il fait une comparaison entre l'évaluation selon les principes valables dans le commerce des valeurs, d'une part, et l'évaluation fiscale, d'autre part.

La deuxième partie de l'ouvrage traite le revenu provenant des actions. Ici aussi, beaucoup de problèmes, entre autres l'attitude du fisc vis-à-vis l'augmentation de valeur des actions, les actions gratuites, ,,claims'' etc.

Dans la troisième partie l'auteur s'occupe du problème de la double imposition. Ici, comme dans la deuxième partie, c'est la société elle-même qui demande l'attention du lecteur: impôt sur la capital, le rôle du capital pour autant qu'il concerne l'impôt sur le revenu.

Ce sont tous des problèmes qui se représentent dans d'autres pays que la Suisse. Le traitement détaillé par l'auteur peut contribuer à ce que l'on voit plus clairement les problèmes dans ces autres pays.

Revenue Administration 1948. 16th Annual Conference of the National Association of Tax Administrators. — Federation of Tax Administrators, Chicago, 1948.

Cet opuscule contient un aperçu succinct des données importantes que contiennent les discours proncncés au 16me congrès de l'Association Nationale des Administrateurs Fiscaux des Etats Unis. Le président, M. HAROLD J. CHATER, a fait un discours sur la structure fiscale du Canada, M. ALFRED G. BUEHLER a traité les relations fiscales entre les états et les communes: Les taxes communales sur le revenu et sur le chiffre d'affaires ont été discutées amplement.

On s'est réuni aussi par section, et cet ouvrage contient des résumés de ces réunions: revenu, fortune, successions, chiffre d'affaires, etc.

North American Gasoline Tax Conference, 22nd Annual report. Federation of Tax Administrators, Chicago, 1948.

Les taxes, perçues par les Etats américains sur le pétrole et ses dérivés, ont été l'objet de ce congrès. Il appert que la législation, ainsi que la fiscalité dans ce domaine sont tellement étendues et compliquées que non moins de 11 conférences ont précédé le congrès. On a traité les différents aspects du problème, et on peut en tirer la conclusion que ces taxes impliquent beaucoup d'intéréts spéciaux.

Le domaine, directement ou indirectement embrassé par le droit fiscal, est très étendu. On le voit encore une fois dans trois études faites sous les auspices du ,,Bureau of Business Research'' de l'université de Kentucky (Etats Unis). D'ordre purement fiscal est l'ouvrage intitulé *State Supervision of the property tax assessments in Kentucky*, publié par l'université de Kentucky, Lexington, 1948. On y traite les relations entre le ,,State Department of Revenue'' et les ,,local assessing officials'' dans le territoire de l'Etat de Kentucky, pour autant qu'il concerne l'assiette des impôts. L'auteur, MLLE BEULAH LEA PARDUE a fait usage de données comparatives concernant d'autres Etats et traite les expériences avec ,,Technical Assessment Aids'', ,,Administrative Aids'' et ,,Legal Aids''. Après avoir examiné les besoins, en Kentucky, de compléter le système en vigueur, l'auteur termine l'opuscule en faisant quelques recommandations. L'ouvrage détaillé de VERA BRISCOE, JAMES W. MARTIN ET J. E. REEVES: *Safeguarding Kentucky Natural Resources* est d'un tout autre caractère. Cet ouvrage reste essentiellement dans le domaine des finances publiques, et les auteurs y traitent les sources naturelles dont dispose l'Etat de Kentucky, ainsi que la façon dont ces sources sont exploitées et plus spécialement la réglementation de ,,l'administrative management''. Il ressort de la citation suivante qu'il n'y a pas encore d'efficacité complète dans ce domaine: ,,The State Forester reports that for every dollar we collect in fire fees we spent $ 0.56 to $ 0.75 in salesmenship, collection and bookkeeping costs; and that is not right''. C'est l'intention de faire étudier le même problème dans un certain nombre d'autres Etats dans le Sud des Etats-Unis, après lequel on publiera une analyse.

Le troisième opuscule, celui de Miss ÁLVA MARION MATHERLY: *Kentucky State Purchasing*, contient une étude sur le problème de l'emploi de l'argent payé par les contribuables, et celui de savoir si cet argent est employé de façon bonne et juste. L'auteur, traite enfin le problème de la centralisation, et compare la situation en Kentucky avec celle d'autres Etats, également du point de vue historique.

FELDMANN RECHTSGRUNDRISSE: *Heft 1, Bürgerliches Recht, Allgemeiner Teil des B.G.B.*, 4e Auflage — Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Stuttgart, 1951.

Cet ouvrage ne traite pas le droit fiscal, mais contient un aperçu général des principes du droit civil allemand. Nous mentionnons cet ouvrage parce que ceux qui s'occupent du droit fiscal d'un certain pays ont souvent besoin d'un tel aperçu du droit civil. On trouve dans cet ouvrage succinct un aperçu systématique du droit objectif et des droits subjectifs, les personnes dans les relations juridiques, les objets du droit (choses, fruits etc.) et obligations.

Il semble que l'on consulte beaucoup cet ouvrage: la première édition est de 1946, la deuxième de 1947.

CARL SHOUP: *Principles of National Income Analysis.* — Houghton Mifflin Company, Boston, 1947.

Cet ouvrage, résultat d'une étude favorisée par la Rockefeller Foundation, s'occupe, en grande partie, de la politique fiscale et financière. L'auteur s'est efforcé de traiter son sujet plus systématiquement qu'à ordinaire.

Dans le premier chapitre, l'auteur traite la question de savoir ce qu'il faut entendre par revenu national: ou bien les résultats nets de la production dans le territoire d'un pays, ou bien les résultats nets de la production revenant aux habitants du pays? L'auteur part de la seconde hypothèse. L'évaluation du revenu national des Etats-Unis et de la Grande Bretagne, et les différentes méthodes, suivies pour cette évaluation, occupent une partie importante de l'ouvrage, et dans trois chapitres suivants le problème est étudié de différents points de vue. On traite dans les chapitres suivants le revenu national, analysé dans ses facteurs („as Factor Payments'') et comme „net product'', tandis qui l'auteur étudie dans le chapitre 7 „the Government sector''. Ici il ne traite pas seulement l'aspect fiscal, mais aussi l'emploi, par l'autorité publique, de l'argent des contribuables. On étudie d'autres sujets, à savoir: épargne et investissement, les différentes industries comme sources du revenu national, le revenu des Etats de l'Amérique à part celui de la Grande-Bretagne, tout cela élucidé par de nombreuses tables. Une bibliographie détaillée augmente la valeur de cet ouvrage important qui se termine par des tables analytiques qui permettent d'entrer dans les détails.

K. G. A. SANDSTRÖM: *Om beskattning av inkomst av rörelse enligt svensk rätt.* (De l'imposition sur les bénéfices commerciaux et industriels selon la législation suédoise.) Troisième édition revue et augmentée. — Stockholm 1951, 23 + 724 pages.

Om beskattning av inkomst av tjänst samt av tillfällig förvärvsverksamhet enligt svensk rätt.

(De l'imposition sur le revenu du travail ainsi que sur les profits occasionnels selon la législation suédoise.) — Stockholm 1945, 756 pages.

Om förmögenhetsskatt samt beskattning av inkomst å kapital enligt svensk rätt.

(De l'impôt sur la fortune et de l'imposition sur le revenu du capital selon la législation suédoise). — Stockholm 1945, 547 pages.

Au cours des années 1944 et 1945, le docteur Sandström a rédigé en trois parties une étude approfondie sur toute l'imposition suédoise, à l'exception

de la partie qui concerne le revenu de la propriété bâtie et de l'exploitation agricole. Rien que l'ampleur de cet ouvrage, qui réunit près de 2.000 pages, laisse entrevoir qu'il s'agit d'un travail d'une nature exceptionnelle dans la bibliographie des impôts. Cette opinion s'affirme de plus en plus en étudiant cet ouvrage. Les traits caractéristiques de l'auteur, la minutie et l'érudition, ont aussi marqué cet ouvrage de leur empreinte; l'auteur est allé jusqu'au fond de son sujet. Comme un exemple, on peut mentionner que, en ce qui concerne les règles de décomptes, chaque forme imaginable d'évaluation du matériel, des machines, des stocks, etc . . a été traitée séparément et en détail. En même temps, dans le tome sur l'imposition des salaires, etc . . ., l'auteur a, entre autres, présenté un compte-rendu détaillé du système compliqué des salaires de l'Etat. Il faut aussi faire remarquer les analyses approfondies qui ont été faites des précédents. Ce n'est cependant pas seulement l'étude des précédents qui est caractérisée par cette érudition et cette minutie; l'étude des questions théoriques se fait remarquer aussi par ces mêmes qualités. Les ouvrages de l'auteur portent le témoignage d'une érudition remarquable portant non seulement sur la bibliographie suédoise et nordique de l'imposition, mais aussi sur la bibliographie étrangère. Tout son savoir s'est exprimé d'une manière utile pour résoudre les problèmes pratiques. Dans la solution des problèmes apparaît un autre trait de l'auteur: il ne laisse rien à moitié résolu et n'abandonne pas ses propres prémisses. Il est allé à cette táche avec énergie et grande perspicacité.

C'est avant tout le travail sur l'imposition des revenus commerciaux et industriels — dont deux éditions ont été publiées précédemment — qui apparaît comme le magnus opus du docteur Sandström. Le développement de la jurisprudence dans ce domaine semble avoir été déterminé, pour une grande part, par ce dont il a été rendu compte dans cet ouvrage.

L'auteur, comme tous les pionniers, n'a pu échapper à la critique. Mais ces ouvrages sur le droit fiscal suédois se présentent quand même aujourd'hui comme des modèles difficiles à égaler. On peut ajouter, que cette opinion doit s'appliquer à tout le domaine du droit nordique.

K. G. A. Sandström *„Om principerna för en rättvis beskatting"* (*Principes pour une juste répartition des impôts*). Stockholm, 1947, 200 pages.

Dans un style clair et élégant, l'auteur expose dans la première partie de son ouvrage le but des impôts tel qu'il est défini par le Droit Suédois.

Sandström maintient que la constitution suédoise ne permet pas à l'impôt d'avoir d'autre but que de fournir les recettes nécessaires à l'Etat et aux communes. En conséquence, le but d'un impôt ne doit pas être de modifier la structure de la société; il doit être neutre au point de vue politique.

Après un exposé des diverses théories de l'impositon équitable, Sandström s'attache à la théorie moderne selon laquelle la capacité relative de payer doit être la mesure de l'imposition. Sandström examine alors si le système fiscal suédois est en accord avec cette théorie.

En prétendant que la capacité doit être établie selon le revenu du contribuable et non d'après sa fortune, Sandström formule cette définition: le revenu, étendu au sens général, est constitué par ce que l'on peut consommer sans amoindrir sa fortune originelle. Cette notion de revenu comprend également les successions, dons, lots et autres gains analogues.

Dans la dernière partie du livre, l'auteur critique divers détails des lois fiscales dépourvus de conséquence, de logique ou d'opporunité. La progression très forte de l'impôt direct est également critiquée: bien qu'elle soit conforme à la théorie de la capacité, elle peut toutefois avoir des répercussions fâcheuses sur la vie industrielle.

Books on double taxation Conventions.

In the postwar period an ever growing importance is attached to the

double taxation conventions concluded by the various countries. This is due to the fact that international trade is very much affected by the problem of double taxation and is very much interested in the removing of obstacles in the field of taxation.

In this Bulletin, many books have been reviewed already dealing with double taxation conventions. Recently, another three important studies have been devoted to this subject deserving the attention of tax specialists.

RAOUL LENZ: *Les Conventions suisses de doubles impositions*. — Bibliothèque de Droit et de Jurisprudence, Lausanne/Martinus Nijhoff, La Haye, 1951.

The author, member of the Bar of Geneva, has written an extensive work dealing with the tax conventions concluded by Switzerland, both federal and cantonal (282 pages).

This work is divided into two parts, each of which containing 6 chapters. At the end the author gives his conclusions, whereas two annexes (*A* containing a list of Swiss conventions being in force, *B* enumerating the taxes covered by these conventions) and an extensive bibliography conclude this book.

Though this work is written in a way to afford to lawyers the information which they need, and thus contains much details with respect to problems of practical importance, it is not merely a practical guide, but it is of great scientifical interest, for it deals with a great many principles of Swiss law, statute as well as case law, and of international tax law.

More than by going into details we can show them by mentioning some subjects dealt with.

The first chapter contains a discussion of Swiss policy with respect to double taxation and of the characteristics of Swiss law of treaties, compared with the development of the law of treaties in Europe and the Anglo-Saxon countries. Special attention is paid to the modelconventions of Mexico and London. The policy of the cantons is equally dealt with.

In Chapter II the constitutionality of both the cantonal and federal Swiss tax conventions is dealt with, whereas the third chapter contains an extensive description of the general rules adopted therein; various main principles are discussed, such as: double taxation within the meaning of the conventions, the allocation of profits, the relation between the conventional provisions and those contained in the national law, taxation at source, persons entitled to benefit from the conventions, tax rates and progression, the possibility to take into account losses, interpretation, etc.

Chapter IV deals with the taxes covered by the conventions; here special attention is paid to the problem of what is to be understood by direct taxes.

Domicile and procedure form the subjects dealt with in chapters V and VI.

In the special part more practical problems come up for discussion, e.g., the taxation of industrial and commercial enterprises (chapter VII), where the various problems are discussed in relation to the different conventions Switserland concluded with other countries; in this connection we may mention in particular; l'établissement stable en droit fiscal conventionnel, les participations, l'imposition des holdings, la ventilation du revenu et de la fortune d'une entreprise à établissements multiples, etc.

Immovable property and revenue therefrom, forms the subject dealt with in chapter VIII, whereas chapter IX contains an extensive survey of the taxation of movables: la notion de capital mobilier et de ses revenus, les règles d'imposition du capital mobilier et de ses revenus, le remboursement des impôts prélevés à la source, les lacunes des conventions suisses en matière d'imposition à la source des revenus de capitaux mobiliers, etc.

Professional earnings are dealt with in chapter X, other profits and income in chapter XI, and in the last chapter the double taxation of inheritances is discussed.

It need not be said that this important work deserves the attention of all who are concerned with international tax law.

K. G. A. SANDSTRÖM: *Svenska dubbelbeskattningsavtal i vad de avse skatt à inkomst eller förmögenhet* (Accords suédois en vue d'éviter la double imposition pour ce qui s'applique aux revenus ou aux fortunes). — Stockholm 1949, 735 pages.

Cet ouvrage — qui constitue la thèse de doctorat de l'auteur — a apporté à la bibliographie peu abondante sur ces questions, un supplément qui marque une date.

Dans ce volume, l'auteur a réunie les textes suédois qui règlent dans ce pays les accords en vue d'éviter la double imposition. La connaissance du fouillis des lois, décrets d'application, circulaires etc., qui se sont développés, est déjà un gros travail. La plus grande partie du volume est ensuite consacrée à une large analyse des accords à la lumière de la législation et des précédents sur l'imposition suédoise et étrangère. Ce qui donne à l'ouvrage sa valeur tout à fait particulière c'est que le docteur Sandström a participé et participe toujours lui-même comme un des négociateurs suédois dans ce domaine. Il peut donc, pour ainsi dire, apprécier par lui-même les différents accords, rendre compte des discussions qui ont lieu pendant les pourparlers, etc . . . Comme il a déjà été laissé entendre, l'auteur ne voit cependant pas les accords seulement du point de vue suédois, mais s'est donné la peine d'introduire le lecteur dans tous les systèmes d'impositions étrangères.

Il faut seulement regretter que, comme de nouveaux accords surviendront et les anciens accords seront révisés, cet ouvrage soit appelé à devenir assez rapidement relativement périmé. Mais en connaissant la capacité de travail de l'auteur, on peut espérer avec confiance qu'une nouvelle édition verra le jour par la suite pour aider les contribuables et les autorités.

When this issue of the "Bulletin" comes off the press, probably another important work will have appeared (the date of publication depends from the date of ratification of the conventions which form the subject of this book) viz.,

KURT LOCHER: *Handbuch der schweizerisch-amerikanischen Doppelbesteuerungsabkommen: Einkommens - und Erbschaftssteuer*. Verlag für Recht und Gesellschaft, Basle.

Dr. LOCHER, chief of the Section for International Fiscal Law and Double Taxation Matters, Swiss Federal Tax Administration, has written a very extensive loose-leaf work in which he comments the two recently concluded conventions between Switzerland and the United States of May 24, 1951 (Income Taxes) and July 9, 1951 (Death Taxes).

The principal structural differences between the Swiss and American income and death tax systems bring about very much difficulties for the tax advisors who have to deal with problems arising within the relations between the two countries. Mr. Locher's work is written in order to give assistance to all those who are dealing with these problems, in a way to enable them to get acquainted with the internal regulations to be issued in both countries. The following subjects are particularly dealt with:

In respect of the taxes on income: the taxation of business income, including special problems relating to permanent establishment, "verdeckte Gewinnausschüttungen" etc.; reduction of taxation at the source with respect to dividends and interest, royalties, pensions and annuities; the taxation of income from employments, liberal professions and fees of directors of companies; etc.

In respect of death taxes: reliefs granted where persons deceased within Switzerland possessed American movable and immovable property; tax credits and situs rules in the case of deceased persons with a double domicile.

As already stated above, the first part of this work will appear as soon as the instruments of ratification have been exchanged.

In this connection we should like to mention two booklets recently published as No. 4 and 5 in the series, "Publications of the International Bureau of Fiscal Documentation".

MITCHELL B. CARROLL and KURT LOCHER: *The Swiss-American double taxation Conventions* — International Bureau of Fiscal Documentation, Amsterdam 1951.

K. G. A. SANDSTRÖM and KURT LOCHER: *The Swedish-Swiss double taxation Conventions* — International Bureau of Fiscal Documentation, Amsterdam, 1951.

The present volumes, published at the same time as supplements A and B, respectively, to this „Bulletin" contain very brief and succinct surveys of the conventions concluded in 1951 between Switzerland and the United States, and in 1948 between Sweden and Switzerland. They donot only contain surveys of the provisions of the conventions, but they indicate in which way the conventions affect the provisions of the respective national tax laws.

The three authors being all very much experienced in the matter, they have been able to draw the attention to many important problems notwithstanding the succinct form of their articles.

The texts of the Conventions in the original languages have been inserted; moreover in the latter volume, internal regulations have been published as well.

RENZO POMINI: *La „causa impositionis" nello svolgimento storico della dottrina finanziaria.* — Nuova Serie di Studi dell' Istituto di Finanza dell' Università e della Camera di Commercio di Pavia. — Giuffrè. Milano, 1951.

The author discusses the theory of causa impositionis from philosophical, legal and practical standpoint. He stresses the point that it is felt necessary to limit the financial activities of governments to the cases of direct or indirect transformation of the sacrifice involved in taxation into the advantages of tax expenditures.

The origin of the theory was found in the need of moral theology prevalent in the Middle Ages, whereas it gained significance with St. Thomas, canonists and juriconsults.

The theory did not shed its force when the thomistic doctrine was dissolved, as the theoreticians of absolution considered causa impositionis as a brake on the arbitrary activity of governments which led to irrational taxation.

According to the author, the theory lost ground because of the influence of illuminism upon legal science, which induced jurists to prospect law as an empty formula (pure law), reducing law to the governmental command.

The present renewal of the theory by the School of Pavia, headed by Professor Griziotti — to which the autor belongs — is centered in the movement of economic realism in Finance, as well as of legal realism stemmed as a reaction to legal formalism.

In chapter 6, the author states that in the old as well in the modern doctrine, caisa impositionis (a) justifies and at the same time limits the financial power; (b) helps in solving controversial cases according to the principle of territoriality in taxation; (c) sets up a distinction among taxes; (d) helps in defining double taxation, as repeated taxation of the same wealth for the same cause, multiple taxation, as repeated taxation for different causes, and excessive taxation, that is not proportional to the cause by an excess; (e) represents the actual income-receiver as a passive subject, independently of considerations of the corresponding legal title; (f) is an efficient tool for inter-

preting taxation laws, as, among other things, it legitimates the extension of the norm; (g) in the field of fiscal and extra-fiscal finance it distinguishes rational from irrational taxation.

The differences between the old and the new doctrine are determined by the different protection of the claims to taxation, for a control on such claims is at present subtracted to the citizen and to the judicial power — at least for the most important class of taxes — while attributed exclusively to the Parliament and to the Constitutional Court, to which belongs the task of deciding whether a tax law is to be rejected on the ground that the tax lacks a couse; this, indeed, is the element which constitutes the fiscal obligation and is to be found in the law, which relates such obligation with certain assumptions, as a symptom of the cause.

Where the influence of taxation is increasing daily, it is good to have this work which deals with the moral side of it, and by which the reader can trace the thoughts of philosophers throughout the ages. The author has performed a great work, which can be seen, inter alia, from the extensive bibliography concluding his work and which covers 23 pages.

From the contents we may cite:

Introduction: Origini teologiche della dottrina della ,,causa impositionis'' e suo svolgimento nel campo giuridico; Chapter I: Dalla patristica alla scolastica; II: La dottrina tomistica; III: La ,,causa impositionis'' nella dottrina canonistica; IV: La ,,causa impositionis'' nei giurisconsulti; V: La ''causa impositionis'' in Agostino Caputo e nello sviluppo del pensiero filosofico-giuridico; VI: I risultati della dottrina della ,,causa impositionis'' nel campo guridico; VII: L'arresto della dottrina della ,,causa impositionis'' e la sua rinescita nella scuola giuridica italiana.

United Nations: *World Economic Report* 1949—50. — U.N. Sales No. 1951 II. C.1. Avaiblable from the U.N. authorized local agents.

World Economic Report 1949—50 is the first comprehensive review of world economic conditions to be published by the United Nations since June 1949, when ''World Economic Report 1948'' appeared. It was prepared by the Division of Economic Stability and Development in the Department of Economic Affairs of the United Nations Secretariat. The report is devoted to an analysis of major developments in domestic conditions and international economic relations during 1949 and the first half of 1950, with some preliminary comments on tendencies since mid-1950.

The report is divided into three parts comprising ten chapters. The first part deals with major domestic economic developments in the economically developed private enterprise economies, the centrally planned economics of eastern Europe, selected countries in Latin America and the Far East, and in Germany, Japan and China. The second part is devoted to a discussion of changes in the volume, value and direction of foreign trade and to recent trends in international financial settlements. The third part contains an analysis of the longterm and short-term aspects of the dollar shortage in international trade and a study of relationship between the currency devaluations of 1949 and the subsequent declines in dollar deficits. There are a total of 123 tables included in the text of the report, as well as 14 additional tables in the Statistical Appendix. It also contains a ''Chronology of Major Economic Events'' from January 1949 to December 1950, and a complete index.

United Nations: *Public Finance Information Papers*. — Prepared by the Fiscal Division of the Department of Economic Affairs of the U.N. Secretariat.

The purpose of this new series is to present the condition of public finances in selected countries, with due consideration given to economic development

programmes. Major recent changes in the fiscal structure are highlighted in the text and special tables show the economic significance of governmental financial activities. An attempt is made to analyze data covering as much as a decade so that various trends can be traced. In addition to the special tables, there is a set of data including a summary of budget accounts, cash position of the treasury, detailed statement of expenditure, receipts and the public debt.

The series opens with papers on *Columbia, Egypt, Iran* (description, *inter alia,* of tax reform, and Iranian land and income tax systems and the use of oil royalties), *Iraq* (here, too, a summary of the tax system is given) and *Italy* (idem).

These papers, in which numerous illustrative tables and charts are inserted, contain valuable information in the field of taxation and will undoubtedly interest our readers.

BUDGET PROPOSALS IN GREAT BRITAIN

EXTRACTS FROM THE BUDGET SPEECH MADE BY THE CHANCELLOR OF THE EXCHEQUER

Tax changes

We have therefore to reckon with another £20 million or so to be added to the £150 million at which I previously estimated the gap. How are we to find this £170 million? Before dealing with this, I wish to refer to the report which I have recently received from the Committee under the chairmanship of Mr. Millard Tucker, K.C., which was set up by Sir Stafford Cripps to consider the taxation of trading profits. The Report, which was published last week, is a most careful document, representing the result of a great deal of hard work and thought, and I must express my warm thanks to the Chairman and members of the Committee for the valuable service they have rendered. I have not yet been able to study the recommendations in detail, and in any event I must await the reactions of industry and commerce before coming to final conclusions. Any question of legislation on the Committee's Report will therefore have to wait till next year.

Profits Tax

I now turn back to the problem of filling the gap, and I will refer first to a proposal which will not bring in much revenue this year, but which will, nevertheless, as I shall show, materially reduce the extent of this year's problem. It concerns the Profits Tax. There is no doubt that the level of company profits has recently been increasing rapidly. After a period of relative stability in 1948 and 1949, they are estimated to have increased in 1950 by nearly 14 per cent. — as against a rise in money incomes generally of nearly 7 per cent. A further substantial increase in 1951 is, I think, certain.

There are some who disapprove of profits in principle. I do not share their view. In an economy three-quarters of which is run by private enterprise, it is foolish to ignore the function of profit as an incentive. But it is one thing to recognise the justification for profit in the case of the individual firm as a reward for efficiency—perhaps with an element of luck thrown in; it is quite another to ignore a situation where, by reason of the general economic climate and not through the aptitude of individual managements, the whole level of profits, and the share of the national income taken by it, is rising. Unfortunately, in recent months not only have profits gone up, but dividends have risen too, and I have little doubt that unless some action is taken this process will continue and may even gain momentum.

SIR WALDRON SMITHERS (Orpington): How much have wages risen?

MR. GAITSKELL: A good deal less.

The figures published in the „Financial Times'' show that ordinary dividends increased by 2 per cent. in the first half of 1950 compared with the corresponding period of the previous year; in the second half of 1950 the increase was 6.7 per cent., while in the first two months of 1951 the increase was 10 per cent. and in March it has been more than 14 per cent.

SIR HERBERT WILLIAMS (Croydon, East): Ten per cent. over what?

MR. GAITSKELL: Over the previous year.

In present circumstances we simply cannot afford such substantial increases in dividends. Whereas a high level of corporate savings is essential, a big increase in dividends not only adds directly to inflationary pressure but also leads to claims for higher wages. I have considered very carefully whether in the circumstances we should not introduce some form of statutory control of dividends. While this is not, in my view, wholly practicable, it would involve additional administrative work for which the manpower can ill be spared at present. Moreover, it is bound to give rise to all those difficulties associated with the fixing of a base period which were met with in the administration of the Excess Profits Tax and would be encountered again if any of this tax had to be reintroduced.

I have therefore come to the conclusion that, though there are arguments both ways, it is better to deal with this problem through the existing Profits Tax. I therefore propose to increase the rate of Profits Tax on distributed profits from 30 per cent, to 50 per cent., with effect from 1st January of this year, while leaving unchanged at 10 per cent, the tax on undistributed profits. If increased dividends are declared on or after today for a period before 1st January, the increase will, as on previous occasions, be subject to the increased rate of tax. The net effect of the increase in the rate of Profits Tax is, of course, only about half as big as appears at first sight because the Profits Tax is allowed as a deduction in arriving at Income Tax assessments.

In this way, we shall provide a powerful incentive to companies to put profits to reserve rather than to increase dividends. This will be supported by the new instruction to the Capital Issues Committee, to which I referred earlier, and which will involve some changes in the conditions under which bonus issues will be permitted.

As I hinted earlier, the yield from this change will be very little in the current financial year—about £5 million net: in a full year, after allowing for the loss of Income Tax at current rates, it will be £68 million. But this does not mean that it will not assist us substantially this year. Since firms will be liable to the high tax on profits earned now, in so far as they are to be distributed later, we can, I think, safely assume that from now onwards more will be set aside for tax reserve and less paid out in ordinary dividends. I put the net increase in corporate savings resulting from this change at some £30 million in the current year. This means we can make a corresponding reduction in the size of the Budget surplus which is required.

Before I leave the Profits Tax, I must mention a few more technical points. The first concerns the deduction made in respect of directors' remuneration in computing profits for Profits Tax purposes. At present, in the case of a director-controlled company, Profits Tax at the higher rate is payable—as well as Income Tax and Surtax—on the amount by which the total fees or salaries payable to the directors, other than the whole-time service directors owning less than 5 per cent. of the shares, exceed £2.500. In view of the increase in the Profits Tax, I do not think this is altogether fair on small businesses, in cases where there are a number of such directors working full time. As from 1st January, 1951, therefore, the limit of £2,500 per annum will be increased, subject to certain conditions, to £ 3,500 where there are two full-time directors to whom it applies—it is the total salary, of course—and to £ 4.500 where there are three or more directors. The net cost of this concession, after allowing for the consequential change in Income Tax, will be about £4 million in a full year and £300,000 this year.

Secondly, certain public utitily undertakings, mainly bus and water undertakings, which at present enjoy complete exemption from Profits Tax, will from 1st January, 1951, be treated in the same way as nationalised

undertakings, and be charged to Profits Tax at the lower rate of 10 per cent. The net yield from this change, after allowing for the consequential loss of Income Tax, will be about £1 million in a full year and £90,000 this year.

Finally, I propose to provide against avoidance of Profits Tax, in particular against arrangements for reducing Profits Tax liability by the issue of bonus shares coupled with redemption of capital, and also against avoidance of Profits Tax and Income Tax by switching profits from one associated concern to another.

Minor Taxation Proposals

Before I come to my other major taxation proposals, I can at this point in the traditional way conveniently refer to a number of minor and, I believe, uncontroversial or relatively uncontroversial matters on which Resolutions will be tabled.

Following my predecessor's announcement of last July, I propose to give statutory effect to the special Income Tax arrangement with building societies. There will also be Resolutions dealing with the taxation of investment income from new sources, and to prevent claims to re-payment of Estate Duty paid in accordance with the view of the law taken at the time payment was made. Other Resolutions will provide for validation of long-standing practice, which is found to be at variance with the law, in regard to three matters: the exemption from Estate Duty of certain Government securities held by persons domiciled and ordinarily resident abroad, the deduction of tax by paying agents from dividends paid by certain companies outside this country, and the taxation of persons employed in this country by Commonwealth Governments in trading or business undertakings.

I propose to continue for a further three years the key industry duty which would otherwise come to an end next August; to implement the recent trade agreement with Pakistan and to provide, in accordance with the Convention on the Valuation of Goods for Customs purposes, which was signed on behalf of His Majesty's Government on 21st February last, a new defirition of value for Customs purposes. We shall also put an end to some tax evasion by extending as from tomorrow the Excise duty on mechanical lighters to include the principal parts of certain gas lighters and thus prevent people avoiding duty by offering for sale complete sets of these parts, which are ostensibly for replacement purposes, but which can easily be assembled into a complete lighter.

Purchase Tax

I now come to the difficult and throny subject of the Purchase Tax, and will begin by referring to one small change concerning photographers. At present the larger portrait photographers are registered for Purchase Tax purposes solely to enable them to buy their materials free of tax. This is not only a waste of revenue and manpower but is unfair to their smaller competitors, who are not eligible for this advantage, I propose, therefore, to impose, from the date of the passing of the Finance Bill, a tax of $66^{2}/_{3}$ per cent. on photographs of this kind, if made from materials which have not borne tax. It will thus no longer be in the interest of the photographers concerned to obtain tax free materials and in future they will all, large and small, be treated alike. The saving from this will be about £1 million in a full year, and about £500,000 this year.

I now come to my major Purchase Tax proposals, and will preface them with three comments of a general nature. First, the aim of Purchase Tax is nowadays to a large extent the raising of revenue and the withdrawing of spending power to check inflationary tendencies, in very much the same way as the Excise duties and the non-protective Customs duties. On the face of it, there is no overwhelming reason why we should not raise revenue

by taxing certain types of expensive clothing, household equipment and other things subject to Purchase Tax today just as we raise revenue by taxing beer and tobacco. Indeed, the proportion of the price paid in the case of Purchase Tax is, of course, only a fraction of what it is in the case of beer and tobacco. There is no doubt that many people would regard the latter as just as essential to them as many goods bearing Purchase Tax.

But for most of the time the tax has been in existence, there has also been another motive behind it—the discouragement of home consumption. This is of great importance at present when we not only need more revenue but also, as I have several times explained, must export an increasing quantity of consumer goods; and, in so far as it is feasible, must divert to defence production labour, materials and capacity now making consumer goods.

Thirdly, the Purchase Tax is often criticised because it is untidy, because it is not always easy to decide into which category an article falls, or why it should be subject to one rate of tax rather than another, and because, by and large, many people think it is thought to fall too heavily upon articles which nowadays are not regarded as luxuries.

In the proposals that I put forward, I have taken into account all three considerations. We need more revenue; that means taxing some articles at higher rates; in choosing the articles we must turn to those whose production for the home market we want to discourage because their production and sale at home is likely to conflict most seriously with the needs of export and defence. Increased taxation for this range of articles is clearly indicated, for so long as these other claims continue. Accordingly, I propose to increase from $33^1/_3$ per cent. to $66^2/_3$ per cent. the Purchase Tax on motor cars. This will bring in £12 million this year, and £17 million in a full year.

SIR W. SMITHERS: Will the right hon. Gentleman get it?

MR. GAITSKELL: This is a useful addition to the revenue, and in this field there is no danger of any adverse effect on the industry beyond that which must be faced in any case, because of the needs of defence. Home demand vastly exceeds the supplies available for the home market, and the prices paid for secondhand cars show that those who buy are prepared to pay considerably more than the present selling prices of new cars. In the high-class section of the industry, where this is not so much the case, there is at present particular justification for discouraging production for the home market, since the highly skilled technicians employed are urgently required for the re-armament programme. Generally speaking then, the tax will bring in revenue and will relieve the pressure of home demand, thus making easier the smooth transition to defence.

For the same reason I propose to increase the Purchase Tax from $33^1/_3$ per cent. to $66^2/_3$ per cent, on wireless and television sets and valves and on gas or electrically operated domestic appliances. This increase does not, of course, apply to those appliances now exempt from tax and it will not apply to wireless batteries and a number of other articles, specified in the White Paper. The new rate will apply to goods delivered by registered wholesalers and manufacturers from tomorrow and will yield in a full year about £14 ½ million and in 1951—52 about £10 million.

I need hardly say that I much regret having to increase the tax on many appliances which can do so much to make the life of women at home less exacting. But we cannot carry through our defence programme without giving up something, and as I have repeatedly warned the House and country, it is in this field especially—the consumer goods produced by the engineering industry—that the sacrifice must me made. We want to discourage people from buying these things and if they insist on doing so then I think we can reasonably ask them to make a financial contribution to defence. When the period of re-armament is over, it will be possible to look again at the height of the taxes on all these articles.

I hope, too, that what I am now going to propose will be a small compensation. We have often been pressed to grant further exemptions from Purchase Tax for various necessary household articles which are in no sense luxuries. I must confess that having studied the Schedules pretty carefully, I have come to the conclusion that there is no clear-cut distinction between articles which may properly be taxed and those which should not. It is in the last resort a matter of opinion, and, wherever we choose to draw the line, we can be sure that there will be many who will claim that we should have freed still more articles from tax. In any case the need for revenue this year is such that I cannot contemplate going very far.

What I have done, however, is to go through the list and to propose for exemption from tax a fairly large number of the more necessary articles used in every household. These include various kitchen utensils such as pastry boards, rolling pins and pot scourers; a range of dusters and cleaning cloths; wash tubs, ironing boards, and hand-operated wringers; sewing needles, knitting needles, pins, thimbles, and paper patterns; hot water bottles, air cushions and overbed tables; school satchels and shoe laces. Full details of these reliefs will be found in the White Paper. The cost will be £3 ½ million in a full year and £2 ½million this year. Towards the £170 million we have now found £35 million from the Profits Tax and £20 million from these changes in Purchase Tax.

MR. KEELING (Twickenham) *rose*——

MR. GAITSKELL: I am sure the hon. Member will have plenty of opportunity before long to discuss these things.

We are left still with £115 million to find. I think we should raise this money in a manner which as far as possible spreads the burden pretty widely and therefore thinly so that the actual increase in particular rates of taxation is not too heavy.

Entertainments Duty

Let me begin with entertainments. I do not think it unreasonable to look to expenditure on entertainment for some modest contribution to the heavy cost of defence. The duty, which brings in some £44 million a year, has not been altered for some time. Indeed, the tax on cinema receipts, which accounts for over fourfifths of the whole Entertainments Duty, has not been raised for eight years. There is, to be sure, much criticism of this tax, even at its present level, in the trade. But then it is usual for the trades concerned to criticise any tax which they collect for the Exchequer.

Moreover, much of this criticism is directed not to the level of the duty, which is paid by the customers, but to the share of the box office receipts which the industry retains; the criticism, in other words, is not that the public are paying too much, but that the industry is getting too little. Last year we made some changes in the tax as a result of which we lost a small amount of revenue, but some £2 ½ million extra was secured by the industry, shared about equally between the exhibitors and producers. This seems to me to point the way we should go, with this modification—that whereas last year more than the whole of the increased prices which consumers paid went to the industry, this year the need for revenue being what it is, the Exchequer must have its fair share.

I do not think there is any very great danger that a small increase in the tax will affect attendances at cinemas. Total gross box office receipts for 1950 were somewhat above 1949 and attendances and receipts are running this year at about the same level as last.

I propose therefore slightly to raise the rate of duty on cinema seats, from 5th August. The increase will be 1d. on seats from 6d. to 9d., 2d. on the main prices, that is, from 10d. to 2s. 10d., and above 2s. 10d. the duty will increase in appropriate steps up to 5d. on the top price of 11s. 7d.,

which will then become 12s. These proposals will bring in about £10 million in a full year, and £6 million in 1951—52.

I am prepared, however, to safeguard the position of the industry by forgoing for their benefit the proceeds of ½d. per admission, which will amount to about £1 ½ million in the first year and £2 ½ million in a full year. This will mean that in two years £5 million will have been added to the net revenue of the industry through adjustments of duty in their favour. This will be made effective by an arrangement of the same kind as was made last year, provided that on this occasion the larger part of the Exchequer remission goes to the producers. Negotiations will therefore be undertaken by the Treasury and the Board of Trade with the industry as soon as possible, and if an agreement satisfying the condition I have laid down is made, the necessary adjustments in the Schedule will then follow.

The increases in the duty will apply to the other entertainments now charged under the full scale, such as horseracing, greyhounds and speedways, but I do not propose to alter the taxes on entertainments paying at the lower rates, such as theatres, football and criket.

MR. CHURCHILL: What will be the yield from the increase in Entertainments Duty?

MR. GAITSKELL: Ten million in a full year and £6 million this year, less what we give back to the industry.

Hydrocarbon Oils

In the last Budget, the duty on petrol and other light hydrocarbon oils was raised from 9d. to 1s. 6d. a gallon. This was the first increase in the tax since before the war, and in my opinion was overdue. Although there was, of course, much argument about its merits during the Budget and Finance Bill Debates, I have seen little sign of the damage which it was alleged at the time the tax would cause to British industry and transport. I am satisfied that in our present circumstances there is a good case for a further contribution from this source to provide additional revenue. I propose, therefore, to raise by 4 ½d. a gallon—half the increase made last year—the Customs Duty on petrol and other light oils and on heavy oils used as road fuel. The increase will apply to any oils of this kind which become chargeable with duty, from 6 o'clock this evening. (*Laughter.*) I hope that there will be no sudden exodus from the Chamber.

The new maximum prices, including the extra duty, will become effective at the garages after midnight tonight. As a result of this change, the basic retail price of petrol will be raised to 3s. 6d. a gallon. Even so, it will still be lower, in some cases substantially lower, than in most European countries.

It was estimated during the debates last year that the effect of the increase then imposed on the operating costs of commercial and passenger transport was about 4 per cent. The present increase, therefore, of 4 ½d. a gallon will raise operating costs by no more than 2 per cent. This is a very slight increase, and would not on its own justify any increase in fares or freight charges.

As the committee will be aware there is at present a preference for indigenous oils of 9 d. a gallon. I see no reason to change the extent of this margin, and the duty on indigenous oils will therefore also be increated by 4 ½d. a gallon from today. There will be corresponding adjustments in the rates on petrol substitutes and power methylated spirits which come into the same group. The extra yield of these changes I estimate at £35 million in 1951-52 and £36 million in a full year.

That leaves us with some £75 million still to be found. I do not propose to increase any other indirect tax. It would not, in my view, be wise to raise the duty on tobacco, or beer or other alcoholic drinks, which are already at very high levels.

Income Tax

In the circumstances, I must turn to Income Tax. Since 1945, Income Tax reliefs have been given by my predesessors which amount in all to more than £650 million. This figure represents the cost at the time the reliefs were given, but with the steady rise in national income which has occurred since then, they are today, on current income levels, worth about £1,000 million a year. With great regret I now feel bound to take back some small part of this relief. I want to do this, however, in a manner which favours those with greater family responsibilities and who might otherwise suffer most hardship.

I propose to increase the three rates of Income Tax by 6d. in the £, but to combine this with an increase of £10 each in the married persons' allowance and in the child allowance. The 2s. 6d. rate chargeable on the first £50 of taxable income will thus become 3s., the 5s. rate chargeable on the next £200 will become 5s. 6d., and the standard rate of 9s. will become 9s. 6d., while the married persons' allowance goes up from £180 to £190 and the child allowance from £60 to £70[1]). The married allowance will thus be higher than immediately before the war, and the child allowance higher than it ever has been.

As a corollary of the increase in the standard rate I propose to reduce the top rate of surtax chargeable for 1951—52 on incomes over £20,000 to 10s. in the £, to prevent the combined top rate exceeding 19s. 6d. in the £. The net yield of these changes will be £73 million this year and £81 million in a full year.

Tables will be included in the Financial Statement showing the effect of the proposed changes on specimen incomes, but the Committee will be interested to know that, with these concessions, a married couple without children will pay no increase until the man's earnings exdeed £7 2s. a week; in the case of the married couple with one child there is no increase until earnings exceed £11 4s. a week, and in the case of the married couple with two children the tax payable is not increased until earnings exceed £21 1s. a week. There are in fact some very slight reductions in tax liability for those with children at lower levels of income.

These changes will necessitate new P.A.Y.E. tables, and some recoding will also be necessary. The new tables will be in the hands of employers, and the recoding will be completed in time for deductions on the new scale to begin in the week commencing 25th May. In the first week in which the new tables are used, the under or over-deductions of tax in the previous seven weeks will be made good. In some cases this may mean a fairly substantial deduction of tax in that week, but it will not be unduly heavy in relation to the income involved.

Summary

I must now summarise these proposals to see whether they represent an adequate contribution to the solution of the problem with which we started. The gap to be filled was, as the Committee will remember, £150 million. This was increased, by the changes in pension which we propose, to £170 million, but I have estimated also that the additional corporate savings which should result from the incrase in the Profits Tax will amount to £30 million, and therefore reduce the gap to £140 million. (*Interruption.*) As some hon. Members appear to be leaving the Chamber, I would say that I fully appreciate the ordeal through which the audience has had to go.

The tax changes which I have proposed should yield, in 1951—52 ,an additional £61 million from Customs and Excise duties, and an extra £77 million in the field of Inland Revenue—a total of £138 million in all. In terms of the conventional Budget, they will turn an above-the-line deficit of £99 million

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[1]) See table on p. 245.

into a modest surplus of £39 million. In terms of the alternative classification which, as I have explained, gives us a much truer picture of the current expenditure and revenue, they produce a surplus on current account of £224 million which in my judgement is about what we require.

The Committee has accompanied me very patiently on this long journey through such a maze of facts and figures and explanations and arguments. I will not detain hon. Members for more than a few minutes longer.

In the circumstances in which we have been placed this year it was impossible for the Budget to be both honest and popular. I know that this Budget will not be popular, but I claim that it is honest. It is honest because so far as fiscal policy can do so, it will protect us from inflation. It provides on the best judgment I can make at least, sufficient, though no more than sufficient, of a Budget surplus on current account to bring our national savings up to the level required to avoid inflation. It is also, I would argue, a sound Budget, in so far as it deliberately assists, both by its general anti-inflationary character and by some more specific measures, the transfer of resources to defence.

I claim, too, that it is a fair Budget. It does something to help those who are most hard hit by rising prices—those with low fixed incomes. The proposed increases in taxation are admittedly severe, but they are not crippling, as they would, I fear, have had to be if we had also substantially increased the subsidies. Moreover, the incidence of the new taxes which fall admittedly most heavily on the better off, must be judged in the light of the decision not to increase the subsidies—a decision which, of course, affects all consumers, but presses more hardly on those who are not so well off.

This Budget will be the subject of prolonged argument here in this place, on the platform, in the Press, in the country. That is as it should be. That is the way in which we in this island go about our democratic business. But let the arguments be frank and fair; let the real alternatives be posed against each other so that people may judge more easily and clearly between them. If anyone thinks that the right way to meet the cost of defence is to lift the burdens I am proposing to lay on some shoulders, and impose them instead upon others, let him say so and say why. That is fair and honest. What is not honest is to pretend that you can do the lifting without the re-imposition.

Again, if anyone thinks that even in this time of rising costs Government expenditure should be cut substantially, let him say so, and say particularly where and how it should be done. That is fair and honest. But it is unfair and dishonest to base a self-righteous demand for cuts on rhetorical generalities, supported by a few flimsy and trivial illustrations. It is worse still, of course, if the evasion is openly justified by the brazen plea that to say what you really mean would cost votes.

And let us not altogether forget in the forthcoming debates the setting of this Budget. It is a setting physically remote from this Parliament of ours, but spiritually it is very close, for the setting is the clash and conflict between the two great forces in the world today—between Soviet imperialism on the one side and the Parliamentary democracies on the other.

It is this clash and the particular episode in it—Korea—which has imposed upon us here in Britain the need to turn our industries to defence and to call up our young men from their jobs and their homes. It is this clash, which, working through the huge demands of re-armament everywhere, has forced up the prices of materials and food throughout the world, and has also led to shortages of materials which hold back our rising production.

In all this, of course, we are not alone. In Europe and in the United States itself the same economic difficulties are to be found, springing from the same political forces. That is the plain and simple truth. Re-armament in peace-

time does not come easily to democratic peoples, especially so soon after a major war. The popular urge to relax, the pressure for higher and higher living standards, the absorption with domestic issues, are all powerful influences which weaken the will to re-arm. And we must face it; the very process of democratic government to some extent encourages all this—often, in the past, with fatal or near fatal results. It has happened many times in history that democracies have played, while dictatorships have prepared. It is our responsibility and our opportunity, all of us, to see that this does not happen again.

Let us in our debates have some regard for the vital importance of keeping all sections of our people united on the necessity of doing what has to be done. Let us keep them satisfied that their political leaders—all of us here are in that sense political leaders—think too gravely of the issues at stake to use them as occasions for merely playing politics. Heavy as our new burdens may seem at times, how small even they are when set against the greater issues which lies behind them. If by these measures we can save the peace —as we believe we can; if we can protect ourselves from the nightmare of the police state, so utterly destructive of all that we value most in human relationships, there is not one of us here that would not cheerfully accept the burden, and far more too,

In all our debates and discussions, heated and prolonged though they will be, let us remember the great moral issues which lie in the background and let us shape our conduct accordingly so as to inspire our friends and confound our enemies.

THE CHAIRMAN: It is now my duty to put the appropriate Ways and Means Resolutions to the Committee. I assume that, in accordance with recent practice, hon. Members have now received a copy of the Resolutions and that the Committee will be agreeable to my putting them in a shortened version.

HON. MEMBERS: Hear, hear.

I

TAXES AFFECTING INDUSTRIAL AND COMMERCIAL ENTERPRISES IN ARGENTINA [1])

by

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I - Summary of the law with regard to taxes on profits

1. *Taxes.* Profits resulting from commercial and industrial activities are subject to income tax and also to excess profits tax. The latter is levied on annual profits which exceed 12 % of the capital and free reserves, excepting profits derived from the sale of goodwill, trade marks, patents, royalties, etc., which are subject only to income tax and not to excess profits tax, unless such sales constitute the kind of business carried on by the sellers in which case excess profits tax is also payable, as above indicated.

Certain types of capital gains are excluded from income and excess profits tax and subject to the casual profits tax or capital gains tax. This tax does not apply, however, to most ordinary commercial and industrial activities, for which reason no further comments will be made thereon.

Both the income tax law and excess profits tax law are national in scope, being applied by the Federal Government in all the territory of the country, even though the proceeds of such taxes are shared by the Federal Government with the Provincial Governments. Both taxes are levied on the basis of the commercial balance sheet of the taxpayer, the general principles thereof being laid down by the law relating to income tax, which applies generally in this respect to the excess profits tax, with certain modifications peculiar to the latter.

2. *Persons liable.* The subjects of taxation are: 1) Individuals; 2) Corporations, including partnerships, limited liability companies,

[1]) See questionnaire, *Bulletin* IV, p. 197.

special partnerships, and civil associations; 3) Undivided estates and similar legal phenomena which, without having a legal status of their own, are by law treated as taxpayers.

It is to be noted in this respect that there is a marked difference between the Fiscal Law and the ordinary or Civil Law. Thus, under Civil and Commercial Law, companies have their own legal Status which is separate and distinct from that of the members which compose it. For the purpose in Income Tax, however, the only companies which are considered as having independent Status from that of its members are the corporations or "Sociedades Anónimas" and the Silent Partnerships by Shares, which are taxed on profits obtained, whilst in the other types of companies or partnerships, the partners and not the partnerships are considered as taxpayers, the profits of the partnership being divided between the respective partners, and included in the individual tax returns of the latter. The same applies to the matrimonial community of interests, in which each spouse is required to file a separate tax return. On the other hand, undivided estates which do not have independent Status under Civil Law are considered as taxpayers under the Fiscal Law.

Cooperative Societies, Mutual Assistance Societies, Religious Institutions, Sporting Associations which do not pursue any gainful activities; Juridical, Benevolence, Scientific and other entities of this kind, are exempt from taxation. Mixed capital companies formed by the participation of the State and of private individuals, are exempt on that part of profits which corresponds to the State's share in the capital.

3. *Conditions for tax liability.* The principle of the source of income, that is to say a territorial principle of taxation is that followed by Argentine law. According to it, income derived from capital goods or rights situated, placed or economically used in the Republic, or from the pursuit within the country of civil or commercial activities or of personal work, without regard to the nationality, domicile or residence of the person or of the parties who intervene in the operations nor to the place of execution of the contracts, is income of Argentine source. Pursuant to this principle the following are considered as being of Argentine source: a) Income derived from mortgage, on property situated in the

country; b) Income derived from the handling of goods produced, manufactured, treated or purchased in the country; c) Income of insurance companies derived from insurance or reinsurance covering risks in Argentina or which refer to persons who, when the contract of insurance was executed, resided in the country. Furthermore, the law presumes without admitting evidence to the contrary that the following are of Argentine source: 1) 10 % of the gross freight receipts for passengers or cargo collected by foreign shipping companies; 2) 10 % of the gross remuneration paid by persons residing in the country to national news agencies; 3) 50 % of the price paid for the exploitation of films of foreign origin.

However, in spite of the general principle, there are certain exceptions to the concept of the territoriality of income. For example, the following are considered as of Argentine source, even though they may be partially of foreign source: a) Income obtained by persons, individuals or corporate bodies, residing in the country, derived from occasional activities performed abroad. b) Interest on debentures, when the issuing corporation is constituted or has been established in the country (even if the property given in guarantee is located abroad or if the issue of debentures has been floated abroad). c) All income obtained by companies constituted or established in the country, derived from transportation abroad without regard to the ports between which the transportation takes place.

Argentine law also takes into account the matter of residence when dealing with the income derived from the soil or agricultural or cattle exploitation by persons residing habitually abroad or by persons who are absent for more than one year from the country, in which cases a surcharge of 30 % is to be paid.

4. *Fiscal year.* Generally speaking, the fiscal year is the same as the calendar year. It commences on January 1st and closes at December 31st, but if the financial period should not coincide with the calendar year, income tax is paid for a full financial year on closing the latter. The law allows the taxpayers to choose between the system of computing income on the basis of amounts received or to be received (once one of these systems has been adopted it may not be changed), the only exception to this is that on income from the soil, which mandatorily is always dealt with under the second system.

II - What is understood to constitute profits

1—2. *Computation of fiscal profits.* The rules for the determination of taxable profits, are the same for individuals as for corporate bodies, the basis being the commercial balance sheet with certain corrections or adjustments which transform it into the Fiscal Balance Sheet. These adjustments differ in their nature and may affect all the items of the Balance Sheet, the powers of the Tax Board in this respect being wide.

The principal adjustments relate to the following items:

a) Depreciation charges or amortizations of assets, to take care of losses due to wear and tear, must conform to legal and reglamentary rules, it being prohibited to amortize trade marks and goodwill.

b) Limitation of organization expenses. Limitation of fees paid abroad. Limitation of commissions and expenses incurred abroad.

c) Modification of the values of exported or imported merchandize.

d) Prohibition of deductions of intérest on capital contributed by partners to the business.

e) Limitation in the amounts of reserves for bad debts.

3. *Method for the computation of profits.*

a) *Net worth.* Traders and those classed as traders must maintain return books and records and the results shown in their balance sheets must be those used for tax returns, duly adjusted as above mentioned, such balance sheets must be made out in accordance with the principles of sound accounting. The Income Tax law contains no specific provisions respecting goodwill (except in that it does not allow its amortization) so that there is no legal reason why goodwill should not be computed when determining the amount of capital of the business and the resulting profits.

If the taxpayer does not keep books, or does not produce them, tax is assessed by the tax authorities, bearing in mind: the invested capital, the rise and fall in the value of assets, the volume of operations and the profits in other periods, the amount of purchases or sales, stocks of goods, normal profits made by the business or similar businesses, etc.

b) *Fiscal profits.* Income derived from the normal and habitual activity of traders and industrialists, as well as income of other categories, is considered as taxable income. In some cases what

should be regarded as a capital gain is treated as income liable for tax. The following items must be included in the tax returns:

a) Income derived from the sale of real estate when the taxpayer habitually deals in real estate.

b) Income derived from the sale of fixed assets, when such a sale is made within two years counting from the moment when such assets ceased to be utilized in commerce or industry.

c) The sale within two years of their purchase of goods which are acquired in settlement of debts arising from habitual operations.

Profits derived from the revaluation of assets and from liquidation of businesses, are also taxed.

In general, by gross income is understood the total amount of net sales, (that is total sales less discounts, returns, allowances, etc.), and after deducting the cost of purchase, production or inventory cost.

Deviating rules. The general principle of interpretation of the law is based on the objective of the fiscal legislation and its economical significance bearing in mind the true nature of the taxable situations and in accordance with the acts, situations and economical relations which are eventually realized, pursued or established by the taxpayers. When taxpayers subject such activities to juridical forms or structures which are not those normally utilized, such forms and structures are not taken into account and the real purpose which is hidden behind them is looked for. In accordance with this concept, the fiscal law has created the juridical figure of the *economical unit,* which permits attributing to one person or entity income which apparently belongs to several persons or entities, when, under a plurality of subjects in accordance with the juridical forms adopted, only one economical entity is hidden.

Thus in importation or exportation, when the sales price of the goods appears to be higher or lower than the market price in the place of origin or destination, respectively, it is presumed that there is an "economical link" between the importer and the exporter which empowers the authorities to take a different price for tax purposes, the difference being considered as income of Argentine source attributable jointly to the importer and the exporter. Similarly, adjustments may be made in the case of branches or subsidiaries of foreign companies. There are no special rules on

holding or investment companies, but the powers of the tax authorities are very wide and at any time they may make adjustments or levy assessments if they should establish that through such companies taxes are avoided or income of Argentine source is hidden.

III - How are profits computed?

1. *Valuation methods.* The taxpayer may choose anyone of the following methods:

1) Cost of production or of purchase;
2) Market value;
3) Market value less selling expenses;
4) Sales price less selling expenses;
5) Cost of production or of purchase or market value (whichever be the lesser.)

Stocks, bonds, debentures, shares, etc., may be shown at their quotation value on the Stock Exchange.

The tax authorities may accept and or apply other systems of valuation when suitable, according to the characteristics of the business, but they must be uniform and controllable.

Once a given method has been chosen, it may not be changed unless by express prior approval from the tax authorities.

The law contains no provisions relating to the revaluation of assets, and the tax authorities do not take them into account taxwise. As a consequence of the devaluation of currency, there is a great difference between the values of inventories and the real value at the present time, which results in a fictitious increase of taxable income. In view of this, and for reasons other than tax reasons, many taxpayers have revalued their assets, this having no immediate bearing on their tax position in that the greater value resulting from revaluation is not taxable as long as no acts of transfer or of sale of such assets are made.

2. *Depreciation, etc.* Amortizations for wear and tear and losses through non use are deductible. The amortization for wear and tear is determined generally by applying a fixed annual percentage which is established in accordance with the probable number of years during which the goods maintain their usefulness; nevertheless in special cases other methods may be used which are technically justified and used commercially. The amortizations are computed

"ex officio", even if the taxpayer should not have made any deduction in this connection, and whatever the result of the commercial year.

3. *Reserves.* Reserves are not acceptable for the points mentioned in a) and c), but they are admitted for bad debts, unless the taxpayer should prefer to fix an annual amount as reserve for bad debts, computable in the profit and loss account, according to the uses of commerce.

4. *Deductions.*

a) Deductions, or formation of reserves, are admitted for contributions to pension funds, superannuities or subsidies, which in Argentine are administered by the State. Reserves may also be formed to attend to severance compensation and deductions are admitted for other social charges and for insurances.

b) Deductions are admitted for technical and financial advice and for the use of patents, but with certain restrictions, especially if they should originate from abroad.

c) Deductions are admitted for interest on debts, but not in the case when the money has been loaned by a partner or by the owner of the enterprise.

d) Remuneration paid to directors, administrators, counsel or other directive bodies are accepted as deductions, even though they should act abroad, (with certain limitations).

e) Deductions on a scale restricted are admitted for scientific investigation, depending on the nature of the enterprise.

f) Deductions are admitted for taxes which are levied on assets which produce income. Excess profits tax is deductible from income tax. Income tax itself is not deductible, nor other taxes which are levied as a result of the obtaining or maintaining of capital.

g) In general the law accepts the deduction of those expenses which are required for obtaining, maintaining and preserving income of Argentine source, but those which correspond to *capital,* such as inheritance tax, etc., are not deductible.

5. *Losses.*

a) The losses of one period may be carried over to the next period and written off against future profits until four years after the period during which the loss originated.

b) If the taxpayer should have made an advance against the

amount of tax to be paid and later a loss resulted, the said payment is returned to the taxpayer or credited to him against future taxes. On the other hand, if he should suffer an unexpected loss, such as that resulting from unfavourable outcome of a lawsuit, this loss must be computed wholly in the period in which it takes place and may not be applied retroactively against previous periods.

6. *Reserves.*

a) Corporations are obliged to make a legal reserve of 2% of profits each year until a reserve equal to 10% of the capital has been set aside. Other companies and taxpayers may only set up reserves for bad debts (see point 4 and 3) according to "normal foresight", that is to say, by taking into consideration the bankruptcies which occurred during a period of not less than five years.

b) Apart from the reserves authorized by law, which in addition must be adjusted to the normal commercial practice, (see point 3) any other reserve which the taxpayer should make would be of no effect as regards taxation. Furthermore, according to the present system, income tax in the case of corporations is paid on the full annual profit, whether dividends are distributed or not, so that extra legal reserves are automatically subject to taxation.

THE STRUGGLE AGAINST TAX-EVASION

by

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The societies of western civilization demand from their Governments that the largest part of the state revenue should proceed from the income tax, because in determining this tax the level of income and family burden of the taxpayer are taken into consideration and at the same time the danger is avoided of the taxpayer's productivity giving way under too great a stress.

In order, however, that the income tax may achieve its aims, the real income of every taxpayer should be found out and taxed.

Theoretically this is achieved through the taxpayer's income declaration which he is called to submit to the tax authorities.

Facts, however, are not so promising as they seem to be in theory. Many taxpayers declare less than what their real income is, others avoid submitting any declaration at all. Thus the ranks of tax-evaders are always increasing, while the present financial conditions demand that tax rates should be kept high, thus making tax-evasion a very profitable job promising tremendous gains which may tempt even the most loyal subjects. The increase of tax-evaders is making dangerous progress, because the lessening of moral resistance on the one hand, and the speed and complexity of modern transactions on the other, make it possible to conceal or misstake them in one or more of their points.

In these circumstances the tax authorities have to ascertain whether all taxpayers have submitted a declaration showing their real income.

Considering that the greatest part of the taxpayers' income either proceeds from commercial or industrial enterprises or is paid to them through these enterprises, it is necessary that the interest of the tax authorities should turn, almost exclusively,

to these agents, without, of course, neglecting other minor resources (such as rents, interest on loans granted to non-business men etc.)

Tax Authorities must a) know all those who get an income and b) find out the real income of each taxpayer. But to achieve this it is necessary that a) the taxpayers should be obliged to provide certain data and keep certain books in their transactions, and b) a system should be enacted by means of which all transactions may be followed up through the concentration of certain data.

A. *Documentation.*

The data that should be given or drawn up with respect to these transactions must be the following:

1. Receipts showing that the local producer has been paid for the products that he has sold whether agricultural, or stock-farming, fowl breeding, forestry, apiculture, sericulture, fishing etc. denoting also the amount bought and the price that the buyer has paid.

2. Way-bills for goods carried by any means of transport. This will make possible the follow-up of the movement of goods. Particularly with respect to goods carried by means of private trucks a transport note should be issued.

3. Import declaration for goods coming from abroad or export declarations for goods going abroad.

4. Import statement for goods destined for cold-storage or refrigerating plants and an export statement for such goods going out.

5. Consignment notes of goods sent from a commercial to an industrial enterprise to be manufactured for sender's account and a settlement return for goods thus manufactured and for the manufacturer's compensation.

6. Consignment notes for goods sent to a third party, or to a branch-establishment to be sold for sender's account and a settlement return for goods thus sold (containing sale price, commission, expenses, despatches of money etc.)

7. Invoices of goods sold by wholesale to others to be re-sold as they are, or after elaboration or to be otherwise utilized (installations, furniture etc.)

8. Statements of goods sold by retail, wherein at least the price at which the goods were sold should be shown.

9. Receipts for payments made by the businessman or enterprise concerned, to any person or firm for dependent work such as salaries, wages, compensations etc. and any interest, hire etc. connected with them.

10. Receipts for fees paid to lawyers, doctors, engineers etc. by their customers.

11. Registration certificates for stocks and bonds. Stocks should be transferred through a special document signed before a stock-broker, notary public, Bank etc.

Nearly all the above documents should be drawn up in many copies so that the contracting parties and the tax assessor may receive one each, and that one may remain in the files.

12. Books should be kept by all businessmen or firms. The number and the kind of these books should be determined according to the turnover of the business, its kind etc.

By securing the above data, the following two aims are achieved: a) a follow-up, according to quality and value, of goods from the time when they are imported into or produced in the country to the time when they are sold to the retailer or exported abroad, and b) a determination of the income proceeding from dependent work or otherwise, from loans or from investment in enterprises etc.

In view of the antithesis observed between the interests of the buyer and those of the seller, it is almost certain that as regards domestic transactions, an accurate estimate of the prices of goods will be possible. The same thing does not apply, however, to goods coming from abroad as well as for those going out. We have quite a number of examples showing that here is a large-scale misquotation of prices which are shown on invoices to be less or more than they actually are, and this is done mainly for the purpose of evading currency or tax regulations where import tax etc. are imposed ad valorem.

The desire that every country has for increasing its currency resources and reviving its foreign trade makes a suitable ground for such evasions. A true understanding between the various countries on this subject would undoubtedly produce good results and would protect the sound trade from an unfair competition.

B. *Concentration of data.*

In order to check the accuracy of the taxpayer's entries, the tax authorities must have the necessary data in hand so that the follow-up of goods, transactions and services may be achieved to a fairly great extent.

For this reason the tax authorities should be obliged to concentrate the following data which, as a rule will be copies of items issued for business transactions:

1. Copies of receipts for wholesale purchases of domestic products (agricultural, cattle-farming, forestry, fishing etc.) collected from business enterprises. Receipts for purchases effected in the districts of each Commune should be collected separately and a statement for each Commune should be drawn up in duplicate, containing the name of the Commune, the number of the receipt and the value of good purchase in each district.

2. Copies of way bills collected from transportation enterprises.

3. Copies of import declarations for goods coming in and export declarations for goods going out. These copies should be obtained from custom Houses throughout the country.

4. Copies of accounts from cold-storage or refrigerating plants for each of their customers, containing the kind and quantities of stores issued to their customers or received from them.

5. Statements, in duplicate, collected from enterprises sending goods to a third party to be manufactured for sender's account. These statements should include identity particulars of the third party, the number of the consignment note, and the kind and quantity of the goods concerned.

The third party (the manufacturer) will be required to submit a personal statement containing identity particulars of the sender, the number of the relevant settlement return etc.

6. In case of sales for the account of a third party, the contents of the above paragraph, should be accordingly applied.

7. Copies of invoices from wholesale dealers. Wholesale dealers (merchants, manufacturers, handicraftsmen etc) should be required to sort out invoices of the same purchaser and prepare a personal duplicated statement containing the identity particulars of the buyer, the number of the invoice and the sale price of the goods. Based on these personal statements a general statement should be

drawn up containing the buyer's name and the total value of the goods bought by him.

8. Full statements should be required from businessmen or firms who pay commission, compensation etc. to third parties or issue shares or pay compensation to free traders. These statements should contain full particulars of the parties concerned and the amounts paid.

9. Copies of transfer of stocks, shares or other secrurities. These should be obtained from stock-brokers, notaries public, and Banks.

10. Statements of all transfers of immovable property should be required from local tax assessors for each district respectively.

The concentration of all these data should be done in biweekly, monthly, quarterly, biannual or yearly periods, according to the kind of concentrated data.

This concentration may be done by all tax assessors throughout the country. The elaboration of the concentrated data, however, should be done by a central service, which would be able to make use of mechanical means in a large scale. It is not necessary, however, for receipts denoting the purchase of agricultural and other kinds of products to be submitted to the tax assessor, provided there is some certainty that the exact figures concerning the quantity and the cost of these products, will appear in the original and the copies of other documents of transaction.

The data thus concentrated should be entered as a whole, in a special register that will enable the services to follow up those who would be required to submit these data. Then they should be sorted out and be classified as per each individual taxpayer. As soon as a number of data have been concentrated in each taxpayer's file a statement containing all these data should be drawn up in duplicate. The one copy should be sent to the appropriate tax assessor for the assessment of the tax and the other should be kept in the files of the Concentration Office.

11. Furthermore, each Tax House should concentrate data in respect to taxpayers of the same profession or trade — merchants, businessmen, handicraftsmen and industrialists — from tax declarations or control statements.

Retail dealers should provide information with regard to the amount in drachmae concerning a) raw materials or goods purch-

ased within the year, b) salaries and wages, c) rents, d) interests, e) administration expenditure, f) gross receipts and g) net profits. Wholesale dealers should make known, besides all the above information, the value of goods in stock at the beginning and at the end of the year.

On the basis of the above data the following items would be ascertained for each branch of trade: a) gross receipts, according to the areas of business of the same trade, b) the amount of domestic and foreign raw materials and other goods, c) the amount of gross profit, d) the amount spent on salaries and wages, e) rents, f) interest, g) other kinds of expenditure, h) the amount of net profit, i) the relation of certain kinds of expenditure, to the total receipts or the cost value of the goods and j) the relation of gross and net profit to the total cost of sold goods or the total gross receipts, etc.

These data would make it possible to control only a limited number of taxpayers without running the danger of tax evasion.

12. In order to facilitate the assessment and collection of taxes and the acceleration of sorting out the concentrated data, a general register of all taxpayers in the country should be prepared containing all persons who are required to submit a personal income tax declaration. Each taxpayer should be referred in the register by two letters (the taxpayer's initials, — surname and first Christian name) and a number. This reference should be quoted on all documents and transaction papers concerning the said individual.

C. *Subsequent measures.*

Tax authorities have to deal with an enormous number of taxpayers. Therefore, they should be able to make use of subsequent measures against tax evasion, which should be excercised in the form of sanctions, such as the following:

1. Obligation of the taxpayer to take the oath before the tax Assessor, for the accuracy of his declarations and the enterings in his books.

2. Instituting the keeping of a „black-list" for tax evaders where, following a certain procedure, the names of all tax-law transgressors should be entered, who through act or omission of duty have committed tax evasion or have caused others to commit

a similar offence. The entering of a person's name in the "black list" would render such person liable to the suspense, for a period from six to twenty four months. of such facilities as a) payment of tax by instalments b) importation of goods from abroad c) borrowing money from Banks d) participating in auctions and e) travelling abroad.

3. Imposing fines against the offenders.

4. Suspending the offender's professional licence for a short or a long period, with a simultaneous closing-down of his office, shop, warehouse etc.

D. *Application of the above measures in Greece.*

Following the writer's suggestion, nearly all the above measures have for three years been applied in Greece. A special Tax Office for the concentration of such data has been established, which deals with the concentration of information and various items regarding business transactions etc.

One may suppose at first that a termendous bulk of paper would be piled up in the Concentration Office. The first year, however, of a smooth and general application has proved that the bulk of such paper is surprisingly small. And thus the argument that the office would in a short time be unable to proceed with its work, has been proved to be quite out of place.

The whole of the work concerning the elaboration of the concentrated data is now being done by manual labor. The use, however, of a system of perforating machines — already ordered — will soon be made possible.

The system of keeping books and issuing documents for the various transactions as well as the system of concentrating tax data have been strongly attacked from those taxpayers who would rather be taxed on outside presumptions, probably because they would thus be able to deceive the tax assessor. But the arguments of the opponents have fallen through one after another. This unjustified opposition, however, has lasted for nearly two years, causing delay to the process of the work.

The first data that have been concentrated show a considerable increase of the amount of declared taxes and permit the hope that the ranks of the honest taxpayers will become more and more crowded.

On the other hand, the establishment of the principle that each field tax office should deal only with the Concentration Office, as far as the work of sending or receiving tax data or information is concerned, has laid down a firm support to the success of the income tax collection.

A strong support to communal taxation is also the system of issuing receipts for the purchase of rural products and submitting them to the Tax Office separately, according to the Commune of the area where the purchase has taken place.

Today, a large part of the taxpayers fully apprehend the value of the system of issuing documents and keeping books as well as the system of concentrating tax data, and appreciate its great significance with respect to the solution of so many great problems concerning a) tax collection b) market control c) credit and currency policy d) transportation policy e) assessment of income of farmers etc.

THE SALES TAXES OF CANADA AND NEW ZEALAND

A comparative study

by

JEFFERY E. HODGINS.

Introductory.

The Dominions of Canada [1]) and New Zealand have made use of general sales taxes in their national fiscal systems since 19/5/20 (in its present form, since 1/1/24), and 9/2/33, respectively. In New Zealand, the tax is imposed only at the national level. In Canada, however, in addition to the national sales tax, two Provinces, two Cities, and several municipalities have their own sales taxes. In this paper, however, the Provincial, City and municipal taxes are not considered.

There is an interesting relationship between the sales taxes of the two Dominions. When it was decided, during 1930, to impose a sales tax in Australia [2]), it was to Canada that Australia turned for a basis for the proposed legislation. Similarly, New Zealand looked to Australia when it began to plan its sales tax early in 1933.

The two sales taxes of Australasia, however, deviate from that of Canada in one fundamental aspect, for whereas the Canadian tax is levied at the point at which goods are sold by the manufacturer, the sales taxes of Australia and New Zealand are levied at the point at which goods pass from manufacturer or wholesaler to retailer, or from manufacturer to consumer, as the case may be. Thus the Canadian tax is a manufacturers' tax, while those of New Zealand and Australia are manufacturers' or wholesalers' taxes.

The sales taxes of the two Dominions have been in force so long, their administration has been so successful, and their capacity

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[1]) See *Bulletin* Vol. IV, p. 5.
[2]) See *Bulletin* Vol. II, p. 193.

as revenue producers so amply demonstrated, that it is reasonable to regard them as forming permanent parts of the Canadian and New Zealand fiscal structures. Thus the time would seem to be ripe for the making of a comparative study of the two taxes, and that is the object of this paper.

The legislative structure.

The legislative set-up of the two taxes is relatively compact and clear. That of the Canadian tax is to be seen in Part XIII of the Special War Revenue Act, 1915, as amended from time to time, together with regulations. The New Zealand legislation consists of the Sales Tax Act, 1932—1947, and regulations thereunder.

General principles and classification.

The general principles of the two taxes are:

(a) goods only are taxable;
(b) the only goods not taxable are those specifically exempted;
(c) the sequence in determining taxability and rate is:
  (i) are the goods covered by an exemption?;
  (ii) if not, are they entitled to the special rate? (4% in Canada and 10% in New Zealand);
  (iii) if not, the goods are taxable at the general rate (8% in Canada and 20% in New Zealand);
(d) goods are taxed once only. In Canada, this is upon importation, or, if produced locally, where they pass out of the hands of the manufacturer. In New Zealand, the point of taxation of goods imported for retail sale is at importation, while locally produced goods are taxed at the point at which they pass from the wholesaler (including manufacturer) to the retailer, or from the manufacturer to the consumer, as the case may be;
(e) manufacturing retailers are taxed on a wholesale value;
(f) thus the taxes are paid to the respective Departments by the manufacturers and importers in Canada, and by the manufacturers, wholesale merchants and importers in New Zealand;
(g) the vendors referred to in (f) in effect assess themselves by compiling and lodging monthly returns, accompanied by the tax;
(h) imports as such are not exempt.

It is now possible, in the light of these principles, to say that

the Canadian tax is classifiable as a manufacturers' single turnover tax, while that of New Zealand may be classified as a manufacturers' and wholesalers' single turnover tax.

Administration.

The Canadian tax is administered by the Customs and Excise Division of the Department of National Revenue, while that of New Zealand is administered by the Customs Department. The political and permanent heads of the tax in Canada are the Minister of National Revenue, and the Commissioner of Excise, respectively, while their New Zealand counterparts are the Minister of Customs and the Comptroller of Customs. The Canadian heads are located at Ottawa, and those of New Zealand at Wellington.

The detailed administration of the Canadian tax is carried out by some 150 Collectors of Customs and Excise located at various points throughout the Dominion, while that of New Zealand is in the hands of Collectors of Customs in sixteen "Districts".

Early Canadian experience.

Between 19/5/20, when, (as already said) the Dominion of Canada first introduced a Sales Tax, and 31/12/23, that tax was not a manufacturers' single turnover tax, as is the present one, but a manufacturers' and wholesale merchants' turnover tax. It was, therefore, payable on every sale of taxable goods by manufacturers and wholesale merchants, whether or not those particular goods had previously borne tax.

A serious defect of the tax, however, was its interference with the normal course of trade by encouraging the by-passing of wholesale merchants. Within a month of its introduction, therefore, the law was amended to provide that where manufacturers sold direct to retailers, their sales should be taxed at twice the ordinary rate.

A trial of several years duration, however, convinced the Authorities that here were still too many serious anomalies, and, as from 1/1/24, Parliament replaced the tax with the present one.

Licensing.

As already stated, the taxes are paid to the respective Departments by the manufacturers in Canada, and the manufacturers

and wholesale merchants in New Zealand. It is they, therefore, who must become licensed, by making annual application and paying a fee of $ 2 in Canada, and by making application and paying a fee of £ 1 in New Zealand.

There are several exceptions to the general rule, however, the most important being if exempt goods only are dealt in, e.g. butter. In Canada, licensing may be dispensed with by the Minister in respect of "any class of small manufacturer or producer selling his products exclusively by retail". In New Zealand, licensing is not required where the annual turnover of the wholesale merchant or manufacturer in taxable goods is not more than £ 500.

The determining of what constitutes manufacturing and selling by wholesale.

As the taxes are paid to the Departments, by the manufacturers in Canada, and the manufacturers and wholesale merchants in New Zealand, the determination of what is manufacturing and what is wholesale vending become important questions.

The Acts relating to both taxes, therefore, define the respective terms with great care, and the definitions have been amended on several occasions.

The difficulties of deciding what is wholesale vending under the New Zealand tax have generally been much less than those of deciding what is manufacture.

"Quotation" or "non-quotation" of license.

In single turnover taxes of the Canadian and New Zealand types, it is necessary to devise a method of ensuring that any particular goods be not taxed more than once. The method so devised in Canada was the "Quotation of License". Manufacturers must quote when purchasing raw materials, and the vendors are thereby authorised to sell them the raw materials free of tax.

In New Zealand, persons selling to wholesale merchants are authorised to refrain from charging tax. Manufacturers deduct from the tax payable on the monthly returns which they must submit to the Department any tax paid by them on raw materials, or should their sales consist of exempt goods, they claim a refund from the Department.

Returns.

All licensees in Canada and New Zealand must submit monthly returns, embodying the transactions made during the particular month, to the respective Departments. These returns must be lodged not later than the end, and twenty-eighth, respectively of the following month. Returns must be on the prescribed forms, and be accompanied by the tax.

In Canada, returns must be declared before an officer of the Department of National Revenue, a Justice of the Peace, or a Commissioner of Oaths. Each return under the New Zealand tax must be verified by a statutory declaration, made before an Officer of Customs, a Postmaster, Solicitor, Notary Public, or Justice of the Peace.

Sale value.

It has already been noted that the general point at which the taxes are levied is where the goods pass form the manufacturer in Canada, and from wholesaler (including manufacturer) to retailer in New Zealand. The actual sale price of these transactions is, therefore, the amount upon which the Canadian manufacturer, and the last wholesaler in New Zealand, pay tax to the respective Departments.

The Canadian manufacturer need not show the tax as a separate item on each invoice, unless he wishes to. In New Zealand, however, it is compulsory for the last wholesaler to do so, and the Act then gives him the same power to recover that tax from the purchaser as he has to obtain payment for the goods.

In order that manufacturing retailers may not be placed at a disadvantage, they are required to pay tax to the Departments, not upon their sale price, but upon a fair wholesale value.

New Zealand taxpayers who lodge their returns and tax not later than the due date (twenty-eighth of the following month) may deduct a cash discount of 1¼%. There is no similar provision under the Canadian tax.

War-time changes.

The impact of total war gave rise to two additional federal Sales Taxes in Canada. The first was levied at the same level as the general sales tax, that is, upon sales by manufacturers. It was payable upon candy, pipes, etc. etc. The second special Sales Tax represented

an innovation in Canadian federal finance inasmuch as it was levied at the retail level. It was payable by means of stamps, at the rate of 25 %, on jewellery, luggage, etc. etc. These two additional Sales Taxes allowed the rate of the general Sales Tax to be left unchanged at 8 % from 1936.

The remainder of this paper does not include any further references to these two special sales taxes.

The New Zealand war-time changes consisted in the main of two increases in the general rate — each of 100 % — further details of which may be seen under the paragraph dealing with rates of tax.

Exemptions.

Both taxes contain lengthy lists of exemptions. These increase the difficulties of administration, but lessen regressivity and adverse political pressures. By exempting machinery for use in manufacture, indirect double taxation is also avoided.

The Canadian exemptions are contained in the Third Schedule to the Special War Revenue Act, while those of New Zealand are to be found in the First Schedule to the Sales Tax Act, 1932—1947. The New Zealand exemptions are divided into two lists, the goods in one of which retain the interpretation already given to them for customs purposes.

The exemptions in both taxes may be classified broadly thus:

(1) basic foodstuffs;
(2) small taxpayers;
(3) exports;
(4) plant for the production of goods;
(5) building materials;
(6) fuel and power;
(7) educational;
(8) consular and diplomatic.

In addition, the Canadian tax does not apply to sales to the Provinces, while that of New Zealand exempts clothing and certain furnishings.

There is an interesting exemption under the Australian Sales Tax by which "goods the produce or manufacture of New Zealand — being goods of the same class or kind as goods upon the sale value of which, if produced or manufactured in Australia, Sales Tax is not payable", are exempted.

Plant, machinery and other aids to manufacture.

The freedom from tax on raw materials, referred to in the paragraph entitled "Quotation" or "Non-Quotation of License", does not, of itself, of course, extend to goods such as abrasives, and still less to plant and machinery. There was much criticism of this lack of freedom from tax on "aids to manufacture", mainly on the ground that it violated the principle that any particular goods should not be taxed more than once. It was contended in this connection that goods carried not only their own tax, but also a proportion of the tax that had been paid upon the producer's plant with which they had been made.

Some relief was afforded the Canadian taxpayer when what is referred to under the Canadian tax as "consumables" were again exempted, when used in manufacture. The main item covered by the term "consumables" appears to be chemicals. The Budget for 1945/46 went far beyond this, however, for it provided for the re-moval of the tax „from all machinery and equipment used directly in the process of manufacture or production of goods".

From its inception, the New Zealand tax has not only provided wide exemptions for machinery used in primary production, but also for machinery, machines, machine tools, engines and appliances, as may be approved by the Minister, peculiar to use in manufacturing, industrial and similar processes.

Rates of tax

The rates of tax under the two taxes, since the introduction of the New Zealand tax on 9/2/33, have been as follows:

Canada			New Zealand		
Rate	Date of Introduction	Duration of	Rate	Date of Introduction	Duration of
6 %	Prior to 9/2/33	3 Years (plus a period prior to 9.2.33)	5 %	9/2/33	7 years
			10 %	28/6/40	2 Years
8 %	2/5/36	13 Years	20 %	11/5/42	7 Years
		16 Years			16 Years

The above are the „general„ rates, but both Dominions have made use of a half rate over a small field. The special Canadian rate of 4% applies only to goods made at institutions for the blind, deaf, and dumb, while the main half-rate item in New Zealand is certain motor chasses.

The above schedule suggests that a much greater war-time use was made of the Sales Tax in New Zealand than in Canada. As explained under the paragraph dealing with War-time changes, however, additional revenues were obtained, and civilian purchasing power was partly restricted, in Canada, by the imposition of two additional federal Sales Taxes of selective types, one at the manufacturers' level, and the other at the retailers' level.

Productivity and disposition.

The amounts produced by the two taxes during the ten financial years ended 31/3/48 are:

Financial Years, 1st April to 31st March	Revenue from Sales Tax		Total Revenue from Taxation		Percentage of Sales Tax toTotal Taxation	
	Canada $ m.	N.Z. £ N.Z.m	Canada $ m.	N.Z. £ N.Z.m	Canada Percentage	N.Z. Percentage
1938—1939	122	3	435	37	28	8
1939—1940	137	3	468	44	29	7
1940—1941	179	5	778	61	23	9
1941—1942	236	7	1360	68	17	10
1942—1943	250	11	2066	87	12	12
1943—1944	304	12	2436	100	12	12
1944—1945	209	13	2154	108	9	12
1945—1946	326	15	2202	114	14	13
1946—1947	328	15	2427	113	13	13
1947—1948	383	16	2452	122	15	13
Totals	2474	100	16778	854	Av. 14	Av. 11

The proceeds of neither tax is for a specific purpose and are accordingly paid into the Consolidated Revenue Account for general use. In New Zealand, however, the additional revenue resulting from the two increases of rate (from 5% to 10% on 28/6/40, and 10% to 20% on 11/5/42), was paid into the War Expenses Account.

Importations.

As a general rule, the incidence of the two taxes on imported goods is the same as it is on locally produced goods.

In the case of taxable goods imported by New Zealand retailers or consumers, tax must be paid, upon importation, upon a sale value equal to the value of the goods in New Zealand currency, plus any Customs duty, plus 25 % of both. The percentage addition of 25 % is designed to take the place of the additional sale value which would have been added had the goods passed through the hands of a wholesale merchant. As wholesale merchants, as such, do not come within the Canadian tax, there is no corresponding percentage addition under that tax.

Goods applied to own use.

Where a person applies taxable goods to his own use he must pay tax on them to the person from whom he purchased them. If, however, he bought them in tax-free circumstances, or manufactured them himself, he must pay tax on the goods to the Department. The value upon which tax must be paid in these latter circumstances, is broadly the fair wholesale value.

Assessments, decisons, and appeals.

In both Dominions, the use of formal assessments is the exception to the rule. It is necessary to invoke the assessment-making power only in those relatively few cases in which taxpayers refuse to furnish accurate returns.

Appeal from the decisions of the Canadian Commissioner may be made either to a court of law, or to the Tariff Board, but not from one to the other.

Any New Zealand taxpayer may appeal to the Minister of Customs against an assessment, and the Minister may delegate his power to hear the appeal to any person. The decision of the Minister, or his delegate, is final on all questions of fact, except in the case of fraud. On questions of law, appeal may be made to the Supreme Court.

Books of account.

Some three years after the introduction of the tax in Canada, Parliament enacted legislation to compel munufacturers to keep

"proper" books of account. These may be kept either in English or in French.

The New Zealand legislation does not contain a similar power. It does, however, confer a wide power upon the Customs Department of impounding and retaining any books and documents „presented in connection with any return or required to be produced."

Conclusions.

The sales taxes of the Dominions of Canada and New Zealand have been in force for thirty (in its present form for twenty-six) and seventeen years, respectively. Businessmen have, therefore, become thoroughly accustomed to them. They have been prolific revenue producers. The natural regressivity of sales taxes has been much mitigated by the exemption of necessities, progressive income tax rates, and other devices. The efficiency of the administration of the Canadian tax, attested by several independent authorities, including Dr. T. S. Adams, Professor Alfred G. Buehler and Mr. E. C. Elvord, is at least equalled in the Sister Dominion, where the smallness of the number of legal issues brought before the Courts reveals the satisfaction of the business community with the efficiency with which the tax is administered. It seems reasonable to assume that both taxes have become established as permanent portions of the fiscal systems of the two Dominions.

LA LUTTE CONTRE LA FRAUDE FISCALE

4e étude [1])

LES MOYENS DE DECOUVRIR LA FRAUDE

par le

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„Alerter'' les redevables sur leurs obligations fiscales, doter les services fiscaux d'une organisation matérielle et d'un personnel instruit, réveiller la conscience fiscale chez les assujettis sont des moyens qui seraient suffisants dans une nation où l'évasion fiscale serait considérée comme un crime de lèse-patrie.

Malheureusement sont rares ces pays où les redevables sont tout disposés à faire leur devoir vis-à-vis du Trésor, dès lors qu'ils sont guidés, renseignés et documentés sur les dispositions légales et règlementaires.

Le législateur doit donc chercher des procédés plus efficaces, non pour *éviter* la fraude, mais pour la déceler directement ou indirectement, afin de la *réprimer* sévèrement sur les plans pécuniaire, disciplinaire ou pénal.

A — CONSIDERATIONS GENERALES SUR LES MOYENS DE LUTTE —

Les procédés pour „détecter'' la fraude, pour être nombreux et variables suivant les pays, peuvent toutefois être réduits aux prérogatives courantes suivantes: le recours à la preuve littérale, le droit de communication, le droit de visite, le droit de recensement des stocks, le droit de saisie, le contrôle polyvalent, le droit d'expertise, le droit de poursuite, le droit de définir les situations juridiques et matérielles, etc.

Peuvent encore être prévus le droit de recours à la preuve testimoniale, à l'aveu, aux présomptions, à l'enquête, au serment, et la délation ou dénonciation, etc.

Constituent enfin des modes de contrôle spéciaux le recours à la conciliation et à l'arbitrage, l'utilisation des déclarations fiscales des tiers, la taxation d'office etc.

Ces différentes techniques rentrent, dans le droit allemand, dans l'amtliche Kontrolle ou Aufsicht ou surveillance de l'Administration fiscale. [2])

Il n'est pas inutile d'observer que ces multiples prérogatives s'inspirent plus ou moins du droit civil, de la procédure civile, du droit criminel ou de l'instruction criminelle: dans tous les pays, les Codes prévoient, en effet, des

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[1]) I dans *Bulletin* IV, p. 148; II, *ibid.* p. 237; III, *ibid.* V, p. 11.

[2]) *Camille Rosier:* L'Impôt — Traité de Législation Fiscale, t. I et II. — La fiscalité française et l'opinion publique, etc.

Von Myrtach-Rheinfeld: Précis de droit financier.

Camille Rosier: Les problèmes fiscaux devant les théoriciens, les praticiens et les contribuables (Archivio Finanziario, 1951).

modes de preuve pour les obligations civiles (preuve littérale, preuve testimoniale, aveu, serment, présomptions, etc.), pour la découverte et la reconnaissance des infractions pénales (enquête, audition des témoins, perquisitions, etc.) pour le règlement devant les juges de certains différends techniques (expertise, arbitrage, conciliation, etc.).

A ces techniques du droit commun, les législations fiscales ajoutent des systèmes qui ne peuvent être utilisés qu'en matière fiscale comme la taxation d'office, l'utilisation des déclarations fiscales émanant des tiers, etc.

§ 1. *La défense ou la critique de ces mesures.*

a) Toutes ces prérogatives fiscales appellent une critique du point de vue de l'orthodoxie de la science financière: elles violent la fameuse règle de la *discrétion* posée par Adam Smith, puisqu'elles aboutissent inévitablement à multiplier les contacts entre le fisc et les assujettis, à organiser l'inquisition dans les affaires des redevables, dans leur domicile, dans leur comptabilité, dans leurs stocks etc.

Il suffit de rappeler les paroles bien connues de certains économistes: „Le redevable hait moins ce qu'il doit payer que l'acte même de payer; il n'aime pas à voir la figure du percepteur et être exposé à une demande d'explication de sa part" a dit Stuart Mill; „L'art consiste à plumer l'oie sans la faire crier" a écrit Léon Say, etc.

Autrement dit, l'intérêt du fisc serait de masquer sa main avide le plus souvent possible, d'éviter les communications de documents, les vérifications et les visites domiciliaires. s'il veut que le contribuable ne se considère pas comme une victime épiée, suspectée, traitée en ennemie.

On peut donc se demander si ces différentes prérogatives du fisc ne doivent pas être *réglementées trés rigoureusement* pour éviter l'arbitraire, si notamment ces droits d'investigation ne doivent pas comporter des restrictions quant aux agents qui peuvent les utiliser, quant aux impôts dont le contrôle est ainsi facilité, quant aux heures où les fonctionnaires du Trésor peuvent en faire usage, etc.

A cet égard, certains auteurs ou législateurs estiment que la meilleure solution à retenir est celle qui subordonne l'utilisation de ces pouvoirs exorbitants à une autorisation de fonctionnaires de l'ordre *judiciaire*, ou tout au moins à une „présence" d'un magistrat.

D'autres pays se contentent de régler par des dispositions légales ou administratives l'intrusion du fisc dans la vie, dans les affaires, dans la comptabilité, dans les immeubles industriels, dans le domicile des assujettis, sauf à prévoir *exceptionnellement* certaines mesures judiciaires de protection en faveur des redevables, s'il s'agit, par exemple, d'habitations privées, de visites nocturnes, etc.

Il est enfin des nations qui, uniquement soucieuses de défendre les intérêts du Trésor, non seulement donnent aux agents du fisc toute liberté totale d'initiative, mais prévoient, en outre, les mesures *policières*, les *„descentes de police"* les „interrogatoires", c'est-à-dire les procédés nécessairement plus ou moins brutaux auxquels il est fait appel pour la recherche des infractions délictuelles et criminelles.

Il n'est pas douteux que l'option entre les trois systèmes est subordonnée à l'état d'esprit des contribuables d'un pays: la première solution s'impose dans un pays où l'habeas corpus est sacré, où le respect du domicile est indiscutable, où au surplus, la fraude est relativement rare.

La seconde solution est possible dans un climat où le contribuable est enclin à la fraude, veut „jouer avec le fisc" et se résigne dans cette lutte à subir quelques restrictions à sa liberté d'agir.

Quant à la dernière solution, elle n'est acceptable que par des contribuables animés de courage civique et convaincus que la fraude fiscale est une infraction aussi grave que le vol, l'escroquerie, le détournement ou l'abus de

confiance; à l'égard des redevables latins, notamment elle apparaitrait par contre comme du véritable ,,terrorisme''.

b) Une question se pose indirectement et accessoirement: les prérogatives d'investigation, qui appartiennent au fisc pour déceler la fraude, peuvent-elles être exercées concurremment par d'autres fonctionnaires?

Il est des pays où la réponse est affirmative: les fonctionnaires du fisc font ,,équipe'' ou ,,brigade'' avec des fonctionnaires de la police judiciaire, par exemple, pour exercer leur droit d'investigation; ils utilisent aussi, le cas échéant, des agents des Services économiques, du Contrôle des prix ou des représentants des chemins de fer, des Ponts et Chaussées.

D'autres nations répugnent à cette possibilité; elles redoutent l'intrusion, dans la taxation des citoyens, de fonctionnaires manquant d'objectivité, de bienveillance ou de technique.

§ 1 bis. *L'acceptation possible des contrôles, grâce au secret professionnel*

a) En toute hypothèse, les droits d'investigation du fisc ne peuvent être acceptés par les contribuables que si les agents, utilisant les prérogatives du Trésor, sont astreints au *secret professionnel* imposé par les différents Codes pénaux aux personnes appelées, à l'occasion de leurs fonctions ou attributions, à recevoir des secrets ou confessions (médecins, pharmaciens, représentants du culte, etc.).

Les agents du fisc sont, le plus souvent, à ce titre, soumis à trois responsabilités en ce qui concerne la révélation des faits qu'ils peuvent recueillir dans leurs investigations: — une responsabilité pénale, génératrice de peines correctionnelles — une responsabilité civile qui se traduit par des dommages-intérêts — une responsabilité professionnelle qui entraîne des peines disciplinaires administratives. Il faut, bien entendu, pour qu'il y ait délit de révélation de secrets fiscaux:

1°. que le fonctionnaire du fisc ait appris des faits secrets dans l'exercice de ses fonctions ou à l'occasion de leur exercice;
2°. que la révélation en ait été effective et volontaire à un tiers, avec ou sans publicité, c'est-à-dire qu'elle ne découle pas d'une simple négligence ou inadvertance;
3°. que l'agent ait eu une intention délictuelle.

Il importe peu, par contre, pour que la révélation du secret fiscal soit répréhensible, qu'elle ait été accompagnée d'une intention de nuire ou du désir de détruire des suppositions fâcheuses contraires.

b) Une difficulté accessoire peut recevoir, suivant les pays, une solution différente: y a-t-il des autorités légales auxquelles les agents du fisc soient autorisés de révéler les fraudes qu'ils ont découvertes?

Certains soutiennent que les agents du Trésor ne peuvent, sans engager leur responsabilité, répondre aux demandes de renseignements des juges d'instruction, des magistrats, des experts, des avocats, des autres Administrations publiques, des Commissions parlementaires, etc.

Mais il est, dans divers pays, des textes moins pusillanimes qui permettent aux agents du fisc de déposer dans des instances où l'ordre public est en cause, dans des procès engagés par le fisc lui-même contre les contribuables, etc.

§ 2. *Les classements possibles des investigations administratives.*

Les classifications, pour paraître bien souvent trop rigides, trop systématiques, n'en sont pas moins d'une grande utilité: elles apportent toujours une clarté à l'étude des problèmes économiques ou juridiques; elles facilitent l'observation objective et désintéressée.

Ces considérations générales ont une importance particulière en matière fiscale, où bien souvent agents du fisc d'une part et contribuables de l'autre, ont tendance à n'examiner leurs droits et obligations que sous un angle

trop particulier (défense des intérêts du Trésor ou désir d'échapper à sa charge fiscale).

Les différentes prérogatives du fisc peuvent être ainsi classées de manière très diverses, suivant l'aspect sous lequel elles sont examinées.

a) Les unes sont purement *matérielles*, puisqu'elles conduisent à la visite d'un véhicule, d'un immeuble à usage d'habitation, d'une installation commerciale ou industrielle, au dénombrement de stocks, à la poursuite d'un fraudeur, à la fouil e de ses colis, à la saisie provisoire d'un objet en contravention avec les lois fiscales, etc.

D'autres prérogatives sont, au contraire, essentiellement *juridiques*, lorsqu'elles permettent au fisc d'examiner des titres, des conventions, des situations et des rapports de droit entre des individus, des actes notariés, administratifs; de faire appel au serment, à l'aveu, à la preuve testimoniale, etc.

Certaines sont de l'ordre *comptable*, si elles s'exercent sur des documents comptables, des livres de comptabilité, des bilans, des amortissements, des provisions, des frais généraux, des dépenses professionnelles, etc.

Enfin, il est des prérogatives qui ressortent de *l'économique*, s'il s'agit de contrôler la valeur ou l'estimation d'un immeuble, d'un fonds de commerce; s'il convient d'établir un rapport entre un chiffre d'affaires annuel, un bénéfice annuel et la valeur vénale d'une clientèle; s'il est nécessaire de fixer le prix d'une marchandise importée de l'étranger, d'un outillage industriel ou commercial; s'il est opportun de rechercher la relation entre un fermage en grains, en viande par exemple, et une valeur à l'hectare; s'il importe de déterminer la valeur de liquidation d'une action non cotée ou d'une part sociale, ou d'apprécier l'espèce, l'origine ou la provenance d'un produit venant de l'étranger, etc.

b) Sous l'aspect sociologique, les prérogatives du fisc appellent aussi certaines discriminations complémentaires.

Les procédés *juridiques* se justifient de préférence pour contrôler l'assiette et la liquidation des impôts sur les opérations juridiques, sur les mutations, sur les successions, tels que les droits d'enregistrement, de timbre, d'hypothèques, des impôts généraux sur le patrimoine, etc.

Les procédés *matériels* sont plus acceptables pour déceler la fraude commise en matière d'impôts indirects, de droits de douane, de taxes sur la circulation des marchandises, de taxes spécifiques sur les boissons, les sucres, etc.

Les procédés *comptables* conviennent particulièrement pour la vérification des impôts établis d'après une comptabilité, ou frappant les bénéfices commerciaux agricoles et industriels, les chiffres d'affaires, les distributions ou les mises en réserve de profits des entreprises.

Les procédés *administratifs*, comme la taxation d'office, s'imposent plus spécialement pour déceler les fraudes relatives aux impôts généraux sur le revenu, aux contributions globales sur le patrimoine ou sur les héritages, aux impôts sur les bénéfices des entreprises commerciales et industrielles, aux contributions sur les bénéfices exceptionnels ou supplémentaires, etc.

c) Enfin, certaines prérogatives du fisc s'exercent à l'égard des *contribuables eux-mêmes*, d'autres à l'encontre d'*intermédiaires*, de banquiers, de transporteurs, de loueurs d'alambics, etc.

Il est des moyens de contrôle qui sont utilisés chez les assujettis, alors que d'autres s'adressent aux Administrations publiques, services publics, à la justice, à la police, etc.

(à suivre)

IV

REVIEWS — COMPTES RENDUS

VAN STEENBERGEN-SCHUTTEVAER: *De Zegelwet* 1917. 7th edition by G. Layendecker — N. Samson N.V. Alphen a/d Rijn, Netherlands, 1951.

Stamp duties have been existing in the Netherlands since 1624. The States of Holland started and the States of other Provinces followed this example. From a historical point of view it is very interesting to examine the speed with which this kind of duties was spread all over the world.

Numerous legal provisions succeeded each other; in 1805 the first ordonnance got force of law which prevailed in the whole State, afterwards during the years of French occupation the French duties were introduced untill 1843 in which year a real Dutch tax came in existence. And finally in 1917 the still existing Act which was repeatedly changed however. The last change of 1950 did extend the levy of a stampduty on securities as this was to include a duty on promissory notes on account of loans by institutional investors to Dutch bodies corporate in order to provide for the necessary increase of investments of the latter.

Originally bonds were issued with respect to these loans, which bonds were charged with proportional stamp duties. However practice changed and instead of bonds the promissory notes were issued which saved the duty. Unlike the Belgian system (comp. Bulletin Vol. II, p. 1.) the Dutch Stamp Duty Act charges each instrument apart. Sometimes the duty depends on the size of the instrument (stamped paper).

Sometimes the duty is a fixed amount (receipts, promissory notes) or at a proportional rate (policies of insurance, trade instruments, leases, securities etc.). In 1917 the Minister of Finance entertained illusions that the application of the Act might be simple unlike the 1843 Act. One should but read the above mentioned book to be convinced that it was an illusion indeed. Numerous administrative decisions have been dealt with by the author with clearness. Just like the former editions the book is an annotation of each section of the Stamp Duty Act.

CENTRE D'ETUDE DES SOCIETES: *Le droit fiscal des Sociétés. Tome II: Impôts sur les revenus.* — Bruxelles, Etabl. Emile Bruylant 1951.

After the law of March 8, 1951 it was necessary to expose as exactly as possible all fiscal provisions relating to companies. Hence the publication of this work. After a short explanation of the Belgian tax system and the development of the direct taxes the scheduled and other taxes to be taken into consideration are dealt with. References are made to case law and literature, so that any one who wants to enter more deeply in these matters has a valuable guide. The texts of the coordinated taxes have been inserted with annotations. In the first place is dealt with the tax on income from immovable property (land and buildings) further the tax on income of movable property and the tax on profits from business, profession and employment. The latter is discussed in full, whereby the method of computation of business profits and related problems are placed in the centre. The different forms of corporation are discussed, which is very interesting, especially when taking into account that in the preceding years the taxation of undistributed and distributed profits of a limited liability company have been changed considerably. Moreover the attention is drawn to the partner-

ship etc. In shorter chapters other problems are discussed. The full text of the coordinated laws after the introduction of the law of March 8, 1951 are inserted.

T. B. ROBSON: *Consolidated and other Group accounts.* 2nd edition. — Gee & Co (Publishers) Ltd. London, 1950.

This work does not deal with fiscal problems although there may be some relations. It gives a discussion of the task of the auditor with respect to the holding company. This problem was of current interest in Canada and the United States some time ago. It lasted rather long before it drew the attention in the United Kingdom. This book, the first edition of which was published in 1946, does give the information required. The fiscal problem is — as was mentioned before — touched sometimes e.g. in connection with undistributed profits which easily can occur in a complex of holding-companies. A second interesting topic to note is the divergence in time, viz. the different periodes on which the computation of the profits of the various parts of the concern is based and thirdly all dealings at arm's length.

DR. XAVER LEUTENEGGER: *Betriebswirtschaftliche und Steuerliche Bewertung Industrieller Liegenschaften.* — A. Francke A. G. Verlag Bern s.d.

The valuation-problem is very extensive and difficult to deal with. In this book only one facet of the problem is discussed namely with respect to immovable property belonging to a trade on business. Principally economical questions are described, whereas the fiscal aspect is mentioned as complementary. In the introduction the author remarks that present balance sheets are drawn up more in accordance with the indication by fiscal laws than in accordance with sound economics. From his further explanations (§ 4) it appears that he acknowledges a divergence between fiscal and commercial balance sheets. He thinks not possible any attempt to make both balances according to each other.

This topic is very interesting as well as the division of the matter: at first the problem of valuation generally; then the various balance theories are discussed; furthermore the different concepts of value in business economics, commercial and fiscal law. Much attention is paid to the problem of depreciation and writings-off and the reservation of profits. The fiscal aspect of these problems is touched.

In the third chapter the problem of the valuation of immovables is dealt with in respect of coal mines, loam-and gravelpits, industrial lands and plants, working-class cottages etc. Always both business-economical and fiscal problems are discussed. All questions which fiscal experts in other countries will meet. Hence that we gladly draw the attention to this book.

V

TAXATION OF INTERNATIONAL AIR TRANSPORT [1])

I — References of interest to the Fiscal Commission of the United Nations contained in the proceedings of the second assembly of the International Civil Aviation Organization, Geneva, 1—21 June 1948. [1])

The Secretary of the Fiscal Commission has the honour to communicate to the members of the Commission, for their information, excerpts relating to international tax problems from the record of the second assembly of the International Civil Aviation Organization held in Geneva from 1 to 21 June 1948.

2. By its resolution A1—42, the first assembly of the Organization had called on its Council to enquire into onerous tax burdens on the development of internationel air transport.

3. Pursuant to this resolution, the Council included the following item in its report to the second assembly on the activities of the Organization for the period from 1 June 1947 to 1 March 1948:

"Chapter III — Economic Questions

"4. *Undue Economic Burdens on International Air Transport*

"(a) Double Taxation

"Resolution A1—42 directed the Council to arrange for a study on the economic burdens upon international air transport resulting from double taxation and the taxation of fuel and equipment not consumed within the jurisdiction of the State imposing such tax. To furnish material for this Study, Contracting States were asked to provide by November 1, 1947, information concerning their national taxation practices insofar as they affected international air transport, and the views of the International Air Transport Association were invited. The number of replies received so far has been insufficient to permit the preparation of a study for submission to the Second Assembly. In the meantime, a general commitment towards the elimination of multiple, unfairly burdensome or discriminatory taxation of airlines and their employees will be discussed at the Second Session of the FAL. Division which is scheduled to open on May 17, 1948."

(Doc. 5221, A2—P5, 19 March 1948, p. 52).

4. Thereupon, t e Facilitation Division of the Organization inserted the following provision on international tax problems in the report on its second session:

„Part IV. — Recommendation for International Standards and Recommended Practices:

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[1]) Because of the importance of the problems relating to the taxation of international air transport, we are reproducing some documents published by the United Nations Fiscal Commission. We regret not to be able to reproduce all papers relating to this subject because of the limited number of pages in this issue. In the text references are given to other documents.

[2]) U.N. Document E/CN.8/40, 20 December 1948.

"16. *Provision Relating to Multiple Taxation Requirements*

"Each State shall adopt all practicable measures in co-operation with other States concerned to eliminate multiple, unfairly burdensome or discriminatory taxation of airlines and their employees." (Doc. 5464, FAL/535, 1 June 1948, p. 37).

5. During the second assembly the matter came up at the first meeting of the Economic Commission during its discussion of the Council's report. The minutes of this meeting, insofar as they are here relevant, read as follows:

"*Agenda Item* 1. *General Review of the work of the Organization in the Air Transport field including: DOC A2—P/5*

"(a)*Report by Council* XXXX

"(iii) Undue economic burdens on international Air Transport — double taxation — (A1 — 42)

"13. After the subject was introduced by the Chief of the FAL Section, the Observer from the United Nations mentioned the complexities of this entire subject and stated that the United Nations Fiscal Commission had it generally under consideration. He expressed his belief in the desirability of maintaining liaison between the interested Organizations, with ICAO concentrating on the purely aviation aspects". (A2—EC/14, 6 June 1948, p. 5).

6. For the further information of the Commission, the Director of the Fiscal Division of the United Nations submitted a memorandum which showed that a comprehensive study of the tax problems on international air transport was included in the over-all research programme of the Division. This memorandum is attached as Appendix I.

7. In its final report to the Assembly, the Economic Commission referred to this subject as follows:

"11. The Commission took no action with respect to Item 1 (a) (iii) of its Agenda on "Undue Economic Burdens on International Air Transport Double Taxation", which had been included only for purposes of information; . . ." (Doc. 5674,A2—EC/58, p. 3).

8. While there was no further discussion or action on this matter in the Assembly, it adopted Resolution A2—24 which called for close liaison with the United Nations in the following language:

"*Relations with the United Nations*

. . . . . .

THE ASSEMBLY:

. . . . . .

2. APPROVES of the manner in which the Agreement between ICAO and the United Nations has thus far been implemented; and

3. DIRECTS the Council to continue to maintain close and co-operative relationship with the United Nations to fulfill the objectives set forth in the agreement with that Organization". (Doc. 5692, A2-P/37, 21 June 1948, p. 20).

APPENDIX I

Second Assembly of the International Civil Aviation Organization: Double Taxation

4 June 1948.

The revised provisional agenda for the second assembly of ICAO (A2—P/2, 8 March 1948) includes the following item among the subjects to be discussed by the Economic Commission of the Assembly as part of its general review of the work of the Organization in the air transport field:

"1(a) (iii) Undue Economic Burdens on International Air Transport — Double Taxation".

By its resolution A1—42, to which this item of the agenda refers, the first assembly had called on the Council to inquire into onerous economic burdens on the development of international air transport which might result from:

1. Double taxation;

2. The taxation of fuel and equipment consumed within the jurisdiction of the country imposing such tax;

3. Other taxation practices of various states which constitute onerous economic burdens on the development of international air transport.

The problems of the tax treatment of international business transactions and of double taxation are included in the over all research programme assigned to the Fiscal Division by the Fiscal Commission and the Economic and Social Council by its resolution 67 (V) of 24 July 1947. Under this resolution, the Division has undertaken the following programme of research and publication of direct concern to those engaged in international air transport:

1. A "Collection of International Tax Agreements" is now in the process of publication.[1]) It will contain the texts of almost one hundred (100) international agreements for the avoidance of double taxation concluded since the publication of the last similar collection by the League of Nations in 1936. While but four of these agreements are exclusively concerned with the taxation of international air transport enterprises, the other agreements governing the taxation of business enterprises operating in, or among, the contracting states in general are intended to include international air transport enterprises and are, therefore, of vital interest to them;

2. Through a questionnaire, dated 2 September 1947, and sent to all Member Governments, the Division has requested comments on the Mexico and London Model Bilateral Conventions for the avoidance of double taxation and the prevention of fiscal evasion, drafted under the sponsorship of the League of Nations Fiscal Committee. Since these model conventions contain both provisions generally applicable to international business activities and provisions specially relating to international air transport enterprises, the relevant comments of Member Governments should be of great practical interest to the air transport enterprises. These comments will be collected and analysed for publication as soon as they have been received from a substantial number of governments;

3. A detailed questionnaire [2]) designed to obtain from all Member Governments the most complete information possible on their tax treatment, *inter alia*, of international business enterprises in general and of international air transport enterprises in particular, is now in preparation. The replies will be co-ordinated with the underlying texts of governing laws, treaties and regulations and will then be published in comparative form for ready use by lawyers and the business community.

It should be noted that these studies will cover not only the taxation of actual flight operations and of their profits, but also the taxation of fuel equipment, supplies and personnel engaged or used in international air transport.

Since the international tax problems of the air transport industry can best be studied and dealt with as part of the over-all tax treatment of persons and enterprises engaged in international business transactions, it is suggested that the comprehensive studies of the Fiscal Division may best be adapted toward satisfying the needs for information, and for action on the basis of such information, which the first assembly had in mind when it adopted resolution A1—42.

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1) Reviewed in: *Bulletin*, Vol. III, p. 136, Vol. V, p. 179.

2) See for the text of this questionnaire: Annex to *Bulletin*, Vol III, No. 1.

II — International Civil Aviation Organization Council—Twelfth session—39th report to Council by the Chairman of the Transport Committee with statement of Council action thereon. [1])

Mr. TRYGVE LIE,
Secretary General of the United Nations,
New York, New York. 1 May 1951

Sir,

I have the honour to inform you that, on 13 April 1951, the Council of the International Civil Aviation Organization approved the enclosed 39th Report to Council by the Chairman of the Air Transport Committee dealing with multiple, discriminatory and unfairly burdensome taxation, and adopted the resolutions set forth in Appendices I and IV and the recommendation set forth in Appendix II to that Report.

The Council also found that the resolution set forth in Appendix III to the Report was acceptable, but noted that the United Nations Fiscal Commission will convene on 7 May and the Economic and Social Council on 3 July. The Council therefore decided, before formal approval of that resolution, to refer it to the forthcoming meetings of these United Nations bodies, with a view to ensuring that the substance of the resolution is not inconsistent with any action taken or policy adopted by them up to and including these meetings.

I have the honour to be Sir,

Your Obedient Servant,

ALBERT ROPER
Secretary General of the International Civil Aviation Organization.

Recent History

1. It will be recalled that the Council, at the 20th Meeting of its 8th Session held 13 December 1949, approved the 20th Report of the Air Transport Committee on the subject of Multiple, Discriminatory and Unfairly Burdensome Taxation (C-WP/509). That Report, modified in accordance with Council action, was reproduced as DOC 6943, C/805.

2. Pursuant to its approval of the above mentioned Report, the Council sent a letter in late January 1950 to Member States, requesting their views on draft Resolutions and a Questionnaire dealing with the following specific subjects:

(1) Taxation of aircraft fuel, lubricants and other consumable technical supplies, as to which the Convention for the Exemption from Taxation for Liquid Fuels and Lubricants Used in Air Traffic, drawn up in London 1939, afforded a valuable precedent (Appendices I and II to the Report, DOC 6943, C/805, pages 5—8);

(2) Taxation on the income and movable property of international air transport enterprises (Appendix III to the Report, DOC 6943, C/805, page 9); and

(3) Taxes related to the sale or use of international air transport (Appendix IV to the Report, DOC 6943, C/805, page 10).

3. It was understood that the Air Transport Committee would again review the matter and submit its final recommendations to Council after taking into account (a) answers received from Contracting States, (b) the analysis and interpretation to be presented from the point of view of international

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[1]) Doc 7145, C/824, 18/4/51, reproduced in U.N. document E/CN. 8/57, 3 May 1951.

taxation theory and practice as expressed in the consultant's study of the problem undertaken for the UN and ICAO Secretariats jointly, and (c) other relevant material which might be furnished.

Current Review

4. At the First Meeting of its 12th Session on 7 February 1951 the Air Transport Committee began its review of this matter, deciding that, as a first step, a working group composed of Messrs. Alves de Souza, Soderberg, Pugh and Seagrave should examine the draft Resolutions set forth in DOC 6943, C/805 in the light of the replies received from 24 Contracting States and nine dependent territories (set forth in AT-WP/153, 159, 192, 200 and 211), as well as of the study of the joint UN/ICAO consultant (AT-WP/154) and the comments of IATA (AT-WP/178). The working group, under the chairmanship of Mr. Alves de Souza, considered this matter at six meetings, reporting to the full Committee which concluded its discussions at its 10th Meeting of its 12th Session held on 2 April 1951.

5. The Committee concluded, on the basis of the report of its working group and of the additional material made available since the original Resolutions were drafted by the Air Transport Committee and approved by the Council for transmission to the States, that these Resolutions had been framed on a sound basis. The evidence in general confirmed the views expressed by the Committee and Council last year that adoption of the Resolutions in substantially the form originally conceived will obtain a favourable response from a large majority of Contracting States and will assist in the healthy development of international civil aviation. Therefore, the Committee has maintained the original Resolutions without major alterations, the principal change in substance being the addition of a recommendation covering the first question raised in Apendix II of DOC 6943, C/805. In recommending that the Council take positive action of the limited nature suggested, the Committee felt it was desirable to move ahead in those areas where a large measure of agreement can be anticipated rather than on the one hand to attempt to take broader action at this stage which might well fail to obtain the necessary degree of universal acceptance or on the other hand to do nothing and await developments. The Committee recognized the possible bearing of these Resolutions, and in particular the Resolution concerning the exemption of fuel, etc. from customs duty, on its study of Charges for the Use of Airports and Airways, but it considered that a tax or a customs or excise duty on fuel differs, in essence, from a charge (however it may be levied) for the use of certain facilities.

6. With respect to the proposed Resolution on Taxation of Fuel and Lubricants (Appendix I of DOC 6943, C/805):

(a) The Committee endorsed the policy of exemption from or refund of customs and other duties on fuel, lubricants and other consumable technical supplies used in international air transport. It did so not only upon the basis of the replies of States now in hand but upon long-standing maritime practice, recent precedent (the London Convention) and the obvious practical difficulties inherent in adopting any other course of action. This policy appears to be the only one available in the foreseeable future which would, in a simple and effective manner, assure equitable treatment for international aviation throughout the many jurisdictions into which it operates;

(b) A new first resolving clause has been added and consequential changes made in the whereas clauses in order to make it clear beyond doubt that the exemption is not dependent upon the re-exportation of the same fuel, lubricants and other consumable technical supplies as were imported in the tanks of the aircraft;

(c) The Resolution includes consumable technical supplies such as de-icing fluid, hydraulic fluid and cooling fluid, which, in their usage, furnish a precise parallel with fuel and lubricants. Exemption of these supplies in supplies is feasible and appropriate, and has the support of the great majority of replying States;

(d) The Committee decided not to include other so-called "stores" at this juncture since (i) at least partial exemption is provided in Article 24 of the Convention; (ii) further action might more appropriately be pursued through the further development of provisions in Annex 9 dealing with „stores"; and (iii) such stores had not been included in the draft Resolution previously sent out to States. The Committee attaches importance to continued efforts in this direction by the FAL Division;

(e) Exemption from fuel taxation for flights from one customs territory of a State to another customs territory of the same State has been retained in the Resolution, as failure to do so would be a step backward from the London Convention, and its retention is supported by the great majority of replying States;

(f) The Committee submits a separate Recommendation concerning the exemption of fuels, lubricants and other consumable technical supplies consumed between two or more landing points within the same customs territory of a single State. The Committee believes that it involves a considerable amount of facilitation to aircraft operators with, in most cases, little loss of revenue to States, and it would be based on reciprocity in any event. This exemption was made the subject of a separate recommendation of the London Conference. However, the answers received from States to the questions contained in Appendix II of DOC 6943, C/805 indicated less universal acceptance of granting an exemption in such cases and, for this reason, it is submitted in the form of a Recommendation rather than a Resolution;

(g) All aircraft engaged in international operations have been included in the Resolution and the Recommendation. The Committee believed that all types of operations were entitled to equal treatment in this respect, and this appears to have been the basis upon which Article 24 of the Convention was drafted;

(h) The Resolution and Recommendation are addressed to States. The Committee noted that some States being federal States might find greater difficulty in granting the exemptions than others. However, if internal arrangements by a federal government cannot reach complete fruition, the other national government concerned can still determine whether sufficient reciprocity is available to warrant its entry into an agreement.

7. With respect to the proposed Resolution on Taxation of the Income and Flight Equipment of International Air Transport Enterprises (Appendix III of DOC 6943, C/805):

(a) The Committee considered the various methods available for the avoidance of multiple taxation on the income and flight equipment of international air transport enterprises. It appeared to the Committee that some action should be taken now in order to avoid a further extension of multiple taxation and in order to prevent its becoming a firmly established practice. Only two methods appeared available for the purpose, namely, "reciprocal exemption" under which each State taxes its own carriers and reciprocally exempts the carriers of other States flying into its territory, or "allocation on a multilateral basis" under which each State taxes a portion of the earnings or fleet of all carriers flying into its territory in accordance with an agreed formula. The Committee came to the conclusion that a Resolution based on the reciprocal exemption method should be retained because:

(i) It is the widely accepted practice with respect to international water and air transport enterprises and the one favoured by the great majority of replying States. Out of 51 general tax agreements negotiated between States during the period September 1935 — May 1948, 46 referred to air transport enterprises specifically in some manner, and 45 utilized the reciprocal exemption method for the avoidance of multiple taxation of such enterprises. Such agreements are consistent with the recommendation of the Economic and Social Council of the United Nations that governments should actively pursue a policy of negotiating agreements with each other for the avoidance of double taxation;

(ii) It has been adopted in all model bilateral international tax conventions developed to date (Ref. Mexico Model Tax Convention Article V; London Articles V & XV) in which tax experts from large and small, developed and underdeveloped States have participated. This must mean that international water and air transport enterprises were recognized by them as being essentially different from other types of business enterprises which do not generally operate with great mobility on or above the high seas and in a multiplicity of jurisdictions. Although in other respects these conventions differ, they agree on the treatment to be given to shipping and air transport. The governing factor undoubtedly was the advantage of simplicity of application without the necessity for allocating the tax base;

(iii) It is the only method covering the income and movable property (ships or aircraft) of international water and air transport enterprises which is not dependent — if double taxation is to be completely avoided — upon a uniform method of allocation and the consequential necessity for multilateral action;

(iv) Allocation on a multilateral basis insofar as it affects the earnings and fleet of international water and air transport enterprises, remains only a theory which conceivably might be more equitable provided every state in the world would agree to commit itself to the formula devised. This is precluded in the foreseeable future by fundamental differences between jurisdictions, in tax structure, revenue needs and economic conditions, as well as by differences in language, business and accounting practices and fiscal and commercial legislation. The difficulty of achieving a uniform multilateral basis of allocation is also demonstrated by the experience within federal States. Reciprocal exemption makes unnecessary (1) the developing of an acceptable formula which, in the case of international air transport, is extremely difficult; and (2) the making of the complicated computations necessary to apply that formula as required;

(v) A system of reciprocal exemption would not preclude the future development of a multilateral agreement as would, for example, the existence of a number of bilateral agreements based on widely varying principles of allocation;

b) The Committee decided, in line with the above, to add two new whereas clauses to the Resolution in order, in the first place, to draw attention to the Economic and Social Council's recommendation to States that they actively pursue a policy of negotiating bilateral agreements for the avoidance of double taxation, and, in the second place, to emphasize the difficulties of income allocation in the case of water and air transport enterprises operating on or over the high seas and through a multitude of taxing jurisdictions.

8. With respect to the proposed Resolution on Taxes Related to the Sale or Use of International Air Transport (Appendix IV of DOC 6943, C/805), the Committee decided that the Resolution was satisfactory in the form previously drafted. The further development and expansion of international travel and trade in pursuance of the principles of the Convention constitutes

an important objective of the Contracting States of ICAO, particularly in the present need for international cooperation.

Recommendations

9. (a) With respect to customs or other duties on fuel, lubricants and other consumable technical supplies used in international air transport, the Committee recommends that the Council adopt the Resolution set forth in Appendix I hereto, and that the Council adopt the Recommendation set forth in Appendix II hereto;

(b) With respect to multiple taxation of the income and flight equipment of international air transport enterprises, a majority of the Committee recommends that the Council adopt the Resolution set forth in Appendix III hereto;

(i) The Committee noted that the Fiscal Commission of the Economic and Social Council convenes on 7 May 1951 and that ECOSOC itself convenes on 3 July 1951. The imminence of these two meetings caused a division of opinion in the Committee as to whether it should recommend that this Resolution should be finally adopted now, it being recognized that a delay in Council's adoption of the Resolution would result in a delay in the distribution of all of the Resolutions to Contracting States, since the three Resolutions and the Recommendation are closely connected;

(ii) However, it was the opinion of the Committee that, if Council action were to be delayed, this should be only for the purposes of (1) allowing time to the above mentioned United Nations bodies to comment on whether Appendix III remains consistent with any action taken or policies formulated by ECOSOC through July 1951 with respect to the taxation of international air transport or enterprises of a similar character; and (2) taking any such comment into account;

(c) With respect to taxes related to the sale or use of international air transport, the Committee recommends that the Council adopt the Resolution set forth in Appendix IV hereto.

F. H. Copes van Hasselt Chairman,
Air Transport Committee.

APPENDIX I

COUNCIL RESOLUTION ON TAXATION OF FUEL, LUBRICANTS AND OTHER CONSUMABLE TECHNICAL SUPPLIES

WHEREAS the Convention concerning Exemption from Taxation for Liquid Fuel and Lubricants Used in Air Traffic, adopted by the International Conference held in London from 21 February to 1 March 1939, the Final Act of which Conference was signed by the representatives of 38 States, has not yet come into force, many of the signatories shortly thereafter having found themselves at war; and

WHEREAS article 2(1) (a) of that Convention provided in substance that fuel and lubricants contained in the tanks of aircraft on arrival and not subsequently unloaded should be exempt from customs or other duties; and Article 24(a) of the Convention on International Civil Aviation provides for such exemption when the fuel and lubricants contained in the tanks on arrival are retained on board on leaving the territory; and

WHEREAS it is desirable, irrespective of the apparent differece in language between the two Conventions on the above point, to ensure complete implementation of Article 2(1)(a) and (b) of the London Convention, particularly in view of the fact that this would correspond to common practice in many countries in the field of shipping and aviation; and

WHEREAS Article 24(a) of the Convention applies also to spare parts, regular equipment and aircraft stores, and it appears practicable and desirable to extend the principles agreed in the London Convention to other consumable technical supplies,[1]) which, like fuel and lubricants, are filled into receptacles forming part of the aircraft, which are consumed during flight and which are essential for that purpose, so that all the exemptions applicable to fuels and lubricants will apply also to such supplies; [2])

THE COUNCIL RESOLVES THAT

(1) When an aircraft registered in one State arrives in the territory of another State, the fuel, lubricants and other consumable technical supplies contained in the tanks or other receptacles on the aircraft shall be exempt from customs or other duties provided that no quantity may be unloaded except temporarily and under customs control;

(2) When an aircraft registered in one State departs from a customs airport of another State either for another customs territory of that latter State or for the territory of any other State, the fuel, lubricants and other consumable technical supplies taken on board for consumption during the flight should be furnished exempt from all customs and other duties or, alternatively, any such duties levied should be refunded, provided that the aircraft has complied, before its departure from the customs territory concerned, with all customs and other clearance regulations in force in that territory;

(3) Nevertheless, if the aircraft lands again before leaving the customs territory in which it has obtained exemption or refund (except in the case of a forced landing), such exemption may be withdrawn or refund withheld in respect of the fuel, lubricants and other consumable technical supplies consumed prior to such landing;

(4) The provisions of Paras, (1), (2) and (3) above should apply whether the aircraft is engaged in an individual flight or in the operation of an air service and whether or not it is operating for remuneration;

(5) The expression ,,customs or other duties'' includes import, export, excise, sales, consumption and internal duties and taxes of all kinds levied upon the fuel, lubricants and other consumable technical supplies by any taxing authority within a State.

AND THE COUNCIL RECOMMENDS THAT:

(a) On or before 1 January 1952, each Contracting State should notify the Council whether it accepts the preceding Resolution and of the extent to which it is prepared to apply the Reslolution as from 1 April 1952 to aircraft of other Contracting States accepting this Resolution; and

(b) After 1 Januari 1952, any Contracting State which has not made notification persuant to Para. (a) above may notify the Council at any time of its acceptance and of the date on which acceptance will be applicable.

THE ACCEPTANCE UNDER EITHER (a) OR (b) BEING SUBJECT TO THE TERMS AND CONDITIONS HEREINAFTER SPECIFIED:

(i) upon notification made, pursuant to Paras. (a) or (b), the Council will notify all Contracting States of such acceptances, and in the case of Para. (b), of the date of their application;

(ii) the Resolution being based upon reciprocity, no State accepting the Resolution would be obliged to grant to aircraft registered in another State any treatment more favourable than its own aircraft are entitled to receive

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[1]) e.g., de-icing fluid, hydraulic fluid, cooling fluid, etc.

[2]) This paragraph is reproduced in the form in which it was amended by Council.

in the territory of that other State pursuant to its acceptance of the Resolution and any reservation to such acceptance;

(iii) any Contracting State, in notifying its acceptance of the Resolution pursuant to Paras. (a) or (b) above, may declare that this acceptance will nevertheless not apply to any one or more of the territories for the foreign relations of which such State is responsible;

(iv) any Contracting State which is prepared to accept the Resolution but which finds it necessary to make a reservation with regard to the application of any of its provisions may so inform the Council, which will forthwith communicate such reservation to each Contracting State;

(v) acceptance of the Resolution in respect of any territory may be withdrawn at any time by notification to the Council. Such withdrawal should take effect not less than three months after the date of its receipt by the Council. The Council will inform each Contracting State of any such withdrawal and of the effective date thereof.

APPENDIX II

COUNCIL RECOMMENDATION ON FUEL, LUBRICANTS AND OTHER CONSUMABLE TECHNICAL SUPPLIES CONSUMED BETWEEN TWO OR MORE LANDING POINTS WITHIN THE SAME CUSTOMS TERRITORY

WHEREAS the Resolution on Taxation of Fuel, Lubricants and Other Consumable Technical Supplies adopted by the ICAO Council on 13 April 1951, based on the Convention concerning Exemption from Taxation for Liquid Fuels and Lubricants Used in Air Traffic, adopted by the International Conference held in London from 21 February to 1 March 1939, provided that exemption from fuel taxation should be granted for all fuel on board an aircraft engaged in international air navigation both on arrival in the territory of a State and on departure from the final airport of call in the territory of that State, whether or not such airport is located at the border of the territory; and

WHEREAS the above mentioned London Conference in addition recommended that, notwithstanding the provisions of Article 2(2) of the London Convention, fuel and lubricants consumed between two or more landing points within the same customs territory in the operation of aircraft in regular commercial international air services or in international experimental flights should be exempt from customs and other duties; and

WHEREAS it appears practicable and desirable to extend this recommendation of the London Conference to other consumable technical supplies, which, like fuel and lubricants, are filled into receptacles forming part of the aircraft, which are consumed during flight and which are essential for that purpose, so that the exemptions applicable to fuels and lubricants will also apply to these supplies; and

WHEREAS it also appears practicable and desirable to extend such exemptions to all aircraft engaged in international air navigation since this is already the practice of a number of States and appears to be acceptable to a number of additional States;

THE COUNCIL RECOMMENDS THAT

(1) The fuel, lubricants and other consumable technical supplies consumed between two or more landing points within the same customs territory of one State by aircraft of other States engaged in international air navigation should be exempted from customs and other duties on a reciprocal basis;

(2) The expression "customs or other duties" should include import, export, excise, sales, consumption and internal duties and taxes of all

kinds levied upon the fuel, lubricants and other consumable technical supplies by any taxing authority within a State;

(3) Each Contracting State should notify the Council, on 1 January 1952 or as soon thereafter as possible, of the extent to which it is prepared to take action in accordance with the principles of this Recommendation;

(4) All Contracting States be notified of the information communicated to the Council pursuant to this Recommendation.

APPENDIX III

COUNCIL RESOLUTION ON TAXATION OF THE INCOME AND FLIGHT EQUIPMENT OF INTERNATIONAL AIR TRANSPORT ENTERPRISES

WHEREAS the Economic and Social Council of the United Nations has recommended to governments that they actively pursue a policy of negotiating bilateral agreements, wherever appropriate, for the avoidance of double taxation; and

WHEREAS in such bilateral agreements completed to date the principle of reciprocal exemption from taxation of the earnings of international water and air transport enterprises has been widely accepted; and

WHEREAS the application of the same principle to the property taxation of vessels and aircraft operated in international transport has been favoured in the drafting of model international tax conventions; and

WHEREAS double taxation of the above mentioned earnings and property of international air transport enterprises can be effectively prevented by the application of the rule of reciprocal exemption; and

WHEREAS for international air transport enterprises the absence of reciprocal exemption involves either double taxation or considerable difficulties of income allocation in a very large number of taxing jurisdictions; and

WHEREAS it is the understanding of Council that some States would find it more practicable to deal with the problem of relief from double taxation of air transport enterprises as part of the problem of relief from double taxation of trade and industry in general;

THE COUNCIL RESOLVES THAT

(1) Each Contracting State should, to the fullest possible extent, grant reciprocally to air transport enterprises of other Contracting States

(a) exemption from taxation on the income and gross receipts derived in that State from the operation of aircraft in international air transport; and

(b) exemption from property taxes, capital levies, increment of wealth or other similar taxes on aircraft engaged in international air transport;

(2) Each Contracting State should endeavour to give effect to paragraph (1) above, by the bilateral negotiation of agreements relating to double taxation generally, or by such other methods as the inclusion of appropriate provisions in bilateral agreements for the exchange of commercial air transport rights, or by legislation granting such exemption on a reciprocal basis;

(3) Each Contracting State should notify the Council, on 1 January 1952 or as soon thereafter as possible, of the extent to which it is prepared to take action in accordance with the principles of this Resolution;

(4) All Contracting States be advised of the notifications so received.

APPENDIX IV

COUNCIL RESOLUTION ON TAXES RELATED TO THE SALE OR USE OF INTERNATIONAL AIR TRANSPORT

WHEREAS the further development and expansion of international travel and trade in time of peace and in pursuance of the principles of the Convention is accepted as an objective by the Contracting States of ICAO; and

WHEREAS the history of taxes on the sale or use of transport suggests that, in many instances, they were first imposed as exceptional measures in time of war; and

WHEREAS the imposition of such taxes tends to retard further development of international air transport both by materially increasing its cost to the traveller (as in the case of most sales taxes) and by subjecting the traveller to considerable inconvenience (as in the case of most head taxes, entry and departure taxes, stamp taxes, landing and quarantine taxes);

THE COUNCIL RESOLVES THAT

Each Contracting State should eliminate, or reduce to the fullest possible extent, taxes on the sale or use of international transport by air.

REPORT ON THE MEETING OF THE UNITED NATIONS FISCAL COMMISSION, LAKE SUCCESS, MAY 7-17, 1951

by

MITCHELL B. CARROLL

The Fiscal Commission ended its session at Lake Success May 7—17, 1951 with a voluminous report.

However, the rather terse and dry English of the report, supplied by the rapporteur, Mr. W. W. Morton of the Board if Inland Revenue of the United Kingdom, does not adequately reflect the heat and definiteness of some of the views expressed, particularly by the representatives of the U.S.S.R., India, Pakistan and, at times, China and Venezuela. As was stated to me by one of the representatives, there were three lines of conflict:

1. The representatives of the U.S.S.R. and the satellites, Czechoslovakia and Poland versus the Anglo-American group;
2. the representatives of the so-called underdeveloped countries led by representatives of India, Pakistan and Venezuela versus the representatives of the capital-supplying countries; and
3. to a lesser extent the representatives of Western European countries versus representatives of the United States and the countries in the British Commonwealth.

On balance it would seem that the general opposition of the Communist representatives coincided with the obstructive attitudes of the underdeveloped countries with the result that the attitude of the last-mentioned prevailed. This was particularly evident from two resolutions that were adopted in the field of taxation and, therefore, in the field of primary interest to American or European countries engaged in investing or carrying on business abroad.

Tax Treatment of Air Transport Companies [1])

The resolution which gave rise to the most extensive and intense debate was one supported by the American representative, Mr. Edward F. Bartelt, Assistant Secretary of the Treasury, which was intended to support a resolution pending in the Council of the International Civil Aviation Organization in favor of reciprocal exemption of the income of air transport enterprises. This principle has been generally accepted by the countries of the leading air carriers. However, this proposal was sharply opposed by the representatives of India, Pakistan and Venezuela. It is understood that the first two wish to allocate to their territories all of the net profits of the foreign enterprise which correspond to the gross amount collected in their territories for outgoing transportation of passengers or freight, and the third country is said to wish to tax at least one-half of such income.

The resolution finally adopted by the majority of one [2]) opposes, in substance, the adoption of this principle by referring to the resolution of the Commission on International Tax Problems. [3])

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[1]) See also p 297.

[2]) For the text of this resolution see p. 312 *infra*.

[3]) p. 313 *infra*.

General Views on Relief from Double Taxation.

The Commission Resolution on International Tax Problems recommends specifically that "there is normally no need or justification for countries seeking to attract capital and enterprise abroad to offer as an incentive specially favorable tax treatment, as against the treatment accorded to their own national enterprises." It also recommends "that the conclusion of bilateral tax agreements for the relief from double taxation should find a place in the fiscal policy of member governments." Hence, the effect of this resolution is to favor bilateral agreements in which the foreign enterprise will not be given better treatment than that accorded to national enterprises of the countries seeking to attract foreign capital and enterprise.

During the course of the discussion of the latter resolution the observer for the National Association of Manufacturers pointed out that there were many instances where countries had found it necessary or justifiable to make concessions to attract foreign capital and enterprise, but he was informed that while attention had been given to his arguments, the decision had been reached not to modify the Commissions' recommendation. One of the reasons given was that the resolution is intended to cover primarily relations between underdeveloped countries in a more advanced state of development, and it was thought advisable to take this position in order not to discourage underdeveloped countries from entering into bilateral agreements for the avoidance of international double taxation.

In the preamble to the resolution it was stated that the country in which income arises has an undoubted right in principle to tax that income and, therefore, the main burden of relief from double taxation must fall on the country where the income is also taxable as part of the income of a resident or national person or corporation. The preamble also stated that the conclusion of bilateral agreements has the advantage of offering scope for the more effective provision of complete relief than unilateral action, of making possible the resolution of different approaches in the national tax laws of the contracting parties, and also of providing the assured stability of an international treaty to enterprises of either country considering ventures in the other.

With special reference to underdeveloped countries the preamble also stated that such bilateral agreements can be concluded by such countries with little sacrifice of national revenue on the part of the former, and that bilateral agreements on this footing can make their contribution to the general objectives of the United Nations for the encouragement of economic development in underdeveloped countries.

In the part of the report relating to this resolution note was taken of a memorandum submitted by the International Chamber of Commerce favoring unilateral relief from double taxation [1]), such as the relief for crediting foreign taxes in the Internal Revenue Code.

U.S. Treasury Position on Exemption of Foreign Income

Moreover, the American representative, Mr. Edward F. Bartelt, Assistant Secretary of the Treasury, had presented a long statement which was said to be the Treasury reply to the recommendation for outright exemption from income of new investments abroad contained in the report of the International Development Advisory Board (the Rockefeller Report). The principal points in Mr. Bartelt's statement may be briefly summarized as follows:

1. The basic Treasury policy is one of tax neutrality between domestic income and foreign income.
2. To achieve real neutrality foreign income taxes are allowed as a credit or offset against the United States tax.

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1) See *Bulletin* V, No. 2, p. 113.

3. The foregoing tax system tends to remove foreign income taxes as a factor in determining where an investment is to be made.
4. The full implications of the proposal to exempt income derived abroad are not clearly understood.
5. If tax exemption were applied to all foreign investments, the benefits of exemption would accrue to investments made many years ago, as well as to those made in the future. Even with respect to the future, it is likely that some investments would be made without exemption.
6. If the United States granted exemption of foreign income, this might lead to competition in exemptions among capital-seeking countries which would be undesirable. It would be self-defeating for the United States to implement its program for the economic development of foreign countries in such a manner as to retard, if not to undermine, sound and equitable taxation in these areas.
7. The various risk factors in foreign investments cannot be offset by exemption from United States income taxes. Tax concessions are likely to provide little incentive to most investors, if the recovery of their capital is threatened or if flexibility in the use of profits is greatly impaired.
8. Allthough the foregoing comments have been directed to general tax exemption, they are also applicable to selective tax exemption proposals.
9. The Treasury concludes that the device of tax credit for taxes paid to foreign countries, coupled with a program of bilateral tax agreements, is a flexible and effective instrument for removing tax deterrents to the free flow of investments with full regard for the inportance of preserving the equity of the separate tax system and with complete recognition of the desires and rights of all Governments to preserve sovereign tax jurisdiction over their nationals and their enterprises.

Fiscal Commission's Conclusion on Relief Methods

The Commission's report stated with regard to the previously mentioned statements that "it was the view of the Commission that on the choice of the method of relief between exempting income from abroad and giving credit on account of the tax paid in the country in which the income arises, no clear-cut arguments were available pointing firmly one way or the other. It was also recognized that, in addition to bilateral tax agreements, unilateral legislation for the relief of double taxation in a country charging income from abroad could make a substantial contribution to the relief of the burden.

Other Resolutions on Taxation

The other resolutions adopted by the Commission with regard to taxation related primarily to a continuation of studies and publications in the field of international tax agreements and the effects of taxation on foreign trade and investments, and a project to cooperate with the International Law Center of the Harvard Law School in publishing a world tax service.

Budgetary and Financial Questions

A large part of the agenda was devoted to government financial reporting, a public finance information service, and studies of government finance in relation to economic development. The resolutions in this field called upon the Economic and Social Council to give consideration to basic principles of accounting and auditing, improved methods of reporting the extent and kinds of provincial and municipal revenues and expenditures and the publication, from time to time, of brief factual summaries of outstanding fiscal developments in Member countries, including important legislation, major administrative developments and similar efforts.

Political Aspect of Discussions

The Cuban representative was elected chairman, and he handled very adroitly the problems raised. The representatives of France and Czechoslovakia wer elected vice-presidents, and to avoid difficulties they were made co-equal. The U.K. representative, who had served well as rapporteur at the meeting of the Fiscal Commission two years ago, was again elected to that position and he sought to obviate difficulties by resorting to colorless brevity in his statement of what transpired. The other representatives were from Belgium, Canada, China, India, New Zealand, Pakistan, the Union of South Africa, the United States of America and Venezuela.

The specialized agencies represented included the Food and Agricultural Organization of the United Nations, the International Bank for Reconstruction and Development, the International Civil Aviation Organization, the International Monetary Fund and the International Labor Office. The non-governmental organizations represented included the International Confederation of Free Trade Unions, the International Chamber of Commerce, the Inter-American Council of Commerce and Production, the International Fiscal Association (Mr. Felix Dayton), the Institute of Public Finance, the International Union of Local Authorities, the National Association of Manufacturers (Mr. Mitchell B. Carroll) and the International Air Transport Association.

The representative of the underdeveloped countries leading in the opposition to making any concessions to foreign airlines was from India, and he was supported by representatives from Pakistan and Venezuela. This group was represented by the delegate of Pakistan in the working party on international tax problems which formulated the recommendation stating, in substance, that there is no normal need or justification for underdeveloped countries to make tax concessions to attract foreign capital and enterprise. Talks with various representatives of countries which have in the past supplied capital indicated resignation to this attitude on the grounds that otherwise no agreements with underdeveloped countries over relief from double taxation are likely to be possible. Consequently, although most of the European countries that have concluded tax treaties with the United Stated such as, Sweden, the United Kingdom, Denmark, France and the Netherlands, have made concessions to attract foreign capital and enterprise, they recognized that similar concessions are not to be expected of the so-called underdeveloped countries.

RESOLUTIONS OF THE FISCAL COMMISSION

I — Resolution adopted by the Commission.

International Air Transport

The Fiscal Commission,

Considering that the Council of the International Civil Aviation Organization has been considering a resolution on the taxation of the income and flight equipment of international air transport enterprises (as recorded in document E/CN.8/57, Appendix III) [1], and

Having considered the report submitted by Professor Louis Shere, a joint consultant to the ICAO and the United Nations, on taxation of International Air Transport,

Appreciates the courtesy extended to it by the ICAO Council in referring its draft resolution for an expression of its views,

Recognizes the importance of International Air Transport as a means

[1]) See p 307.

for the development of international trade and understanding, and of the part which relief from double taxation can play in its development,

Requests the Secretary-General to forward to the President of the Economic and Social Council and to the Secretary-General of the ICAO copies of Draft Resolution B, II on International Tax Problems, and also the summary records of these meetings.

II — Draft Resolution recommended for adoption by the Economic and Social Council.

A.

Report of the Third Session of the Fiscal Commission

The Economic and Social Council

Takes note of the report of the third session of the Fiscal Commission.

B.

International Tax Problems

I.

The Economic and Social Council

Takes note of the documents prepared by the Secretary-General on the subject of international tax agreements and on the effects of taxation on foreign trade and investment, [1])

Commends the Secretary-General on these documents, and

Requests the Secretary-General to continue this programme of study and publications in this field.

II.

The Economic and Social Council,

Recognizing that, in the relations between under-developed countries and countries in a more advanced state of development,

(i) international double taxation normally operates as one of the impediments to the free flow of trade and investment;

(ii) the country in which income arises has an undoubted right in principle to tax that income;

(iii) therefore the main burden of relief of double taxation must fall on the country where the income is also taxable as part of the income of a resident or national person or corporation;

(iv) the conclusion of bilateral agreements has the advantage of offering scope for the more effective provision of complete relief, of making possible the resolution of different approaches in the national laws of the contracting parties, and also of providing the assured stability of an international treaty to enterprises of either country considering ventures in the other;

(v) such bilateral agreements can be concluded on the basis of the foregoing propositions between an under-developed country and one in a more advanced state of development with little sacrifice of national revenue on the part of the former, and bilateral agreements on this footing can make their contribution to the general objectives of the United Nations for the encouragement of economic development in under-developed countries.

Recommends that, there is normally no need or justification for countries seeking to attract capital and enterprise from abroad to offer as an incentive

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[1]) Documents ST/ECA/Ser.. C/2 and 3 and ST/ECA/1.

specially favourable tax treatment, as against the treatment accorded to their own national enterprises;

Recommends again, that the conclusion of bilateral agreements for the relief of double taxation should find a place in the fiscal policy of Member governments;

Requests the Secretary-General: to continue his study and analysis of the methods for relief from double taxation through bilateral tax agreements and national legislation.

C.

Taxation of foreign nationals, assets and transactions

The Economic and Social Council

Recommends to Governments which have not yet sent the Secretariat the information and documents requested in the Questionnaire on the Taxation of Foreign Nationals, Assets and Transactions (E/CN.8/W.19 (1948)) [1]) that they reply to that request as soon as possible and keep such information and documents up to date, and

Requests the Secretary-General to undertake comparative studies on the basis of the information and documents so received.

D.

National accounting and budgetary practices

The Economic and Social Council,

Takes note of and commends the Secretariat's study, "Budgetary Structure and Classification of Government Accounts". [2])

Takes note of the document "National Accounting and Budgetary Practices" (document E/CN.8/NGO/1/Add.1) submitted by the International Chamber of Commerce,

Urges the development of basic principles for government budgeting, accounting, auditing and reporting, for commendation to the member governments, and,

Urges the development of minimum requirements for a uniform system of reporting government financial information including an overall picture of their operations for international use,

Requests the Secretary-General in consultation with governments, appropriate specialized agencies and non-governmental organizations to:

Give consideration to basic principles for accounting and auditing, such as full disclosure, the managerial use of accounting, establishment of accountability, internal control, and independent audit,

Requests that a progress report of the work done in accordance with the preceding paragraph be submitted by the Secretary-General to the Fiscal Commission at its next session,

Requests the Secretary-General, together with the appropriate specialized agencies, as soon as circumstances permit, to

(a) Further the work undertaken in the study, "Budgetary Structure and Classification of Government Accounts", by developing a refined and broadened fiscal data classification and presentation system;

(b) Review and analyze the studies and publications in this field of governments and of private organizations;

(c) Consider the advisability of devising a questionnaire, complete with item-by-item definitions, for submission to governments by the Secretary-General for the purpose of obtaining information which will make possible

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[1]) See appendix to Bulletin Vol. III, No. 1.

[2]) Document ST/ECA/8.

the accumulation and publication of government fiscal data on a uniform and comparable basis.

Recommends to governments that they co-operate with the work along the lines recommended by the Commission.

E.

Problems of provincial and municipal finance

The Economic and Social Council,

Takes note of the suggestion of the International Union of Local Authorities, a non-governmental organization with consultative status, that problems of municipal finance be included in the programme of work of the United Nations (document E/CN/8/NGO/4);

Recognizes the importance of the co-ordination of central and provincial and local fiscal policies for effective economic stabilization and development;

Recognizes the need for better reporting of the extent and kinds of provincial and municipal revenues and expenditures as a first step toward this co-ordination; and recognizes the need for comparability in this reporting;

Requests the Secretary-General to inquire as to the feasibility of including statistics and other information on provincial and municipal finance in the public finance information service;

Requests the Secretary-General to sonsult with the International Union of Local Authorities and any other appropriate organizations concerning their possible co-operation in devising forms for reporting such data and methods of collecting them.

F.

Reports on fiscal developments

The Economic and Social Council,

Having in mind that public finance in many countries of the world is undergoing rapid and profound change,

Considering that there is at present no single source available to ascertain what the outstanding fiscal developments have been in Member countries,

Considering that the availability of such information would stimulate the adoption of improved practices in taxation, budgeting and accounting,

Requests the Secretary-General to compile and publish from time to time, brief factual summaries of outstanding fiscal developments in Member countries, including important legislation, major administrative developments, and similar matters.

G.

Publication of a World tax service

The Economic and Social Council,

Having in mind that the promotion of trade and investment between countries is of great importance in the economic development of Member countries;

Having in mind that the establishment of a modern tax structure constitutes an important factor in attracting foreign trade and investment and in promoting national development;

Having in mind that the availability of comprehensive and authentic information on the tax systems of Member countries serves these aims;

Having in mind that the United Nations is best suited to obtain the basic information on national tax systems from Member governments; and

Having in mind that Harvard University, through its Law School, main-

tains a center of International Law and conducts specialized research in the field of taxation,

Requests the Secretary-General to consider:

(a) The publication of a world tax service, providing a continuous service of information on national tax laws and administration,

(b) Keeping this service on a current basis by the publication of looseleaf or booklet supplements;

(c) Inviting governments in each of the countries to be covered by the world tax service to cooperate in supplying the legislative documentation and other materials;

(d) The cooperation of Harvard University in this project by providing supplementary research and analysis, based on such materials, and in editing the above information for joint publication;

(e) The possible cooperation of other universities in this undertaking; and further

Requests the Secretary-General to make a report on such project to the 13th session of the Economic and Social Council, if possible.

H.

Fiscal status of international civil servants.

The Economic and Social Council,

Having in mind that the draft recommendations transmitted for their opinions to the Governments signatory to the Brussels Treaty may affect not only any new international organization but also the commitments of the Member Governments in the international organizations which already exist;

Takes note of the draft recommendations on the fiscal status of international civil servants prepared by the Group of Experts meeting at Paris by arrangement of the Permanent Commission of the Brussels Treaty; and

Having in mind, in addition, that the experts have expressed the view that it would be appropriate to bring the question before the Fiscal Commission of the Economic and Social Council of the United Nations at its next session;

Draws the attention of the Secretary-General to the propriety of studying those proposals.

I.

Concentration of Effort and Resources

The Economic and Social Council,

Having in mind its resolution 362 (XII) on *Concentration of Effort and Resources,* and

Cognizant of the desirability of organizing the work of the Fiscal Commission on a systematic basis in general conformity with its recommendation on *Criteria for Priorities,* and

Considering the need for a periodic, detailed and comprehensive statement by the Secretary-General relating to the action undertaken by the Secretariat to carry out the programme of work as recommended by the Fiscal Commission and approved by the Economic and Social Council,

Requests the Secretary-General:

To present to the Fiscal Commission at the beginning of each future session a comprehensive statement. (1) showing the action undertaken by the Secretariat to carry out the programme previously recommended by the Fiscal Commission and approved by the Economic and Social Council, and (2) outlining in detail, project by project, on a priority basis, a proposed Secretariat programme of work in the fiscal field, on an annual basis.

J.

Priorities of the programme of work of the Secretariat

The Economic and Social Council,

Requests the Secretary-General, within the limits of available resources, to undertake the following programme of work and to assign, as far as practicable, to the different projects the priorities which correspond to the order in which they are listed, with due regard to the needs of other organs of the United Nations:

I.

Continuing projects

(a) Technical assistance to Member governments at their request
(b) Fiscal information service
(i) Publication of fiscal data in the UN *Statistical Yearbook* and publication of periodic public finance data jointly established with the International Monetary Fund in the IMF Bulletin, *International Financial Statistics*
(ii) Collection, analytical study and evaluation of tax agreements and unilateral provisions for relief from international double taxation. Continuation of series "International Tax Agreements".
(iii) Public finance surveys and information papers
(iv) World Tax Service
(c) Periodic review of fiscal developments including important legislation and major administrative developments
(d) Taxation of foreign nationals, assets and transactions: collection and comparative studies on national laws and regulations (to be co-ordinated with the World Tax Service).

II.

Ad Hoc projects

Category A: First priority

a. Problems of fiscal administration and management including questions relating to government accounting and auditing
b. Continuation of studies on effects of taxation on foreign trade and investment
c. Fiscal problems of agriculture (on request of, and in co-operation with, the Food and Agriculture Organization of the UN)
d. Continuation of study on taxation of corporate profits and dividens
e. Ad hoc projects at the request of UN organs and specialized agencies

Category B: Second priority

f. Further refinement and broadening of fiscal classification and presentation systems (including review and analysis of studies and publications in the field)
g. Problems of municipal finance
h. Consideration of a more comprehensive public finance questionnaire, complete with item-by-item definitions.

ANNEX

I.

Report of the first working group on International tax problems

It was the aim of the Working Group to provide comments and recommendations which might be acceptable to the Commission and which therefore might find a place in the Commission's Report.

The Working Group held four meetings on 10, 12 and 14 May 1951.

The Working Group, in accordance with its assignment, considered the following items of the Commission's agenda: ,

3. (b) (1) "The effects of taxation on foreign trade and investment"

3. (c) "Taxation of foreign nationals, residents, income, assets and transactions".

3. (d) "Unreasonable or discriminatory taxes affecting the operations of foreign information agencies and news personnel".

3. (e) "Unilateral relief from double taxation".

In its consideration of item 3 (b) (1) of the Commission's agenda "the effects of taxation on foreign trade and investment", the Working Group was asked to consider these questions:

(a) What are proper cases and methods of tax incentives, from the two points of view of government needs for revenue and the needs of investors for tax relief under certain circumstances and for certain periods?

(b) What are the proper methods of solving the problem of international multiple taxation, especially from the point of view of the different interests and financial resources of capital-exporting and importing countries, and the availability of unilateral legislation and bi-lateral agreements?

(c) What are the uses of bi-lateral tax agreements?

The Representative of Poland opposed the intentions and trends of the first two of these questions. In his view the conclusion of bi-lateral agreements was a matter within the exclusive prerogative of each country, the consideration of these problems was outside the sphere of international organizations and the aims of these questions were designed to favour the exaction of superprofits by large corporations to the detriment of the standard of living of the populations of the foreign countries in which these corporations develop their enterprises.

On questions (a), (b) and (c) in paragraph 3 of this report, the examination of which was coupled with item 3 (e) of the Commission's Agenda (unilateral relief from double taxation), discussion centred on the relations between capital-importing and capital-exporting countries. In this case the following propositions were acceptable to the majority of the Working Group. [1])

(i) that is normally no need or justification for countries seeking to attract capital and enterprise from abroad to offer as an incentive specially favourable tax treatment, as against the treatment accorded to their own national enterprises.

(ii) that international double taxation normally operates as one of the impediments to the free flow of trade and investment.

(iii) that the country in which income arises has an undoubted right in principle to tax that income.

(iv) that therefore the main burden of relief of double taxation must fall on the country where the income is also taxable as part of the income of a resident or national person or corporation.

(v) that, on the method of relief, the choice between exempting income from abroad or giving credit on account of the tax paid in the country in which the income arises is not one for which clearcut arguments are available pointing firmly one way or the other.

(vi) that while the relief of double taxation in a country charging income from abroad may be provided by unilateral legislation, which to a substantial extent can relieve the burden, the conclusion of bi-lateral agreements has the advantages of offering scope for the more effective provision of complete relief, of making possible the resolution of different approaches in the national laws of the contracting parties and also of providing the assured stability of an international treaty

[1]) See also resolution B, II on International Tax Problems, p. 313 *supra*.

to enterprises of either country considering ventures in the other.

(vii) that such bilateral agreements can be concluded on the basis of the foregoing proposals between a so-called under-developed country and one in a more advanced state of development, with little sacrifice of national revenue on the part of the former, and that bilateral agreements on this footing can make their contribution to the general objectives of the United Nations for the encouragement of economic development in under-developed countries.

(viii) that therefore the conclusion of bilateral agreements for the relief of double taxation should find a place in the fiscal policy of member governments.

On paragraph 3 (c) of the Commission's agenda, it was the view of certain members of the Working Group that Governments which had not yet replied to the questionnaire should be urged to do so and that the Secretary-General should be asked to make further studies, not necessarily waiting until all replies have been received.

On paragraph 3 (d) of the Commission's agenda the Working Group suggested that the Commission in its report merely acknowledges receipt of the resolution of the Economic and Social Council concerning the taxation of foreign information agencies and news personnel.

II.

Report of the second working group on problems of government financial reporting

The Working Group held one meeting on 14 May 1951.

The Chairman opened the meeting by reviewing the terms of reference and invited comments and questions with respect thereto.

The terms of reference were paragraph 4 of the Agenda. This paragraph reads:

4. Government financial reporting

(a) Problems of comparability

Documentation

"Budgetary structure and classification of government accounts" (February 1951, No. XVI. 3)

(b) National accounting and budgetary practices

Item submitted by the Council of the International Chamber of Commerce (documents E/CN.8/NGO/1 and E/CN.8/NGO/1/Add. 1).

The terms of reference also included consideration of, and recommendation with respect to, the resolution submitted to the Commission by the Representative of the United States on 11 May 1951, relating to item 4 of the agenda.

The following order of business was approved by the Working Group:

(a) General discussion of the problem of Government financial reporting.

(b) "Budgetary structure and classification of government accounts" (February 1951, United Nations No. XVI. 3).

(c) Resolution adopted by the International Chamber of Commerce at its 73rd Session, Paris, 13—14 June 1950 (document E/CN.8/NGO/1) and statement of the ICC Commission on Taxation, 28 February 1951, on "National accounting and budgetary practices" (document E/CN.8/NGO/1/Add. 1).

(d) Resolution offered at the plenary session of the Fiscal Commission by the United States Representative on 11 May 1951.

Before opening the debate the Chairman asked the members of the Working Group whether anyone had any paper or documents which he desired to submit and which could be made a part of the record of the proceedings. In response thereto, the address of the United States Representative before the Fiscal Commission Plenary Session in support of his resolution was submitted (see Appendix A to document E/CN.8/64).

GENERAL DISCUSSION WITH REFERENCE TO THE PROBLEM OF GOVERNMENT FINANCIAL REPORTING

After brief preliminary comments, Mr. Bower (observer for the International Chamber of Commerce) asked whether it was within the competence of this Working Group to discuss the problem of municipal and local financial reporting. He cited a reference in the statement of the United States Representative to the Fiscal Commission on this question (see Appendix A to document E/CN.8/64).

Mr. Bartelt (United States of America) replied that it was not the intention of the United States Government to have the problem of municipal finance discussed by this Working Group nor did he consider that the United States resolution, as drawn up, covered this matter.

Mr. Callebaut (Belgium) stated that the question of budgetary classification presented itself in two aspects; namely, domestic and international. With respect to the domestic aspect of this problem, he cautioned that it would be very difficult for governments to adopt an internationally uniform system of classification of accounts. In his opinion, the publication of government accounts on an international level was the important task. He was in agreement with the proposals to commend the Secretariat's study on budgetary structure and to develop an internationally uniform system of reporting government financial information. He had reservations, however, with respect to the proposal to develop detailed principles on government budgeting, accounting, auditing and reporting for internal use.

The Secretary of the Commission pointed out that the development of appropriate principles of domestic accounting and auditing presents a problem which is frequently raised in requests by under-developed countries for technical assistance. He also indicated however that the need with respect to this matter is not limited to cases of technical assistance.

Mr. Chechetkin (Union of Soviet Socialist Republics) stated that his delegation is opposed in principle to the discussion of the subject covered by item 4 of the agenda, as had been stated at previous meetings of the Fiscal Commission by the representative of the USSR. He therefore wished to express his opposition to the resolution proposed by the representative of the United States. He reserved his right however to speak in the Plenary Session on the Secretariat document submitted to the Committee. The CHAIRMAN of the Working Group took note of his views and wishes.

BUDGETARY STRUCTURE AND CLASSIFICATION OF ACCOUNTS

Mr. Bartelt (United States of America) opened the specific discussion of the Secretariat's study by observing that it is a noteworthy contribution in the field of public finance and in his view, should be adopted by the Fiscal Commission, subject to the following comments:

(a) Further work should be directed toward the development of a suitable classification and presentation system to supersede the fiscal data presentation in the monographic public finance surveys of the United Nations.

(b) Further work should be directed toward the development of a new classification with a view to providing a set of concepts which would be useful in making comparisons of the financial statistics of the various governments.

(c) Reservations should be noted regarding the ultimate position which the Commission should take on the problems relating to budgetary structure and classification.

(d) If practicable and within the available means, it would be desirable for a committee of experts to examine the study and make a report to the Fiscal Commission at the next session.

Mr. Callebaut (Belgium) stated that owing to the lack of a French text

of the Secretariat study and to the fact that he received the study only recently, he was not in a position at this time to make detailed comments on such a technical document.

INTERNATIONAL CHAMBER OF COMMERCE RESOLUTION

Mr. Bartelt (United States of America), Mr. Callebaut (Belgium), Mr. Hicks (International Monetary Fund), Mr. Bower (International Chamber of Commerce) participated in the discussion of the ICC resolution. There was general agreement with the objectives of the ICC resolution. The Working Group felt it inappropriate, however, to pass judgment upon the specific proposals and suggestions made in the resolution in view of various reservations which were expressed, for example, as to the definition of surplus or deficit and as to the treatment of depreciation.

The Working Group stated that the ICC should be encouraged to co-operate in every way to stimulate interest in the improvement of national accounting and budgetary practices in the various countries of the world. Mr. Callebaut (Belgium) suggested that the proposal of the ICC be taken note of, by amending the United States resolution, rather than made the subject of a separate resolution. This proposal was accepted.

DRAFT RESOLUTION INTRODUCED BY THE REPRESENTATIVE OF THE UNITED STATES

The Working Group considered the fourth point on its agenda, i.e., the draft resolution submitted by the United States representative. The draft resolution was discussed paragraph by paragraph and amendments were presented. Mr. Chechetkin (Union of Soviet Socialist Republics) stated at the beginning of the discussion that owing to the lack of facilities for Russian translation he deferred his comments to the plenary session. He did point out however that his Delegation had already expressed its opposition to the resolution.

Mr. Hicks (International Monetary Fund) felt that attention should be drawn to the need for an overall picture of governmental transactions for purposes of international comparison. After some discussion it was decided to incorporate this point into the draft resolution which was amended accordingly.

The proposed use of experts with regard to further work to be undertaken by the Secretariat was then discussed. Mr. Bloch, (Secretariat) pointed out that this raised the problem of available funds and that the Commission would need to consider the question of establishing an order of priorities. He pointed out however that the Secretariat had consulted extensively with experts during the preparation of this particular study and that this practice would be continued in the future. Mr. Weir (New Zealand) was of the opinion that, rather than setting up a separate expert group to study this problem, the Secretariat should itself undertake the work, in consultation with governments, appropriate specialized agencies and non-governmental organizations. After some further discussion it was agreed that reference to the employment of experts be omitted from the resolution which was so amended.

The last amendment discussed dealt with the portion of the resolution which proposed that a questionnaire be devised complete with item by item definitions. It was agreed to modify this by inserting that consideration be given to devising such a questionnaire.

A draft resolution was agreed to by all members of the Working Group except Mr. Chechetkin (Union of Soviet Socialist Republics) (see Appendix B to document E/CN.8/64).

FISCAL COMMISSION

Third session

PRIORITIES OF THE COMMISSION PROGRAMME

Memorandum Prepared by the Secretary-General [1])

I. The attention of the Commission is drawn to the resolution on "Concentration of Efforts and Resources", adopted by the Economic and Social Council at its 12th Session (E/1951). Commissions are especially requested:

„(a) To review during 1951 their 1952 programmes, using the criteria set forth in Council resolution 324 (XI); and

„(b) To indicate, when new projects are recommended, which current projects might be deferred, modified, or eliminated to ensure that the economic and social work of the United Nations will be carried on most effectively."

II. For the Second Session of the Fiscal Commission the Secretary-General prepared a memorandum on the implementation of the recommendations of the Commission at its First Session. The items carrying the highest priority in the reports of the Fiscal Commission on its First and Second Sessions related to technical assistance and the fiscal information service. Those tasks have greatly expanded due to resolution 305 (IV) of the General Assembly, providing for an expanded technical assistance programme. This programme has resulted in considerable increase of Secretariat activities of the type which does not necessarily result in published material, such as various advisory functions; briefing, preparation and reviewing of recommendations; selection of experts; selection, briefing and placing of fellows and scholars. It involves also collaboration with regional commissions of the United Nations and with specialized agencies.

III. In the general approach to his work in the fiscal field, the Secretary-General was guided by the principles underlying the Fiscal Commission's work programme as established in the report on its Second Session (E/1104). Against this background the discussion at the Third Session of the Commission and the resolutions adopted give rise to the following governing principles for the work of the Secretary-General in the field of public finance:

1. Principle of a comprehensive approach to public finance, recognising the inter-dependence of the various components of the fiscal structure - receipts, expenditure and borrowing. Thus taxation, budgeting and public debt management problems are here to be considered as of equal importance.

2. Principle of orientation of the study of fiscal techniques towards their application in the financing economic development, and their use for controlling inflation.

3. Principle of priority of the continuing projects of the Secretariat, namely technical assistance for economic development, the Public Finance Information Service, the International Tax Agreements Series and those ad hoc projects which are directly related to economic development, with top priority accorded those projects which serve the general objectives of technical assistance to member governments.

4. Principle of close co-operation with fiscal authorities of member governments, with specialized agencies, non governmental organizations and Universities and scientific institutions.

IV. Some of the work of the Secretary-General in the fiscal field appears in publications covering a broad range of subjects, as for instance in the Statistical Yearbook and the reports of certain regional commissions. Requests for such work often originate from organs other than the Fiscal Commission. In order to keep the members of the Fiscal Commission and

[1]) Document E/CN.8/61.

others in the fiscal field informed on such contributions to the field of public finance, a limited number of reprints have been distributed. In order to avoid duplications of effort, by-products of investigations for general purposes are being used for the accomplishment of specific objectives laid down by the Fiscal Commission.

V. At its Second Session the Fiscal Commission reviewed the various activities of the Secretary-General in the field of public finance and designated those particular areas which deserve high priority ratings. As will be seen from the documentation submitted to the Fiscal Commission at its present session, which was explained in the Note on the Agenda (E/CN.8/52), the recommendations of the Commission have been as closely adhered to as budgetary limitations permitted.

VI. In accordance with the first principle announced above no priority is implied in the following list [1]) as between the various sectors of the field of public finance, to wit: taxation, budgeting and public debt management. The projects indicated below are classified in two major categories, continuing projects and ad hoc projects, with the understanding that among the ad hoc projects top priority attaches to those relating to economic development and especially to the general purposes of technical assistance.

[1]) For this list, see Resolution J. on Priorities of the programme of work of the Secretariat, p. 317 *supra*.

EVALUATION OF RECENT TRENDS IN INTERNATIONAL TAX AGREEMENTS [1])

The unprecedented spread of the network of bilateral agreements since the end of World War II, has made them a decisive influence in the international tax field. The League of Nations and United Nations collections which have reproduced the text of tax agreements reaching back to 1843 clearly reflect this development. [2]) Up to the first World War, tax agreements were concluded sporadically, serving chiefly to regulate tax aspects of intra-European trade. In the inter-war period they took on increased importance as income taxes spread and tax rates rose. Even so, they were largely centered on the continent of Europe, though limited agreements, mostly concerning profits from international shipping enterprises and foreign commercial agencies, were also concluded by such countries as the United Kingdom and the United States.

Since the end of World War II attention has again been given to the desirability of freeing foreign trade and investment from avoidable encumbrances. The fresh emphasis placed in the United Nations Charter on economic development lends added importance to all measures apt to stimulate the opening of new trade channels to and from under-developed countries and the direction of new investment capital into their economics. [3]) Since international trade and investment operations are likely to be subjected to as many tax liabilities as they cover countries, the problem of multiple international taxation — long the object of extended research and comprehensive model solutions in the League of Nations — assumes practical urgency. At the same time, direct taxes in the less developed countries have begun to expand and to assume real importance. Income taxes were introduced or made more effective, rates became steeper and generally the tax burden on the foreign investor assumed importance at the same time that revenues from such direct taxes increased in proportion to over-all government receipts.

While it is apparent that in a world, beset by currency restrictions, trade regulations and economic and political instability, favourable tax conditions are not likely to constitute a decisive incentive for potential foreign investors, the unrelieved accumulation of several national tax burdens on the same income or transactions may well deter those who might be prepared to brave the non-tax obstacles. Within the United Nations, the capital-exporting

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1) U.N. Document E/CN.8/53, included also in Vol. II of "International Tax Agreements".

2) The league of Nations "Collection of International Agreements and Internal Legal Provisions for the Prevention of Double Taxation and Fiscal Evasion" (six volumes, 1928—1936) contained 159 agreements concluded since 1843. The United Nations series "International Tax Agreements", Vol. I, 1948 reproduced 100 agreements concluded from 1936 to 1948; Vol. II, 1951 contains 80 agreements signed during the last two years.

3) The basic provision incorporated in Article 55 of the Charter was buttressed by the unanimous adoption by the General Assembly of Resolution 304 (IV) of 10 November 1949, endorsing an expanded programme of technical assistance for economic development.

countries have assumed the major burden of financing and promoting the desired programmes of economic development. In the tax field, this implies that between countries at different levels of development, the elimination of multiple taxation will be effected through the renunciation of tax revenue on the part of the more highly developed capital-exporting countries. [1])

Through the combination of these developments the need for eliminating international double taxation increased in the post-war period, along with the readiness of the capital-exporting countries to assume a growing share of the resulting tax sacrifice. The latter had been foreshadowed for some time in unilateral income tax relief measures included in national law for the encouragement of foreign trade and investment. The Netherlands had led the way by allowing a deduction from total income tax liability calculated on the basis of the foreign share of the taxpayer's income; this relief dates back to 1893 in the case of individuals and to 1918 in the case of companies, though in a more limited form. A similar reduction of tax obligations on account of foreign income tax was allowed in Belgium as early as 1906. [2])

The United Kingdom has a similarly extended history of relief for foreign income taxes reaching back to 1916. Prior to the Finance Act of 1950 such relief was granted only on account of taxes paid to British Dominions and Colonies, and was limited to one-half the amount of the corresponding United Kingdom tax. Since the 1950 reform such 50 per cent credit is given for all foreign taxes, while taxes paid to Commonwealth territories are credited up to three-quarters of the United Kingdom tax. Credit up to the full amount of the United Kingdom tax can be granted only by tax agreement, a strong foundation for the current spread of such agreements, especially throughout the Commonwealth.

The United States has provided, ever since 1918, that income taxes paid abroad by its citizens or residents could be credited against corresponding taxes due at home, thereby largely avoiding double taxation by reducing its own tax claims, without impairing the tax revenue of the foreign capital-importing countries. In a number of other countries the problem is solved to some extent by the adoption of the source principle under which income is not taxable at all, if derived from sources outside the country. This is the rule in most Latin American countries; it is also largely followed in France and Switzerland.

Such relief was highly effective; yet it covered only a limited number of countries and — being unilateral — could deal with the problem of double taxation only in a general fashion. The obvious logic of solving the fundamentally reciprocal problem of double taxation through bilateral agreements was strongly put forward by the Economic and Social Council in its Resolution 226 D (IX) of 22 July 1949, sponsored by the Fiscal Commission. The Resolution called on Member Governments to conclude bilateral agreements which were specially suited "for assuring concrete co-ordination among the diverse national tax systems expressed in the complex and detailed tax legislation and regulations of the various countries of the world". This need is sufficiently illustrated by reference to the impossibility of providing by unilateral legislation for the broad variations in legal concepts of many countries (such as "residence", "domicile", "source of income") and in the definitions of taxes which are to be considered as analogous and therefore to be credited against each other.

The realization of the effectiveness of international tax agreements brought

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[1]) See "The Effects of Taxation on Foreign Trade and Investment", Chapter II. (Fiscal Division, Department of Economic Affairs, United Nations Publication No. 1950, XVI.1).

[2]) See Mitchell B. Carroll: „Two Decades of Progress Under the League of Nations", page 8 (League of Nations Publications, No. F/Fiscal/111, 1939).

speedy results which are clearly shown by the contents of the present volume. [1]) Outstanding among them is the spread of the network of agreements concluded by the members of the British Commonwealth and by the United States. Starting at the end of the war to substitute general income tax agreements for the limited shipping and agency conventions previously concluded by them, the United States and United Kingdom during the past two years made significant strides toward world-wide coverage of these broad agreements; general income tax agreements to-day tie the United Kingdom to most Dominions and Dependencies as well as to many countries outside the Commonwealth. Numerous Dominions have in turn signed such agreements with each other, and the Union of South Africa has concluded a number of them with British Dependencies in Africa. Provisions in the agreements of the United Kingdom for their extension, under certain conditions, to its dependent territories anticipate the linking of the co-contracting parties to this extensive network. The United States has systematically undertaken to negotiate tax agreements with members of the Commonwealth and other countries in Europe, Asia and the Western Hemisphere; twenty-one have been signed so far, and seventeen are currently under negotiation.

Agreements covering succession taxes have also moved into the foreground, especially in the case of the United States, Sweden and Switzerland, which, as a rule, initiate negotations simultaneously for both income and succession tax agreements. [2])

Reciprocal assistance between revenue administrations in the assessment and collection of taxes is constantly gaining in favour. Most countries prefer the inclusion of such provisions in their general agreements; some countries, especially within the Commonwealth, in fact limit such assistance to the exchange of information on tax matters covered by the Agreements. There have, however, been separate agreements in this field, especially among the Scandinavian countries.

While the active negotiations of the Anglo-American countries constitute the outstanding characteristic of the post-war period, the European countries have continued to expand their comprehensive network of general and special agreements. A significant tax development of the post-war period were the extraordinary capital levies which were enacted in a number of European countries for the combined purposes of confiscating wartime profits, frequently derived from collaboration with the enemy, combatting run-away inflation and obtaining special funds for reconstruction and compensation of war damages. Since these levies were characterized by their brief but heavy impact on the taxpayer, relief against multiple imposition had to be granted promptly. As a result, unilateral provisions, usually exempting foreign holdings of residents and domestic holdings of non-resident aliens, were incorporated in many laws or added by special decrees. Such provisions served especially with regard to countries which had no similar levies so that there was no room for reciprocal agreements. They were also relied upon in relations with other countries as a temporary measure, until such agreements could be negotiated — either as part of general income tax agreements or as special conventions, eight of which are reproduced in the present volume.

As an aftermath of the war, agreements previously concluded by Germany, Japan and Austria remained of doubtful validity; peace treaties with Italy; Bulgaria, Finland, Hungary and Romania provided that the Allied signato-

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[1]) i.e Vol. II of "International Tax Agreements".

[2]) See, *inter alia,* "Publications of the International Bureau of Fiscal Documentation", No. 4 (The Swiss-American Double Taxation Conventions, Amsterdam, 1951) and No. 5 (The Double Taxation Convention between Sweden and Switzerland, Amsterdam 1951) *(Editors' note).*

ries would notify these countries as to which of their pre-war agreements they wished to continue in force; in addition, a number of these countries signed provisional arrangements to revive their pre-war agreements, Austria, Finland and Italy also concluded a number of new tax agreements. [1])

The creation of new independent nations raised the similar problem of the continued effect of agreements previously concluded on their behalf by the former administering authorities. In some cases, such as that of Israel, a special Convention was concluded to continue in force the earlier agreement between the United Kingdom and Palestine (No. A 36). India and Pakistan signed a comprehensive income tax agreement to regulate the problems arising from Partition (Vol. I No. A 40). Burma (No. A 38), and Ceylon (No. A 47) entered into general income tax agreements with the United Kingdom, and Lebanon and the United Kingdom signed a special agreement providing for reciprocal exemption of aircraft from duties on fuel and lubricants (No. D 12).

Finally, it will be noted that Argentina, which since the war developed important international air and shipping lines of her own, concluded a series of special agreements in this field during the last two years (Nos. E 3—13).

Apart from these few, mostly limited, agreements, the volume reveals that independent under-developed countries continue to remain outside the network of international tax agreements. With the three exceptions just noted (agreements between the United Kingdom and Burma, Ceylon and Israel), none of them has signed a general income estate tax agreement with a developed country. This is true for the bulk of countries in Latin America, the Middle East and Asia, although the United States has initiated negotiations with a number of Latin American Republics (see "World Guide to International Tax Agreements").

The basic reason for this fact must be sought in the economic unbalance between capital-exporting and capital-importing countries which allows less scope to the give-and-take essential to tax agreement negotiations. Moreover, the existence of unilateral tax credit legislation in the major capital-exporting countries has taken much of the sting out of the absence of bilateral agreements for under-developed countries which are anxious to assure foreign investors of freedom from double tax burdens. The importance of this consideration is underlined by the fact that Ceylon, Burma and Israel have signed tax agreements with the United Kingdom in order to gain the benefit of tax credit up to the full amount of the United Kingdom tax, as against the one-half or three-quarters maximum allowed under United Kingdom law in the absence of a tax agreement; Latin American countries, however, which expect investment capital largely from the United States, did not have this incentive. Under-developed countries moveover do not have an important stake in relieving double tax burdens resting on the foreign investments of their own citizens and residents and may even be interested in deterring capital flight and encouraging the investment of the scarce domestic savings in national enterprises.

If these considerations contribute to weaken the incentive of under-developed countries for the conclusion of bilateral tax agreements, some of the basic principles governing the distribution of tax jurisdiction in most agreements have even tended to deter them. Foremost among these is the primacy of the residence criterion, relied on especially in the Anglo-American countries. The countries of Latin America especially have traditionally put forward the source of income as the criterion by which tax authority should attach although the credit system can offer a compromise between the two systems, even favouring the position of the underdeveloped countries, the

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[1]) For details see: "International Tax Agreements", Volume III, ,,World Guide to International Tax Agreements, 1843—1951". (not yet published)

protagonists of the source criterion have urged that tax jurisdiction of the country of source be exclusive. While this would give a capital-importing country no more revenue than could be obtained under the credit system, it would offer a valuable concession to foreign investors by reducing their over-all tax obligation to the usually much lower tax scales of the under-developed countries. This incentive is the chief "selling point" of the taxation-at-source rule. Yet it has been noted that such a system, though generous in its motivation, may have its drawbacks by opening capital-importing countries to demands for tax concessions on the part of the foreign investors who, under the credit system, have no concern with their generally lower taxes. [1])

Thus, in the last analysis, the tax credit method offers powerful protection for the growth of an effective tax system in under-developed countries. Its incorporation in bilateral agreements will serve to add those refinements which are necessary to attune the general credit rule to the individual tax and trade relationships of the co-contracting countries.

There is another aspect of tax agreements which under-developed countries will find of particular benefit: the administrative assistance provisions can be used to enlist the co-operation of the highly trained tax enforcement staffs of the developed countries in the efforts now being undertaken in most under-developed countries to make their income taxes effective as to large international enterprises operating within their borders.

Looking beyond the contents of the present volume and beyond the fifty additional agreements currently under negotiation, it is possible to anticipate a new challenge to the flexibility of the tax agreement tool: as the revenue needs of governments in more and more countries exceed what may politically or administratively be collected through the income tax, and as under-developed countries adopt a vigorous policy of obtaining a readily determined tax quid-pro-quo in exchange for the depletable natural resources taken out by foreign companies, broad new tax measures are in the ascendance. Chief among them are general turnover and production taxes in the developed countries [2]) and export taxes in raw material producing countries. As the burden of these taxes increases, unilateral tax relief, limited to a narrowly defined income tax, may well fail of its purpose. The bilateral tax agreement appears as the most suitable instrument for co-ordinating the tax jurisdiction of the co-contracting countries over these various taxes, especially for crediting taxes against each other in accordance not merely with their formal designations, but with their economic nature. [3])

There is thus broad scope left for the still wider use of bilateral tax agreements as instruments for co-ordinating the inter-action of national tax measures and combining with them in building an integrated system of taxing international trade and investment. Up to now tax agreements have chiefly served the aims of fairness and simplification in international tax relations of developed countries and their dependencies: it is proper to expect of them, in the future, a still broader usefulness in giving effective tax support to the role of private trade and investment in the economic development of under-developed countries.

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[1]) L.L. Ecker-Racz: "Tax Stimulants to Foreign Investments" in: Proceedings of Forty-Second National Conference, National Tax Association, 1949 page 148.

[2]) On this development in Europe, see: "Changes in the Structure of Taxation in Europe" in: Economic Bulletin for Europe, Third Quarter, 1950, page 58.

[3]) The internal crediting of the new Peruvian export tax on minerals against the over-all income tax liability of the exporter illustrates this point.

PUBLICATION SPÉCIALE DE L'INTERNATIONAL FISCAL ASSOCIATION
ASSOCIATION FISCALE INTERNATIONALE I.F.A.

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VI. Sujet du Concours pour le Prix Mitchell B. Carroll 1952.

I. Le 1er Novembre 1951 le *Sécrétariat Général de l'I.F.A.* a été transféré de la Haye à Amsterdam à l'adresse suivante:

International Fiscal Association, „Nationale Handelsbank N.V.", Singel 250, *Amsterdam-C*, Pays-Bas.

II. Le jury du *Prix Mitchell B. Carroll* 1951 a décerné le prix à M. Renzô Pomini, Pavia, ITALIE. Des mentions honorables ont été décernées à Dr. Luis Creel Lujan, Mexico, MEXIQUE et Avv. Victor Uckmar, Gênes, ITALIE.

III. Les membres de l'I.F.A., n'ayant pas participé au Congrès de Zürich et désirant d'obtenir les *Cahiers de Droit Fiscal International*, pourront commander ces Cahiers au Secrétariat Général:

International Fiscal Association, „Nationale Handelsbank N.V.", Singel 250, *Amsterdam-C*, Pays-Bas.

Le prix des Cahiers est HFl. 1,— par volume, ou HFl. 4.— pour les quatre volumes, ou bien l'équivalent dans votre monnaie nationale.

Volume XVII, 1ier sujet:

„Le lieu d'imposition des personnes physiques en matière d'impôts directs".

Volume XVIII, 2ième sujet:

„Interprétation judiciairé des conventions de double impositions et nécessité ou opportunité d'une jurisdiction fiscale internationale"

Volume XIX, 3ième sujet:

„Expériences en matière d'impôts extraordinaires sur la fortune"

Volume XX, sujet d'étude:

„Charges fiscales et prix de production dans les entreprises industrielles"

Le volume XX contiendra également le compte-rendu du Congrès de Zürich. Comme on n'a pas fini d'imprimer le compte-rendu du Congrès de Zürich, l'envoi des Cahiers pourra avoir du retard. On fera tout son possible de les envoyer à bref delai.

IV. *Résolutions du congrès à Zürich.*

RESOLUTIONS PROPOSEES PAR MR. CARROLL.

A. En considérant, d'une part, que l'opinion fut exprimée qu'il n'existe aucune justification pour des pays cherchant d'attirer du capital et d'entreprise en offrant, comme attrait spécial, une imposition plus avantageuse que celle accordée à leurs propres entreprises nationales;
En considérant, d'autre part, que plusieurs gouvernements l'ont jugé nécessaire ou justifié, pour attirer du capital et entreprise étrangers, de faire des concessions dans leurs lois fiscales nationales, ou dans leurs conventions bilatérales;
Le congrès recommande au Conseil de l'I.F.A. de nommer un comité pour étudier la question des concessions à faire nécessairement ou dans une mesure justifieé par un pays aux fins d'attirer du capital et de l'entreprise de pays étrangers — y inclus les problèmes spéciaux des entreprises maritimes et aériennes — et d'en présenter un rapport au prochain congrès de l'Association.

CONVENTION MULTILATERALE EUROPEENNE CONTRE LA DOUBLE IMPOSITION.

B. En vue de toutes les mesures prises pour réaliser l'unification de l'Europe Occidentale et
Considérant l'importance d'enlever les obstacles de taxation pour

arriver à ce but comme ceux qui résultent de l'assujettissement du même revenu ou de la même propriété aux impôts de deux ou plusieurs pays ou à des charges fiscales plus lourdes que celles prélevées sur le revenu ou sur la propriété des nationaux du pays;
Le congrès recommande au Conseil d'Administration de l'I.F.A. de nommer un comité pour étudier les conventions bilaterales fiscales en vigueur entre les pays de l'Europe Occidentale quant à leurs systèmes fiscaux et pour préparer un rapport sur la possibilité et la désirabilité de formuler une convention multilatérale entre ces pays afin d'éviter les impositions multiples, extraterritoriales et discriminatoires.

Projet de resolution pour le premier sujet.

Le Congrès

constatant que l'accroissement des charges fiscales donne aux conflits de double imposition un caractère d'injustice de plus en plus aigue, recommande à toutes autorités compétentes de:

1) multipler inlassablement les conventions tendant à éviter la double imposition afin que toute personne ne soit taxée sur chaque objet qu'en un seul lieu,
2) tenir compte, pour conférer à ces conventions le maximum d'efficacité, de la nécessité de définitions très précises, notamment en ce qui concerne le domicile fiscal (celui-ci n'étant pas nécessairement le domicile civil), et du principe général et international de l'unité de domicile fiscal,
3) éviter de taxer des contribuables résidant à l'étranger sur des biens dont la localisation sur leur territoire n'est pas évidente,
4) éviter de taxer des contribuables au lieu de leur résidence sur les biens dont la localisation à l'étranger est évidente, tels que immeubles et entreprises.
5) éviter en toute occasion des dispositions légales et des décisions administratives et judiciaires qui auront manifestement pour effet de provoquer une double imposition.

Resolution sur le 2eme theme du Congres.

Le Congrès,

Considérant que, depuis 1925, un réseau de plusieurs centaines

de conventions bilatérales a permis de résoudre, dans leur principe, la plupart des problèmes que pose l'existence de doubles impositions;

Considérant qu' à l'heure actuelle les conventions stipulent généralement que toute difficulté pouvant surgir au sujet de l'application ou de l'interprétation de la convention pourra être résolue par les Administrations Fiscales, cependant que les contribuables qui estimeront être victimes d'une double imposition auront la faculté de demander à l'Etat dont ils sont ressortissants, ou dans lequel ils sont imposés de s'entendre avec l'autorité compétente de l'autre pour faire cesser, par des mesures appropriées cette double taxation;

Considérant, d'une part, que les Administrations Fiscales éprouvent le plus souvent de très sérieuses difficultés pour dégager une interprétation commune des textes dont le sens est douteux, ou suppléer aux lacunes qu'elles y constatent, et que, par ailleurs, les stipulations qui paraissent réserver les droits des contribuables lésés, ne conférant à ceux-ci aucun droit précis, ne leur assurent pas une protection efficace;

Considérant, d'autre part, que si, dans certains pays les redevables peuvent saisir utilement les juridictions nationales compétentes pour leur faire préciser, au cas où ils sont en désaccord avec les autorités fiscales de ces Etats, la portée des dispositions de la convention, sans qu'ils puissent d'ailleurs être toujours garantis contre la tendance naturelle de ces tribunaux à interprêter la convention en fonction de leur loi interne ou de leurs concepts nationaux, il est constant que, dans d'autres, au contraire, ils n'ont pas la possibilité d'obtenir des jurisdictions auxquelles ils ont accès une solution positive et rapide des difficultés qu'ils leur soumettent; qu'il en est ainsi notamment au caş où le tribunal saisi se déclare incompétent pour appliquer ou interpréter les stipulations de la convention prêtant à équivoque, et renvoie les intéressés à se pourvoir devant une autorité administrative;

Considérant que pour assurer la sauvegarde des droits de l'individu, et dans l'intérêt du commerce international, il convient d'ores et déjà d'envisager un certain nombre de mesures propres à suppléer aux insuffisances des interprétations administratives et judiciaires;

PAR CES MOTIFS,

Le Congrès émet le voeu que toutes démarches utiles soient entreprises par le Comité Directeur de l'I.F.A., notamment auprès du Comité Fiscal de l'O.N.U. pour rechercher les moyens pratiques d'instituer tous organismes consultatifs ou juridictionnels, ayant pour mission de réaliser, tant à la requête des Hautes Parties Contractantes que des particuliers, une interprétation des conventions fiscales internationales qui assure à celles-ci pour la sauvegarde des droits qu'elles sont appelées à protéger le maximum d'efficacité.

A cet effet, le Congrès recommande la création, sous les auspices des groupements internationaux les plus qualifiés d'un Comité juridique permanent qui aurait pour mission générale de signaler à la Commission Fiscale de l'O.N.U. les réclamations d'où qu'elles émanent, qui lui paraissent fondées et d'en informer les gouvernements intéressés, et d'autre part, l'insertion dans les conventions bilaterales,

a) — le cas échéant, d'une clause prévoyant l'institution de commissions mixtes entre les deux Etats pour régler certains cas de double imposition;

b) — d'une clause compromissoire obligatoire susceptible de permettre aux Etats contractants de faire fixer par arbitre en cas de désaccord, le sens des dispositions litigieuses;

Qu'enfin et surtout, il apparait au Congrès comme indispensable d'envisager l'institution d'une juridiction supranationale, comportant en principe des tribunaux bilatéraux dont les décisions pourraient être déférées à une Cour Suprême, qui serait valablement saisie à la requête de tout intéressé, après épuisement des recours qu'autorise la législation interne, les Etats contractants devant d'ailleurs prendre toutes mesures utiles pour que la saisine de la juridiction supra nationale ne soit pas trop retardée par la lenteur des procédures devant les tribunaux nationaux.

V. *Les sujets à traiter au sixième Congrès de Droit Fiscal International* qui aura lieu pendant trois jours entre le 1 et 10 septembre 1952 à Bruxelles, Belgique:

1. „Les problèmes de double imposition résultant de la taxation du revenu à la source"

2. „Le régime fiscal comparé des provisions et des amortissements"
3. Sujet d'étude:

„Comparaison de l'assiette des systèmes fiscaux et parafiscaux au regard de leurs effets sur les coûts de production"

VI. *Le sujet du Concours pour le Prix Mitchell B. Carroll* 1952:

„Le régime fiscal des sociétés holding dans le pays de l'auteur".

I

LA LUTTE CONTRE LA FRAUDE FISCALE

4e étude [1])

LES MOYENS DE DECOUVRIR LA FRAUDE

par le

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B — LES DIFFERENTES PREROGATIVES DU FISC

L'étude de ces différents moyens de contrôle est assez délicate en raison du caractère bien souvent mixte de ces prérogatives du fisc: celles-ci ont, sans doute, un caractère dominant, juridique, comptable, technique, matériel, etc.; mais elles sont maintes fois déformées par l'usage au profit du Trésor.

Au surplus, ces prérogatives doivent être examinées dans leurs caractères généraux, comme si elles s'appliquaient uniformément sinon à tous les impôts d'un pays, tout au moins à toutes les contributions de même caractère; en fait, la plupart des prérogatives fiscales ont été créées successivement, généralement sans programme précis et ont été étendues, le plus souvent, au hasard quant aux contributions dont elles permettent de découvrir la fraude, quant aux agents et aux Régies qui peuvent les utiliser, quant aux conditions de leur emploi, etc.

Il est évident que l'idéal à atteindre serait l'*unification* de ces prérogatives dans *chaque* législation, de manière à éviter au fisc les décisions judiciaires *discordantes*, refusant l'usage de tel moyen de lutte pour telle contribution, l'accordent pour telle autre, etc.

C'est sous le bénéfice de ces considérations générales que l'examen des techniques de détection de la fraude vont être passées en revue.

§ 1. *Le recours à la preuve littérale.*

La preuve littérale résulte d'un écrit dressé pour constater des actes juridiques ou de simples faits matériels d'où découlent des droits et des obligations.

Les écrits destinés à servir de preuve sont généralement ou des actes publics ou des actes s.s.p.: les *actes publics* sont ceux qui émanent d'une autorité ou d'un officier public ayant qualité pour les dresser: actes administratifs émanant des autorités compétentes — actes judiciaires dressés au cours d'une instance ou d'une instruction — actes extrajudiciaires dressés par un officier public en dehors d'un procès — actes authentiques et spécialement actes notariés.

Les actes sous seing privé sont ceux qui sont dressés par les parties sous leur seule signature, sans l'intervention d'un officier public.

Tandis que les actes publics prouvent à la fois, d'une part, leur authenticité, c'est-à-dire qu'ils émanent de l'officier public dont ils portent la signature et,

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[1]) Suite du numéro précédent.

d'autre part, l'exactitude de leur contenu, les actes s.s.p. ne prouvent pas, par eux-mêmes, qu'ils émanent de la personne dont ils portent la signature, ils peuvent être déniés par la partie à qui on les oppose, si l'on prétend qu'ils émanent d'elle.

Il n'est pas douteux que le fisc peut invoquer ces principes généraux et utiliser la preuve qui lui est fournie par les écrits émanant des redevables, mais dans quelle mesure?

Les énonciations qui ont un rapport direct avec la disposition des actes feront pleine foi pour le fisc, de ce qu'elles contiennent; c'est le cas notamment pour les écrits passés entre les redevables et qui forment titre d'une convention taxable; quant aux énonciations qui sont étrangères à la disposition des actes, elles ne peuvent valoir que comme présomptions, tels sont les écrits qui relatent une convention antérieure, sans en former titre.

La preuve littérale sera surtout utilisée pour le contrôle des impôts sur les opérations juridiques (droits d'enregistrement, droits de timbre, droits de mutations entre vifs ou par décès, etc.); mais elle sera aussi d'un certain secours pour détecter une évasion en matière d'impôts directs.

Les applicatons de la preuve littérale seront aussi nombreuses: les actes de vente, de donation, d'échange ou de partage, les inventaires, états liquidatifs, les contrats de louage et de fermage, les actes d'association et de société constitueront les titres les plus révélateurs de fraude.

Mais ils ne seront pas les seuls: on peut citer: les procès-verbaux des assemblées générales, des conseils d'administration, les décisions judiciaires, les sentences arbitrales, les obligations et les reconnaissances de dettes, les transactions, les testaments, les marchés adminisratifs, les mandats de paiement, etc.

Il s'agit là d'actes authentiques ou sous signatures privées, que les contribuables n'ont pas cherché à cacher ou n'ont pas établi pour frauder.

Mais il existe d'autres actes tenus secrets et spécialement rédigés en vue de dissimuler au Trésor certaines conventions ou certains prix: ce sont les contre-lettres.

Certaines législations fiscales se montrent plus ou moins strictes pour l'utilisation de la preuve littérale: il en est qui estiment que le fisc ne peut être dispensé de toute autre preuve que lorsque les actes ont été portés à sa connaissance d'une manière régulière; d'autres acceptent que tout écrit permet au fisc de dénombrer la dissimulation ou la fraude.

§ 2. *Le droit de communication chez les contribuables.*

Le droit de communication est un recours spécial à la preuve littérale surtout à l'égard des entreprises; il est une faculté qui permet aux agents des Régies fiscales de se faire représenter par les assujettis, — personnes physiques ou personnes morales — qui en sont détenteurs ou dépositaires, des pièces, des registres et des documents comptables.

a) L'objectif du droit de communication est double: permettre deux catégories de vérifications: les unes portant sur *l'exactitude* matérielle des *chiffres*, les autres s'appliquant au bien fondé de *l'imputation* des dits chiffres aux provisions, aux réserves, aux amortissements, aux frais généraux, etc.

Le droit de communication comporte, en fait, trois facultés: le droit de lire, le droit de prendre des copies ou extraits, le droit de demander des explications orales.

Le droit de lire est le droit de parcourir les livres ou documents et suppose, par suite, une remise préalable du document avec la possibilité, pour le fisc, de le consulter, de l'interpréter, sous la seule charge de ne pas se l'approprier et de ne pas le détourner, même momentanément.

Le droit de prendre des copies ou des extraits est la conséquence du droit de lire, mais il n'autorise pas toujours l'agent du fisc à exiger la copie des assujettis.

Le droit de communication appelle enfin *le droit de demander aux contribuables des renseignements oraux* et aussi l'obligation corrélative d'entendre les assujettis lorsqu'ils demandent à fournir des explications, notamment dans le cas où les livres et documents comptables sont insuffisants et méritent d'être complétés.

Par contre, le droit de communication ne comporte, en général, ni la faculté de déplacer les pièces communiquées, ni le droit de remontrance aux assujettis; mas il ne saurait mettre obstacle à la saisie, par le fisc, de certains documents en contravention aux lois sur le timbre.

b) En général, le droit de communication en vigueur ne donne pas aux agents du fisc la possibilité d'effectuer eux-mêmes les recherches; ils peuvent tout au moins désigner les documents dont ils réclament communication et en exiger la production de façon qu'ils puissent en prendre connaissance.

Mais rien ne s'oppose théoriquement à ce que le législateur accorde à priori aux agents du fisc le droit de faire eux-mêmes les recherches dans les documents comptables.

Le droit de communication autorise maintes fois les préposés du fisc à inscrire un visa sur les documents communiqués, ce système étant aussi avantageux pour le Trésor que pour les assujettis, puisqu'il précise les documents déjà examinés.

Le droit de communication ne peut, en principe, être exigé que de ceux qui sont légalement assujettis, c'est-à-dire aux contribuables ou à leurs représentants légaux: directeurs, gérants de sociétés, à l'exclusion de salariés quelconques (comptables en particulier).

La réquisition ne peut porter que sur des domuments dont *l'existence* est certaine; s'il y a contestation sur cette existence, le fisc doit pouvoir en faire la preuve par les modes de preuve compatibles avec la loi fiscale, notamment par écrit ou par présomption.

c) Le *refus* de communication peut être exprès ou implicite: il y a refus exprès lorsque l'assujetti déclare nettement à l'agent fiscal qu'il ne veut pas lui représenter les documents demandés; il est implicite lorsqu'il se traduit, chez les contribuables, par des agissements, des attitudes, des allégations, de nature à rendre pratiquement impossible l'exercice de la faculté de représentation des documents; il en est ainsi de l'invocation du secret professionnel.

En cas de refus de communication, l'agent du fisc requiert généralement l'assistance d'un officier municipal et dresse procès-verbal en sa présence, lequel procès-verbal peut faire foi, suivant le cas, jusqu'à inscription de faux ou seulement jusqu'à preuve contraire.

d) Pour faciliter l'exercice du droit de communication, le législateur fixe le plus souvent le délai pendant lequel les livres, pièces, documents, etc., de nature à permettre la vérification, doivent être obligatoirement conservés à la disposition du fisc (2, 3, 4 ans par exemple). Toutefois, les livres, pièces ou documents soumis, pour des raisons civiles, administratives, etc., à un délai de conservation plus étendu, continuent à être assujettis à la communication.

Le droit de communication ne peut être exercé, le plus souvent, que par des agents du fisc d'un cadre principal ou supérieur, assermentés et commissionnés et dans les limites de leur circonscription territoriale.

Les agents qui sont tenus au secret professionnel peuvent se faire seconder par des auxiliaires, mais la présence de ceux-ci ne peut être imposée aux assujettis qui ont le droit de ne donner communication qu'aux agents possédant un certain grade.

Aucune limite n'est, en général, prévue quant au nombre des agents qui peuvent demander une communication.

e) Le droit de communication s'exerce, en principe, dans le lieu-même où sont déposés les documents à représenter, c'est-à-dire au siège social des

enterprises, dans leurs succursales, dans leurs agences, dans les études des officiers ministériels.

La communication ne peut, le plus souvent, être requise que les jours ouvrables, c'est-a-dire à l'exclusion des jours fériés, dimanches et fêtes légales; il est souhaitable d'ailleurs que les vérifications coïncident avec les heures habituelles d'ouverture des bureaux et succursales des assujettis, avec les heures déterminées par les règlements ou les usages locaux, etc.

La *durée* des séances des agents du fisc est, en principe, limitée à trois, quatre ou cinq heures par jour; il est permis d'ailleurs de faire plusieurs séances dans la même journée, si elles n'excèdent pas au total le maximum de durée.

Le nombre de fois qu'un même document peut être communiqué n'est pas, en général, limité par la loi, mais les agents vérificateurs doivent s'efforcer de réitérer la représentation.

f) De même, il est généralement admis que les agents du fisc n'ont à s'expliquer ni sur le but de leur demande de communication, ni sur l'utilisation des renseignements qu'ils recherchent vis-à-vis de tel impôt ou de tel contribuable autre que le redevable soumis au droit de communication; par suite, on ne peut envisager pour l'assujetti la possibilité de discuter le principe du droit de communication et l'intérêt qu'il peut avoir pour le Trésor ou d'invoquer ensuite le détournement de pouvoir, même en en apportant la preuve.

g) Chez quels contribuables le droit de communication est-il possible? La réponse à faire à cette question doit-elle être uniquement fondée sur la nature des assujettis ou, en outre, sur l'importance de la matière taxable (bénéfices, ventes, etc.)?

Ce sont, en principe, d'abord les *officiers ministériels* (notaires, greffiers, huissiers, commissaires-priseurs, avoués, courtiers, agents de change).

Ce sont ensuite les *sociétés* de toutes natures: anonymes, à responsabilité limitée, en commandite, en nom collectif, etc., naturalisées ou étrangères (à l'égard des succursales et agences situées sur le territoire). La question peut se poser de savoir si le droit peut aussi s'exercer dans les *associations* civiles et religieuses, dans les *coopératives* de production, de crédit, de consommation.

Puis sont le plus souvent assujettis au droit de communication les *industriels* et les *commerçants* tenant normalement une comptabilité, en vertu des prescriptions du Code de Commerce; ils sont subsidiairement obligés de présenter ces livres obligatoires à la curiosité du fisc.

Pratiquement la question est moins simple: il est, d'une part, des boutiquiers, des artisans, des façonniers, qui ne se conforment pas aux exigences du droit commercial; il existe, d'autre part, des assujettis dont la capacité fiscale peut sembler très modeste. Y aura-t-il lieu de les soumettre au droit de communication, soit parce que leurs livres sont quasi inexistants, soit parce que leurs bénéfices ou leurs chiffres d'affaires sont minimes? Certains législateurs répondent par la négative, sous prétexte que les dits redevables sont généralement cotisés d'après un forfait ou un abonnement, et qu'ils représentent une multitude de contribuables dont le contrôle s'avérerait impossible ou tout au moins très intermittent et, en tout cas, peu efficient? Il est donc fixé un certain „plafond" de bénéfices ou de chiffre d'affaires au dessous duquel la vérification de la comptabilité est impossible aux agents du fisc.

Cette manière de voir — assez „électorale" puisqu'elle permet de faire échapper à la curiosité fiscale la majorité des commerçants et des industriels — est en fait désastreuse pour le Trésor, indéfendable sur le terrain de la justice fiscale, puisqu'elle „catégorise" les redevables, et très critiquable sur le terrain de la technique.

C'est, en effet, chez les boutiquiers, détaillants et chez les industriels

modestes que la fraude est la plus aisée; au surplus, les assujettis sont maintes fois obligés par la législation fiscale de tenir au moins un livre spécial de leurs recettes et de leurs dépenses, de fournir au fisc un relevé de leur chiffre d'affaires, un relevé des salaires payés, le chiffre de leur loyer personnel et professionnel.

Ces documents appellent donc une vérification et peuvent entraîner un redressement du bénéfice ou du chiffre d'affaires forfaitaire admis par le fisc.

Le droit de communication peut-il être exercé chez les *professions libérales:* médecins, chirurgiens, dentistes, avocats, ingénieurs-conseils, etc.?

Théoriquement, l'affirmative n'est pas douteuse: s'il s'agit, sans doute, d'assujettis que la législation commerciale soumet rarement à une comptabilité commerciale, qui échappent, par suite, à la faillite et à la liquidation judiciaire, ils n'en constituent pas moins une catégorie sociale et fiscale où la fraude est particulièrement facile, puisque les sommes encaissées à titre d'honoraires sont fixées généralement moins en fonction de la loi de l'offre et de la demande que d'après la valeur professionnelle et la notoriété des ,,donneurs de services'' et d'après la capacité financière des clients (maladies, plaidoiries, etc.).

Pratiquement les Parlementaires hésitent à accepter cette solution rationnelle, même quand ils obligent ces assujettis à tenir un livre de recettes et de dépenses; ils se resignent à une taxation forfaitaire pour des assujettis qui invoquent habilement le secret professionnel.

Les *cultivateurs* peuvent-ils être soumis au droit de communication? La plupart des pays répondent par la négative, sauf s'il s'agit de gros agriculteurs ou de cultivateurs spécialisés dans la viticulture, l'arboriculture, la culture maraîchère, etc. La raison invoquée est la suivante: il ne peut y avoir de documents comptables à la ferme; les paysans d'abord ne sont pas obligés d'avoir de livres comptables, puisqu'ils ne sont pas des commerçants, ils sont, au surplus, maintes fois incapables d'en tenir par suite de leur instruction insuffisante et de leur inaptitude au travail de bureau; enfin la comptabilité est quasi impossible dans les exploitations rurales où une infime partie des récoltes est commercialisée, où la plupart des récoltes sont consommées sur place pour la nourriture de l'exploitant et de sa famille, pour les semences, pour les fumures, pour l'alimentation du bétail.

Il y a, à l'heure actuelle, dans cette argumentation une grande part de vérité, mais il semble que dans l'avenir, elle perdrait de sa force si l'on pouvait comme il a été proposé en France, instituer des centres cantonaux ou régionaux de comptabilité agricole, faire établir, par ces organismes, une comptabilité élémentaire rédigée selon un plan comptable agricole. On peut cependant se demander si des comptes ainsi standardisés et rédigés à distance, d'après les renseignements fournis par les paysans, mériteraient de retenir la curiosité du fisc et donner lieu à communication.

Par contre, il n'est pas douteux que les grandes exploitations céréalières, betteravières, horticoles, florales, viticoles, etc., qui commercialisent tous leurs produits et acquièrent la plupart de leurs engrais, devraient, au contraire, être assujetties à une comptabilité soumise au droit de communication.

A fortiori, la solution devrait être la même pour les exploitations rurales mixtes, réunissant l'agriculture et l'industrie (sucrerie, râperie, beurrerie, laiterie, etc.), l'élément industriel prédominant nettement justifie la tenue d'une comptabilité pour connaître, à tout moment, la situation exacte de l'exploitation et déterminer assez exactement les prix de revient.

La liste des assujettis au droit de communication ne serait pas complète s'il n'était fait état d'une catégorie particulière *d'intermédiaires* de toute nature, que le fisc doit surveiller non seulement pour contrôler leur situation personnelle de redevables, mais aussi pour déceler celle de leurs clients: tels

sont les agents immobiliers ou „marchands de biens", les marchands de fonds de commerce et de clientèles, les lotisseurs, les agents d'affaires, les experts-comptables et comptables agrées, les experts-immobiliers ou fiscaux, les rédacteurs d'actes, les exploitants de magasins généraux, les géomètres-experts, les compagnies d'assurances, les entrepreneurs de messagerie, les entreprises de transports terrestres, ferroviaires, fluviaux, aériens et maritimes, les entreprises de groupage, les bailleurs de coffres-forts, les banques, les loueurs en meublé, les transitaires d'importation la douane, les intermédiaires pour opérations de bourse, etc. La plupart des législations fiscales ont imposé ce droit de communication à ces intermédiaires, sans qu'elles aient recherché au préalable, si les dits assujettis avaient ou non la qualité de commerçants au regard de la loi commerciale.

Convient-il d'étendre plus encore le droit de communication? Certains peuvent soutenir que celui-ci serait justifié chez les *propriétaires d'immeubles urbains et ruraux*, dès lors qu'ils font état de frais de gestion, d'entretien, de réparations, c'est-à-dire qu'ils réclament la déduction sur leurs loyers et fermages de dépenses de toute nature.

Pratiquement la question a peu d'intérêt, puisque dans de nombreux pays, les propriétaires sont imposés d'aprés un revenu forfaitaire ou cadastral, ou tout au moins obtiennent des déductions d'après des abattements eux-mêmes forfaitaires.

Enfin, il est indiqué que le droit de communication n'a aucune raison d'être à l'égard les *salariés et fonctionnaires*, puisque ceux-ci sont cotisés d'après les déclarations des employeurs et qu'ils ne déduisent, comme dépenses professionnelles, que des sommes fixées forfaitairement le plus souvent et sans justifications (5, 10, 20, 30 %, etc.).

h) Quels sont les documents sujets à communication?

La liste en est longue pratiquement, mais sur le plan législatif, deux solutions sont possibles: tantôt la liste est purement énonciative, tantôt elle est, au contraire, limitative et, par suite, comporte implicitement des exclusions.

Sont toujours retenus: les titres et écrits commerciaux de nature à établir la preuve d'un droit: marchés, pouvoirs, traites, etc.

—la correspondance commerciale, qui constitue en fait soit un document de comptabilité, soit une pièce juridique (reçu, décharge, quittance, reconnaissance, etc.), soit une pièce justificative de la comptabilité;

— les registres sociaux des actions et obligations, des transferts et conversions, les documents relatifs aux lots et primes de remboursement, les procès-verbaux des assemblées générales, des conseils d'administration, des comités de direction, etc.

—les documents comptables à proprement parler, qu'ils soient obligatoires ou facultatifs, qu'ils se réfèrent aux amortissements, aux provisions, aux frais généraux, aux charges financières, etc.,

— les documents même de caractère confidentiel ou d'ordre intérieur, dès lors qu'ils ont rapport avec la comptabilité ou avec la profession imposable (plans, listes de clients ou d'abonnés, recueils de référence, affaires en cours, renseignements confidentiels sur le crédit des clients;

— les documents techniques, livres, registres, pièces, traites ou correspondance ayant trait à l'organisation technique, aux marques de fabrique, brevets, modèles et dessins, secrets de fabrication.

Certaines législations peuvent se montrer, par contre, plus ou moins libérales et faire échapper au droit de communication les documents appartenant à des tiers, les papiers personnels du redevable; c'est là une attitude qui permettra à la fraude d'échapper à la détection du fisc.

i) En toute hypothèse, le droit de communication peut s'exercer aussi bien pour déceler la fraude commise par le redevable vérifié que celle qui aura pu être faite par d'autres assujettis.

§ 2 bis. *Le droit de communication dans les services publics.*

a) Le droit de communication du fisc peut et doit s'exercer aussi, pour être opportun et „rentable", dans les services publics de toute nature: ceux-ci détiennent souvent des renseignements ou des documents intéressants sur la situation exacte des assujettis; il assure la collaboration étroite de toutes les branches de l'Administration en vue d'amener tous les citoyens à prendre leur part réelle des charges publiques; il est l'expression d'une conception publique moderne d'après laquelle l'Etat ne peut s'opposer à lui-même le secret professionnel, dès lors que les intérêts du Trèsor sont en cause; il est, en d'autres termes, la condamnation de la vieille thème juridique que l'Etat-puissance publique, ne doit pas aider l'Etat-fisc, parce qu'il s'agirait de deux entités politiques aux différentes attributions opposées.

Le droit de communication, qui porte sur des „documents de service", doit être possible pour les agents du fisc dans les différents ministères, dans les préfectures, les sous-préfectures, les mairies, dans les établissements publics, etc.

La pratique peut révéler la nécessité de restreindre ce droit; mais elle appelle, en général, son application sans limite dans toutes les Régies fiscales et douanières, dans les Trésoreries générales, les perceptions, etc., dans les hospices, bureaux de bienfaisance, chambres de commune, caisses d'épargne, dans les dépôts de registres d'état-civil, dans les organismes et caisses de sécurité sociale, etc.

b) Des exceptions peuvent être admises — pour l'Administration des Postes et Télégraphes s'il s'agit d'objets de correspondance et de télégrammes; pour l'Administration de la Guerre, de l'Aviation et de la Marine de guerre, si l'on redoute les indiscrétions sur les mesures de défense nationale, etc.

En ce qui concerne les services postaux, les mesures suivantes sont généralement prises: les agents du fisc doivent indiquer, au préalable, les documents de service qui leur sont nécessaires: registres, carnets, bordereaux, formules, états, comptes de chèques, virements, etc.; la consultation doit avoir lieu de telle manière qu'il n'en résulte aucune gêne pour l'exécution du service; le droit de communication s'applique également aux comptes de chèques postaux, aux comptes dans les caisses postales d'épargne, etc. En toute hypothèse, les objets de correspondance examinés ne peuvent être communiqués; il en est de même des télégrammes en originaux ou en copies, ainsi que des rouleaux contenant la transmission de la correspondance.

c) Des objections particulières sont aussi susceptibles d'être formulées en ce qui concerne le droit de communication dans les *services de police*: ceux-ci peuvent „subir" les visites des agents du fisc qui prennent connaissance des dossiers criminels ou correctionnels; ils peuvent aussi être autorisés à „alerter" les services fiscaux sur certaines infractions fiscales qu'ils ont pu découvrir occasionnellement. Peut-on aller plus loin? Les agents du fisc doivent-ils avoir la possibilité de demander le concours de la police pour déceler certaines fraudes, pour recevoir des témoignages verbaux, pour utiliser certaines dénonciations? La tentation est certes grande pour les Administrations fiscales de pouvoir profiter de cette prérogative, les individus faisant plus aisément des „confidences" aux services de police qu'aux représentants de Régies financières; mais la solution doit être tirée du principe suivant: le fisc ne peut, s'il ne dispose ni de la preuve testimoniale, ni de l'enquête, ni de la délation de serment, satisfaire indirectement sa curiosité par le truchement de la police; il y a alors, indiscutablement, détournement de pouvoir.

d) Le droit de communication est-il possible également et acceptable dans les services *de la justice?* Certaines législations considèrent cette prérogative comme normale et comportant le libre exercice de recherches dans les greffes, archives, etc.

D'autres, plus discrètes, règlementent minutieusement la communication exceptionnelle des dossiers, sous prétexte que celle-ci constitue une dérogation à l'indépendance du pouvoir judiciaire vis-à-vis du pouvoir administratif

Elles distinguent alors deux sortes de communication: l'une *facultative* et spontanée, l'autre *obligatoire*; dans le premier cas, c'est le Ministère public qui prend l'initiative, sans que le fisc le réclame, de lui fournir communication des dossiers, qu'il s'agisse d'une instance devant les juridictions civiles ou devant les juridictions criminelles.

Dans le second cas, ce sont les magistrats sans distinction qui ont l'obligation de donner connaissance, aux agents du fisc, de toute indication qu'ils auront pu recueillir et qui sera de nature à faire présumer une fraude fiscale commise ou une manoeuvre quelconque ayant eu pour objet ou résultat de frauder ou d'éluder un impôt; cette obligation incombe à l'autorité judiciaire dans toute instance civile ou commerciale ou dans toute information criminelle ou correctionnelle même terminée par un non-lieu.

Le fisc dispose alors d'un délai de 10, 15, 20 jours par exemple, après qu'a été rendue la décision judiciaire pour examiner au greffe les pièces du procès.

§ 3. *Le recours aux présomptions.*

En droit privé, on entend par présomption un mode de preuve qui attache a certains actes ou faits connus des conséquences ou inductions déterminées par la loi ou par le juge.

a) Généralement, il existe deux sortes de présomptions: les présomptions légales qui sont considérées comme des preuves par la loi elle-même; — les présomptions de l'homme ou présomptions de fait, qui sont laissées à l'appréciation du juge.

Les *présomptions légales* sont attachées par une loi spéciale à certains actes ou certains faits; elles découlent d'une disposition expresse et ne peuvent être étendues au delà des termes précis dans lesquels la loi les institue; autrement dit, dès lors qu'il reconnaît l'existence des faits ou des actes auxquels la loi attache une présomption de droit, le juge ne peut contredire la conséquence que la loi a décidé de tirer elle même, sous prétexte qu'en raison des circonstances particulières, la raison et l'équité se trouvent heurtées; mais inversement, le juge ne peut, sous prétexte d'interprétation, créer des présomptions légales par voie de déduction ou d'analogie.

Il y a des présomptions légales de divers ordres: *des présomptions de nullité*, quand la loi déclare un acte nul comme présumé fait en fraude de ses dispositions d'après sa seule qualité — *des présomptions de propriété ou de possession*, si la loi déclare la propriété ou la possession résulter de certaines circonstances déterminées — *des présomptions de paiement ou de libération*, lorsqu'un texte légal décide l'extinction d'une dette résulter de certains faits — *des présomptions de libéralité* quand un texte considère une aliénation à titre onéreux comme une donation.

A un autre point de vue, la plupart des législateurs civils opposent des présomptions légales *simples* ou juris tantum, contre lesquelles la preuve contraire est toujours admise et qui sont la règle générale, et les présomptions légales *absolues* ou irréfragables ou présomptions juris et de jure, contre lesquelles la preuve contraire n'est recevable que si la loi l'a expressément réservée.

Quant aux présomptions de l'homme ou de fait, elles sont celles qui ne sont pas établies par la loi, mais laissées à l'appréciation des techniciens; elles ne sont admises d'ailleurs que dans certains cas et dans certaines conditions: preuve d'un simple fait matériel, preuve d'un fait juridique, d'une valeur minima, commencement de preuve par écrit, contestation d'un acte pour cause de fraude, de dol ou de simulation, matières commerciales, etc.

En toute hypothèse, pour pouvoir être admises comme moyens de preuve, les présomptions de fait doivent être graves, précises et concordantes, c'est-

à-dire à la fois être de nature à faire impression sur une personne raisonnable, s'appliquer directement au fait à prouver, reposer sur des faits qui ont du rapport entre eux, etc.

b) La question s'est posée depuis longtemps au législateur fiscal de savoir s'il peut utiliser les deux sortes de présomptions; l'affirmative a éte admise le plus souvent, mais avec des applications plus ou moins limitées.

Le fisc utilise, par exemple: — pour taxer une mutation secrète d'immeuble ou de fonds de commerce, l'inscription au rôle de la contribution foncière ou de la patente du nouveau propriétaire, les actes passés par le nouveau propriétaire; — pour réclamer les droits de mutation par décès, la présomption de la propriété apparente (comptes joints ou collectifs), revenus perçus par le défunt quelque temps avant son décès, objets trouvés dans un coffre-fort loué conjointement, biens appartenant pour l'usufruit au défunt, meubles meublants, titres au porteur, prête-nom d'une société ou d'une congrégation, copropriété, etc.

Le fisc est fondé aussi à invoquer des présomptions de paiement ou de non-paiement pour des dettes échues au décès et dont la déduction de l'actif héréditaire est réclamée — pour des créances non échues au décès et ne figurant pas dans le patrimoine héréditaire, etc.

§ 4. *Le recours au serment.*

a) Le serment, en droit public ou privé, est un acte à la fois civil ou religieux, par lequel celui qui jure prend la divinité à témoin de la vérité d'un fait ou d'une obligation; on distingue généralement, au point de vue du droit civil, le serment extra-judiciaire qui est prêté en dehors d'une instance et le serment judiciaire qui est prêté en justice.

Le serment judiciaire se subdivise lui-même en deux: il y a le serment décisoire qui est celui qu'une partie défère à l'autre pour en faire dépendre le jugement de la cause, et le serment supplétoire ou supplétif qui est déféré d'office par le juge à l'une ou l'autre partie à l'instance.

Le serment décisoire ne peut être déféré que sur des faits personnels à la partie à qui le serment est demandé; il constitue une sorte de transaction conditionnelle en vue de terminer la contestation d'une manière péremptoire.

Le serment judiciaire supplétif peut être déféré par le uge pour suppléer à l'insuffisance des preuves sur le fait même de la demande ou sur l'impossibilité de constater autrement la valeur des choses, qui sont l'objet du procès (serment in litem).

Quant au *serment extra-judiciaire*, il résulte d'une simple convention écrite ou verbale par laquelle les parties s'en réfèrent au serment de l'une d'elles pour trancher un point litigieux.

b) Il semblerait que le serment judiciaire ou extra-judiciaire pourrait être utilisé par le fisc dans les instances judiciaires ou les différends non encore parvenus au stade judiciaire, pour amener les assujettis à reconnaître une fraude.

Cette translation du serment du domaine privé dans le cadre fiscal est rarement faite par le législateur pour les raisons suivantes: en premier lieu, il est malaisé, dans la plupart des pays, de faire appel à la conscience religieuse des assujettis et d'obliger ceux-ci à prendre Dieu à témoin de leur sincérité fiscale; les redevables les plus corrects dans la vie privée ou interne jureraient avec la plus grande désinvoltûre dès lors qu'ils auraient l'assurance de mettre fin, avantageusement pour eux, à l'instance ou au différend qu'ils auraient avec le Trésor.

En outre, le serment déféré ou référé aboutit à un véritable abandon des prétentions fiscales, uniquement motivé par une affirmation morale.

Au surplus, le serment suppose un système autorisant la procédure verbale et, en matière fiscale, l'emploi de la preuve testimoniale est généralement interdit; on comprend donc que le serment décisoire, qui a pour résul-

tat d'entraîner la désicion de l'instance, soit le plus souvent prohibé.

Mais il peut sembler souhaitable, tout au moins à certains, que le fisc retienne le serment chaque fois qu'il y a exceptionnellement un débat oral entre le Trésor et les assujettis, et qu'il n'existe aucune preuve véritable de la fraude commise; le serment peut alors mettre fin à un différend sans issue.

§ 5. *Le recours à l'aveu.*

a) L'aveu est la déclaration intentionnelle par laquelle un individu reconnaît pour vrai et comme devant être tenu pour avéré à son égard un fait de nature à produire contre lui des conséquences juridiques; l'aveu constitue, en d'autres termes, un mode de preuve d'une obligation préexistante; la déclaration d'une personne ne peut d'ailleurs être regardée comme un aveu de sa part que si elle a été faite avec la pensée que cette affirmation pourra former preuve contre elle; en un mot, les déclarations qui sont faites au cours d'une conversation, les moyens et arguments qu'une partie invoque à l'appui de son droit ne sont pas des aveux. L'aveu enfin ne peut avoir pour objet que des questions de fait et non des questions de droit; il peut être judiciaire ou extra-judiciaire ou hors justice; dans le premier cas, il est fait dans une instance; dans le second, il est effectué en dehors du procès relatif au fait allégué.

b) Il peut paraître rationnel d'utiliser l'aveu, ainsi défini, en matière fiscale pour reconnaître une fraude; le procédé dispense le fisc de poursuivre une instance, de recourir à l'expertise, etc.; c'est ce que font diverses législations, en utilisant la *soumission* qui est l'aveu extra-judiciaire emportant reconnaissance par un redevable d'une insuffisance commise dans l'évaluation de la matière imposable et engagement, si son offre est acceptée par le fisc, d'acquitter les droits simples et les pénalités qui en sont la conséquence. La soumission produit, en un mot, l'effet d'un acquiescement total ou partiel et rend sans utilité l'introduction ou la poursuite d'une instance.

La soumission donne lieu, il est bon de l'indiquer, à diverses controverses juridiques: les uns y voient un contrat, les autres une promesse de payer ou une déclaration fiscale complémentaire, etc.

La question a son importance pratique: la soumission peut-elle être rétractée par les contribuables ou lie-t-elle le fisc lorsqu'elle a été approuvée par lui? En fait, la soumission est appelée a reconnaître les insuffisances de prix énoncé dans les actes translatifs à titre onéreux ou à titre gratuit d'immeubles, de fonds de commerce ou de clientèles, etc.

Il est des techniciens pour affirmer que la soumission favorise, au lieu de combattre, la fraude, en donnant aux redevables l'impression que le fisc leur demande d'acquitter l'impôt sur une valeur susceptible de discussion et de diminution.

§ 6. *Le recours à la preuve testimoniale.*

a) La preuve testimoniale est celle qui découle de déclarations orales de témoins, c'est-à-dire de personnes qui ont perçu, par leurs propres moyens, des faits contestés.

Longtemps considérée dans l'ancien droit comme le système normal de preuve des faits *juridiques*, ainsi que le rappelle le vieil adage ,,témoins passent lettre'' la preuve testimoniale tend, dans la plupart des pays, à être réduite dans son usage, à des cas limitativement déterminés; il s'agit, autrement dit, de prouver des faits qui ont pour objet direct et nécessaire de créer, d'éteindre, de transmettre, de reconnaître, de confirmer, de ratifier, de modifier des obligations ou des droits.

Le législateur moderne estime, en effet, que la preuve testimoniale des faits juridiques doit être prohibée, sauf en matière commerciale, parce qu'il exige généralement qu'il soit passé un *écrit* pour les conventions portant

sur une somme ou valeur excédant un certain chiffre, parce qu'il dispose maintes fois aussi qu'aucune preuve ne pourra être reçue par témoins outre et contre le contenu des actes ou sur ce qui serait allégué avoir été dit avant, lors ou depuis les actes; il s'agit uniquement, bien entendu, des énonciations de l'acte qui font pleine foi par elles-mêmes, c'est-à-dire du dispositif de l'acte et des énonciations qui ont un rapport direct avec de dispositif.

A contrario la preuve testimoniale est utilisée dans la plupart des pays sans limitation, s'il s'agit de faits *purs et simples*, c'est-à-dire de faits ne produisant que des résultats matériels, sans aucun mélange de rapport juridique, bien qu'ils puissent indirectement produire des effets de droit (violence, dol, captation, possession, construction, prestation d'aliments, incendie d'un immeuble, démence d'une personne, ivresse d'une partie contractante, etc.).

Au surplus, la preuve testimoniale n'est jamais refusée aux tiers, c'est-à-dire aux personnes non parties aux actes.

b) Est-il possible d'invoquer les errements du droit privé sur l'admissibilité de la preuve testimoniale pour armer le fisc dans sa recherche de la fraude fiscale? Autrement dit, le fisc doit-il se montrer plus ou moins strict que le droit privé?

En faveur de la restriction, on peut faire valoir que la preuve testimoniale est difficile à administrer en matière fiscale, que la foi due aux témoignages doit être très relative surtout dans les pays où l'opinion publique n'attache aucune importance aux combinaisons destinées à éluder l'impôt ou dans ceux où la délation peut être pratiquée par esprit de vengeance contre certains assujettis; pratiquement enfin, certains législateurs redoutent les difficultés que peut comporter l'administration de la preuve testimoniale.

Pour l'utilisation très large de la preuve testimoniale en matière fiscale, il est possible, par contre, de soutenir que les gestes de fraude sont, le plus souvent, des agissements *matériels* (omission, simulation, dissimulation, insuffisance d'évaluation, etc.) qui conservent ce caractère, bien qu'ils puissent apparaître à l'occasion d'opérations juridiques.

On peut aussi faire valoir que le Trésor est un *tiers* auquel ne peut être opposée la règle habituelle qui prohibe la preuve testimoniale au dessus d'un certain chiffre — que la dite règle, ne s'appliquant que dans les rapports des parties entre elles, ne peut jouer à l'encontre du fisc qui ne commet aucune faute en ne se procurant pas une preuve écrite de la fraude commise.

On est en droit pareillement d'objecter que le Trésor étant un tiers doit être autorisé, au moyen de la preuve testimoniale, à contester la sincérite des énonciations contenues dans les conventions qu'on lui oppose et qui sont de nature à préjudicier aux intérêts du fisc.

§ 7. *Le recours à l'enquête.*

a) Théoriquement l'enquête est une procédure dont l'objet est de recueillir des témoignages à l'appui d'une demande ou d'une exception; elle ne peut avoir lieu, le plus souvent, qu'incidemment au cours d'une instance et ne saurait être demandée in futurum, c'est-à-dire afin d'établir, avant toute action, une preuve susceptible de disparaître.

En matière civile, l'enquête doit généralement réclamée au Tribunal; celui-ci apprécie, pour l'accorder, si les faits dont la preuve est offerte sont formulés en termes précis et déterminés; si les faits sont déniés et contestés, s'ils sont pertinents, c'est-à-dire afférents au procès et admissibles et de nature à exercer une influence sur la décision à intervenir, etc,; la décision ordonnant l'enquête doit contenir les faits à prouver la nomination d'un juge commissaire devant lequel l'enquête sera portée, etc.

b) Est-il opportun de prévoir pour le fisc la possibilité de recourir à l'enquête? Rien ne peut s'y opposer en théorie; mais pratiquement il parait difficile d'utiliser cette procédure, parce qu'elle est incidente et parce qu'elle

est longue et compliquée, parce qu'elle comporte l'audition de témoins, c'est-à-dire la preuve testimoniale, parce qu'elle suppose la contre-enquête, c'est-à-dire la démonstration de la non-existence des faits allégués par le fisc, etc.

On peut encore alléguer contre *l'enquête fiscale* la possibilité des reproches à adresser à certains témoins, etc.

§ 8. *Le recours à la délation et à la dénonciation.*

a) La dénonciation est l'acte par lequel une personne fait connaître à la justice qu'une infraction à la loi *pénale* a été commise. Les législations criminelles distinguent *généralement* deux sortes de dénonciations: la dénonciation officielle et la dénonciation privée, qui se subdivise elle-même en dénonciation obligatoire et en dénonciation volontaire.

La dénonciation officielle s'impose au fonctionnaire public ou à l'officier public qui, dans l'exercice de ses fonctions, acquiert la connaissance d'un *crime* ou d'un délit; il doit en donner avis au ministère public; le plus souvent cette obligation ne s'applique qu'aux agents des services publics qui ne sont pas chargés de rechercher les crimes et les délits.

La dénonciation privée obligatoire concerne toute personne qui a éte témoin d'un attentat soit contre la sûreté publique, soit contre la vie ou la propriété d'un individu.

Quant à la dénonciation privée volontaire, elle vise les personnes qui n'ont pas de témoins des crimes précédents ou qui ont connu l'existence d'autres crimes ou délits facultative ou obligatoire; la dénonciation privée doit être adressée également au Ministère public.

b) Rien ne s'oppose en théorie à l'extension de la fiscalité à la procédure de la dénonciation officielle; encore faut-il que l'on considère que les infractions fiscales sont pénales.

Quant à la dénonciation privée obligatoire, elle doit être rejetée, les fraudes fiscales pouvant être difficilement assimilées, tout au moins dans les pays latins, à des attentats contre la sûreté publique.

A fortiori, la dénonciation privée facultative n'est pas acceptable; instituée et pratiquée, elle dégenererait inévitablement en abus et excuserait toutes les vengeances personnelles.

§ 9. *Le recours à l'expertise.*

a) En droit privé, l'expertise est une voie d'instruction supposant nécessairement une question adressée par un Tribunal civil ou commercial à des hommes de l'art qui doivent y répondre dans un rapport; elle est confiée pratiquement par le juge, soit d'office, soit sur le choix des parties, à des gens expérimentés dans un métier, une profession ou une science,. ou possédant des notions sur certaines questions afin d'obtenir d'eux des renseignements nécessaires au règlement d'un litige pendant une juridiction; en d'autres termes, l'expertise ne peut être ordonnée que pour *l'appréciation matérielle de faits* et non pour éclairer le juge sur des points de droit.

L'expertise judiciaire se distingue de l'expertise amiable: tandis que celle-ci découle d'une convention dont les effets sont régis par la volonté des parties dont les experts sont en pareil cas des mandataires, l'expertise judiciaire est toujours ordonnée en justice, à titre incident, et non demandée principalement; elle est, en tout cas, une mesure purement facultative pour le juge, mais elle peut être prescrite par celui-ci d'office, bien que les parties ne la réclament pas.

L'expertise peut être également ordonnée en *matière criminelle* par les tribunaux, en matière d'accidents, de falsifications de denrées et de produits, de vérification d'écritures, de crimes contre les individus, etc.

b) La question s'est posée de savoir si l'expertise peut constituer, pour le fisc, un moyen de déceler les fraudes et les évasions. La réponse peut être très nuancée, étant donnée la diversité des problèmes techniques soulevés.

En premier lieu, on peut décider que le droit d'expertise fiscale aura uniquement le caractère d'une mesure d'instruction à la disposition du Trésor ou, au contraire, qu'il pourra faire l'objet d'une action principale.

Il est loisible également de limiter plus ou moins l'utilisation de l'expertise fiscale: en général, celle-ci ne doit être envisagée que pour déterminer une valeur locative ou une valeur vénale, pour vérifier l'exactitude d'un prix ou d'une estimation afférent à un meuble ou à un immeuble.

Mais il n'est pas impossible que l'expertise fiscale soit employée pour préciser la nature ou l'espèce d'une marchandise, la composition technique d'un produit taxable.

En toute hypothèse, l'expertise fiscale ne peut être justifiée pour définir *un point de droit fiscal*.

Le législateur est en droit également de choisir entre un droit d'expertise manié uniquement par l'Administration du Trésor et un droit susceptible d'être revendiqué par un assujetti.

Il est amené pareillement bien souvent à préciser les points suivants: indication limitative ou non des procédés techniques utilisés par les experts pour établir leur rapport — possibilité ou non d'une tierce expertise — rôle du Tribunal dans l'homologation du rapport — faculté pour les juges de substituer leur propre appréciation à celle des hommes de l'art, ou obligation d'adopter l'opinion des experts — droit pour le Tribunal de contrôler le travail des experts, de ratifier les erreurs de droit commises par les experts, de réclamer une nouvelle expertise — moyens mis à la disposition des redevables pour démontrer les vices ou l'insuffisance de l'expertise soumise au tribunal — intervention plus ou moins active du fisc dans la direction de l'expertise, etc.

Maintes fois de législateur est mis en demeure d'opter entre une procédure d'expertise immédiate et une procédure contentieuse précédée d'un essai amiable de conciliation entre les agents du fisc et les assujettis.

c) Pratiquement, le droit d'expertise est employé par le fisc en matière d'impôts directs, de droits sur les mutations, de contributions indirectes et de taxes douanières.

En ce qui concerne les impôts directs, l'expertise permet de discuter aussi bien l'assiette et la liquidation des contributions forfaitaires que des impôts directs sur les revenus (impôts cédulaires, impôt global ou surtaxe progressive); elle facilite l'évaluation d'un loyer professionnel, l'estimation d'un outillage industriel ou commercial, la fixation d'un loyer d'habitation; mais l'expertise est aussi nécessaire pour contester devant les tribunaux le principe d'un amortissement d'une provision, la ventilation ou le calcul de certains frais généraux ou de dépenses professionnelles, etc.

En matière d'impôts sur les mutations entre vifs ou par décès ou d'impôt général sur le patrimoine, le droit d'expertise est particulièrement opportun: il permet au fisc de contrôler les prix de vente des immeubles, des pas de porte, des clientèles et des fonds de commerce, les soultes d'échange et de partage, l'estimation des biens compris dans un échange ou un partage, l'estimation des immeubles et des fonds de commerce, etc. mentionnés dans les déclarations de succession ou dans les donations de toute nature; en d'autres termes, le droit d'expertise donne au Trésor la possibilité de déterminer, à la date de la mutation, soit la valeur vénale, soit la valeur locative à laquelle est ensuite appliqué un coefficient.

La vérité oblige à reconnaître que le maniement du droit d'expertise est loin d'être toujours satisfaisant, la valeur vénale qui sert de base à la cotisation étant susceptible de plusieurs définitions: valeur d'usage, valeur d'échange, valeur de productivité, valeur de rentabilité, prix de revient, prix de reconstitution, valeur refuge, etc.; il n'est pas, au surplus, toujours aisé de découvrir tous les faits et circonstances qui seraient de nature à motiver, de la part de l'acquéreur, l'offre d'un prix plus élevé, de préciser si l'estima-

tion d'une propriété composée de plusieurs parcelles doit être faite en bloc ou après morcellement ou lotissement, etc.

L'expertise reçoit application en matière douanière sous la forme de vérifications de l'espèce, de l'origine ou de la qualité des produits; le fisc y recourt aussi bien lorsqu'il y a de simples doutes sur l'exactitude des déclarations que quand il les considère comme fausses; généralement, il procède de façon différente.

S'il y a simple doute, l'expertise est faite avec l'assentiment du déclarant en douane et la marchandise est, en principe, remise après paiement des droits dûs en vertu de la déclaration et sous engagement cautionné d'acquitter le supplément de droits que l'expertise rendrait exigible.

Si le fisc a, par contre, la certitude absolue de la fausseté de la déclaration et si cette certitude résulte de constatations matérielles, le fait est constaté par un procès verbal et la saisie de la marchandise litigieuse peut avoir lieu. L'expertise douanière est effectuée sur échantillons prélevées et transmise aux experts par l'intermédiaire de l'administration des Douanes, pour reconnaître la réalité des espèces et qualités déclarées.

Les échantillons destinés au fisc, pour faire déterminer l'application exacte des droits, leur sont le plus souvent adressés en double; l'un est ouvert, l'autre est scellé au cachet de l'importateur ou de l'exportateur déclarant et de celui du receveur des douanes.

§ 10. *Le recours au droit de visite.*

a) Le droit de visite est une prérogative essentiellement matérielle du fisc; il porte non sur des documents comptables ou sur des titres juridiques, mais sur des locaux, des denrées, des moyens de transport. Il aboutit, en effet, soit au recensement, soit au mesurage, soit à la pesée, soit au dénombrement de produits, matériels taxables, soit à la reconnaissance de certains véhicules ou immeubles.

Ce droit de visite peut être soit intégral, soit limité à certains sondages; il est pratiqué soit hors du domicile des assujettis, sur les routes, dans les gares, les ports, les aérodromes, dans certains secteurs ou rayons douaniers, soit même au domicile des assujettis, dans des habitations ou des installations professionnelles.

b) Le droit de visite est spécialement utilisé en matière *douanière* aussi bien pour la vérification des marchandises que pour la visite domiciliaire dans les maisons, les fermes, les usines, les boutiques, etc.

C'est ainsi que les marchandises importées et exportées peuvent toujours être soumises à la vérification du fisc quant au poids, quant à l'espèce, etc. les marchandises ne peuvent être déplacées des quais ou autres lieux de décharge qu'après avoir été pesées ou jaugées; les pesées doivent être notamment faites avec d'autant plus de soin et de précision que les produits sont frappés de droits plus élévés.

La vérification a lieu, soit au bureau des Douanes, soit sur les quais, soit dans les endroits choisis d'un commun accord, soit même, en cas de recensement, dans les magasins des particuliers; elle ne peut être effectuée qu'en présence des intéressés ou de leurs représentants.

La vérification peut être intégrale ou par épreuve, se manifester par des constatations matérielles de poids ou de volume, par des sondages de colis, par des prélèvements d'échantillons, etc.

Pour entraver la fraude, la plupart des législateurs dounaniers déterminent en-deça de la frontière un espace appelé rayon des douanes ou *rayon-frontière* qui est soumis à une police particulière; la circulation des marchandises y est, en principe, soumise à la nécessité d'un titre de mouvement, elle y est même interdite la nuit sauf exception; de même le dépot des marchandises est, en principe, prohibé dans le rayon douanier; pareillement, les usines, fabriques, ateliers de fabrication, etc. ne sont possibles que sur autorisation

administrative,; le pacage des bestiaux est également règlementé; les commerçants sont obligés de tenir avec la douane un compte de leurs entrées et sorties et subissent des recensements périodiques.

Par analogie, est institué un ,,rayon de mer'' qui part des côtes et s'étend en mer sur une étendue de plusieurs lieues à l'intérieur de ce rayon de mer, les bâtiments de commerce, pour certains tonnages sont soumis à des visites à bord par les bateaux et ,,pataches'' de la Douane; en outre, et sans distinction de tonnage les bâtiments entrant dans les ports ou en sortant peuvent subir les visites des préposés de la Douanes, celles- ci portent sur toutes les chambres, armoires, soutes, etc.

La Douane use enfin, dans certains cas, du droit de visiter les maisons pour rechercher les marchandises circulant en contrebande: ce droit est d'ailleurs différent selon que l'immeuble est situé ou non dans le rayon douanier à la campagne ou dans une agglomération, selon que les marchandises ont fait ou non l'objet d'une ''poursuite à vue'', selon que la visite a lieu le jour ou la nuit, etc.; dans certains cas, la visite n'est possible que si les Douanes sont assistées d'un officier municipal du lieu ou d'un officier de police judiciaire, etc.

c) En matière de *contributions indirectes*, le droit de visite est presque aussi sévère; en principe, les locaux servant exclusivement à l'habitation des particuliers ne sont visitables qu'après une autorisation d'un juge, ou que s'il y a distillation clandestine ou fraude relative à certains monopoles fiscaux.

Les locaux, ne servant pas uniquement à l'habitation, peuvent faire l'objet de visites en cas de soupçon de fraude si les agents du fisc sont assistés d'un officier municipal ou de police judiciaire. Quant aux locaux ou établissements professionnels (ateliers, magasins, caves, celliers, etc.) ils sont soumis sans restriction aux formalités particulières aux visites et aux recensements, dès l'instant qu'ils appartiennent à certaines catégories d'industriels (fabricants et marchands d'alcools, distillateurs, etc.). Les visites qui, en principe, ont lieu le jour et très exceptionnellement la nuit, sont soumises à des horaires différents l'été et l'hiver.

d) Au regard *des contributions directes* et notamment des impôts sur le revenu, le droit de visite des immeubles et des stocks est au contraire, en général, très limité et même, le plus souvent, inexistant: autrement dit, sans l'assentiment des assujettis, les agents du fisc ne peuvent pénétrer dans un immeuble pour établir une valeur locative, pour déterminer l'importance de l'outillage, de la force motrice, pour connaître la composition d'un local à usage d'habitation.

Il en est de même le plus souvent pour l'assiette et le contrôle des droits de mutation, des impôts sur le patrimoine, des droits de succession, etc.: les agents du fisc ne peuvent, contre le gré des redevables, visiter des immeubles, des fonds de commerce ayant fait l'objet d'une mutation; en fait, les contribuables ont le plus souvent intérêt à ne pas s'opposer à cette visite en vue de faciliter le contrôle du fisc, ils ont ainsi la possibilité de connaître la manière de voir des représentants du Trésor et, le cas échéant, de faire valoir des arguments pour réduire les réclamations dont ils sont l'objet à l'occasion d'une insuffisance d'évaluation etc.

e) Le droit de visite tel qu'il vient d'être décrit, est assez désagréable aux assujettis pour qu'il ne soit pas coutumier; il doit être limité à l'hypothèse de soupçon de fraude caractérisée.

Sur un point seulement il mérite une extension: il s'agit du *recensement des stocks* détenus par un commerçant ou un industriel; cette opération est indispensable à faire si le Trésor désire réellement pouvoir examiner en connaissance de cause les documents de comptabilité, les contester et les redresser, le cas échéant; il est évident par exemple que les ,,soustractions de recettes'' ou ,,ventes non comptabilisées'' ne peuvent être décelées

qu'après examen matériel des matières premières stockées, des produits demi-finis et des produits fabriqués de l'entreprise.

§ 11. *Le recours au droit de saisie.*

a) Le droit de saisie est une voie d'exécution forcée par laquelle le fisc met certains biens imposables sous la main des Régies financières, pour contraindre leurs débiteurs à remplir leurs obligations fiscales; elle donne un gage au fisc.

Cette prérogative peut porter sur des marchandises, sur des véhicules, sur des actes, sur des pièces quelconques, etc. motivant une taxation éludée ou permettant de mettre sur la trace d'une fraude.

Elle peut être utilisée en matière de droits de douane, de contributions indirectes, de droits de timbre, de droits de mutation sur des droits d'enregistrement, etc.

b) *En matière douanière*, le droit de saisie est possible généralement hors des maisons et dans les maisons, il vise les marchandises de contrebande, c'est-à-dire lès marchandises prohibées ou assimilées. *Hors les maisons*, elle joue, en principe, automatiquement sur le rayon frontière terrestre ou maritime; par contre, à l'intérieur et hors du rayon frontière, elle n'est possible que si certaines conditions sont remplies: les agents doivent avoir vu les marchandises franchir la limite du rayon, avoir poursuivi la fraude sans interruption, les marchandises doivent être dépourvues d'une expédition justifiant le transport, etc.

Dans les maisons la règlementation du droit de saisie doit être encore plus stricte tout au moins hors du rayon frontière; les saisies à domicile ne sont possibles le plus souvent que pour les produits prohibés ou taxés au-dessus d'un certain pourcentage par tonne; par contre, dans le rayon-frontière les saisies sont autorisées pour la plupart des marchandises.

Les saisies domiciliaires comportant une violation du domicile si le propriétaire ou le locataire de la maison refuse d'ouvrir ou de laisser pénétrer les préposés des douanes, doivent, en principe, être effectuées en présence d'un officier public; cette présence d'ailleurs n'est faite que pour protéger la liberté individuelle de l'occupant de l'immeuble et non de faire concourir l'Officier public à la constatation du délit; c'est une formalité purement extrinsèque.

La plupart des législateurs ont prévu des indemnités en cas de saisies douanières mal fondées: l'indemnité, qui est calculée généralenent en pourcentage mensuel de la valeur des objets saisis est due jusqu'à la remise définitive de celles- ci par la Douane chaque fois que la saisie est annulée pour vice de forme, pour inscription de faux, contre le procès-verbal, etc.

Bien entendu, si la marchandise saisie a été détériorée dépérie, ou été perdue par suite de la négligence des agents des Douanes, il est normal que le fisc soit soumis à la responsabilité du droit commun.

Des dispositions particulières doivent règler différentes hypothèses: objets saisis appartenant véritablement à une personne étrangère à la fraude, mainlevée de la saisie, moyens de transports. A cet égard, les législateurs douaniers prévoient généralement la saisie possible des moyens de transport, voitures ou navires.

c) Au regard des *Contributions Indirectes*, la saisie est généralement utilisée lorsqu'il y a fraude ou non représentation des titres accompagnant des marchandises déplacées: la saisie porte sur le chargement frauduleux. La saisie peut d'ailleurs, au lieu d'être réelle, être purement fictive; les tribunaux sont d'ailleurs habilités le plus souvent pour juger du bien fondé d'une saisie et pour accorder, le cas échéant, au contribuable une indemnité représentant le préjudice qu'a pu lui causer la saisie indûment pratiquée sans compter le remboursement des frais de garde ou de fourrière.

d) Quant *aux droits sur les opérations juridiques*, le droit de saisie est

quelquefois utilisé sous des formes très atténuées: c'est ainsi que les agents du fisc peuvent être autorisés à ,,retenir'' c'est-à-dire à conserver des pièces qui n'ont pas été régulièrement assujetties au timbre fiscal, celles-ci devant être jointes au procès-verbal qui est alors dressé; la saisie n'est d'ailleurs pas nécessaire lorsque les écrits frauduleux étant conservés dans un dépôt public peuvent toujours être produits aux juges.

S'il s'agit d'actes s.s.p. ne comportant pas mutations ou contenant des renseignements dont la trace peut être utile pour la découverte d'une fraude, les agents du fisc peuvent avoir la faculté d'en tirer une copie et, à cet effet, de les retenir pendant quelques heures ou quelques jours.

e) Quelquefois le fisc utilise *un droit d'astreinte*, autrement dit, il réclame une somme arbitrée d'office à défaut de représentation des actes soumis à l'impôt; il arrive ainsi à obliger les contribuables à remettre leurs litres.

§ 12. *Le droit de poursuite à vue.*

Il s'agit d'une prérogative exceptionnelle qui permet aux agents du fisc de poursuivre une marchandise en contrebande sans interruption jusqu'à ce qu'ils l'appréhendent ou en effectuent la saisie.

Ce droit qui est une survivance de la clameur de haro Anglonormande ne joue qu'en matière douanière.

§ 13. *Le droit d'assister à certaines opérations.*

a) Est-il souhaitable que le fisc, qui désire découvrir les fraudes aussi rapidement que possible, s'installe chez les contribuables sinon à demeure, tout au moins aux heures où la matière taxable apparaît le plus nettement?

Sur le principe la réponse est facile: il est contraire à la liberté individuelle, qu'il s'agisse de celle du travail, ou du domicile, que les agents du Trésor viennent participer à la vie quotidienne de l'assujetti, demandent à assister aux diverses opérations de son activité professionnelle.

Il est à craindre, au surplus, que cette ,,présence'' du fisc, aussi matérialisée, n'entrave la marche des affaires du contribuable et ne heurte ses relations ou sa clientèle, désireuses de ne pas mettre un ,,tiers'' dans leurs discussions avec l'assujetti.

b) En fait, le législateur se montre moins intransigeant et admet que le contrôle de certains impôts indirects des dérogations d'ailleurs exceptionnelles.

C'est ainsi qu'est institué bien souvent l'*exercice* qui donne aux agents un droit de visite sans limite, et par suite continu, qu'est autorisée la présence permanente de certains agents dans les distilleries, brasseries, rafineries, féculeries, au ,,contrôle'' des caisses des théatres et lieux de spectacle, dans les magasins généraux et entrepôts, à l'ouverture des coffres-forts, etc.

§ 14. *Le recours à l'arbitrage et à la conciliation.*

a) La plupart des législations civiles ou commerciales prévoient des procédures de conciliation et d'arbitrage pour réduire le nombre des procès entre parties.

La conciliation comporte généralement l'intervention d'un juge, qui essaie d'amener un arrangement entre les parties avant d'intenter leur action devant la juridiction compétente.

Quant à l'arbitrage, il est différent de cette démarche que les plaideurs sont obligés de tenter comme une formalité préalable à la recevabilité de leur action; il s'agit alors d'un recours à une juridiction instituée par les parties pour *trancher* une difficulté qui les divise; les arbitres font alors office de juges et non de donneurs d'avis ou d'hommes de l'art dont la mission est d'éclairer le tribunal.

b) Le fisc use de plus en plus de ces deux procédures quand il se trouve en présence de contribuables se refusant à accepter proprio motu leur fraude;

le fisc tente alors de les amener à une plus grande compréhension en soumettant la difficulté à une Commission paritaire composée, à la fois, des agents du fisc et de représentants des redevables en nombre égal.

Les représentants des assujettis peuvent être des délégués des chambres de commerce, des chambres d'agriculture ou des coopératives paysanes, des groupements professions, etc.

Les commissions ainsi instituées sont présidées généralement par un Chef de service fiscal départemental et régional ayant ou non une voix prépondérante.

Les décisions prises ont tantôt le caractère d'un avis, tantôt celui d'une décision de taxation; dans le premier cas, le fisc se rangera le plus souvent à l'avis de la Commission et il appartient à l'assujetti mécontent de faire la preuve devant un tribunal.

Dans la seconde hypothèse, la Commission se substitue au fisc pour taxer l'assujetti fraudeur.

Ce système d'arbitrage et de conciliation est utilisé — pour rehausser des forfaits jugés insuffisants en matière agricole, commerciale, industrielle — pour relever des évaluations insuffisantes en matière de mutations d'immeubles, de fonds de commerce, de clientèle, etc. — pour fixer le bénéfice imposable des commerçants et industriels, etc.

Le procédé se révèle satisfaisant s'il est manié à bon escient, à l'encontre de fraudeurs entêtés et systématiquement butés, si le haut fonctionnaire — président des Comités de Conciliation — sait s'imposer et faire preuve d'autorité objective — si les contribuables ont la conviction qu'ils ne seront pas défendus au sein de la Commission par les représentants de leur profession du fait de l''insolence'' caractérisée de leurs fraudes, etc.

A contrario, le recours à la conciliation, fréquemment employé, aboutit à ,,user'' cette procédure, à désarmer le fisc et à accuser son impuissance à défendre sont point de vue; il en est de même si les représentants des groupements professionnels se considèrent comme obligés d'approuver systématiquement les manoeuvres des assujettis convoqués devant les Commissions, s'ils ne savent pas notamment respecter le secret professionnel, etc.

§ 15. *Le recours au contrôle polyvalent.*

Il s'agit d'un système de contrôle global: il permet, en effet, d'effectuer chez le même assujetti des vérifications et des visites combinées, non plus par un seul ou plusieurs agents du même service fiscal, mais par des fonctionnaires de toutes les Régies fiscales; autrement dit, il n'est plus mis au service d'une seule Administration fiscale préoccupée.

Ce système a de nombreux avantages: il obtient un meilleur rendement, un contrôle plus intensif et plus serré de la matière imposable; il donne aux vérificateurs une formation professionnelle plus étendue, et les rend, en effet, aptes à appliquer à la vérification d'un même redevable, l'ensemble des principes qui régissent la législation fiscale d'un pays; il prépare la fusion des agents vérificateurs en une seule Régie.

La vérification polyvalente donne également aux vérificateurs groupés un ascendant certain sur le contribuable isolé; elle évite les compromissions ou complaisances, difficiles à envisager dans une confrontation à laquelle participent un redevable et plusieurs agents du fisc; elle permet d'utiliser immédiatement pour le contrôle des impôts perçus par une Régie, des renseignements ou constatations effectuées par les agents d'autres Administrations fiscales; elle donne aux agents l'occasion de se familiariser avec les méthodes de contrôle employées par leurs collègues; elle constitue un système éducatif excellent pour faire assimiler rapidement par une brigade de 3 ou 4 agents les textes et les instructions régissant l'assiette et la perception de l'ensemble de la législation fiscale.

La vérification polyvalente a un autre intérêt: elle groupe en une seule

opération les communications successives dont pourrait être l'objet un contribuable déterminé; elle fait apercevoir immédiatement la situation totale de l'assujetti vis-à-vis du fisc, que ce soit au regard des impôts directs sur le revenu, des contributions ou capitations forfaitaires, des impôts généraux sur le revenu ou sur le patrimoine, des contributions sur le chiffre d'affaires à la production ou à la consommation; elle souligne les „rapports de grandeur" qui existent nécessairement entre un bénéfice commercial et un chiffre d'affaires, entre ceux-ci et la valeur d'un fonds de commerce, entre une valeur vénale et une valeur locative, entre des bénéfices réalisés et des bénéfices distribués ou mis en réserve, etc.

La vérification polyvalente présente un autre avantage: elle procure au fisc l'occasion de vérifier sérieusement certains gros contribuables qui, à cause de leur situation politique ou financière ou de la puissance de leurs conseils, peuvent se considérer comme invulnérables.

La vérification polyvalente exige d'ailleurs certaines conditions pour être efficiente: elle suppose des agents qualifiés et exceptionnels possédant une large formation générale et technique; elle appelle la constitution de „brigades" possédant un esprit d'équipe ét de cohésion, chaque vérificateur devant absolument renoncer à rechercher des résultats personnels et porter un intérêt égal à toutes les vérifications, alors même qu'il apparaît probable ou même certain que son Administration d'origine n'obtiendra aucun paiement.

La vérification polyvalente exige donc que dans les équipes chacun des agents apporte sa contribution aux recherches et aux examens comptables relatifs à tous les impôts dont le redevable vérifié peut étre débiteur plutôt qu' à travailler seul dans sa propre sphère, pendant que les autres effectuent les investigations particulières à leur propre Régie.

§ 16. *Le recours à la taxation d'office.*

a) Il s'agit d'une méthode exorbitante du droit fiscal qui tient à la fois à l'assiette de l'impôt ou au contrôle de la matière cotisable.

C'est un système qu'utilise le fisc, en désespoir de cause, en principe, quand il a en face de lui un assujetti qui se refuse à souscrire toute déclaration sous le prétexte que le Trésor ne découvre que les contribuables qui ont eu la candeur de se signaler par une déclaration; c'est une procédure employée aussi quand le redevable a systématiquement minimisé sa déclaration et a la conviction que la Régie ne peut rien contre lui.

La taxation administrative consiste alors à „renverser" les rapports entre le fisc et le contribuable, à présumer celui-ci fraudeur et à le cotiser pour une somme fixée arbitrairement en capital, revenu, chiffre d'affaires, etc.

L'assujetti est obligé, soit de payer l'impôt qui est liquidé sur le chiffre administratif, soit de souscrire une déclaration sincère.

La taxation d'office est accusée de brutalité et d'imprécision; elle peut frapper d'une manière arbitraire un assujetti qui sera incapable de prouver que son revenu, son bénéfice, son chiffre d'affaires, son patrimoine réel, etc. sont inférieurs à ceux que l'Administration lui a attribués.

Inversement elle peut se révéler impuissante si le fisc a fixé une valeur cotisable au-dessous de celle que détient réellement l'assujetti fraudeur: celui-ci se gardera bien de souscrire une déclaration et préfèrera se laisser cotiser d'office.

b) Pratiquement, le système a son intérêt le plus souvent pour amener „à la raison" certains assujettis notamment par l'établissement des impôts généraux sur le revenu, sur le patrimoine ou des impôts spéciaux sur les revenus commerciaux ou agricoles.

Au surplus, la taxation administrative peut ne pas être trop arbitraire si elle use de certains procédés techniques comme ceux de l'enrichissement, au train de vie, des ventes ou des stocks, etc.

Le premier consiste, pour découvrir le revenu imposable, à comparer le patrimoine de l'assujetti tel qu'il ressortait à une date déterminée d'une déclaration fiscale apparemment exacte avec le montant de la fortune à la date de la taxation administrative.

Le procédé du ,,train de vie'' cherche à déceler le revenu global ou cédulaire d'un assujetti en fonction des dépenses incontestables telles que les loyers professionnels et personnels, les salaires payés aux employés et salariés, les gages versés aux gens de maison, les frais de téléphone, de déplacement, les frais de publicité, etc. dans la mesure où ceux-ci découlent de déclarations faites aux Caisses de Sécurité Sociale, de déclarations de salaires, de versements effectués à l'Administration des Postes, à des Agences de presse, etc.

Quant aux autres procédures, elles tendent à faire apparaître le bénéfice de certaines indices non discutables: montant des ventes, importance des stocks detenus, des produits fabriqués, montant des heures de travail payées, quantités de matières premières mises en oeuvre, etc.

La pratique révèle, à cet égard, des rapports numériques intéressants entre le chiffre d'affaires et le bénéfice, entre le bénéfice et les frais généraux, entre la valeur d'un fonds et le bénéfice moyen, etc.

La technique fiscale va plus loin encore dans le détail: elle n'ignore pas la relation qui existe: dans un hôtel entre les recettes et les dépenses de lavage des draps, — dans un cinéma, entre les recettes et le nombre de places; — dans un commerce de poissonnerie,entre les recettes journalières et les achats de glace pour la conservation des denrées vendues, etc.

§ 17. *Le droit de définir les situations et les opérations juridiques et comptables.*

Il s'agit d'une prérogative fiscale assez délicate à manoeuvrer mais justifiée par le désir pour le fisc de frapper des ,,réalités'' et non des ,,fictions''; autrement dit, le Trésor doit pouvoir user d'un droit de contrôle pour s'assurer de la nature exacte d'un revenu, d'un profit, d'un enrichissement ou d'un gain de fortune, d'un élément de patrimoine, d'une dépense de consommation ou de reproduction, etc.

Cette curiosité naturelle du fisc se heurte cependant à la conception de la fraude légale tout au moins dans une certaine mesure: autrement dit, les contribuables peuvent, dans les pays où cette notion est admise, opposer qu'ayant plusieurs moyens légaux pour arriver au même résultat comptable économique ou juridique, ils ont choisi celui qui donne ouverture à la cotisation la moins élevée.

Sous cette réserve, cette prérogative donne au fisc la possibilité de découvrir la réelle nature des conventions des parties, lui permet de restituer aux actes juridiques leur véritable caractère, quelle que soit leur dénomination apparente: ce sera le cas des ventes dissimulant des donations, des gérances de fonds de commerce ,,camouflant'' une cession en toute propriété, etc.

Pareillement, le fisc peut utiliser sa prérogative — pour appeler bénéfice ou tantième le salaire exceptionnel d'un administrateur de société, — pour taxer comme un courtier un salarié apparent — pour cotiser comme bénéfices commerciaux des revenus déclarés agricoles par les intéressés, etc.

Egalement le fisc put démontrer, grâce à la même faculté, qu'une vente conditionnelle est une vente ferme, qu'une admission temporaire en Douane est pratiquement une importation avec versement à la consommation, qu'un chèque ,,à papillon'' et sans provision est une véritable lettre de change, etc. qu'un acte principal et qu'une contre lettre ne forment, en réalité, que les instruments d'une seule et même convention, déguisée dans le premier acte, etc.

Cette prérogative de découvrir la ,,réalité'' taxable s'applique aussi en matière comptable: le fisc est fondé à contester le bien fondé d'un amortissement, d'une provision, d'une dépense professionnelle, d'une réserve, etc. à

modifier par suite les données d'une comptabilité apparemment exacte, à la „rejeter"même pour en reconstituer une autre plus conforme à l'activité de l'entreprise.

§ 18. *Le recours à l'amnistie conditionnelle.*

En droit pénal l'amnistie est une mesure générale faisant remise à tous les inculpés d'une même catégorie de crimes, de délits, ou de contraventions, aussi bien des poursuites à exercer que des condamnations prononcées.

Généralement elle se manifeste sous la forme pure et simple, mais elle peut être aussi conditionnelle et subordonnée à certains gestes de la part des inculpés au paiement de certaines sommes, au règlement de certains frais etc.

Il est naturel que le législateur songe à utiliser l'amnistie sous sa forme conditionnelle pour faire reconnaître à des contribuables des combinaisons frauduleuses.

a) Le système se présente généralement de la manière suivante: un texte législatif offre aux assujettis qui ont commis des infractions fiscales (omissions, insuffisances, retards dans la souscription des déclarations, etc.) la faculté de les reparer soit en souscrivant dans un certain délai des déclarations rectificatives des soumissions etc. et en versant les droits simples exigibles dans la même délai, soit en effectuant au Trésor des versements anonymes.

En contre partie de l'une ou de l'autre de ces gestes, les redevables seront entièrement affranchis pour ces infractions, de toutes pénalités fiscales, quelle que soit leur dénomination (amendes, droits en sus, intérêts de retard) ainsi que le cas échéant de toutes peines ou poursuites pénales.

Les déclarations rectificatives ou soumissions doivent indiquer d'une façon précise la nature des impôts qu'elles concernent, ainsi que les bases sur lesquelles ils doivent être liquidés, elles doivent au surplus comporter les mêmes renseignements que les déclarations ordinaires; elles sont adressées ou remises aux agents du fisc chargés d'établir les impôts ou compléments d'impôt auxquels elles se rapportent; elle donne lieu à un accusé de réception.

Si les fraudeurs préfèrent les versements anonymes, ils effectuent ceux-ci à une caisse publique désignée à cet effet et doivent indiquer la catégorie d'impôts à laquelle s'appliquent leurs paiements. Les années ou exercices au titre desquels les paiements sont opérés la répartition des sommes versées entre ces années ou exercices.

L'Administration craignant que l'anonymat totale ne lui permette aucune vérification, peut exiger en outre soit la date de naissance de la personne physique versante, soit la date de la constitution de la personne morale.

Les redevables qui ont ainsi effectué ces versements anonymes recoivent un récépissé qu'ils peuvent utiliser ultérieurement et opposer au fisc si celui-ci ayant postérieurement découvert les infractions, est amené à les imposer de ce chef.

Qu'il y ait déclarations ou soumissions rectificatives ou versements anonymes il est toujours indispensable que ceux-ci soient effectués non seulement dans le délai préfixé par la loi, mais encore avant toute intervention d'une administration fiscale, ou tout au moins avant le commencement d'une vérification chez les assujettis.

Autrement dit, l'amnistie conditionnelle n'est accordée qu'aux assujettis qui ont fait preuve de spontanéité, qui ne se sont pas laissés devancer par le Trésor, qui ont pris l'initiative de réparer les infractions frauduleuses, dont ils se sont rendus coupables, qui ont effectués leur déclaration rectificative ou leurs versements en dehors et avant toute démarche du fisc pour provoquer ces régularisations.

b) En théorie l'amnistie conditionnelle semble pacifique et conciliatoire de lutte contre la fraude, de faire rapatrier des capitaux irrégulièrement

exploités d'avouer des dissimulations de prix, de bénéfices etc. pratiquement elle ne joue guère utilement dans les pays où les contribuables considèrent la résistance au fisc comme un jeu, où la chance ou l'habileté peuvent les favoriser, et comptent toujours sur le hasard ou l'impuissance du Trésor à les découvrir,

En un mot, où la conscience fiscale est inexistante, on peut être convaincu que le remords fiscal est quasi impossible à espérer ou ne sera qu'exceptionnel. En fait l'amnistie conditionnelle est un geste du législateur, couramment utilisé en période électorale pour calmer les esprits, pour répondre aux ,,campagnes'' a presse contre de contrôle fiscal et la répression des infractions.

CONCLUSION

Tels sont en bref les principaux moyens utilisés ou utilisables pour la détection de la fraude fiscale.

Certains, il ne peut pas le nier, considèrent ces prérogatives comme une violation formelle de la liberté physique et juridique des assujettis, du secret des affaires et des auteurs vont même jusqu'à rappeler que cette intrusion dans l'existence des individus serait défendable à une époque, comme celle des anciens Romains, où la vie juridique s'étalerait au grand jour, et se dévoilerait entièrement; où les liens de droit naitraient publiquement par l'accomplissement de certains rites devant témoins, où les volontés s'enchaineraient et se délieraient sur le forum de la cité, où les témoins déposeraient publiquement devant le forum, où les patrimoines seraient connus de tous, seraient recensés périodiquement pour permettre le classement politique des citoyens suivant leur fortune

Par contre, ajoutent ces défenseurs de la liberté, ces moyens d'investigation deviennent ,,impensables'' dans une société évoluée qui n'attache plus d'importance à la solennité des stipulations, qui se contente de l'échange des signatures pour la preuve des contrats, qui se montre réticente devant la preuve testimoniale tout au moins en droit civil et même commercial, qui laisse aux chefs d'entreprise la possibilité de tenir leurs affaires à l'abri des indiscrétions.

Ce plaidoyer est difficile, à l'examen, d'être retenu pour deux raisons, l'une technique, l'autre générale et psychologique.

Dès lors que les législations fiscales abandonnent la taxation forfaitaire et indiciaire et lui préfèrent la déclaration contrôlée, il parait impossible que le fisc ne vérifie pas l'exactitude de celle-ci, ne se fie en d'autres termes aux dires du contribuable, et ne cherche pas à examiner les documents comptables, les stocks, etc.

Le second argument, pour être moins net, est encore plus convaincant: il semble timoré pour le fisc de renoncer à toute curiosité dans le contrôle des déclarations, alors que les nouvelles Administrations publiques se montrent avides de renseignements sur la vie et l'activité des individus: les services de police immatriculent les individus, les caisses de sécurité sociale ou d'allocations familiales recensent tous les citoyens des deux sexes susceptible de bénéficier des prestations médicales, etc.

De même les nouveaux textes relatifs à la conduite des entreprises privées constituent les Comités d'entreprise, les consuls d'usines, la cogestion, le règlement des grèves, la fixation des salaires, etc. qui conduisent inévitablement à la suppression de tout secret dans les affaires.

Pareillement les dispositions légales, instituant la nationalisation de certains secteurs privés, font limiter progressivement le ,,mur privé''.

Egalement la règlementation concernant la normalisation, la répartition de certaines matières premières, le contrôle des prix etc. enlèvent progressivement aux chefs d'entreprises l'indépendance à laquelle ils étaient habitués.

En définitive, on peut donc conclure que le fisc, par ses prérogatives, n'est plus le seul adversaire de la liberté individuelle; il a, peut-être, devancé — dans

son instrusion dans les affaires privées — les autres services publics; mais, à l'heure actuelle, ses contrôles ne sont pas plus insupportables que ceux qui sont exercés par les services de l'Inspection du Travail, du Contrôle des Prix, du Crédit, etc.

L'auteur croit cependant devoir, pour être objectif, rappeler les arguments formulés contre les moyens de déceler la fraude par les civilistes français tels que GENY, PILON, RIPERT, etc.: l'impôt, disent-ils, devant être uniquement la prestation pécuniaire versée pour satisfaire aux dépens d'intérêt général par les membres d'une communauté organisée, doit se *modeler* sur l'organisation politique, économique, juridique et sociale de cette communauté; autrement dit, le droit fiscal doit s'adapter à cette structure *antérieure* et non la détruire; il doit laisser intacts les principes fondamentaux du droit civil, administratif, etc.; la législation des impôts essentiellement éphémère comme sont passagers les besoins du Trésor, doit respecter les cadres permanentes de la société.

Est-il besoin de dire que cette opinion — théoriquement très soutenable — est pratiquement indéfendable, devant la disparition progressive de la conscience fiscale dans de nombreux pays?

IV

REVIEWS — COMPTES RENDUS

DR. WILLY BAIER: *Gewerbliche Buchführung Kostenrechnung und Steuern.* — Fachverlag für Wirtschaft und Steuerrecht Schäffer & Co, Stuttgart, 1949 — (Buchreihe Finanz und Steuern, Band 2).

The edition "Finanz und Steuern" aims in the first place to be an expedient in training the higher tax authorities. For this reason it is not confined to the discussion of tax laws only, other fields of general interest touching the fiscal domain are dealt with as well. Accounting and related problems are discussed by authors who have a well-known reputation. As a matter of fact the edition is of a greater interest than for tax employees in training. Those who have experience already as well as entrepreneurs and fiscal experts will have great use of the edition. It is not only the present situation which is under the author's consideration, but even the historical point of view. He deals with the origin of business accounting and its technics in the first part of the book: old forms, Cameralistic methods, the influence of science, the development of law and fiscal provisions. The second part deals with the legally prescribed balance sheets, the consequences of improper accounting.

Modern views originating from Belgium, France and Germany—in the first place the name of Prof. Schmalenbach is mentioned—are discussed in part III, the most extensive part of the book, elucidated with examples and graphics, whereas part IV deals with cost accounting.

DR. WILLY BAIER: *Steuerliche Betriebsprüfung. Wareneingangsbuch und Warenausgangsverordnung* 1949. (Volume 5 of the abovementioned edition).

The three subjects mentioned in the title of this book (148 pages) are discussed from a general point of view and in their mutual relation. This book is particularly written for business- and tradesmen. In the first book the fiscal examination of books in various countries is described: necessity, development, returns and effects etc. afterwards the methods in connection with the various taxes. In the second and third part attention is paid to the legal provisions, making bookkeeping necessary, with remarks regarding their application. In the appendix all legal provisions have been inserted.

PROF. DR. P. J. A. ADRIANI: *Het Belastingrecht, zijn grondslagen en ontwikkeling.* Volume III. — L. J. Veen Uitgeversmaatschappij, N.V. Amsterdam, 1951.

The third and last volume of this work, the first and second ones of which have been announced in Bulletin Vol. III, p. 350, deals with fiscal law as such. The contents are systematically arranged and the taxes referring to the particular subject are described. The starting-point is not the various taxes but the description of social phenomena and their fiscal consequences. The first part of this volume deals with the subjects of taxation: individuals and juridical persons. The next part includes a description of gain, income and property. Afterwards attention is paid to determined topics: real property, securities and movable capital — estate — enterprise and personal activity. The position of the entrepreneur, the partnership, the limited partnership and the person entitled to a share in profits is discussed extensively; further-

more the limited company and the limited partnership with share capital. The cooperative society and the non-profit making association are discussed in the following parts, whereas this part is closed by the individual entrepreneur, his actual manner of living and his position with regard to old-age insurance.

A survey of the subjects dealt with forms the end of the book together with some remarks regarding the presumable development of fiscal law.

HENRY LAUFENBURGER: *Les Finances de* 1939 *à* 1945. *I. La France.* Librairie de Médicis Paris, 1947.

Thanks to the aid of the Carnegie-Foundation the professors GASTON JEZE and HENRY TRUCKING could give a survey of finance in the years of war (1914—1918). A similar survey is given by PROF. LAUFENBURGER with respect to the years 1939—1945; provisionally, as many figures had not yet been settled on publication of the book. Important is the indication in the preface stating that financial expenditure (approximately 2.000 milliard francs) is not made good but for $^1/_3$ by ordinary revenues, in the first place taxes. Not less than 1.400 milliards is compensated by loan and creation of money.

In the introduction a comparison is given between the periods 1914/18 and 1939/45. The first part of the book (158 pages) deals with expenditure; the second part with ordinary revenues. The tax revenue in the war years seemed to be of a great importance. The third part deals with the policy of loan and the work ends with some conclusions touching questions which regretfully nowadays do still not have historical significance.

JEAN VAN BASTELAER: *Le régime fiscal des exploitations professionnelles en Belgique.* — Bruxelles, Etablissements Emile Bruylant 1948.

A very succinct book (15 pages) which intends to give information to interested foreigners regarding the most important fiscal charges with respect to carrying on a trade or business within Belgium. In this respect the book maintains its importance even after the many changes which have been brought about in Belgian fiscal legislation since its publication. It gives a review of the income tax. Special attention is paid to the fiscal position of a family and foreign enterprises. Moreover it contains a description of the turnover tax and even of social contributions.

DR. HEINRICH LEHMANN: *Handelsrecht II. Teil: Gesellschaftsrecht.* —Verlag für Rechtswissenschaft vormals Franz Vahlen G.m.b.H. Berlin 1949 (Neue Rechtsbücher).

This work does not contain special treatment of fiscal problems however it is of interest to the practitioner of fiscal law. In fiscal legislation always reference is made to particular forms of cooperation and the basic principles of bodies corporate are dealt with in this book. It is not elaborated in detail but intends only to give the leading principles. After a discussion of "Gesellschaftsrecht" generally, other association forms are dealt with, the "Personengesellschaften" and the "Körperschaften"; finally some particular forms of association. The fiscal consequences are not neglected, they are dealt with seperately.

DR. ERNST FRITSCH: *Die Besteuerung in Gewerbe, Handel und Industrie.* — Manzsche Verlagbuchhandlung, Wien 1947.

This book intends to give a valuable guidance through the most important tax problems in Austria especially on behalf of industrial and commercial life. In this respect the author deals with the turnover, income, corporation and trade tax and gives an extensive description of the valuation problem.

All taxes mentioned are discussed separately and one can find valuable

data with respect to the subject and object of taxation and tax rates. Although there have been brought about considerable changes in rates etc. since the publication it is still usefull in order to get insight in the fiscal matters. The same author published in 1946 a book *"Handelsbilanz und Steuerbilanz"* (Industrieverlag Spaeth & Linde Wien 1946) dealing with the basic principles of accounting, especially the relation between commercial and fiscal balance sheets. He observes that the original task of the balance sheet is a commercial one, but that on account of the complexity of fiscal legislation and its influence in commercial and industrial life the fiscal balance sheet has become the most important one and that unlike its nature sometimes the commercial balance sheet is deduced from the fiscal one.

In *Die Steuerklärung* 1945 *und die Bewertungsrichtlinien des Finanzministeriums* the author had already started the description of the accounting problems particularly with respect to the confusing economic conditions in the last year of the war and the consequence of the capitulation of Nazi-Germany. In 1947 was published another book by him: *"Das Umsatzsteuergesetz"* (Manzsche Verlagbuchhandlung, Wien). This book only discusses the main problems of the turnovertax: a tax which is completely based on the German principles. In the first mentioned book turnover tax problems were discussed already but there the author gives an explanation of each section of the tax in connection with the related provisions of the „Durchführungsbestimmungen zum Umsatzsteuergesetz".

The most important book of Dr. Ernst Fritsch is *"Das Recht der Einkommen- und Korperschaftsteuer"* (Industrieverlag Spaeth & Linde Wien 1948). He gives an extensive review of all sections of the original text together with the regulations. Numerous legal decisions are incorporated and dealt with as well. The treatment is in the same way as those of the Umsatzsteuergesetz. It is an interesting book particularly when dealing with tax problems in the years up to and including 1948. However the evolution of taxation did not pass Austria; since 1948 tax legislation developped and it is hardly possible to learn the present status from this book now. We therefore wish Dr. Fritsch that he is able to revise the book and bring it fully up to date with all provisions now in force. It certainly will have good success.

P. Husy: *Grundrisse der steuerlichen Buch- und Betriebsprüfung*. — Verlag des Schweizerischen Kaufmännischen Vereins, Zürich, 1948.

L'ouvrage sus-mentionné a paru comme vol. 3 dans la série „Leitfaden für Anwärter auf höhere Steuerbeamtungen", et comprend 93 pages. Le sujet traité semble être purement technique, mais l'auteur offre à ses lecteurs plus que cela parce qu'il touche les relations entre le fisc et les contribuables. Tout ce qui peut contribuer à ce que le fisc et les contribuables puissent acquérir une meilleure idée de leurs points de vue réciproques, est utile à la communeauté. Le curriculum vitae de l'auteur lui permet de connaître ces deux points de vue et de les approcher l'un de l'autre. Quand, en 1945, l'administration fiscale fédérale l'invita à écrire cet ouvrage il était inspecteur auprès de la section: Impôts sur les bénéfices de guerre. En août 1946 il quitta le service fiscal et rentra dans la vie professionnelle privée. L'ouvrage fut terminé en juillet 1948.

C'est dans le domaine de la détermination du bénéfice imposable que les points de vue du fisc et des contribuables entrent en conflit très facilement. L'évaluation de l'actif et du passif, les amortissements, les réserves occultes etc. sont traitées par le fisc d'une autre façon que cela est commun dans la vie professionnelle. L'auteur traite aussi le bilan fiscal et le bilan commercial et fait une comparaison entre ces deux.

Après avoir examiné, dans la première partie du livre, les aspects légaux, comptables et personnels du problème, et cela de façon générale, l'auteur traite, dans la deuxième partie, la technique du contrôle des livres. Il va

sans dire que c'est ce sujet qui comprend la plus grande partie de l'ouvrage.

L'auteur a étudié ce sujet de façon systématique: d'abord les préparatifs du contrôle, ensuite cet examen lui-même; c'est ici qu'il traite séparément: le bilan, le capital roulant, le capital propre et étranger, le compte des pertes et profits, etc.

Enfin quelques observations sur la fixation des résultats du contrôle. Alors tout revient à fixer l'assiette dont l'auteur dit encore quelque chose.

WALTER KUNZ: *Führer durch das St. Gallische Steuergesetz*. Heft 28 der Rechtshilfe Bücher — Rechtshilfe Verlag, Zürich 1947.

Voici un petit opuscule de 24 pages mais contenant beaucoup de données. L'auteur y traite la loi du 14 mars 1944 relative aux impôts cantonaux et communaux.

D'abord on pose comme règle générale que, d'après l'article 2 de la loi, les autorités fiscales ne sont pas obligées de tenir compte de constructions de droit privé si celles-ci ne sont pas en harmonie avec la réalité.

Ensuite on traite quelques questions générales: Qui est contribuable? Quel est le lieu de la cotisation au cas d'un assujettissement limité ou illimité?

Parmis les sujets spéciaux que traite l'auteur il faut mentionner: les impôts sur le revenu et sur la fortune avec quelques considérations succinctes; l'impôt sur les personnes juridiques: impôt frappant les bénéfices et le patrimoine des sociétés de capitaux; l'impôt sur les coopérations, associations, fondations etc. Enfin l'auteur s'est occupé du droit formel, de la procédure en matière fiscale, du droit pénal fiscal et des impôts communaux

HERMAN WAGELAAR: *Gewerbesteuergesetz vom 1. Dezember* 1936. — Guttentagsche Sammlung No. 231, Walter de Gruyter & Co, Berlin, 1947.

Dans son introduction l'auteur fait remarquer qu'en 1920 la „Gewerbesteuer" allemande ainsi que les impôts sur les propriétés bâties et non bâties, furent alloués aux „Länder", qui en même temps reçurent le droit de les laisser, en tout ou en partie, au profit des communes.

Par conséquent les législations des „Länder" à ce sujet étaient tellement différentes l'une de l'autre que la situation était devenue indésirable. Il en resultait par exemple que le lieu de l'établissement d'une entreprise dépendait trop de la situation fiscale. C'est pourquoi il y avait des efforts en vue d'unifier ces diverses législations, et il en résultait enfin la loi de 1936: les communes ne pouvaient lever l'impôt que suivant les règles établies dans la loi fédérale. Cette loi a donné à l'impôt un caractère réel.

L'auteur a donné le texte de la loi avec des commentaires. L'ouvrage se termine par une table analytique détaillée qui permet de trouver facilement tous les sujets dont on a besoin.

WALTER THIER: *Steuerrecht der Personengesellschaften*. — Fachverlag Schiele und Schon, Berlin, 1949.

C'est un sujet important que traite l'auteur, parce que le groupe: „Personengesellschaften", comprend des formes de sociétés de caractère différent. Par exemple: sociétés en nom collectif, sociétés en commandite sous leurs différentes formes, sociétés d'armateurs, sociétés civiles, l'association sans personalité juridique. Dans les relations juridiques elles jouent un rôle tout à fait différent. Quant à la société en nom collectif l'unité de cette société s'impose — aussi dans quelques pays cette sosiété a acquis la personnalité juridique —; quant à d'autres formes, les relations entre les associés n'ont que d'effet interne, et un tiers n'est engagé qu'envers l'associé agissant.

Quel est le point de vue du droit fiscal dans cette matière? Est-ce qu'il fait une distinction entre ces différentes formes, ou bien est-ce que la société est frappée toujours comme unité devant le droit fiscal, ou bien le droit fiscal nie-t-il cette unité et n'impose-t-il que les personnes faisant partie

de la société? Ou bien, troisième possibilité, est-ce que l'on ne prend l'unité en considération que sous certains rapports? Il y a encore une quatrième possibilité, à sàvoir: on traite les sociétés de différentes manières selon qu'il s'agit d'un impôt ou d'un autre.

Pour pouvoir donner une opinion bien fondée sur ces questions une étude approfondie dans le caractère et signification sociale des diverses formes juridiques ainsi que dans le caractère des différents impôts est indispensable. Voilà un terrain important pour une étude comparée. C'est aussi à ce point de vue que l'ouvrage de M. THIER mérite d'être signalé.

Ce contraste apparaît déjà au début où l'auteur constate que, pour autant qu'il s'agit de l'imposition des sociétés de personnes, celles-ci sont considérées comme unité pour la plupart des impôts excepté l'impôt sur le revenu, l'impôt sur la fortune et l'impôt ecclésiastique („Kirchensteuer").

En étudiant l'ouvrage on peut se rendre compte de la complexité des matières traitées. Dans le premier chapitre les sociétés de personnes sont traitées d'une façon générale, ensuite l'auteur discute les différentes formes.

Il suit pour autant qu'il soit possible, toujours le même schéma: généralités-cotisation-commencement et fin-apports-revenu etc. L'impôt sur le revenu est traité dans le deuxième chapitre où l'auteur attire l'attention sur le problème de l'affiliation et de la retraite des associés, problème qui est très compliqué à cause des nombreuses règlementations spéciales.

Le problème de l'évaluation, moins traité à fond, forme l'objet du troisième chapitre. Il en est de même en ce qui concerne d'autres impôts. Par exemple, les droits de succession ne sont traitées qu'en quelques pages bien qu'il y ait beaucoup de difficultés dans ce domaine dans quelques autres pays à cause de stipulations speciales prévues dans les actes de constitution.

L' ouvrage se termine par un index détaillé.

UNITED NATIONS: *Review of Economic conditions in the Middle East.* — U.N. Publ. No. 1951.II.C.3.

Review of Economic Conditions in the Middle East was prepared by the Department of Economic Affairs of the United Nations Secretariat and is published as a Supplement to *World Economic Report* 1949—50. The *Review* discusses the basic physical, economic and social characteristics of the Middle East and surveys the main economic trends of the area. A full section of the *Review* is devoted to a study of the petroleum industry of the Middle East and its importance in both the world economy and in that of the producing countries. A final section of the Review discusses certain aspects of the economic development of the region. The text is complemented by a statistical appendix of 50 tables. Three maps are included on the climate, principal transport routes and petroleum and other fuels in the Middle East.

M. SLAMET: *Privaatrechtelijke codificatie en maatschappij in Indonesië.* (Codification de droit civil et société en Indonésie). — J. B. Wolters, Groningen, Batavia, 1949.

L'histoire se répète, ainsi est apparemment la thèse de ce discours d'inauguration à l'Université de l'Indonésie.

La révolution française a fait naître le code civil (dit code Napoléon), qui fut copié par le législateur hollandais. A son tour le code civil hollandais fut introduit — avec quelques modifications insignifiantes — en Indonésie, il y a un siècle. Toutefois ce n'était que la population européenne qui était assujettie au code civil.

La révolution indonésienne récente exige, presque sous les mêmes slogans et avec un décor un peu différent de ceux de la révolution française il y a un siècle et demi, l'unification et la codification du droit civil.

La fin du discours nous révèle qu'auparavant le professeur a servi le fisc un quart d'un siècle durant.

J. R. Hicks & U. K. Hicks: *The incidence of local rates in Great Britain* — Cambridge University Press, 1945.

Cette brochure (64 pages) peut être considérée comme une suite et un complément à l'ouvrage de MM. Findlay Shirras et Rostas intitulé „The Burden of British Taxation" dans lequel les auteurs se sont demandés quelle partie du revenu de différentes classes de la population revient au Trésor. Quant aux impôts locaux une étude spéciale fut considérée comme nécessaire, en particulier en ce qui concerne les taxes sur les habitations.

Les auteurs ont publié des études préliminaires, à savoir: *Standards of local expenditure* et *The problem of valuation for rating*. La grande diversité dans différents domaines rend extrêmement difficile de donner une vue d'ensemble.

Après avoir décrit le matériel dont ils ont eu la disposition et la façon dont ils ont fait usage de ce matériel, les auteurs font une distinction entre régions industrielles et régions agricoles. Ils ont fait leur investigation par différentes voies et pour différents cas, et le resultat en est démontré dans de nombreux tableaux et grafiques. Cet opuscule a une importance aussi pour d'autres pays, plus spécialement à cause de la méthode qu'ont suivie les auteurs et de leurs exposés détaillés à ce sujet.

Matthias Metz: Das Deutsche Steuerrecht, Band II: Die einzelnen Steuern Richard Boorberg Verlag, Stuttgart/München, 1949.

L'ouvrage du docteur Metz a un caractère informatif et n'est pas écrit en vue de prendre la place des commentaires des différentes lois fiscales. L'auteur n'a eu en vue que d'écrire un guide dans cette matière changeante et c'est pour cette raïson que son ouvrage est publié sur feuilles mobiles. On trouvera dans ce guide des aperçus succincts de presque toutes les lois fiscales: la „Grunderwerbsteuer" manque.

L'impôt sur le revenu par exemple comprend 150 pages: après une brève introduction (dans laquelle on a donné une idée du développement de l'importance et du caractère de cet impôt) l'auteur traite la matière dans son ensemble, d'une façon systématique et souvent en citant littéralement les prescriptions légales, souvent en commentant la loi se basant sur la jurisprudence. De la même façon il traite aussi les autres impôts.

Un index détaillé augmente la valeur de cet ouvrage comme ouvrage de référence.

Reinhold Sellien: *Kaufmanns-Brevier* — Betriebswirtschaftlicher Verlag Dr. Th. Gabler, Wiesbaden, 1949.

Ce ne sont pas seulement des ouvrages d'ordre fiscal que le Bureau International de Documentation Fiscale reçoit. Les sujets dont s'occupe le Bureau sont tellement entrelacés avec les différents aspects de la vie sociale qu'il n'est pas possible de tracer une limite. Ainsi on peut attirer l'attention sur l'opuscule sus-mentionné (112 pages) qui traite — pour ainsi dire — la philosophie du commerçant. La pensée de celui-ci ne se borne pas à la comptabilité, au bilan, aux dépenses et aux . . . impôts. Nous trouvons dans cet ouvrage des considérations succinctes sur son éthique et ses idéaux, sur ses joies et ses mécontentements, sur ses „dadas" et ses bonheurs, sur sa présomption et son sentiment de la responsabilité, et heureusement aussi sur son humour et 50 autres sujets.

Est-ce-que tout cela compte seulement pour les commerçants? On peut se demander — question qui nous ramène dans le domaine du Bureau de Documentation — si tout contribuable, tout fonctionnaire des administrations fiscales, et tout conseiller fiscal ne peuvent profiter de ces considérations philisophiques des expériences dans la vie quotidienne.

GUIDO FEGER: *Das Steuerrecht des Fürstentums Liechtenstein.* Neu bearbeitet in Verbindung mit Dr. jur. Bruno Güggi, Vaduz. — Verlag für Recht und Gesellschaft, Bâle, 1948.

Voici un opuscule de 31 pages contenant une bibliographie, une énumération des lois fiscales de Liechtenstein, (pas de textes) et un traitement systématique des impôts sur la fortune et sur les entreprises, les droits de succession et de donation, et l'impôt sur les sociétés. Les auteurs ont donné leur attention spéciale à l'imposition des étrangers. En outre, on trouvera des renseignements concernant la déclaration, la détermination des valeurs et la prévention de doubles impositions.

KURT BARSKE: *Grundriss der Reichsabgabenordnung.* Band 4 Buchreiche Finanz- und Steuern. — Fachverlag für Wirtschaft und Steuerrecht Schäffer & Co, Stuttgart, 1949.

Après la première guerre mondiale on introduisit, en Allemagne, la loi du 13 décembre 1919, la „Reichsabgabenordnung" contenant une règlementation des sujets généraux pour tout le droit fiscal.

Plus tard, quelques-uns de ces sujets ont trouvé une règlementation à part dans des lois spéciales, et il en resultait le „Steueranpassungsgesetz" et le „Reichsbewertungsgesetz" du 16 Octobre 1934. La „Reichsabgabenordnung" existe encore. L'ouvrage sus-mentionné la traite d'une façon systématique en prenant comme base la situation à la fin de mai 1949. Malgré la séparation politique, la partie du droit se référant à la Reichsabgabenordnung est restée la même dans les trois zones occidentales. Il n'y a qu'un nombre restreint de différences, sur lesquelles l'auteur attire l'attention.

Il va sans dire que les problèmes formant le sujet d'une telle loi générale, se présentent dans tous les pays. Il y a une différence, à savoir que, dans un pays sans loi générale, il se peut que les problèmes soient résolus de différentes manières, selon qu'il s'agit d'un impôt ou d'un autre. Dans un tel pays il est absolument impossible d'appliquer à un certain impôt une solution que l'on a trouvée pour un autre.

La grande valeur d'un ouvrage comme celui de M. Barske est que l'on y trouve une solution pour le droit fiscal entier, ce qui pour un étranger est aussi très important d'un point de vue scientifique.

Il ne nous est pas possible de mentionner plus de quelques sujets traités par l'auteur. La première partie traite les principes fondamentaux du droit fiscal. La „Reichsabgabenordnung" elle-même est l'objet de la deuxième partie; d'abord le droit matériel, en suite le droit formel. Mentionnons les sujets suivants de droit matériel: dette fiscale — le débiteur de la dette fiscale — naissance de la dette fiscale — responsabilité — transfert de la dette — dette commune — droits de réclamation mutuels. Parmi les sujets de droit formel on trouvera: l'administration fiscale, secret, moyens de contrôle, procédure en matière fiscale etc.

E. SCHREUDER: *Sanctions et peines pécuniaires en matière fiscale.* — Annales du Notariat et de l'Enregistrement, Bruxelles, 1949.

L'auteur, professeur à l'Université libre de Bruxelles et Directeur-Général de l'Enregistrement et des Domaines a fait un travail utile en publiant une étude des amendes fiscales. Ce sujet donne des difficultés aussi dans d'autres pays, et on en trouve des conceptions divergentes.

Dès au début de son s'étude, l'auteur fait une distinction entre les sanctions qui interviennent après une condamnation judiciaire et celles dont l'application revient à l'Administration elle-même. Parmi le premier groupe on trouve les sanctions pour les impôts directs, les droits d'entrée, les accises et les taxes provinciales et communales; pour ces impôts et taxes les sanctions du code pénal sont applicables (emprisonnement, amendes, confisca-

tions). Dans le deuxième groupe rentrent les sanctions des droits de succession, de l'enregistrement et du timbre et taxes assimilées. Bienqu'on les appelle aussi amendes, on ne peut pas les mettre au même niveau que les amendes du code pénal; on les doit par le fait même de la contravention.

D'abord, l'auteur traite la partie pénale, art. 100 du Code pénal belge, avec citation détaillée de la jurisprudence belge qui attribue un caractère mixte aux amendes fiscales: amende *et* indemnité. Il donne beaucoup d'exemples relatifs aux conséquences de cette théorie et il fait mention de l'argumentation contre cette doctrine et des motifs sur lesquels est basée la conception d'après laquelle il s'agit ici fort bien de droit pénal.

Les amendes du second groupe ne sont pas des amendes dans le sens du code pénal. Mais faut-il en tirer la conclusion qu'il s'agit d'une action civile d'indemnité? L'auteur cite d'une façon détaillée les ouvrages, la jurisprudence et les décisions administratives. Que faut-il penser de tout cela? L'amende passe aux héritiers, mais quand même l'auteur maintient le caractère d'amende pénale, et il maintient qu'il y a contravention à la loi. Une étude historique confirme cette conception, et l'auteur en traite les conséquences.

L'étude se termine par un certain nombre de considérations sur quelques sujets spéciaux.

LEWIS H. KIMMEL: *Taxes and economic incentives*. — The Brookings Institution, Washington, 1950.

La ,,Brookings Institution'' fondée en 1927, a pour but de contribuer au développement sociale et de favoriser l'étude scientifique des sciences sociales. L'ouvrage précité (217 pages), publié par cette institution, s'occupe du fardeau fiscal toujours croissant depuis la deuxième guerre mondiale. L'auteur y traite son influence sur l'économie, en général, et, en particulier, sur les investissements et sur l'expansion des entreprises.

A cette fin beaucoup de personnes ont contribué, entre autres en répondant à des questionnaires.

Dans l'introduction on constate que les dépenses publiques ont tellement augmenté que l'on ne peut obtenir les revenus nécessaires qu'en temps de prospérité économique. Les impôts perçus en Amérique par la Fédération, les Etats et les Communes ont monté à plus de 50 milliards de dollars, c'est environ un quart du revenu national. Sous ce rapport on fait remarquer que des variations dans les activités des entreprises ont une influence plus que proportionnelle sur les revenus publics. Si, par exemple, les activités diminuaient de 10 p.c., les revenus publics diminueraient peut-être de 10 milliards. Voici le point crucial du problème fiscal: comment pourra-t-on réduire à des proportions aussi mimimes que possible l'influence freinante de l'imposition sur la production?

On étudie ce problème de différents points de vue: il faut qu'il soit un stimulant: a) à l'établissement de nouvelles entreprises; b) à l'extension des entreprises existantes; c) en ce qui concerne le public: à économiser et à mettre ses épargnes à la disposition de la vie industrielle; d) à développer l'amour du travail.

Après quelques considérations concernant la capacité contributive, on traite successivement: l'impôt sur les sociétés, l'impôt sur le revenu, la taxe sur le chiffre d'affaires, les accises, les impôts sur la fortune et les ,,Pay Roll or Employment Taxes'' perçues sur les salaires et sur les entrepreneurs pour le financement des soins pour les vieux jours. L'ouvrage se termine par un certain nombre de conclusions. On a ajouté encore quelques tableaux très intéressants contenant beaucoup de données importantes.

V

SUMMARY OF JAPANESE TAXES IN EFFECT AS OF 1 APRIL 1951 [1])

The following is a description of the various national and local taxes in effect as of 1 April 1951:

NATIONAL TAXES

Personal Income Tax

This tax has brackets ranging from 20 % to 55 %, as indicated in the table below. There is a basic exemption of 30,000 yen for each taxpayer, and an additional 15,000 yen exemption for each dependent.

Table I

1951			*Rate*
y	0 —	y 50,000	20 %
	50,001 —	100,000	25 %
	100,001 —	150,000	30 %
	150,001 —	200,000	35 %
	200,001 —	300,000	40 %
	300,001 —	500,000	45 %
	500,001 —	1,000,000	50 %
	1,000,001 —	and over	55 %

The tax is divided into two administrative parts for the purpose of collection — namely, the self-assessed and the withholding tax. The former levy is reported and paid by the taxpayer, while the withholding tax is primarily on earned income, and is deducted from the employee's salary by the employer.

There are three periods for filing and payment for self-assessed taxpayers. These are the months of July and November of the current year and February of the following year. The taxpayer is responsible for filing provisional self-assessed returns on 31 July and 30 November of the taxable year, and for filing a final return not later than 28 February of the following year.

Particular features of interest in this tax are the following:

a. The law permits each taxpayer to file his own return as long as he is not claimed as a dependent by another. The one exception to this is in the case of earnings of family members in an enterprise carried on or owned by one of the members of the family. In this case the return must be consolidated.

b. Capital gains and losses are taken into account to the extent of one hundred percent in computing taxable income. However, such gains, as well as income from forestry, fishing, royalties, or retirement, may be averaged over a five year period.

c. Medical expenses and certain personal losses resulting from casualty, earthquake, fire, etc., (and not compensated for by insurance or otherwise) may be deducted from taxable income to the extent that they exceed 10 %

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[1]) See also: Dr. HENRY LUDMER in *Bulletin* vol. V, No. 3, p. 137. The following documents, issued by the Japanese Taxing Authorities, have been sent us by Dr. LUDMER, for publication as a supplement to his article.

of net income. Maximum deduction for medical expenses is 100,000 yen.

d. A dividend credit of 25 % of the dividends received is allowed as a direct credit against the tax.

Personal Income Tax of Foreign Nationals

Certain foreign nationals receive special treatment with regard to the income tax, although they are fully liable for all other national and local taxes. The Special Measures Taxation Law of March 1950 provides that foreign nationals who legally received an income in Japan in foreign currency prior to 1 July 1950 or who became residents of Japan after 1 July 1950 may exclude 50 % of the income accruing to them after they had been residents of Japan for more than one year, but in an amount not exceeding 3.5 million yen for 1951.

For the period of 1952—55 certain foreign nationals employed by certain designated corporations utilizing foreign capital and requiring foreign capital investment or foreign scientific techniques will be allowed to exclude 50 % of their earned income up to 3.5 million yen. These designations will be made by the Minister of Finance after consultation with the Foreign Investment Committee. One criteria required to fall in this category is that the corporation must have invested one hundred million yen or more in foreign currency. Foreign nationals who are employed by corporations whose operations are primarily to facilitate the operation of corporations indicated above will also receive a 50 % exclusion for the same period. As well, foreign nationals engaging in certain professions specifically designated by the Minister of Finance which facilitate the operations of corporations mentioned above will receive the same tax benefits, even though their remuneration may be in the form of fees rather than salaries (earned income). With the exception of such individuals, however, *the exclusion benefit is limited to those foreign nationals receiving earned and retirement income*. Earned income, under the Japanese tax laws, refers only to salaries and wages; *it does not include fees and commissions*.

Further, for 1952 to 1955, designated foreign nationals invited to Japan as technicians to improve scientific techniques will receive the same benefits on their earned income. These designations will be made by the Minister of Finance. Foreign teachers of the high school level or above and foreign missionaries will also be allowed the same 50 % earned income exclusion benefit.

In addition, for 1952 to 1955, earned income received outside Japan will not be subject to Japanese taxation. If the taxpayer received remittances from abroad, however, such amounts must be added to the foreign national's total income. Furthermore, if the taxpayer's normal living expenses paid in Japan are more than the earned income received in Japan, such additional amounts will be considered as part of the taxpayer's income in Japan. Thus, under the Japanese foreign national tax law, individuals who receive their *earned* income outside Japan are not taxable on such income unless it is directly or indirectly remitted to Japan.

Corporation Taxes

This tax consist of a flat 35 % rate applicable to the net income during the accounting period for the firm. This tax applies both to foreign and domestic corporations. The return is required to be filed and paid within two months following the end of the accounting period. Firms having annual accounting periods must file both an interim return covering the first six months' operations and a final annual return.

Net Worth Tax

This levy is a tax on the difference between the net assets and net liabilities of an individual. The first five million yen is excluded under the Net

Worth Tax Law; the next five million yen is subject to a 5 % tax rate. The next 10 million is subject to a 1 % tax rate; the next 30 million to a 2 % rate, and the remainder to a 3 % rate. The tax is applicable to net worth as of the last day of each year, and filing and payment are due as of the last day of February of each year.

It should be noted here that this is a new type of tax in Japan and was introduced into the Japanese tax system partially to compensate for the relatively low top-individual net income tax bracket (55 %).

Accessions Tax

This tax replaced the Estate and Gift Tax in 1950, and is an accumulative levy on the recipient of gifts and bequests. Due to its graduated rates, a donee may reach a higher tax bracket each time he received a gift or bequest: The tax is simpler than the former gift and inheritance taxes since it does not discriminate in rate for gifts made during life or at death. An exclusion of 150;000 yen is allowable to each donee. The following is a table of the existing rate structure.

Table II

Accessions Tax Rate

y	0	— y	200,000	25 %
	200,001	—	500,000	30 %
	500,001	—	1,000,000	35 %
	1,000,001	—	1,500,000	40 %
	1,500,001	—	2,000,000	45 %
	2,000,001	—	3,000,000	50 %
	3,000,001	—	4,000,000	55 %
	4,000,001	—	5,000,000	60 %
	5,000,001	—	7,000,000	65 %
	7,000,001	—	10,000,000	70 %
	10,000,001	—	15,000,000	75 %
	15,000,001	—	25,000,000	80 %
	25,000,001	—	50,000,000	85 %
	50,000,001	—	and over	90 %

Revaluation Tax

Due to the inflation which occurred between the prewar period and 1950 there was a great divergence between book and market values of the majority of Japanese assets. Corporations in many cases were paying their corporation tax from capital, since depreciation expense based on book value was far below true depreciation based on market value. The Revaluation Tax Law permitted corporations to revalue their assets up to market value. To discourage excessive revaluation and thus the amount of depreciation taken, a tax of 6 % is levied on additional book reserves realized from revaluation. The tax amount for an individual who revalues assets is spread over a five year period and is payable during the first month of each of the five years. For a person who has sold land, houses or shares of stock and thus is deemed to have revalued, a one-time payment is due the year following sale. Corporations that revalue are permitted to spread the tax payment over three years, 50 % being due the first year, and 25 % during each of the following two years. The first payment is due within the year following revaluation. The payment period may be extended to five years when profits are insufficient to take full advantage of the new depreciation allowances arising from revaluation. Separate legislation was enacted by the National Diet in early 1951 which extended the privilege of revaluation through 1952.

Travel Tax

This tax is applicable to Class A and B passengers of trains, tramcars, busses, and airplanes. It also applies to Class A passengers on steamships. It has a rate of 20 % collectible by the transportation company, with a turnover date of the 10th of each month following the month of collection.

Registration Tax

This tax applies to registrants of real property, and of copyrights, publishing rights, patents, trade marks, etc., and to registrants of commercial firms — including corporations, and of professions — such as lawyers, doctors, accountants, etc.

The taxable basis of the registration tax is the price of the property to be registered in the case of real property or the number of applications in the case of professions, parents, etc. The tax rate is 2.5 % for the acquisition of real property as a gift or inheritance and 5 % for the acquisition of property through purchase. For firms the rate is 6 % of the value of investment of paid-up amount of shares. For the professions it is 3,000 yen per application. In the case of the transfer of copyrights and publishing rights, the rate is 120 yen per right acquired as gift or inheritance and 600 yen if acquired otherwise. In the case of patent rights and trade marks, the rate is 120 yen per right if received through gift or inheritance and 300 yen if acquired otherwise.

Liquor Tax

The liquor tax is imposed on all forms of alcoholic beverages, including sake (most common Japanese alcoholic beverage), whiskey, shochu, mirin and beer. The levy is imposed on the manufacturer as the beverages leave bond. The table below indicates the tax rates and official selling prices:

Table III
Liquor Tax Rates Effective 1 December 1950

		Ration Tax (y per sho)[1])	Fixed Retail Price	Free Sale Tax (y per sho)[1])	Fixed Retail Price
Sake	Special	350	580	715	950
	1st	300	500	540	750
	2nd	223	390	290	460
Imitation Sake	1st	200	350	340	500
	2nd	168	300	238	370
Mirin	A	Eliminated		565	800
	B	,,		225	375
Beer		120	199.42	245	327.63
Whiskey					
1st Class	1st kind			1,700	none
	2 nd kind			1,700	none
2nd Class		No Ration		900	none
3rd Class				497	none

[1]) One sho equals 0.48 gallons.

Commodity Tax

This is a manufacturer's excise applied on an ad valorem basis to 5 groups of commodities, and on a specific basis to a small number of other commodities such as matches, soft drinks, etc. Commodity tax rates appear in the table below:

Table IV

Group	*Rate*	*Examples of Commodities Included in Each Group*
A	50	Precious stones, gold objects, etc.
B	40	Cameras, rifles, etc.
C	30	Gramaphones, electric fans, etc.
D	20	Smoking utensils, trunks, etc.
E	10	Cosmetics, sporting goods, etc.

Gasoline Tax

This is a specific levy of y 11 per liter and is normally collected at the import or domestic refinery points as it leaves the bonded area.

Sugar Excise

The excise is levied at the point of manufacture on or leaving the bonded area. The average rate of this tax is ten yen per kin (1.3 lb.). The rate varies with the type or quality of the sugar. It applies both to imported and domestically produced sugar.

Playing Set Tax

This is a specific tax applied at the point of manufacture or a bonded area. Examples are y 1500 on a mah jong set and y 50 on a deck of cards.

Bourse (Exchange) Tax

This tax is applicable to securities transactions and commission receipts on securities transactions. It is .2 % in the case of commissions, .01 % on bonds or corporate debentures, and .2 % on stocks.

Stamp Tax

Stamp Taxes are primarily specific levies, although a few are ad valorem. They are imposed at varying rates on documents covering the transfer of titles, real estate, commodity exchange tickets, promissory notes, power of attorney and similar documents.

LOCAL TAXES

These taxes are divided into two groups. The first group is employed by the prefectures, while the second group is utilized by the municipalities, i.e., cities, towns and villages. The prefectures and municipalities each possess three main tax revenue sources. For the prefectures they are the Enterprise and Special Net Income Tax, the Admission Tax, and the Amusement, Eating and Drinking Tax. For the municipalities, the three main taxes are the Inhabitants Tax, the Real Property Tax, and the Electricity and Gas Tax.

PREFECTURAL TAXES

Enterprise and Special Net Income Tax

These taxes are applied to the net income of enterprises and professions. The standard enterprise tax rate is 12 % of the corporate or individual net

income. This rate may be increased to a limit of 14.4 % by authority of the individual prefecture. The amount of this tax is deductible in computing the amount of income subject to the national income too. Special net income taxes are applied to doctors, lawyers, dentists, and similar professions, the rates varying between 6.4 % and 8 %.[1])

In the case of a corporation, the amount due under the enterprise tax is determined by self-assessment and is payable within two months after the close of the corporation's business year.

Admission Tax

This is a 100 % tax on admission fees to movies, theatrical productions, athletic fetes, etc. In the case of fees to art galleries, exhibitions, amusement parks and other places of similar nature, as well as for school athletic and theatrical productions, the rate is 40 %. The tax is not imposed on activities as mentioned above when they are under the direct auspices of the schools.

Amusement, Eating and Drinking Tax

This is a luxury tax with varying standard rates, which may be increased or decreased by the prefectures. The standard tax rate on service fees for geisha girls, dancers, entertainers, etc., is 100 %. The standard rate is 40 % on charges for eating and drinking in hotel-type restaurants, rooms for hire in these establishments, cafes, bars, and such other places of a similar nature, as may be provided for by the local by-laws of the prefectures concerned. The standard rate on lodging, eating and drinking in other establishments not mentioned above is 20 %. Owners of such establishments are designated as special collectors and generally utilize tax stamps for collection purposes.

Automobile Tax

The amount of this tax varies roughly with the size of the motordriven vehicle. For the ordinary passenger car there is a 15,000 yen per annum tax if the car is to be used for private purposes, and 10,000 if used for business. The amount is 10,000 yen also on trucks and busses; small bantam type automobiles bear a lower tax of 4,500 yen per annum for private use and 3,000 yen for business use. Motor-tricycles bear a 2,000 yen per annum tax and motor-bicycles 1,000 yen. The tax on extremely light automobiles is 500 yen per annum. The date of imposition is 1 April with period of payment, as determined by local by-law, during April and October.

Mine Lot Tax

The basis for this tax is the area of the mine lot. For prospecting mine lots, the tax is 30 yen per annum for 1,000 tsubo. (A tsubo is 6 sq. ft.) The mine lot in operation bears a 60 yen tax for the same size. For placer mining lots the tax is 30 yen per cho (120 yds) along river beds and 30 yen per 1,000 tsubo for non-river bed areas. This tax is due in December.

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[1]) The present local tax law calls for a replacement of the Enterprise and Special Net Income Taxes with a Value Added Tax, to be effective 1 January 1952. The Value Added Tax rate will run from 4 % to 8 % and will be applicable to the value of services rendered or to the increase of value on materials which accrues between arrival and departure of the materials from a given firm. This tax need not affect income and may be shifted to the final consumer.

Fishing Right Tax

The base here is the actual or assessed rent of the fishing right. The rate is 10 %. Date of imposition and period for payment is according to by-laws of the prefecture concerned.

Hunter Tax

This is a tax of 3,600 yen per hunting license per annum.

Extra-Legal Taxes

These taxes are special levies which may be imposed by the prefectures or the municipalities at their discretion and are not specifically laid down in the local tax law. An example of such a tax might be an apple production tax. The imposition of such taxes requires the approval of the Local Finance Commission to insure that they do not duplicate levies of other levels of government or are contrary to public interest.

MUNICIPAL TAXES

Inhabitants Tax

This tax has two components. The first is a flat per capita levy, and the other is an income tax. The per capita amount is as follows:

Table V

Per Capita Amount

1. Cities with a population of 500,000 or more:
   Individuals —[1] Standard rate ..... y 700
   (maximum ..... 900)
   Juridical person — Standard rate 2,400
   (maximum ..... 4,000)
2. Cities with a population of 50,000 to 500,000:
   Individuals — Standard rate 500
   (maximum ..... 650)
   Juridical person — Standard rate 1,800
   (maximum ..... 3,000)
3. Cities other than those under the preceding two items, and towns and villages:
   Individuals — Standard rate 300
   (maximum ..... 400)
   Juridical person — Standard rate 1,200
   (maximum ..... 2,000)

The income portion consists of a standard rate of 18 %, using as an assessment basis the income tax paid in the previous year to the National Government. This rate by local option may be increased to 20 %. Municipalities have the option of employing one of two substitutes for the income feature of the inhabitants tax as applied to individuals. First, the taxable income as determined for national income tax purposes may be used as a base for the income feature of the inhabitants tax with the application of a tax rate not to exceed 10 %. The second substitute is similar to the first except that the base excludes the amount paid for national income tax, and the rate here may not exceed 20 %. A 15 % rate applies to corporations using as an

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1) Amounts between standard and maximum may be employed at discretion of municipal government.

assessment basis the corporation tax paid to the National Government in the previous year. In computing the amount of income subject to the national income tax the tax paid here is allowable as a deduction.

Property Tax

This is a tax on land, buildings, and (depreciable assets used in business enterprise) carrying a standard rate of 1.6 % of capital (fair market) value. The maximum rate that can be applied by by-law of the municipality is 3 %. Due dates for the tax are April, July, December and February. However, for the FY 1951-52 only, the applicable dates are:
April, June, September and December.

Electricity and Gas Tax

The tax base here is the charge for electricity or gas used. The rate is 10 % and is collected by the utility company along with the collection of the regular bill.

Bicycle Tax

This is a 200 yen levy per annum on bicycles.

Cart Tax

The tax is 800 yen per annum on ox or horse drawn carts, 400 yen on medium sized hand-carts and 200 yen on small hand or bicycle drawn carts.

Mine Products Tax

The basis here is the value of the products mined. They bear a standard rate of 1 % which may be raised to a maximum of 1.2 % by municipal by-law.

Timber Trade Tax

The basis of this levy is the price of raw timber. The standard rate is 5 % with a maximum of 6 % if prescribed by municipal by-law. Collection is by use of a tax stamp.

Advertisement Tax

The tax rates are as follows:

Table VI

Standard rate:

1. Advertisements made in trains, tram-cars, automobiles, steamships, and other means of transporation or facilities of transportation enterprises: 10 % of ad. charge
2. Advertisements by means of illumination (restricted to advertisements made by persons operating advertising businesses): 10 % of ad. charge
3. Advertisements made in telephone directories, etc.: 10 % of ad. charge
4. Advertisements made by means of placing or hanging signboards: ¥ 50 per piece
5. Advertisements made by means of permanent type signboards, etc. (excluding those falling under 1. and 2. above): ¥ 300 per annum per tsubo or fraction thereof. (6 sq. ft.)
6. Advertisements made by means of posters (excluding those falling under 1. of the above): ¥ 10 per piece
7. Advertisements made by means of handbills: ¥ 50 per 1,000 pcs or fraction thereof

Mineral Bath Tax

This is a tax of 10 yen per mineral bath taken.

Service Girl Tax

There is a tax of 100 yen per month levied on each geisha girl, taxi dancer, etc.

Extra-Legal Taxes

Extra-Legal taxes are permitted for use by the municipalities in the same manner as with the prefectures.

ADDENDUM

I. *Japanese Income Tax Burden on Corporations*

As indicated above there are three income taxes levied on corporations in Japan. These are the national corporation tax of 35 %, the local government inhabitants tax (15 % of the national corporation *tax*) and the enterprise tax (12 % of the *preceding year's* corporation *taxable income base*). The enterprise tax is a deductible expense in computing the national corporation tax. The total income tax burden of these three taxes amounts to approximately 47 % of income. In addition, in the case of family corporations there is a 5 % tax on their reserve fund (undistributed profits).

The burden of these taxes for the year 1951 on a non-family corporation (assuming the corporation earns 10 million yen in 1950 and 10 million in 1951) is illustrated below:

Computation of
Tax on 10 Million Yen Corporation Income in 1951

Income	10,000,000	
Deductions:		
Enterprise tax paid in 1950 12 % of y 8,800,000 taxable income (this represents income of y 10,000,000 in the preceding year)	1,056,000	
Income subject to national income tax	8,944,000	
Corporation tax (35 % of 8,944,000)		3,130,400
Inhabitants tax, 15 % of corporation tax (3,130,400)		471,960
Enterprise tax, 12 % of corporation taxable income base (8,944,000)		1,073,280
Total Japanese income taxes on corporations		4,675,640

II. Value-Added

Effective 1 January 1952 a value added tax will replace the prefectural enterprise and special net income tax. The value-added tax is a tax on the amount of value added to the product of, or the value of the services rendered by, each business concern. One method of computation is to add together the total of wages, interest, rent and net profit of each concern. Another method is to subtract from gross profits expenditures for capital outlay.

The tax rates vary between 4 and 8 % on manufacturing, banking, transportation, printing, amusement and similar business, and between 3 and 6 % on professional, fishing and livestock breeding activities. Corporate taxpayer returns are due no later than two months after their accounting

period ends. Where a corporation uses a period longer than 6 months, they are required to pay an estimated tax on their first six months' operation within one month after the end of the six months period. For a non-corporate taxpayer two preliminary returns and payments are due on May 31 and September 30, and a final payment is due by February 10.

LOCAL TAX REFORMS IN JAPAN

SCAP Recognition of The Local Tax Problem

Occupation authorities early realised that the Japanese local tax structure and administration, both prefectural and municipal, afforded an inadequate fiscal basis for the establishment and development of local democratic processes; that realization of one of the occupation's principle objectives, the strengthening of local autonomy, was being impeded by the lack of fiscal independence of local entities; and that something must be done to improve taxpayer morale. Conplete reformation of the local tax system and its administration was imperative if the revised educational system, the local autonomy law, the local finance law and other local reforms were to have real meaning.

The Local Tax System and Administration Prior to June, 1950

The local tax system and administration early during the occupation and prior to its reformation in July, 1950 was extremely weak and defective:

1. Local entities lacked fiscal independence.
2. Tax sources were inappropriately distributed between the national, prefectural and municipal governments.
3. The tax burden was inequitably distributed among taxpayers.
4. Many taxes were such as to constitute a serious impediment to business operations.
5. The local tax structure needed simplification and clarification.
6. Local tax administrative organization and practices resulted in inefficient, ineffective and inequitable administration of the local tax laws and were not consonant with democratic principles and processes.
7. Taxpayer morale was notoriously low.

Local entities enjoyed a relatively small degree of fiscal independence. Roughly 50 percent of total local revenues were derived from shared taxes, subsidies and other national government sources. The determination of the amount of these revenues and their distribution by the national government was uncertain, precarious and often arbitrary. Political intrigue was widely practiced and local officials were required to spend an inordinately large amount of time in the national capital currying the favor of national bureaucrats. Even though the local entities collected about 50 percent of total local expenditures from local taxes, service charges, miscellaneous fees, forced contributions, etc., they could exercise very little discretion respecting these revenue sources. Most local taxes and rates together with service charges and fees were prescribed by national laws enacted by the Diet and implimented by Cabinet Ordinance and Ministerial regulations. Local entities could exercise some freedom in imposing numerous minor taxes, mostly of a nuisance character, but even here approval of central authorities was required.

The distribution of tax sources among the national, prefectural and municipal governments bore little relationship to the expenditure requirements of the various services performed by each level. The revenue sources of

both the prefectures and municipalities were inadequate. For the fiscal year, aggregate revenue collections of all local units, prefectural and municipal, constituted only about 10 percent of total revenue collections for the nation. This figure had increased to around 20 percent by FY 1949—50, and to 29 % in FY 1951—52 budget, the first year after passage of the Local Tax Law. The balance of local revenues, which was roughly equivalent to the amounts collected from local tax and non-tax sources, took the form of grants, subsidies and shared taxes from the national government. The proportion of total revenues derived from local sources was lower than in practically all other important nations. When account is taken of the fact that Japan was maintaining no army, navy or other defense forces and that the national debt was negligible, the relative importance of the local share of total revenues is even more significant.

The municipalities had only a few minor sources of independent revenues. Their principal revenues were derived from supplemental levies upon the prefectural inhabitants taxes and land and house taxes. The municipalities levied in excess of 150 different minor taxes, most of which had little revenue significance and in many instances were exceedingly difficult to administer. Even with this array of miscellaneous taxes, most municipalities were not able to raise sufficient revenues to meet the compulsory expenditure requirements imposed by the national ministries. As a consequence ,they were forced to resort to extra-legal measures such as requiring forced contributions of the citizens of the community. These amounted to a sizable portion of total municipal revenues.

Taxes were inequitably distributed among taxpayers. The national tax system placed considerable emphasis upon income as a measure of ability to pay; and this situation was further aggravated by a local tax structure which was based almost entirely upon income. The principal source of prefectural revenues, the enterprise tax, was based upon income. Likewise, the second main source of prefectural revenues and the principal source of municipal revenues, the inhabitants tax, was a supplemental levy upon the national income tax. Another main source of prefectural and municipal revenues, the land and house tax, was based upon rental incomes and consequently was closely correlated with the income potential of property. Although there was considerable variation in the measures for determining liability for the forced contributions of citizens, most localities gave heavy weight to income components.

Perhaps the most striking defect of the entire Japanese tax system, both national and local, was the relatively small weight given to taxes based upon property. Income, of course, is perhaps the best single measure of ability to pay, but the possession of wealth is a second detesment of ability to pay. In practically all major countries, much greater emphasis is given to property as a base for taxation than has been the case in Japan. Prior to the war the land and house taxes were relatively substantial, but even then personalty was not taxed. The post war inflation largely obliterated the land and house tax base by reducing established rental values to nominal amounts relative to inflated property values. During fiscal 1949—50, only about 4 % of total national and local revenues were derived from property. Of this 4 %, the national estate and gift taxes constituted a sizable proportion and the land and house taxes, which were the only local taxes based upon property, were relatively unimportant. One factor contributing to low property tax rates was efforts by the national government to maintain official price controls over property rentals.

Many local taxes unduly impeded business operations. Numerous localities levied taxes, such as building repairing tax, various taxes on machines, etc., which altered conditions of business competition and directly impeded productive enterprise. Transactions in real property were retarded by a

20 percent property acquisition tax which also extended to building activities. The activities of hotels and restaurants and of theaters and other places of entertainment were taxed at abnormally high rates, ranging as high as 200 percent of gross receipts in some instances. Many of these rates were set during the war for sumptuary control purposes. They were continued after the war because of the critical need for revenue. The incidence of numerous taxes as the rice and wheat refining machine tax, weaving and spinning machine taxes, etc. was such that these taxes constituted a heavy burden upon the necessities of life owing to poor administration and to a faulty tax structure small business enterprises and the low income element of the population bore an inordinately heavy tax burden while many large corporate enterprises had succeeded in not only securing exemption from taxation but in being heavily subsidized by the government.

Local tax provisions needed systematization. There was in fact no local tax law. Local tax provisions were scattered throughout many national laws, regulations and Imperial Ordinances, some extending back to a date beyond the turn of the century. The whole system was a "hodge-podge", generally incomprehensible to the taxpayers and even to most Japanese tax officials.

The administration of local taxes was ineffective and inadequate. The brunt of the burden was borne by the municipalities. The national government exercised detailed directions over the administration by means of Cabinet ordinances and ministerial regulations. The prefectures served as intermediary agencies to direct the municipalities in implementing these national directives.

Most prefectures maintained no tax administration organizations. Administration of the prefectural taxes was "farmed-out" to the municipalities. The prefectures maintained small corps of supervisory personnel in the prefectural capital and also in the field (gun) offices.

As a consequence of centralized direction by the National Government through the prefectural offices, the municipalities could exercise virtually no discretion in the administration of the laws. This resulted in inflexible application of the laws and gave rise to widespread inequities from which taxpayers could obtain little, if any, relief. Moreover, the application of the tax laws did not accord closely with varying local conditions and circumstances.

The administration of local taxes, especially municipal taxes, was rendered to a certain extent ineffective by virtue of statutory provisions giving priority to collections first of national taxes and secondly of prefectural taxes. The priority provisions fostered a widespread feeling among the taxpaying public that the national taxes must be paid first, the prefectural taxes secondly, and last of all the municipal taxes. This feeling, together with the pervasive attitude of the taxpayers that the total tax burden was too heavy, constituted a serious impediment to the collection of local taxes.

The combined weight of a faulty tax structure together with poor and often arbitrary administration was rapidly destroying taxpayer morals. There was widespread resentment of taxes and tax administration personnel. Tax evasion was widely condoned, and organized resistance to the payment of taxes was so widespread that open violence was a frequent occurance.

The Shoup Tax Mission

To assist in bringing about a correction of this situation, a mission of tax experts, headed by Dr. CARL SHOUP of Columbia University was brought to Japan to make an intensive study of the Japanese revenue system and to make recommendations for its reform. This mission completed its study and submitted its recommendations in July, 1949. The recommendations were released in their entirety to the Japanese Government and given wide publicity throughout Japan. The Japanese Government agreed with the

Supreme Commander that the recommendations of the Mission were generally sound and should constitute an outline, or blue print, for a thorough revision of all tax laws, national and local.

Discussions Looking Toward Reform of Local Taxes

Discussions were started between the Japanese Government and the Internal Revenue Division of SCAP at an early date following the release of the Shoup Report. The Local Autonomy Agency was assigned the responsibility on the part of the Japanese Government of reaching an understanding with SCAP as to detailed revisions to be made in the local tax structure and of formally drafting the necessary legislation.

Discussions between the Local Autonomy Agency and the Internal Revenue Division were protracted. They began around September, 1949 and continued from day to day until passage of the Local Tax Law in June, 1950.

There was considerable delay in formulation of the Local Tax Bill. The principle deterrent was the proposed increase in local taxes. The proposed increase was bitterly opposed even though the overall tax burden, including national taxes was reduced. Other major contributing causes, included:

1. National government opposition to increasing local fiscal independence;
2. Opposition in the national government to delegation of authority to the local entities for autonomous local tax administration;
3. Promises of the Government of extensive tax reductions; and
4. Pressure from private groups who had formerly largely escaped paying their full share of the tax burden, particularly the local tax burden.

The national administration was steeped in the concept of detailed centralized direction over local administration. Historically, this had been the experience of national government personnel and it was pervasive in their thinking and attitudes.

For many years some of the most powerful business groups in Japan, including the electric and gas utilities, shipping, private railroads and other large property holders, had not only been given certain special tax privileges but also had succeeded in securing subsidization by the Government. A few months prior to the time of the drafting of the revised Local Tax Law, a national stabilization policy had been adopted along lines advanced by the Dodge Mission, one element of which was the discontinuance of government subsidization of private business activities at as early a date as this could be effected. Since many of the business enterprises indicated above had suffered drastic reductions in receipts from government subsidies, they resisted stubbornly any tax increases or modifications which adversely affected them.

The basic issues in dispute in drafting the Local Tax Bill were:

1. The amount of revenue which could be expected to be produced by given tax rates, especially those of the property tax;
2. Adoption of the value added tax;
3. The inclusion of depreciable assets in the property tax base;
4. The assessment standard to be employed in valuing property for the property tax; and
5. The application of the value added tax and the property tax to the enterprise and properties of the electric and gas utilities, private railroads, shipping, and other private enterprises;
6. Administrative provisions relating to delegation of authority to the local entities.

The Shoup mission recommendations were specific as to the amount of revenue needed by the local entities to discharge properly their service functions and as to the amount of the national equalization grant and tax rates estimated to be necessary to raise these amounts. These estimates

had been included in the over-all national budget previously adopted by the Diet. Differences arose between the Local Autonomy Agency and the Ministry of Finance and between both of these agencies and the findings of the Shoup Mission as to the amount of revenues which could be expected from given local tax rates, particularly the value added and property tax rates. The Ministry of Finance contended that the tax rates recommended by the Shoup Mission were too high and that the recommended property assessment standards would result in excessive property valuations. The position taken by the Local Autonomy Agency was more nearly in line with the recommendations of the Shoup Mission. Repeated estimates were presented by each agency, but the same basic differences remained. The Internal Revenue Division after careful investigation supported the position of the Local Autonomy Agency. Later experience has shown that the position taken by the Local Autonomy Agency and supported by the Internal Revenue Division was more nearly correct.

In addition to the differences over revenue estimates, the Japanese Government, as well as powerful private pressure groups, contended until the very last that local tax rates, particularly the property tax rates, should be rigidly fixed in the Local Tax Law and at a level considerably below what would probably be needed for long range local revenue needs, whereas the Internal Revenue Division took the position that delegation of authority to local entities to determine rates locally in the case of most local taxes was a necessary part of the over-all local autonomy program.

There was widespread misunderstanding, both among the Japanese Government and taxpayers generally, of the value added tax. This tax was generally understood to be a tax which would have to be paid out of the income of enterprises, whereas in fact it is basically a sales tax designed to be shifted generally to the consumer. This misunderstanding was partly responsible for the opposition to this tax. Some misunderstanding could be expected as the value added tax had never been imposed elsewhere on a broad scale, though in most countries there are taxes which in the aggregate add up to a tax structure somewhat related to that which is contained in the value added tax.

Historically, tangible personal property had never constituted a base for taxation in Japan. Consequently, opposition arose to broadening the old land and house tax base to include depreciable assets. Since Japan is a relatively advanced nation industrially, a correspondingly high proportion of its total property values are represented by tangible property. In many enterprises such as public utilities, shipping; etc., most of their property holdings take the form of depreciable properties and the inclusion of these properties in the property tax base meant in substance the imposition of a heavy new tax upon these enterprises. This attempt was strongly resisted. Furthermore, other enterprises such as the steel industry, chemical industry, railroads, etc., had relatively heavy investments in land and structures and a tax measured by the value of these properties would constitute a relatively much heavier burden upon these enterpises.

Delay in Passage of the Local Tax Law

The Local Tax Bill, once it was presented to the Diet, encountered considerable opposition in the Lower House, but was passed after considerable delay and repeated attempts for amendment. However, it was successfully blocked in the Upper House. Several members of the House of Councillors are elected from the country at large. Large business enterprises had succeeded in securing the election of several councillors who supposedly represented the interests of large business. These councillors were members of independent party groups and, together with other members who were basically opposed to the Local Tax Bill or who wished to capitalize on the

situation to embarrass the governing party, succeeded in delaying its passage. This delay was rapidly giving rise to a fiscal emergency among the local entities of government and was threatening a crisis in national politics. The situation became so grave that General MacArthur wrote Prime Minister Yoshida on March 21 stating, among other things, that he considered it imperative that the Local Tax Law be passed effective by April 1, the beginning of the fiscal year.

When it became apparent that the Local Tax Bill would not be enacted by the regular Session of the Diet, interim measures became necessary. Increased local borrowing was authorized and special funds were appropriated for distribution among the local units of government to continue basically necessary local government services during the interim before reconvening the Diet. Also, since the local tax system was to be revised extensively, it was necessary in order to avoid unnecessary confusion to suspend collection of all annual taxes such as the enterprise, inhabitants and land and house taxes.

The Diet adjourned in April with the Local Tax Bill still pending in the House of Councillors. On May 3 the Public Information Office of General Headquarters issued a statement presenting General MacArthur's views on the Diet's failure to enact the Local Tax Bill. Pertinent excerpts from this statement follow:

"Asked to comment upon the action of the National Diet in not enacting at this session the Local Tax Law Revision Bill, Gen. MacArthur today observed that whereas the resulting lack of essential revenue sources to finance local government "cannot but fail to hamper the efficient operation of local public services," both sides on the issue acted in full accord with the constitution and pertinent laws, and the 'legislative stalemate which resulted was not unusual under the democratic process in comparable situations.'

"He expressed full confidence that once the coming election is out of the way, the Diet will proceed with resolution, statesmanship and unity of purpose' to discharge its attendant responsibility in implementation of this phase of the Economic Stabilization Program designed to insure'stability in public finance as reciprocal warrant for American economic aid.'

"He added that, contrary to a widespread impression, the effect of the bill taken in conjunction with reductions recently effected in the national taxes in anticipation of the bill's enactment, would be to lighten the overall tax burden heretofore existing by approximately y 50,000,000,000. Japan's taxes, heavy as they are, due to the cost of war and defeat, are lighter in relation to national income than those currently levied by such nations as the United States, England or Germany."

Immediately after adjournment of the National Diet the Japanese Government reinitiated discussions with the Economic and Scientific Section of GHQ looking toward extensive revisions in the Local Tax Bill. The proposals generally were contrary to the previously issued economic stabilization directive and consequently were unacceptable. Approval was given only on making such alterations as the delay in the passage of the Bill made necessary. These amendments related primarily to administrative details. Finally, the Prime Minister took the issue up directly in a letter to the Supreme Commander. Excerpts from General MacArthur's reply of 25 May, 1950 follow:

"I have given thoughtful consideration to the report of Finance Minister Hayato Ikeda forwarded with your letter to me of May 22nd. Many of the proposals contained therein would be in conflict with the principles of the Economic Stabilization program directed from Washington and transmitted to you by my letter of December 19, 1948, which must guide the formulation of continued economic aid from the United States. They would, if adopted, require a complete revision of the national budget only recently enacted

into law and entail abandonment, in favor of an inflationary course, of essential measures designed to implement the stabilization program, the success of which has already been established.

"Any proposal for changes in the Local Tax Law Revision Bill will require careful study to insure that the revenue derived from the new local tax rates are sufficient to meet the revenue requirements of local governments without necessitating grants from the national treasury in addition to those already provided in the 1950—51 budget, and that the basic principles of taxation upon which the tax program is based are not violated. This is a matter which may be the subject of joint studies between representatives of your government and the Economic and Scientific Section of this Headquarters prior to the next session of the Diet.

"In general, the proposals offered by Mr. Ikeda would appear to be matters for future consideration in connection with long range planning when conditions make this possible. Indeed, they in part have been previously considered in connection with the present fiscal year's budget and found impractical of adoption in view of existing conditions. The Chief, Economic and Scientific Section, will of course gladly discuss with you in fuller detail the impact which untimely adoption of such proposals would have upon the Japanese economy."

Failing in its determined attempt to obtain approval of widescale amendments to the Local Tax Bill, the Japanese Government submitted such proposed amendments to the Diet as had been approved.

A stalemate somewhat comparable to that having taken place during the regular Diet Session was again experienced in the Emergency Session, called primarily for reconsideration of the Local Tax Bill. Finally, near the close of the Session, certain compromises were agreed upon which resulted in the passage of the Local Tax Bill in June, 1950. Among others, the proposed standard property tax rate was reduced from 1.75 % to 1.6 %, the proposed assessment factor was reduced from 1,000 to 900 and the effective date of the application of the value added tax was postponed for one year. The old Enterprise Tax was continued in operation during this interval.

The Local Tax Law, as finally enacted by the Diet in the latter part of June, 1950, became effective July 1, 1950, with the supplemental provision that the taxes were to be retroactive to the beginning of the fiscal year, April, 1950. The local tax system thus provided constituted signal improvements over the prior system.

Improvements in the Local Tax System

Prior to enactment of the Local Tax Law, legal provisions relating to local taxation and revenue were scattered throughout many statutes. The new Local Tax Law set forth all provisions relating to the local taxes in one consolidated statute so designed that a separate section was devoted to each local tax except for a few general provisions relative to all local taxes. Thus, the general provisions, together with those relating to a particular tax constituted the entire body of law relating to each tax measure.

The local tax structure was greatly simplified. The heterogeneous array of some 100 odd local taxes were repealed and the local tax structure was reduced to a few major revenue sources and to a few relatively minor sources. Formerly the municipal levies in the case of each of the major taxes took the form of supplemental levies upon the prefectural tax base. With the enactment of the new Local Tax Law, however, a complete separation of sources was provided. The prefectures were assigned the following major taxes:

1. Value added tax (the enterprise tax until January 1, 1952, the effective date of the value added tax).

2. The admissions tax.
3. The amusement, eating and drinking tax.

In addition to these major revenue sources the following minor taxes were assigned to the prefectures:

1. Automobile tax
2. Mine Lot tax
3. Fishing right tax
4. Hunter tax

The prefectures were required to levy the taxes indicated above but were not restricted to these levies. They were authorized to impose ordinary taxes by creating new tax items and to impose a water utilization and land benefit tax as special purpose measures.

The municipalities were assigned the following major revenue sources:

1. Inhabitants tax
2. Municipal property tax
3. Electricity and gas tax

In addition to these major revenue sources the municipalities were also given the following relatively minor taxes:

1. Bicycle tax
2. Cart tax
3. Mine products tax
4. Timber trade tax
5. Advertisement tax
6. Mineral bath taking tax
7. Service girl tax (A per capita levy on Geishas, dancing girls, etc.).

The municipalities, like the prefectures, were required to levy the taxes indicated above but were also authorized to impose ordinary taxes by creating new tax items and to impose water utilization, land benefit, and common facilities taxes as special purpose measures.

In cases where it may be necessary by reason of public interest, etc., local units of government were authorized to impose taxes at unequal rates. Similarly, with respect to special purpose taxes when some taxpayers stand to benefit more than others the local units of government concerned were authorized to levy nonuniform rates. Local governments were prohibited from levying taxes which are generally contrary to the best public interest.

As indicated above, the prefectures and municipalities are specifically required to levy certain taxes calculated to be adequate for meeting most expenditure requirements of the local entities having relatively the most extensive revenue sources. The Equalization Grant Law, which was a companion measure to the Local Tax Law, is designed with the view of the national government appropriating annually sufficient funds for allocation among the financially weaker local entities sufficient to meet whatever additional expenditure requirements that are necessary to maintain reasonable standard levels of local services. Although the Local Tax Law does not provide complete fiscal independence to the local entities, especially the prefectures which were granted relatively less adequate tax sources, it provides the local entities greatly increased opportunities for a relatively much larger degree of fiscal independence. It also provides the local entities increased opportunities for providing flexible revenue structures to meet varying local needs and circumstances. The localities can now seek additional local revenue sources and they have considerable freedom in the case of most of their major revenue sources of providing a flexible tax rate structure corresponding to local expenditure requirements.

The Local Tax Law provides the local entities with greatly increased

authority for providing autonomous administration of the local taxes and indirectly, through providing more adequate revenue sources, gives them increased opportunities for exercising real autonomy respecting many other reform provided for in the Local Autonomy Law, the Local Finance Law, school laws, police laws, etc.

The prefectural and municipal assemblies are given general authorization to enact local by-laws governing the administration of local taxes. Likewise, the prefectural governors and the mayors of municipalities, with the approval of their respective local assemblies, are given general authorization to formulate rules and regulations respecting local tax administration.

Prior to enactment of the Local Tax Law, local tax administration procedures and methods were dictated by central authorities. Such authority of the central agencies is limited in the Local Tax Law to those circumstances in which central direction is necessary in order to maintain desired uniformity, in settling controversial issues arising among the local entities, etc. Generally, central direction is replaced by provisions for central leadership and guidance. The Local Tax Law recognizes that central technical assistance, uniform interpretations of law, and leadership and guidance are necessary for most effective local administration and adequate provisions are made in this respect with, however, restrictions in their exercise designed to protect the local entities against central usurpation of authority.

The centralized direction of local tax administration prior to enactment of the Local Tax Law had resulted in a very rigid and stilted application of the tax laws with little delegation of authority whereby inequities could be corrected and effective application of the laws could be obtained at the local level. In place of this type of administrative procedure the Local Tax Law provides simple, straightforward administrative methods and procedures to be applied by local officials and gives these officials authority commensurate with these duties and responsibilities, thereby providing for greatly simplified local tax administration in contrast with the complicated, stereotyped procedures which applied formerly.

At the time the Local Tax Law was enacted, taxpayer morale in Japan was extremely low. This fact, coupled with the legal provisions that priority should be given respectively to the national tax collections, prefectural collections, and finally local tax collections, resulted in a situation where it was virtually impossible for local officials to effectively enforce the Local Tax Laws and provide for efficient tax collections. The priority rights of the higher levels of government were removed and the tax claims of all three levels of government, national, prefectural, and municipal, were placed upon a parity. This did much to remove the thinking which was pervasive among taxpayers that national taxes must be paid first, prefectural taxes secondly and finally the municipal tax payments.

Many years of centralized direction of local tax administration, together with inadequate delegation of authority for local officials to exercise reasonable discretion in the application of the tax laws, had resulted in gross inequities among taxpayers and widespread arbitrary enforcement of the tax laws. Taxpayers, moreover, were not afforded adequate opportunities to register complaints and to appeal to impartial agencies against mistaken and arbitrary actions of tax officials. The Local Taw Law corrected this situation by providing taxpayers adequate legal protection and by setting up administrative machinery through which the taxpayer may be assured of proper hearing and opportunities for appeal.

A brief tabulation of local tax measures is given below.

Since enactment of the original Local Tax Law, the inhabitant's tax has been amended (a) to lower the per capita levy on individuals and (b) to impose a standard municipal rate on corporate income of 15 percent of the national corporation tax.

Activities of Occupation Authorities Subsequent to Passage of the Local Tax Law.

The Internal Revenue Division of ESS has actively assisted the Japanese in implementing and in initiating administration of the local taxes. Activities in this connection have included:

1. Approval of amendments to the law which one year of experience has shown to be needed.
2. Reviewing administrative ordinances, regulations, instructions, etc.
3. Assisting local officials.
4. Furnishing general guidance and technical assistance to central agencies.
5. Encouraging increased citizen interest and participation in local government.

Operations under the Local Tax Law indicated a need for numerous revisions of detailed administrative provisions, for clarification of some sections and for the revision of a few basic provisions of the law. The Internal Revenue Division of ESS has assisted and advised the Japanese respecting all of these revisions.

The Local Tax Law, of course, had to be implemented by a few basic Cabinet ordinances, ministerial regulations, instructions as to its interpretation, and by numerous local by-laws. The Internal Revenue Division has had the task of giving the Japanese officials guidance and advice respecting their formulation.

As local officials had not previously exercised broad authority in tax administration, reorientation was necessary. The local tax laws were new and unfamiliar both to local officials and to taxpayers, and the local tax burden was greatly increased. The Internal Revenue Division anticipated the changed local situation and had on hand a staff of competent local tax specialists to be assigned to regional field offices to work with and assist local officials in assuming their increased responsibilities. This field staff found that the local officials were hungering for technical assistance and guidance and generally willing to cooperate fully with the occupation in initiating autonomous administration of the local taxes. Furthermore, the taxpaying public manifested an intense interest in the new local tax situation. The confluence of circumstances created a very favorable environment for constructive work by the IRD field staff. Its accomplishments were limited primarily by the small number of men assigned to the work.

The principle need of local officials was for guidance and technical assistance. The Local Government Branch of IRD has worked constantly with the Local Finance Commission to provide this assistance. A property tax appraisal expert, for instance, was brought to Japan in May, 1951, for 90 days to advise the Local Finance Commission staff respecting the preparation of local property assessment manuals and the centralized assessment and allocation of the values of public utility properties, shipping, etc. which was one of the most difficult and basically one of the most important tasks of the commission.

During the early part of 1951, personnel from the Local Government Branch of IRD together with personnel from other interested divisions of ESS and SCAP sections conducted a general survey of local tax administration throughout Japan during which conferences were held with local tax officials, with the press, and with the general public respecting local taxation and its relationship to autonomous local government. The conferences with the officials stressed the need for improved tax administration and administrative methods and procedures for achieving this objective. Citizens and the press were encouraged to take increased interest in autonomous local government, participate more actively in its operation, and to

organize citizen's committees, better government associations, etc. as instruments through which to work most effectively.

Conclusions

The Local Tax Law has been accepted almost unanimously by the cities, towns and villages, and they are making substantial progress toward successful implementation of it. There is great need for widescale improvement local tax administration methods, techniques and procedures. Municipal officials, however, are earnestly seeking the answers and substantial progress is being made in most municipalities.

The prefectures have certain basic objections to the Local Tax Law. They complain that it provides them with independent revenue sources from which they can raise only about 20 percent of their budget expenditure requirements and consequently does not afford them fiscal independence and a secure financial basis for the development and growth of autonomous prefectural government. Prefectural officials complain that their tax sources are confined to the larger towns and cities and that most prefectural expenditure requirements are in rural areas. They also point out that the prefectures have no direct tax on the mass of citizens and that direct ties between most citizens and the prefectural governments have thereby been severed. The basis for these complaints will be largely removed and most of them will perhaps subside when the Value Added Tax becomes effective.

The Japanese public has accepted the Local Tax Law and are showing reasonable compliance with their local tax obligations. There is a general feeling that local services are not commensurate with the local tax burden. However, local taxpayers are emphasizing the need for economy and efficiency in local expenditures rather than pressing for decreases in local taxes.

Although drastic reforms approximating virtually complete redrafting of the local tax structure have been accomplished, further basic revisions are needed to complete the reformation. Some of these, however, need to be correlated with needed redistribution of local government services and associated expenditure requirements.

Along with the redistribution of local government services and associated expenditure requirements contemplated by the Local Administration Investigation Committee which are currently being studied by the Government consideration needs to be given to:

1. Strengthening independent sources of prefectural revenues, so that most of the prefectures can meet a proportionately larger share of the expenditure requirements from prefectural revenue sources with a corresponding decrease in their dependence upon national funds supplied through the equalization grant.

2. Redistribution of revenue sources among the national, prefectural and municipal levels of government which may be required as a consequence of redistribution of service and expenditure requirements.

Further revisions in the local tax structure which need to be made irrespective of any redistribution of local government services and expenditure requirements include.

1. Coordination of administrative authority. A particularly undesirable situation exists in this respect as between the Value Added and other local taxes. The authority of the prefectures to provide autonomous administration of the Value Added Tax is limited, whereas both the prefectures and the municipalities have been delegated broad authority in the administration of all other major local taxes. Futrhermore, central authority respecting administration of the Value Added Tax is vested in the Cabinet, whereas central authority respecting the other local taxes is vested in the Local Finance Commission. This situation contains possibilities for cross currents in administrative policies and practices.

2. Elimination of widescale exemptions from local taxes. The extent of these exemptions is not clearly defined or generally appreciated. Available evidence, however, clearly indicates that the local tax base and resources are severly restricted. Moreover, these exemptions complicate administration, result in inequity among taxpayers, and constitute a standing invitation to pressure groups to seek further exemptions.

3. Resolution of the inequities which result from a national tax policy under which government and cooperative enterprises are exempted from most tax requirements whereas competitive private enterprise must bear the full weight of public tax impositions.

4. Review of the taxation of motor vehicles. Trucks and busses are exempted from the property tax and pay no special highway taxes. Their registration fees are only nominal.

5. Extension of the property tax base to include (a) the properties of many enterprises currently exempted, (b) inventories and (c) equity rights in real property, including mining rights.

6. Revisions in property registration requirements and in the Civil Code to clarify responsibility for property tax liability.

7. Exemption of food and necessary lodging from the Amusement, Eating and Drinking Tax concurrently with replacement of this tax source with some other tax.

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