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TAX AVOIDANCE IN INDIA

by

R. K. Dalal, B. Com., F.S.A.A., F.C.A.

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Dr. R. C. Cooper, M. Com., Ph. D. (Econ.), F.S.A.A. (Hons), F.C.A.

In regard to tax there are two terms which are often used in common parlance when the proper levy of tax is either reduced or avoided by certain schemes, transactions or dispositions. These terms are ,tax avoidance' and ,tax evasion'. Dictionary defines ,evasion' as an act of ,evading'. The word ,evade' connotes ,to avoid by dexterity, artifice or trickery'. On the other hand ,avoidance' means ,to escape'. Therefore, it seems, to the act of ,evasion' some odium attaches, because the avoidance is by means of artifice or trickery, no such odium perhaps attaches when the tax is avoided by means which are legally open to the assessee.

Avoidance of tax may be either legitimate or illegitimate. It is *legitimate* when the law expressly allows it e.g. registration of firm and disruption of Hindu Undivided Family. Instead of paying one integrated tax on a firm, the firm pays by registration tax through its partners at their individual rate. Total of tax thus payable may be less than that payable on the total undivided income of the firm. So also tax paid by H.U.F. may be large. Members may wish to partition in order to crystalise and separate their individual shares from the family. There may be thus saving effected by disruption of family status.

It may be *illegitimate*, when the law prohibits it e.g. you split up your holdings between nominees and pay tax at their individual low rate of tax, instead of the high rate of tax applicable to your own income. Since the ownership really vests in you, you have split up the holdings ostensibly in order to escape your legitimate dues for payment of tax. These transactions viz. of the disposal of the holdings amongst benamidars are not real. They are fictitious and, therefore, they are not only not legitimate, but clearly illegal.

A transaction or a disposition may be illegitimate but may yet be legal. For example you give gifts or create a trust in favour of your adult sons. Now so long as sons and father mess and stay together, the transfer of assets to a trust for the benefit of the sons without any cause or reason, merely with a view to gaining advantage in the incidence of tax, may be legal, yet it is not legitimate, for to that extent you are whittling down your proper contribution to the country's exchequer.

It is trite to say that no person is under the slightest obligation to so arrange his affairs as to put in as large a shovel of contribution of his burden in the Government coffers. If he can, within the four corners of the Act, walk out of the limits of taxation, while remaining within the letter of the law, though not the spirit, he can legitimately do so and no odium will attach to such an act of his.

There are a number of well-known decisions of the English Courts saying

that a tax-payer is legitimately entitled to save as much tax as he can do so within the ambit of law.

"The Highest Authorities in England have always recognized that the subject is entitled so to arrange his affairs as not to attract taxes enforced by the Crown so far as he can legitimately do so within the Law (10 T.C. 302). It is trite law that His Majesty's subjects are free, if they can, to make their own arrangements so that their cases may fall outside the scope of the Taxing Acts. They incur no legal penalties, and, strictly speaking, no moral censure if, having considered the lines drawn by the Legislature for the imposition of taxes, they make it their business to walk outside them (13 T.C. 486). No one owes a duty to the State to maintain his assessment for surtax at the highest possible figure. If a subject thinks proper to do so, he assuredly may get rid of an income bearing security for the purposes of avoiding the addition of income from that security to his assessment for surtax purposes (19 T.C. 561). No man in this country (England) is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow — and quite rightly — to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is in like manner entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue (8 A.T.C. 531)."

A recent observation of Viscount Simon, however, points otherwise. He said in a House of Lords case of *Latilla v. C.I.R.* (25 T.C. 107 at p. 117) as follows:

"Of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income, without sharing in the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are 'entitled' to do so. There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeed, is, of course, to increase *pro tanto* the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how, to adopt these manoeuvres."

When a legitimate evasion takes place on the proportion and extent so as to seriously affect the budgetary position, the Legislature is entitled to step in and plug the loop-holes. We shall here consider a few of the Income-tax Sections, the genesis of which is found in the large-scale evasion practised to the detriment of the country's revenue.

Foreign Income

Prior to Amendment Act 1939, foreign income of a person was not taxable except on the basis of its remittance into India. The effect of this was that the accumulated foreign income was not taxed nor taken into the total income for rate purposes. The Amendment Act 1939 for the first time made the foreign income of a resident liable to be taxed on accrued basis. This has led to expanding of the ambit of the Charging Section and defining the status of the resident or the non-resident taxpayer by certain tests.

Agricultural Income

In the past, agricultural income accruing either within or without India was exempted. The Legislature took away this exemption on the remittance of agricultural income into India. There was another difficulty and that was, must all remittance be subjected to tax when brought into India, even though it may have accumulated since years? The Legislature accepted a reasonable date viz. remittance of income accruing prior to 1-4-1933 was expressly exempted.

Partnership

An individual could avoid tax by formation of partnerships and not seeking registration, with the result that the firm was taxed as a legal entity! Partners declared their share for rate, and not for tax purposes. The Amendment Act 1939 put a stop to this practice by providing that such deliberate non-registration should be ignored, where non-registration has the effect of reducing the tax liability of the partners as a whole.

Private Companies

Another method adopted by individuals was to form private companies. These companies were treated as separate legal entities apart from the shareholders composing them. These companies made profits which they did not declare as dividends, but accumulated in a Reserve Account and the shareholders were given advances and loans so that they enjoyed the funds of the Company without bearing any tax. Another advantage was that such companies, like individuals, paid super-tax only after the minimum exemption of Rs.50,000/– was given. Above this item, super-tax called corporation tax was levied at the flat rate. The Act countered this practice by Amending Act 1939 under which private limited companies were made liable to Income-tax and Super-tax without any minimum exemption. Further, companies in which public were not substantially interested were compulsorily made to distribute 60 % of the assessable income, less taxes on pain of 100 % distribution.

While the above sections controlled the dividend policies of private companies in India, there was nothing to prevent formation of such companies outside India. The Act could not apply to such companies. Further, they being legal entities, profit made by them could not be taxed in the hands of shareholders in the absence of a declaration of dividend. The Act had to formulate a very elaborate Section 44D in order to catch within its mesh even such foreign companies, where the main purpose was to avoid tax liability in India.

Trust

A still further *modus operandi* to avoid tax was the formation of trusts. A trust is a separate legal entity. A person who wants to avoid super-tax could easily create revocable trust by making himself and his wife and children beneficiaries. Prior to 1939, such trusts were taxed as separate legal entities. The Amendment Act 1939 made this loophole in the Act ineffective by providing that before a trust can be recognised as a separate entity, it should be a trust in which the settlor has completely and irrevocably transferred the subject matter of the trust. So long as the property vests in the settlor, notwithstanding that legally such trust may be irrevocable for the purpose of income-tax, it will yet be treated as revocable and income therefrom will be treated as the income of the settlor. Lest there be genuine hardship in irrevocably transferring the corpus to the beneficiaries, the rigour is relaxed by a provision that a revocable trust which cannot be revoked for a period of more than six years or during the life time of the beneficiaries will be given the benefit of an irrevocable trust.

This let to further consideration, whether in recognising irrevocable trust, you are not illegitimately avoiding tax by creating such trusts in favour of wife and minor child. The law plugged this lacuna by providing that trust in favour of wife and minor child, although irrevocable, will still be treated as revocable for purpose of Income-tax and its income added to the income of the settlor.

There is yet a lacuna viz. a trust created for charitable purposes, although revocable, would still enjoy the exemptions, if there were legal obligations attached to the trust, which were of a charitable nature. The Amendment Bill 1952 seeks to rectify this position viz. that for a full complete creation of a charitable trust, the settlor mustdivest himself of ownership irrevocably in favour of the charitable trust.

Life Insurance Premia

In case of life insurance premia, the exemption was allowed prior to the amendment in 1939, to the extent of one sixth of the total income of the assessee both in case of an individual and H.U.F. As a result of this provision, the assessee with a higher income was getting a very large amount of rebate in income-tax by insuring himself heavily. To counteract this device of avoiding tax, the Legislature passed an amendment in the year 1939 whereby this exemption was restricted to the extent of one sixth of the total income or six thousand rupees, whichever is less, in case of an individual and one sixth of the total income or twelve thousand rupees in case of an H.U.F.

Even after this amendment in 1939, it was found that avoidance of tax was being resorted to by the assessees by taking out single premium policies in the year when there is large income. There was, therefore, a further amendment of Sextion 15 in the year 1944 by Section 4 of the Indian Income-tax (Amendment) Act 1944. By this amendment, the Legislature whittled down the relief by restricting the exemption to 10 % of the actual capital sum assured, so that any premia paid in excess of 10 % in respect of any insurance policy will not attract exemption under the Section.

Bonus shares

Tax was sought to be avoided by certain operations, such as creation of bonus shares out of revenue reserves, shortly thereafter reducing the capital. As the law stood, the return on the reduction of capital was capital receipt in the hands of the shareholders.

Sometimes the company did not distribute dividend out of profits each year, but accumulated them in shape of reserves. After such reserves were created, the company went into liquidation, with the result that what would have been dividend if the company had distributed while it was a going concern, became capital in the hands of the shareholders. Similar tactics were adopted regarding issue of debentures. Bonus debentures were issued out of revenue reserves and the company would be empowered to redeem it at any time. Thus reserves were distributed to the shareholders in a manner that would avoid tax. The amendment Act 1939 put a stop to such a practice by an artificial definition of dividend for the purpose of income-tax. All these so-called capital distributions were under that difinition deemed to be dividend liable to be taxed in the hands of shareholders as income.

Investments

An individual could avoid the burden of tax, by selling his stock cum dividend just before the year ending and purchasing it back ex-dividend soon afterwards. The dividend part included in the price was regarded as capital realisation. It was deemed to be the price of the stock sold and not a realisation of income. The Amendment Act 1939 has empowered the Income-tax Officer in a fit case to attack such ,,bond washing'' operations and hold that the income did accrue to the settlor, notwithstanding the sale.

These are in brief the directions in which the law has sought to nullify tax avoiding operations and practices. The Government is vigilant and as experience gathers, they are forging new weapons to fight clever tax avoiding schemes within the ambit of the Act.

Other cases of tax avoidance arise by reason of practices which are illegal in themselves. Some of the principal forms in which such evasion is practised are summarised below:

(1) Artificial reduction of assessable profits through the device of inflating figures of purchases of goods by trading concern. Fictitious invoices for purchases may be booked in the accounts, thus reducing the gross profit. This fraud is extensively encountered in smaller concerns where maintenance of proper stock records is either not feasible or practicable e.g. retail traders dealing in large number of assorted articles.

(2) Suppression of sales is another device of illegal tax evasion widely practised in India by more or less the same class of concerns as indicated in (1) above. This may arise either out of sales made without preparation of cash memos or invoices or by maintaining duplicate series of cash memos and bill books, one of which may not be accounted for in the books of accounts at all. In either case, the proceeds are realized in hard cash (not by cheques or other negotiable instruments) and pocketed by the trader. With the introduction of Sales Tax Machinery in most Indian States, this type of fiscal fraud has shown a tendency to grow, because it means avoidance of both income-tax and sales-tax through a single process.

(3) Fiscal fraud practised through manipulations of stock is also not uncommon in India. Attempts are frequently made to drop some of the items from the final stock inventory altogether and thus reduce the total quantum and value of stock. Deliberate errors may be committed in calculations involving pricing of stocks. Sometimes, although the stock figures are purported to have been valued on cost basis, some of the items included may be deliberately valued at prices below cost. Departure from normal basis of stock valuation may be made to understate the figures of stock. Purchases made at the end of the accounting period may be included in the books of accounts without including the goods in the inventory of closing stock. Fictitious credits may be given for returns inwards.

(4) Another common type of fraud practised for income-tax purposes consists of charging capital expenditure to revenue. Purchases of furniture etc. may be passed off by debiting the cost to such accounts as Sundry expenses.

(5) Secret commissions are often debited in the books of accounts with a view to reduce taxable profits. Commissions are debited to fictitious names of persons who are binami or non-existing. Sometimes, commissions are debited falsely to names of certain persons who have negligible income from other sources and their tax liability is agreed to be borne by the trader himself through a private arrangement.

(6) Fictitious salaries are debited in the books of accounts in binami (non-existent) names or in the names of one's own relatives with a private arrangement as to tax liability. The idea is to reduce one's own tax liability and also to reduce the rate of tax. Similarly, private arrangements are often entered into with trusted employees who are paid exhorbitent salaries and bonuses with a view to sharing these payments in cash with them. Wage sheets also offer tremendous scope for practising fiscal fraud in India specially because of people's illiteracy. In India, the acknowledgement of payment upon a wage sheet is more often than not a thumb impression of the payee rather than his signature. Thus, no difficulty is experienced in cheating the revenue authorities by adding a few more fictitious names to the pay sheet which are duly authenticated by false thumb impressions.

(7) There are a number of share brokers and others who make a regular

business of selling false vouchers of share speculation losses. A person who has made a substantial income from business etc. in any year has not much difficulty in purchasing false ankadas (vouchers) for share losses which are really not incurred by him but are merely acquired by paying some private considerations. These share losses are then utilised in reducing one's tax liability by the method of set off of losses against other profits. The unscrupulous share brokers and other persons who dabble in such undesirable practice of selling false share loss vouchers have no difficulty in adjusting their books since the same are kept open for a long time after the end of the accounting year and which are not infrequently re-written.

(8) Very often speculative and other business activity is carried on by wealthy businessmen through nominee accounts in the names of their relatives, employees or trusted friends, with a view to reducing the average rate of tax.

(9) Since the World War II, it has become a very common practice to bring black market profits into the books of accounts by bringing in the same as cash credits or loans in the names of fictitious or binami persons, rather than crediting the same to revenue account.

(10) Payment of tax free salaries to managers and other forms of tax free remuneration to directors is widely prevalent in India. In case of private limited companies, it provides an effective medium for practising fraud upon the revenue authorities.

(11) Inflation of expenses, especially travelling expenses, conveyance charges, entertainment allowances etc. is very widely effected by many business concerns, both private concerns and limited companies, to defraud the revenue.

(12) Re-writing of entire books of accounts for falsification of accounts and maintenance of more than one set of books of accounts is also quite common.

(13) Fiscal fraud also makes its appearance as far as Income-tax assessment of professional persons are concerned. A common device employed is to put into one's pocket cash receipts of fees which are conveniently forgotten to be recorded in one's books of accounts. Sometimes in case of general medical practitioners, it is found that purchases of medicines are being understated. This is done because it is a normal practice with the Income-tax Department to estimate the receipts of general practitioners from mixtures, etc., sold to patients by basing the same on the purchase of medicines.

CAUSES OF TAX EVASION

If one were to investigate and inquire into the causes of tax evasion the following would generally appear to be the causes;

(a) *Heavy Rates of Taxation*

As an aftermath of war, rates of taxation have reached their peak limits. At some levels you earn only to contribute to the exchequer a lion's share. Where will be, then, the initiative to earn more, if Government takes away a major share as a sleeping (nay, dictating) partner? You run the risk of loss and endanger your capital and all that is your own. Yet when you start earning, the Government steps in and demands its lion's share. They are partners in profits, not in losses. Such high taxation which kill all initiative and savings must lead to the eventual concomittant result, viz. tax evasion.

(b) *Lowering of Ethical Standards*

Amongst the many evils the country falls prey to as a direct result of abnormal war conditions, is the general scarcity of materials and soaring up of prices and depressing of the purchasing power of an income. The progressive income can hardly keep pace with rising cost of living. There are con-

trols for planned economy. These invariably lead to black-marketing and corruption. Such operations, when practised to an appreciable extent must lead to lowering of morals and blunting the civic sense of public duty and obligations to one's State. All these lead to general lowering of standards both amongst those who govern and those who are governed to their mutual disadvantage.

(c) *Greed for Money*

Greed for money leads to greed for savings. Some people are by nature so greedy and grabbing that nothing will deter them if they could save anything — may be by means not at once above board. They will pare and cheese everywhere and their attitude will be the same even with the Government dues. They will find ways and means of avoiding their true liabilities in the hope of building up a nest of unrevealed and undisclosed savings.

(d) *Unfair and Harsh Tax Laws*

Another cause which lowers the morals of public and induces them to resort to tax evasions, is unfair and unjust and harsh taxation laws and the unsympathetic, inefficient and corrupt administrative personnel.

Harsh laws breed tax-dodgers. Tax-dodgers breed more hershness and more penal laws. That leads to more dissatisfaction and dissatisfaction to greater evasion. Thus the vicious circle goes round and round, You cannot make dishonest persons honest by enacting more penal provisions and tightening up the screws everywhere. You must go to the root of such causes and apply the remedy to the basic causes. For that the incidence of taxation must be lowered sufficiently to make it attractive for the person to earn income. You must also administer the laws sympathetically and judicially; you must educate public opinion and instil in them the sense of civic duty to help one's own Government by just payment of their dues. You must change the general attitude of suspicion and distrust to one of sympathy and trust. You must not straightaway convict ten persons as guilty in the hope that one at least among them may be found really guilty. It is exactly the other way about in the U.K.

There is a large mass of honest tax-payers with small incomes who appreciate a straight and fair deal, Let not the Government drive this section into the arms of tax-dodgers, for even their honesty and straight-forwardness are also suspect in the eyes of the Government. The public morale cannot improve by laws but by educative propaganda and sympathetic study of real needs and hardships. Let the Government in their anxiety to balance the budget, not ride rough shod over the country's primary need of building up the national wealth, expanding foreign trade, promoting industrialisation and commerce of the country, but by sympathy, understanding and breadth of vision.

In conclusion, where the legal avoidance takes on the proportion and the extent which becomes a source of anxiety to the Exchequer for finding ways and means for balancing of the country's budget and consolidating its financial position, the Legislature can legitimately enact measures to counteract such practices and may even resort to retrospective legislation,

THE STRUGGLE AGAINST TAX EVASION
THE SITUATION IN DENMARK

by

S. HIORT-LORENZEN,

President of the National Taxation Appeal Tribunal in Denmark.

Almost one half of the revenue of the Government of Denmark is made up of the income tax levied on individuals and corporations.

For the fiscal year 1951/52 1219.9 million kroner were levied as ordinary and extraordinary income tax on individuals and corporations, and this amount plus the property tax levied on individuals, 97.6 million kroner, amounted to abt. 49 per cent of the total revenue of the Government for this fiscal year. Add to this that also the material part of the revenue of the individual urban and rural local government authorities is raised as income tax on the same basis as the national income tax, that these local government income taxes for the fiscal year above mentioned amounted to a total of 1083.2 million kroner, and that, furthermore, the assessment for the national income tax for the fiscal year in question formed the basis for the levying of compulsory savings to a total amount of 297.7 million kroner and for the levying of ecclesiastical dues to an amount of 51 million kroner, and it will be seen that it becomes a question of urgent interest whether it is expedient to such a large extent to base the satisfaction of the public revenue requirements on this foundation. Quite apart from any hampering effects on productivity, investments, and the whole economic initiative that such a radical income taxation may involve, it is particularly the question of the reliability of the whole taxation basis that prevails upon the mind. Can the assessment of the income tax, which in the first line must test on the taxpayers' own declaration of their annual incomes, be given such an effectiveness that the assessment of income, as is the intention with this form of taxation, really becomes the best possible and absolutely true and faithful expression for the particular taxable capacity of each individual taxpayer?

In the following I shall endeavour to account for the degree in which taxation of income in Denmark may now be said to have approximated this goal and for the facilities provided by the Danish fiscal legislation for achieving this end.

An income taxation of a modest extent had existed in Denmark for half a century as a source of revenue for the local government authorities when in 1903 this form of taxation was introduced also as a national tax supplemented with a tax on property, mainly levied on individuals only, and at the same time the assessments for national income tax were established as the basis for the income tax to the local government authorities too. During the first years both categories of income tax were of slight consequence only; under the Act of 1903 the highest rate of national income tax was 2.5 per cent, and as late as the commencement of the first world war it had not exceeded 5 per cent. In the first instance the assessment of these taxes was entrusted to the local assessment authorities, which were composed of persons elected by the

local inhabitants from among their own number according to the principles applying to the election of the local government councils. Assessment Boards („Skatteraad") acted as control bodies for the assessment and appeal resorts in respect of the assessments made by the local assessment authorities. Their members, however, were not officials appointed by government and trained in taxation technique, but local citizens selected for this task by the minister of finance for a short term of years at a time. This arrangement exists in all material details till this very day even if, in the course of time, several developments have been made. Thus the Government Assessment Directorate („Statens Ligningsdirektorat") has been created as a guiding and controlling body for the whole assessment of taxes, and the National Taxation Appeal Tribunal („Landsskatteretten") has been established as a special tribunal to try all complaints of taxation assessments. Furthermore, most of the larger local government authorities have established Tax Inspectorates („Skatteinspektorater") as auxiliary bodies for the local assessment authorities which are elected on a democratic basis, and most of the work of tax assessment has to a greater and greater extent passed into the hands of the technically trained personnel of these auxiliary bodies. This state of affairs applies, however, mainly to the larger urban communities, and the tax assessment rests chiefly, particularly in the rural districts, on the representatives elected by the taxpayers themselves.

The assessment is made on the basis of the taxpayers' annual tax return, which contains headings for specification of the main items of the income as well as the property. An actual duty to file a tax return was only introduced by the Act of 12th July, 1946, and applies only to the declaration of the property, but failure to declare the income will, however, involve certain penal effects by way of compulsory increases of the income on which the income assessment for the previous fiscal year was based; and by appealing to a superior instance the taxpayer can then only have his assessment reduced to the actual income plus a certain percentage (up to 40 per cent). The reason why a direct duty to declare the income has not been introduced is largely the fact that to such a great extent Denmark is an agricultural country, and that the majority of the farmers of the country, highly developed as the Danish farming industry is, do not keep any actual accounts, nor are they considered to be able to do so. The same point of view applies, of course, to many small tradesmen in the towns, and the fiscal authorities must consequently limit their demand for the production of profit and loss accounts and balance sheets in substantiation of the income and property declared in the income tax returns to those tradesmen within the urban occupations who, for other reasons, are required by law to keep statutory books of account and to corporations.

By the Act of 1946 the Minister of Finance was empowered to enjoin certain groups of trades, professions or vocations not otherwise required by law to keep statutory books of account to keep special accounts for the use of the fiscal authorities. Such a special duty to keep accounts has, however, only been introduced in the case of very few groups, as doctors, veterinary surgeons and dentists, and, particularly, it has not been introduced in the case of farmers.

If you now ask to what extent do the income tax returns received year by year express the taxpayers' actual taxable income, the answer must be a rather disheartening one. According to calculations made on the basis of the national income during the years just after the last world war, the part of the total income that evades taxation is estimated at a minimum of 15 per cent. In the nature of things, the taxpayers' possibilities of evading the declaration of their whole income is most different, and, as a matter of course, they are much greater for the independent tradesmen and professionals, who base their income tax return on their own private account, sthan for the

wage-earners, whose wages are declared to the fiscal authorities by their employers. Consequently it cannot be presumed that the part of the income which evades taxation as much as approximates a fairly even distribution on all taxpayers, but it falls mainly on a greater or smaller part of them, and for these taxpayers it must thus be supposed to be a materially greater part of their actual income than 15 per cent. As furthermore the non-declared part of the income would have been taxed with the top percentage according to the sharply progressive scale of taxation, it must be reckoned that, by their false income tax returns, the taxpayers concerned evade the payment of a far greater part of the tax they are liable to pay than expressed by the average percentage of hidden income stated above.

The ways in which the taxpayers try to evade their full liability to pay taxes are different for the different sectors of industry and professions.

When it is a question of people running a small-scale business of their own in one of the urban occupations, e.g. shopkeepers and artisans who personally collect the current income and manage the daily bookkeeping, the most common procedure will presumably be that part of the income is not registered nor entered in the books, but put aside and used for private expenses which are not booked, or saved and invested in hidden assets.

Such a procedure will, naturally, cause that the accounts show too low a gross profit and often, in addition, that compared with the property fluctuations in the course of the year the nett profit declared leaves room for a suspiciously low amount of private expenditure only. Suspicion to such accounts may, inter alia, be aroused when the fiscal authorities compare the percentage of gross profit with the average percentage of profit for businesses of the same kind within the district; but partly will the average percentage of profit used as a basis of comparison be computed from a series of business accounts of which several are encumbered with similar defects as the accounts picked out for examination and may thus in itself be too low, and partly it will often be difficult to disprove the taxpayer's claim that the poor result shown by the accounts is due to special circumstances, such as unsaleable stocks and the like.

When technical errors and defects in the accounts cannot be proved, the facts stated above will, therefore, as a rule not be sufficient for the assessment authorities to disregard the accounts as a basis for the assessment.

Actually faked working expenses are generally a rare occurrence as such attempts can be disclosed comparatively easily by an audit of the vouchers. This does not, however, apply to the group of expenditure appearing under the name of official entertainment, which taxpayers often attempt to deduct more or less arbitrarily without detailed substantiation, and under which heading it is sought to include several expenses of a purely private nature. Similarly, goods taken for private use from the stock-in-trade are often declared with far too low amounts without any entries in the books, it must further be presumed that some tradesmen cover a part of their private expenditure by barter with other tradesmen without any statement to this affect appearing from the accounts.

The business people who run larger enterprises whose bookkeeping is in charge of a paid staff will have fewer possibilities of accomplishing manipulations with the actual accounts of the nature mentioned above, alone in consideration of the danger it would involve to let their staff know of such transactions. In such cases the efforts to curtail the taxable income will more often tend towards too large depreciations of the stock-in-trade, too large depreciations of circulating assets or of accounts outstanding, deduction of losses that do not concern the income, but in reality are capital losses, or deduction of costs spent on buildings or other circulating assets as if they were maintenance expenses although in reality they have been spent in improving such assets and consequently do not constitute working expenses.

Several of these transactions will be on the borderline of the illegal taxation evasion as they rest on a more or less doubtful interpretation of the taxation rules in force, but for the rest there are also several examples where profit-making commercial transactions undertaken by the owner of the business in person have been kept entirely out of the accounts.

As stated above, the majority of the farmers do not keep any actual accounts, and the income declared in such cases results from the amount whereby the taxpayer's property has increased or decreased in the course of the year, plus an estimated amount for his private expenditure. In such cases the control exercised by the assessment authorities must consist of ascertaining the amount of the property at the beginning and at the end of the year, respectively of examining the extent to which the property fluctuations affect the taxable income, and finally of an estimate whether, in view of all the relevant facts, the private expenditure declared may be considered reasonable. The latter implies, of course, a considerable possibility of arbitrariness at such assessments. Generally it must supposedly be said that not only the taxpayers, but also the local authorities, display a tendency towards reckoning with too small amounts for the private expenditure and towards fixing such expenditure more according to a certain uniform level within the district in question than according to the actual cost of living. It will, therefore, often be so that tax assessments made on this basis are not expressive of the taxpayer's complete taxable income.

As far as the wage-earners are concerned, the wages paid to them will be declared to the fiscal authorities by their employers, and their possibilities of evading taxation will thus be limited to any extra profit of another nature that may not be declared. The duty to declare wages paid only applies to considerations for work in the wage-payers' business, not to considerations for work in his private household, and there can be no doubt that e.g. the wages many married women receive as assistants in private households are not declared to the fiscal authorities, and consequently they evade taxation entirely.

Examples of the use of unusual juridical forms aiming at the evasion of income tax are comparatively rare and mostly met with in cases where a taxpayer wants to secure his right to deduct donations, which according to Danish law cannot generally be deducted from the donor's taxable income. It will then be seen that a taxpayer who wants to support another person, e.g. an adult son or daughter or another near relative, realize this intention by a legally binding contract whereby he undertakes the obligation to pay to the person in question a special annual aid through an indefinite term of years, e.g. his own or the donee's life. Irrespective of the fact that it springs from a unilateral promise of a gift, such a contractual engagement will generally be approved as justification for the donor to deduct the annual payments from his taxable income, unless the promise, having formally been given for an indefinite time, in reality is only intended to hold good for a certain short term of years, e.g. the son's or daughter's years of study; and in addition must be said to cover a natural obligation already encumbent on the donor which for taxation reasons only has been given a contractual basis.

This rule of Danish fiscal law, according to which, irrespective of the reasons for the promise, current annual payments under a legally binding pledge may be deducted from the annual taxable income, may also involve that the consideration for the acquisition of certain capital goods — e.g. real estate or a business undertaking — is fixed as a current annual payment of indefinite duration or indefinite amount, e.g. a certain percentage of the annual profits of the estate or business. Had such consideration been in the nature of a payment once for all, it could not have been deducted from the assignee's

annual taxable income. Such an arrangement will on the other hand, cause that the payee becomes liable to pay income tax on the annual payments, and contracts of this nature are, for the rest, of such common occurrence that they cannot be regarded as aiming at an evasion of the liability to pay taxes.

A certain peculiarity of Danish fiscal law is not rarely used to achieve freedom from taxation of income that by its nature is otherwise taxable. This refers to the special circumstances that arise when a taxpayer dies, and the probate court takes over his estate for division. Such a division of inheritance by a public authority will be compulsory if minor or absent heirs are involved, but may otherwise be ordered by the testator himself by will. As long as this public administration is in progress, the estate is under Danish law regarded as a corporation and as such subject to independent liability to pay taxes. This liability does not, however, commence in immediate continuation of the deceased's liability to pay taxes, but not until the proceedings in the estate have lasted for a period, varying according to circumstances from 15 months to 2 ¼ years. As the liability to pay taxes for a given fiscal year rests on the taxpayer's income during the calendar year next preceding the beginning of the fiscal year, and as the deceased's liability to pay taxes ceases with the end of the fiscal half-year in which he died, the fact that his estate does not immediately enter upon his liability to pay taxes will in the first place often involve that the deceased's income during the calendar year or the financial year, next preceding the death is not taxed at all but if the proceedings in the estate are otherwise concluded before the expiry of the term for the commencement of its liability to pay taxes, there will furthermore be an interval during which the income accruing to the estate will also evade taxation. This interval will often be used for undertaking transactions which normally would involve liability to pay taxes, particularly for the distribution of accumulated profits of joint-stock companies of which the deceased was the principal shareholder or for the liquidation of commercial transactions initiated by the deceased.

The fact that the liability to pay taxes rests on the income during the financial year, or the calendar year, next preceding the fiscal year, may also involve that a taxpayer who has been in receipt of an extraordinarily large income during a financial year will attempt to evade the liability to pay taxes of this income by leaving the country to take up a permanent residence abroad before the commencement of the next fiscal year Under the fiscal legislation the Minister of Finance holds, however, powers to post-levy taxation for up to 5 fiscal years during the period of absence on a person who returns from residence abroad and resettles in this country. Consequently a person who wants to evade taxation of extraordinary income by absence must extend his residence abroad over at least 5 years in order to achieve the desired end.

There can hardly be any doubt that all available possibilities of evading taxation are exploited to a large extent. Shortly after the end of the last world war all persons and companies were enjoined by an Act of 22nd July, 1945, to make an extraordinary declaration of property as of 23rd July, 1945, which measure was linked together with a general exchange of bank notes, a registration of all securities and a declaration of all bank and savings bank deposits.

The idea behind this measure was in the first line to provide as certain a basis as possible for the computation of the tax on property increment which it was then intended to compose as a capital levy for stabilization of the financial affairs after the war and the occupation, which tax was also adopted shortly after.

The intention was, however, also to bring to light supposedly hidden property amounts as a basis for post-claims on the property owners concerned on account of the tax evasions these hidden property amounts might indicate and, furthermore, through such a general ascertainment of property to create a certain tenable starting point for the future assessments.

These measures revealed very large property discrepancies causing that nearly 200,000 taxpayers had to pay nearly 600 million kroner by way of post-payments of tax and fines to the Treasury alone, in addition to which considerable post-payments of taxes and fines had to be paid to the local government authorities.

Irrespective of the fact that by their nature these measures only lent themselves to revealing the fiscal evasions that had left their trace in the form of hidden property and could not tell anything of income that had evaded taxation and had immediately been spent in the course of years, they revealed, however, clearly an extensive fiscal fraud. As a matter of fact this also gave the impulse to the adoption the following year by Act of 12th July, 1946, of more rigorous penal provisions for fiscal fraud and a number of rules which materially developed and supplemented the facilities of the assessment authorities for controlling the amounts of income and property declared by the taxpayers. Furthermore it was endeavoured to strengthen the administrative assessment machinery as such by the appointment of a number of government surveyors („Ligningsinspektører") stationed all over the country.

The control measures now available to the assessment authorities are the following:

(1) Facilities for examining the taxpayers' accounts with vouchers.
(2) Facilities for checking and valuating stocks-in-trade, life-stock, machinery, furniture and fixtures and other working plant.
(3) Right of demanding from all public authorities, managements of money institutions, companies and other corporations information of deposits for or payments to taxpayers, not only those individually named, but also whole groups.
(4) Right of obtaining similar information from solicitors and stock-brokers as far as their clients and customers are concerned.
(5) Pay sheets from all employers.
(6) Reports from banks and stock-brokers on dealings in securities.
(7) Right of demanding from manufacturers and wholesalers information on their wholesale turnover with individually named customers or suppliers.

Furthermore authority was introduced for carrying into effect special control measures in connection with the redemption of interest and dividend coupons of bonds and shares; and — in connection with the call for information on deposits with money institutions — the Minister of Finance was granted powers to demand that accounts be blocked if the owners were not known for certain to the money institutions.

Whereas up to that time the penalty for fiscal fraud had only consisted of fines, authority was now introduced for sentences of imprisonment (up to 2 years) in particularly aggravating cases; and whereas it had not been possible to punish persons who had aided and abetted a taxpayer in committing fiscal fraud, such aiding and abetting now was made punishable so that the penalty may amount to as much as 2 years' imprisonment if it has been rendered professionally (e.g. by a solicitor or an accountant).

There can hardly be any doubt that the introduction by the 1946 Act of the possibility of sentences of imprisonment in the most aggravating cases of fiscal fraud, was made with the purpose of influencing public opinion towards a more severe view of this delict, but whether this end will be achiev-

ed, will in some degree depend on the extent to which this possibility is applied, and it should be observed that during the 6 years that have passed since the Act came into force only a few sentences of imprisonment are on record. This extraordinary reluctance with respect to the utilization of the possibility of more rigorous sentences in its most severe consequences, is undoubtedly in accordance with the intention of the Act, which has only been that that this means of punishment, imprisonment, should be applied in very few exceptional cases of a particularly aggravating nature. By these latest amendments of the penal provisions, the fiscal legislation has not either left the point of view that fiscal fraud, deliberate or by gross negligence, is a delict sui generis which cannot be classed under, or parallel to, ordinary crimes' committed for the purpose of gain, cf. Hartvig Jacobsen, D.L.: "Skatteretten" (i.e. Fiscal Law), p. 384 ff.

In certain quarters of the population, particularly among workmen, employees and civil servants, whose income can generally be checked exactly through the pay sheets forwarded to the fiscal authorities, and who consequently have small opportunity of evading their liability to pay taxes, trends have been in evidence of late years of the adoption of a sterner view of offences against the fiscal authorities. In such quarters it is maintained that irrespective of the fact that the individual taxpayer's omission of declaring his whole income in the first line appears as an offence directed against the public administration, the consequence of his tax evasion will be that the other taxpayers will have to contribute a correspondingly larger amount to cover public expenditure, the amount of which determines the total amount of taxes levied, and that the offence, therefore, ought to be regarded as fraud on the fellow-citizens and that the penal rules should be fixed in accordance with this point of view.

Even if it must be admitted that the individual taxpayer's tax-evasion actually must get such consequences for the liability of the other taxpayers, it must, however, be maintained from a juridical point of view that these are the indirect effects of the offence, and it cannot be said that this has been its aim, neither subjectively nor objectively.

As stated above, this view of the offence cannot either be said to have formed the basis for the penal provisions of the fiscal legislation. As far as the greater part of the taxpayers are concerned, it must unfortunately be admitted that they are inclined to regard offences of this nature as a more or less justified defence against public encroachments on their economy, and the disgrace which, from a general point of view, attaches to the various other crimes committed for the purpose of gain can in no way be said to be connected with the fiscal offences.

This general point of view must, I suppose, be said to have particularly old roots in a population as the Danish one with its rather marked individualistic stamp and a strong feeling of personal freedom, but the sharp increase of the tax burden, which was already initiated during the first world war and which gained speed at a violent rate during and after the last war, has naturally been highly conducive to the greater spread of these offences. A contributory cause of this generally adopted lenient view of the offence of fiscal fraud will, however, presumably also be found in the way in which fiscal fraud cases have been handled so far, and are mainly handled still. For it is extremely few of these cases that are tried in the courts. The predominant number of cases are settled amicably by the taxpayer's agreement with the fiscal authorities to pay a specified post-tax and fine, and only in cases where the taxpayer refuses to accept such an amicable arrangement or where the claim for punishment is deemed to amount to a sentence of imprisonment, will the case have to be brought before the courts of law. Under these amicable arrangements the taxpayer was always previously shielded by the secrecy imposed upon the fiscal authorities, and the cases were thus

settled in private without the taxpayer's reputation being affected outwardly by the affair. In this latter state of affairs the Act of 1946 introduced a change by providing that the conclusion of the case in aggravating circumstances, also where the case is settled amicably, must be accompanied by a publication of the taxpayer's name and address. This provision, which as a penal provision has been subjected to severe criticism, is, however, only applied in a few instances, and by far the greater number of cases are, as hitherto, settled amicably and in private.

That the possibility of publication may act as a most unpleasant threat and thus be instrumental in checking these offences and perhaps also in the long run may influence the general view of them can, however, hardly be rejected.

As yet it is too early to give any opinion on the extent to which the more rigorous penal provisions and control measures introduced in 1946 will be able to contribute to putting a stop to the fiscal fraud offences.

During the years that have passed since 1946 the fiscal authorities — not least the supreme control authority, the Government Assessment Directorate — have been so heavily burdened, partly with the great number of post-payment and fine cases resulting from the Act of 1945 on the Extraordinary Declaration of Property, partly with the administration of a number of extraordinary fiscal acts, that the increased means of control made available to them by the Act of 1946 can hardly as yet be said to have been applied to their complete extent at the current assessments.

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DIE EVASION FISCALE IN DER BUNDESREPUBLIK DEUTSCHLAND

von Prof. Dr. iur. FRIEDRICH KLEIN
Direktor des Instituts für Steuerrecht an der Universität Münster (Westf.)

VORBEMERKUNG

I. *Begriffliches*

Der Gegenstand der Aufsatzreihe, in der dieser Beitrag erscheint, ist in den bisherigen Arbeiten als ,,fraude fiscale'' bezeichnet worden. In einem Beitrag, der den gegenwärtigen Stand dieses Problems in der Bundesrepublik Deutschland darstellt, erscheint es jedoch nicht ganz unmiszverständlich, ebenfalls diese Bezeichnung zu verwenden. Im Sprachgebrauch des deutschen Steuerrechts wird nämlich entsprechend der wörtlichen Bedeutung des französischen Wortes ,,fraude'' im Deutschen (= Betrug) unter Steuer-Defraude oder Steuer-Defraudation[1]) nur eine — wenn auch die wichtigste — spezielle und tatbestandlich fest umgrenzte Steuerstraftat verstanden, nämlich die Steuerhinterziehung des § 396 der Reichsabgabenordnung vom 22. Mai 1931 (Reichsgesetzblatt Teil I Seite 161). Diese Steuerstraftat bildet erst zusammen mit noch anderen Steuerstraftaten die Summe der (strafbaren) Steuervergehen (früher ,,Steuerzuwiderhandlungen'' genannt). Neben diesen *illegalen* Steuervergehen gibt es auch für den deutschen Steuerpflichtigen zahlreiche *legale* Möglichkeiten, dem Steuerfiskus auszuweichen und damit dem staatlichen Steueranspruch zu entgehen. Alle diese Möglichkeiten — illegale wie legale — und nicht nur das besondere steuerstrafrechtliche Delikt der Steuerhinterziehung (= Steuer-Defraude) sind Gegenstand der bereits vorliegenden Untersuchungen über die ,,fraude fiscale''. Eine prägnante deutsche Bezeichnung, mit der alle diese Vorgänge unmiszverständlich erfaszt werden könnten, gibt es nicht. Der wohl nach seiner Wortbedeutung den hier gemeinten Sachverhalt treffende Ausdruck ,,Steuerumgehung'' ist in der Terminologie des deutschen Steuerrechts bereits ebenso wie der Ausdruck Steuerhinterziehung für einen Unterfall der ,,fraude fiscale'' (im Sinne dieser Aufsatzreihe) festgelegt. Die sachlich gleichfalls treffenden Bezeichnungen ,,Steuerausweichung'' oder ,,Steuerentweichung'' wären für die deutsche Zunge kaum annehmbar. Deshalb erschien es am besten, hier den französischen Ausdruck ,,*l'évasion fiscale*'' zu verwenden, und zwar in der umfassenden Bedeutung, in der er bereits im Rahmen dieser Aufsatzreihe von Camille ROSIER gebraucht worden ist[2]).

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[1]) Vgl. Alex WEHNER, Die Steuerhinterziehung und Steuergefährdung nach dem Strafrechte der Reichsabgabenordnung, Berlin (Vahlen) 1923, S. 2 Anm. 1; Otto GOLDAMMER, Steuerhinterziehung durch Steuerumgehung, Leipziger Dissertation 1929, S. 3.

[2]) La lutte contre la fraude fiscale, 1 ère étude § 1, Bulletin Vol IV Nr. 4-5, 1950, S. 148 ff, S. 149; enger, nämlich nur im Sinne der ,,fraude fiscale internationale'' (deutsch etwa = Steuerflucht), dagegen bei Camille SCAILTEUR, Situation de la fraude fiscale en Belgique, Bulletin Vol V Nr. 2, 1951, S. 65 ff unter VI S. 70.

II. *Die évasion fiscale als soziologisch-politische Erscheinung und als Rechtsproblem.*

Die évasion fiscale ist primär eine soziologisch-politische Erscheinung im Ringen des Staatsbürgers mit den Verhältnissen, die ihm in Staat und Gesellschaft zur Bewältigung aufgegeben sind. Als solche ist sie wie alle tatsächlichen Erscheinungen, die das soziale Zusammenleben unmittelbar und tiefgreifend beeinflussen, auch Gegenstand von Rechtsnormen. Als besonders komplexe Erscheinung wird sie sogar von mannigfaltigen Rechtsnormen erfaszt, die sie nicht nur bekämpfen, sondern in mancher Hinsicht auch begünstigen. Die tatsächliche Erscheinung der évasion fiscale, besonders ihre historische Entwicklung, ihre soziologische und sozialpsychologische sowie ihre rechts- und staatsphilosophische Begründung, kann im Rahmen des vorliegenden Beitrages nicht behandelt werden. Dessen Aufgabe ist es vielmehr nur, die besonderen Rechtsnormen des deutschen Steuerrechts darzustellen, die sich mit der évasion fiscale befassen. Auch dabei werden allerdings historische, soziologische und sozialpsychologische Gesichtspunkte sichtbar werden, mit denen es der Kampf gegen die évasion fiscale in der Bundesrepublik Deutschland zu tun hat. Dieser Kampf wird wie überall so auch hier im Bereich aller Staatsfunktionen, also im Bereich der Gesetzgebung, der Verwaltung und der Rechtsprechung, geführt. Dabei werden in diesen Bereichen die in ihnen auch sonst zur Erfüllung der Staatsaufgaben eingesetzten Mittel verwandt: in der Finanzgesetzgebung der generelle und abstrakte Gesetzesbefehl, der allgemeine Rechte und Pflichten des Steuerpflichtigen und der Steuerbehörde schafft; in der Finanzverwaltung der unmittelbare Eingriff und Zugriff in und auf die Rechtssphäre des Steuerpflichtigen; in der Finanzgerichtsbarkeit in Ausübung von Finanz-Verwaltungsgerichtsbarkeit (gegebenenfalls unter Anrufung der Verfassungsgerichtsbarkeit) der Rechtsschutz des Steuerpflichtigen gegen Übergriffe der Finanzverwaltung im Kampf gegen die évasion fiscale, aber auch in Ausübung von Finanz-Strafgerichtsbarkeit der Schutz des Staates gegen die évasion fiscale.

A. DIE EVASION FISCALE UND DIE DEUTSCHE FINANZGESETZGEBUNG.

I. *Die Begünstigung der évasion fiscale durch den Finanzgesetzgeber.*

1. Die deutsche Finanzgesetzgebung bekämpft nicht nur die évasion fiscale; im Rahmen des rechtsstaatlichen Verfassungsrechts der Bundesrepublik Deutschland umgrenzt sie vielmehr mit ihren oft nur sehr unbestimmt gehaltenen und häufig unvollständigen Normierungen gleichzeitig die Möglichkeiten legaler und illegaler évasion fiscale in einer für den Steuerpflichtigen günstigen Weise. Denn die neuerliche Konstituierung des westlichen Teiles Deutschlands als nicht nur sozialer, sondern auch liberaler Rechtsstaat mit Vorbehalt des Gesetzes und *umfassendem Rechtsschutz des Staatsbürgers* gegen nicht auf gesetzlicher Grundlage beruhende belastende Eingriffe der Staatsgewalt in seine Rechtssphäre durch das Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949 (Bonner Grundgesetz) gibt den Steuerpflichtigen manche Handhabe, unbestimmte Gesetzesbestimmungen und unvollständige gesetzliche Regelungen unter Berufung auf rechtsstaatliche Grundsätze zu ihren Gunsten auszulegen und auszuwerten und diese ihre Auffassung mit Erfolg in der Finanzverwaltungsgerichtsbarkeit durchzusetzen. Notfalls können sie sogar im Wege der sogenannten Verfassungsbeschwerde, die jedem einzelnen Staatsbürger zusteht, das Bundesverfassungsgericht wegen Verletzung ihrer Grundrechte anrufen, und zwar selbst gegen rechtskräftige Urteile der Finanzverwaltungsgerichte. Nach Artikel 80 des Grundgesetzes dürfen unbestimmte Gesetzesbestimmungen und unvollständige Regelungen auch nicht durch Verordnungen

der Bundesregierung, des Bundesministers der Finanzen oder einer Landesregierung ergänzt werden; vielmehr darf die Exekutive im Verordnungswege nur reine Durchführungs- und Ausführungsbestimmungen erlassen. Zu diesen Erleichterungen der évasion fiscale durch die rechtsstaatliche Gestaltung der Verfassungs- und Steuerrechtsordnung der Bundesrepublik Deutschland kommt noch hinzu, dass eine der auch in Deutschland am meisten verbreiteten Formen der évasion fiscale, die Gepflogenheit, aus steuerlichen Gründen bestimmte Rechtsformen oder rechtliche Gestaltungsmöglichkeiten, besonders des bürgerlichen Rechts oder des Handelsrechts, zu wählen, vom deutschen Steuerrecht seit jeher als rechtmäszig anerkannt ist, wenn diese Wahl nicht als Missbrauch der betreffenden Rechtsformen oder Gestaltungsmöglichkeiten angesehen werden musz (vgl. auch unten unter II 2a)[1]). Dieser Grundsatz des deutschen Steuerrechts ist erst kürzlich in einer Entscheidung des Obersten Finanzverwaltungsgerichts der Bundesrepublik Deutschland, des Bundesfinanzhofes in München, vom 22. August 1951 (IV 246/50 S) ausdrücklich bestätigt worden; danach liegt ein solcher Missbrauch dann nicht vor, wenn ein Steuerpflichtiger zur Einsparung von Steuern die für ihn günstigste Rechtsform wählt, vorausgesetzt, dasz die tatsächlichen Verhältnisse dem formell abgeschlossenen Rechtsverhältnis entsprechen.

2. Darüber hinaus begünstigt die deutsche Finanzgesetzgebung auch unmittelbar durch ein ganzes System von *Steuervergünstigungen* besonders wirtschaftspolitischer, sozialpolitischer und wiederaufbaupolitischer Art für alle Steuerpflichtigen oder für grössere und kleinere Gruppen von ihnen in hohem Masze die legale évasion fiscale. Diese Regelungen wirken sich in der Praxis besonders zu Gunsten der in der Wirtschaft tätigen und der wohlhabenden Steuerpflichtigen aus, da viele jener besonderen Vergünstigungen *rechtlich* an das Vorliegen einer ordnungsgemäszen Buchführung, bestimmter Betriebsgrössen, der Vornahme von betrieblichen Investitionen u.ä. oder *tatsächlich* einfach an die genügend grosze wirtschaftliche Kraft des Steuerpflichtigen geknüpft sind, höhere Beträge für bestimmte Zwecke (Wohnungsbau, langfristiges Sparen usw.) auszugeben. Für diese Bestimmungen gilt schlieszlich das unter 1. Gesagte in erhöhtem Masze, da auch diese Vergünstigungsvorschriften vielfach einer Auslegung zu Gunsten der betreffenden Steuerpflichtigen Raum lassen und damit deren allgemeine günstige steuerliche Position in diesem Punkte noch verbessern.

II. *Die Bekämpfung der évasion fiscale durch den Finanzgesetzgeber.*

1. Entsprechend dem Charakter der Gesetzgebung als Setzung genereller und abstrakter Regeln ist auch die Bekämpfung der évasion fiscale durch den Finanzgesetzgeber in erster Linie *allgemein präventiver Natur.*

So hat der Finanzgesetzgeber im deutschen Steuerrecht eine Fülle von *allgemeinen Pflichten der Steuerpflichtigen* festgelegt, die der Bekämpfung der évasion fiscale dienen. Dazu gehören vor allem die vielfältigen Buchführungs- und Aufzeichnungspflichten sowie die Pflichten zur Abgabe von Steuererklärungen und zu deren weitgehender selbständiger Berichtigung, zur Vorlegung von Schriftstücken und Urkunden und zur Gewährung von Kontrollmöglichkeiten im eigenen Haus der Betrieb.

Diese allgemeinen Pflichten der Steuerpflichtigen, an der Festsetzung der von ihnen zu zahlenden Steuern selbst mitzuwirken, werden ergänzt durch umfangreiche *Auskunftspflichten Dritter* über Tatsachen, die für die Ausübung der Steueraufsicht oder in einem Steuerermittlungsverfahren für die Feststellung von Steueransprüchen (vergleiche unten unter B I) von Bedeutung

[1]) Vgl. hierzu im einzelnen Max Lion, Gesetzlich erlaubte Steuererspa-rungen, Berlin und Wien (Spaeth und Linde) 1931.

sind. Solche Pflichten die allerdings zu den einschlägigen Pflichten der von der Auskunftserteilung betroffenen Steuerpflichtigen im Verhältnis der Subsidiarität stehen, obliegen uneingeschränkt allen (auch juristischen) Personen, mit Ausnahme von Personen, die durch die Auskunftserteilung sich selbst oder einem Angehörigen die Gefahr einer Strafverfolgung zuziehen würden, sowie mit Ausnahme der Verteidiger und Rechtsanwälte, soweit sie in Strafsachen tätig gewesen sind, der Ärzte und Rechtsanwälte (nicht dagegen der Notare) in Bezug auf Dinge, die ihnen in Ausübung ihres Berufes anvertraut sind, der Gehilfen aller dieser Personen und der Geistlichen. Auch für Rechtsanwälte und ihre Gehilfen besteht allerdings Auskunftspflicht gerade über Tatsachen, die bei Beratung oder Vertretung in Steuerangelegenheiten zu ihrer Kenntnis gelangt sind, jedoch nur, soweit nicht die Auskunftserteilung ihre Auftraggeber der Gefahr einer Strafverfolgung aussetzen würde. Kein Auskunftsverweigerungsrecht besteht dagegen für Steuerberater und Helfer in Steuersachen sowie für Banken, wenn auch von deren Auskunftspflicht im Zuge der Liberalisierung von Staat und Wirtschaft der Bundesrepublik Deutschland nur selten Gebrauch gemacht wird[1]). Diese Auskunftspflichten umfassen nicht nur die mündliche und schriftliche Mitteilung von Tatsachen, sondern erforderlichenfalls auch das persönliche Erscheinen und die Vorlage von Schriftstücken und Akten der auskunftspflichtigen Dritten.

Von diesen Auskunftspflichten privater Dritter sind die *Rechtshilfepflichten* der öffentlichen Behörden und der Notare zu unterscheiden, denen zufolge diese von sich aus den Finanzbehörden alle Steuervergehen, von denen sie dienstlich Kenntnis erhalten, und alle Urkunden über Rechtsvorgänge von steuerlicher Bedeutung mitzuteilen haben.

2. Neben dieser allgemeinen präventiven Bekämpfung der évasion fiscale hat der deutsche Finanzgesetzgeber ferner nach seinem ausdrücklichen, in den amtlichen Begründungen und Motiven der betreffenden Vorschriften bekanntgegebenen Willen *spezielle repressive Masznahmen* gegen bestimmte bereits aktuelle Formen der évasion fiscale und insbesondere gegen den offensichtlichen Miszbrauch von Steuervergünstigungen ergriffen. Von diesen Masznahmen können hier nur die bedeutendsten und die aktuellsten dargestellt werden.

a) Eine der auch in Deutschland am meisten verbreiteten Formen der évasion fiscale ist die, Rechtsformen und formalrechtliche Gestaltungsmöglichkeiten der sonstigen Rechtsordnung, insbesondere der bürgerlichen und der Handelsrechtsordnung, zu benutzen, um die Erfüllung steuerlicher Tatbestände zu vermeiden. Hiergegen bestimmen § 1 Absatz 2 des Steueranpassungsgesetzes vom 16. Oktober 1934 (Reichsgesetzblatt Teil I Seite 925), dasz die Steuergesetze (auch) nach ihrer *wirtschaftlichen* Bedeutung auszulegen sind, und § 6 Absätze 1 und 2 desselben Gesetzes, dasz durch Miszbrauch von Formen und Gestaltungsmöglichkeiten des bürgerlichen Rechts (= Privatrechts) die Steuerpflicht nicht umgangen oder gemindert werden kann (sogenannte Steuerumgehung; vergleiche auch unten unter 3a) und dasz bei Vorliegen eines Miszbrauchs die Steuern so zu erheben sind, wie sie bei einer den wirtschaftlichen Vorgängen, Tatsachen und Verhältnissen angemessenen rechtlichen Gestaltung zu erheben wären. Demnach haben insbesondere nur *formal bürgerlichrechtliche* Eigentumsübertragungen (etwa auf einen einkommens- oder vermögenslosen Verwandten) zum Zwecke der évasion fiscale *steuerrechtlich* keine Bedeutung. Maszgebend für die Steuerpflicht ist in diesen Fällen vielmehr nach § 11 des Steueranpassungsgesetzes stets die tatsächliche wirtschaftliche Sachherrschaft.

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[1]) Von 1919 bis 1923 muszten die Banken ihre Kunden sogar unaufgefordert an die Finanzbehörden melden.

b) Weit verbreitet ist ferner die évasion fiscale durch *Nichterteilung von Rechnungen* (sogenannte O(hne) R(echnung)-Geschäfte) über Geschäftsvorgänge. Gegen diese Praxis, die an sich auf die Zeit der Kompensationsgeschäfte während der Zeit der Warenbewirtschaftung zurückgeht, wird heute eine steuergesetzliche Bestimmung angewandt, die bei ihrer Einführung durch das Steueranpassungsgesetz an sich nur gegen die den OR-Geschäften nahe verwandte Zahlung von Schmier- und Bestechungsgeldern gedacht war. Nach § 205a Absatz 2 der Reichsabgabenordnung müssen nämlich die Steuerpflichtigen, die den Abzug von Betriebsausgaben oder Werbungskosten geltend machen wollen, auf Verlangen der Finanzbehörden die Empfänger dieser Aufwendungen genau bezeichnen. Im Falle der OR-Geschäfte bleibt ihnen danach nur die Wahl, entweder ihrerseits auf den Steuervorteil zu verzichten oder den Finanzbehörden ihren Geschäftspartner anzugeben.

c) In besonders ausgiebigem Masze haben die gewerblichen und freiberuflichen Steuerpflichtigen seit jeher von der legalen Möglichkeit der évasion fiscale Gebrauch gemacht, *Reisekosten und Fahrtauslagen* sowie *Ausgaben für die Bewirtung von Geschäftsfreunden* (Spesen) als Betriebsausgaben von dem zu versteuernden Einkommen abzusetzen. Das deutsche Einkommensteuergesetz kam diesem Verhalten dadurch entgegen, dasz sein hier in erster Linie in Betracht kommender Begriff der „Betriebsausgaben" nicht darauf abstellte, ob die betreffenden Ausgaben durch den Betrieb oder den Beruf des Steuerpflichtigen *notwendig* gemacht, sondern nur darauf, ob sie dadurch *veranlaszt* waren. Dies bedeutete nach der Auslegung dieses Betriebsausgabenbegriffes durch das höchste deutsche Finanzgericht, dasz es durch den Steuergesetzgeber selbst völlig in das Belieben des Steuerpflichtigen gestellt war, ob irgendwelche Aufwendungen als Betriebsausgaben gelten sollten oder nicht; sogar bei offenbarem Miszbrauch erschien das Vorgehen des Steuerpflichtigen gerechtfertigt. Hiergegen wurden neuerdings die Verwaltungsanordnung der Bundesregierung über die steuerliche Behandlung der Reisekosten vom 21. Dezember 1950 (ab 1952 in Abschnitt 121 der Einkommensteuerrichtlinien übernommen), der neue Abschnitt 120a der Einkommensteuerrichtlinien 1950 und 1951 über Aufwendungen für Personenkraftwagen als Betriebsausgaben und der durch das Gesetz zur Änderung und Vereinfachung des Einkommensteuergesetzes und des Körperschaftsteuergesetzes (Einkommensteuer- und Körperschaftsteueränderungsgesetz 1951) vom 27. Juni 1951 (Bundesgesetzblatt Teil I Seite 411) in das Einkommensteuergesetz eingefügte § 9a sowie die dazu gehörige Verordnung zu § 9a des Einkommensteuergesetzes vom 22. Oktober 1951 (Bundesgesetzblatt Teil I Seite 871) erlassen.

Von diesen Vorschriften schränkt Abschnitt 120a der Einkommensteuerrichtlinien 1950 und 1951 den oben genannten weiten Betriebsausgabenbegriff hinsichtlich der *Reisen im eigenen Personenkraftwagen* in mehreren Punkten ein. So können bei einem Steuerpflichtigen, dem sein Kraftwagen nicht auch sonst überwiegend zu seiner beruflichen Tätigkeit dient, für Fahrten zwischen Wohnung und Arbeitsstätte nur die objektiv notwendigen Aufwendungen, d.h. nur die Aufwendungen für vorhandene, vom Steuerpflichtigen aber nicht benutzte öffentliche Verkehrsmittel, als Betriebsausgaben anerkannt werden. Aus den Aufwendungen für die Kraftwagenhaltung sind alle Aufwendungen auszuscheiden, die zwar betrieblichen oder beruflichen Zwecken, daneben aber auch der Lebensführung des Steuerpflichtigen dienen, welche die wirtschaftliche oder gesellschaftliche Stellung des Steuerpflichtigen mit sich bringt, auch wenn dadurch der Beruf oder die Tätigkeit des Steuerpflichtigen gefördert wird. Ist die Trennung der Aufwendungen in Betriebsausgaben und Kosten der Lebensführung nicht leicht und einwandfei durchzuführen (z.B. bei einer mit einer Geschäftsreise ver-

bundenen Urlaubsreise), so gehört der gesamte Betrag zu den nichtabzugsfähigen Ausgaben für die Lebensführung. Bei Gewerbe- und Berufszweigen, deren Tätigkeit sich auf einen Ort beschränkt und bei denen nach den tatsächlichen Verhältnissen das Aufsuchen von Kunden oder Lieferanten überhaupt nicht oder nur selten in Betracht kommt, sodasz andere unter gleichen Verhältnissen tätige Steuerpflichtige für solche Zwecke keinen Personenkraftwagen halten[1]), gilt die Anschaffung eines Personenkraftwagens als nicht durch den Betrieb veranlaszt, und zwar ohne Rücksicht darauf, ob der Steuerpflichtige den Personenkraftwagen buchmäszig als Betriebsvermögen behandeln darf oder nicht; der Steuerpflichtige hat deshalb über die gelegentliche Benutzung für betriebliche Zwecke und die Höhe der dadurch entstandenen Aufwendungen im einzelnen Nachweis zu führen. Für einen Steuerpflichtigen, der einen gröszeren oder teureren Personenkraftwagen anschafft, obwohl nach der Verkehrssitte andere Steuerpflichtige unter gleichen Verhältnissen einen kleineren oder billigeren oder überhaupt keinen Personenkraftwagen, sondern einen Lieferwagen oder ähnliches verwenden würden, gilt das gleiche wie im vorgenannten Falle, wobei von dem durch die betriebliche Benutzung des Personenkraftwagens entstandenen Anteil der Aufwendungen für die Unterhaltung desselben nur der Betrag als Betriebsausgaben anerkannt wird, der bei der Benutzung eines kleineren Personenkraftwagens oder eines Lieferwagens etc. entstanden wäre. Schlieszlich gehört bei Steuerpflichtigen mit ordnungsmäsziger Buchführung ein im Jahre der Anschaffung zumindest zur Hälfte zu privaten Zwecken benutzter Personenkraftwagen in vollem Umfange zum Privatvermögen; nur die der betrieblichen Nutzung entsprechenden Teile der Aufwendungen einschlieszlich der Abschreibungen in den einzelnen Jahren der betrieblichen Nutzung werden als Betriebsausgaben behandelt.

Aufwendungen für die *Bewirtung von Geschäftsfreunden* mit Speisen, Getränken oder sonstigen Genuszmitteln können nur bei Bewirtung von Personen, mit denen der Steuerpflichtige in geschäftlicher oder beruflicher Verbindung steht, mit denen er eine solche Verbindung anbahnen will oder die er aus geschäftlichen oder beruflichen Anlässen bewirtet oder bewirten läszt (Geschäftsfreunde) und nur im Zusammenhang mit einer solchen Bewirtung auch für den Steuerpflichtigen selbst und Angehörige seines Betriebes abgesetzt werden. Sie sind auch dann nur absetzbar, soweit sie sich für jede einzelne Bewirtung in üblichem und angemessenem Rahmen halten und für die Bewirtung jeder Person 10 DM (für Bewirtung ausländischer Geschäftsfreunde 30 DM) pro Tag nicht übersteigen, soweit die Bewirtung nicht in einem Haushalt erfolgt, soweit ihre Verbuchung getrennt von den sonstigen Betriebsausgaben vorgenommen wird und soweit die einzelnen Aufwendungen durch Belege nachgewiesen werden, die Angaben über Ort, Tag und Stelle der Bewirtung, über Name, Anschrift und Firma jeder an der Bewirtung teilnehmenden Person und gegebenenfalls ihres Arbeitgebers, über Art, Menge und Preis der gelieferten Speisen, Getränke und sonstigen Genuszmittel und über den Gesamtbetrag der Rechnung enthalten, vom Steuerpflichtigen unterzeichnet und als richtig und ordnungsmäszig zugesichert sowie (bei Bewirtung in einer Gaststätte) durch eine die Angaben über die Aufwendungen bestätigende Quittung erhärtet werden, die von dem Unternehmer oder Betriebsleiter der Gaststätte unterzeichnet sein musz.

d) Der infolge der Kriegszerstörungen in der Bundesrepublik Deutschland notwendig gewordene Wiederaufbau wurde steuerlich seit 1949 unter anderem

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[1]) Als Beispiele nennt die im Text genannte Verordnung Gastwirte, Hoteliers, Fleischer, Bäcker, Lebensmittel- und Tabakwareneinzelhändler, Friseure, Modisten, Schneider, Apotheker, Zahnärzte, Dentisten und Röntgenärzte.

dadurch gefördert, dasz Steuerpflichtige *Zuschüsse* (Steuerpflichtige mit ordnungsmäsziger Buchführung auch unverzinsliche Darlehen) *zur Förderung des Wohnungsbaus* an gemeinnützige Wohnungs-, Siedlungs- und Heimstättenunternehmen, an Organe der staatlichen Wohnungspolitik sowie an sonstige Wohnungs- und Siedlungsunternehmen und private Bauherren bei der Ermittlung des steuerpflichtigen Einkommens absetzen konnten; für die Förderung der letztgenannten Gruppe galt dies mit der Einschränkung, dasz die geförderten Wohnungen eine bestimmte Grösze nicht überschreiten durften (§ 7 c des Einkommensteuergesetzes in der Fassung vom 10. August 1949). Diese Steuervergünstigung wurde von vielen Steuerpflichtigen in einem vom Steuergesetzgeber nicht vorhergesehenen Ausmasz nicht zur Erstellung neuen Wohnraumes für Wohnungssuchende benutzt, sondern zur oft luxuriösen Erweiterung und Verbesserung vorhandenen Wohnraumes miszbraucht, der nicht wohnungssuchenden, sondern bereits wohnungsbesitzenden Personen gehörte. Zu diesen Zwecken wurden sogar häufig Wohnungsbaugesellschaften neugegründet, die nur aus Familienangehörigen des Steuerpflichtigen bestanden. Zur Bekämpfung dieses Miszbrauchs wurden durch eine Neufassung des § 7c des Einkommensteuergesetzes durch das Einkommensteuer- und Körperschaftsteueränderungsgesetz 1951 die bisher nur für sonstige Wohnungs- und Siedlungsunternehmen und für private Bauherren geltende Beschränkung der Abzugsfähigkeit auf die Förderung des Baues von Wohnungen bestimmter Höchstmasze auf alle Arten der Wohnungsbauförderung erstreckt und als weitere Beschränkung ebenfalls für alle Arten der Förderung ein Höchstbetrag des abzugsfähigen Zuschusses oder Darlehens von 7000 DM je Wohnung (auch bei Förderung durch mehrere Steuerpflichtige) eingeführt. Weiterhin wurde die abzugsfähige Förderung von Bauten durch freie Wohnungsunternehmen auf die Förderung solcher Unternehmungen beschränkt, die von dem Steuerpflichtigen und seinen Angehörigen wirtschaftlich unabhängig und an denen der Steuerpflichtige und seine Angehörigen weder unmittelbar noch mittelbar beteiligt sind und die sich der Prüfung durch einen besonderen wohnungswirtschaftlichen Prüfungsverband unterwerfen. Die Förderung von Bauten durch sonstige Wohnungs- und Siedlungsunternehmen und private Bauherren schlieszlich ist nach dieser Neufassung des § 7 c nur noch abzugsfähig, soweit Wohnungen zur Benutzung durch den Steuerpflichtigen selbst, seine Arbeitnehmer oder seine Angehörigen erstellt werden.

3. Der Finanzgesetzgeber hat auch die verschiedenen Tatbestände des *Steuerstrafrechts* geregelt.

a) Das deutsche Steuerstrafrecht versucht, die illegale évasion fiscale vor allem in den folgenden allgemeinen *steuerstrafrechtlichen Einzeltatbeständen* zu erfassen:

1. *Steuerhinterziehung*, d.h. die Erschleichung ungerechtfertigter Steuervorteile zum eigenen Nutzen oder zum Nutzen eines anderen, die vorsätzliche Bewirkung der Verkürzung von Steuereinnahmen, die Verwendung von Sachen, für die Steuerbefreiung oder Steuervorteile gewährt worden sind, zu einem Zwecke, welcher der gewährten Vergünstigung nicht entspricht, ohne rechtzeitige Anzeige an die Finanzbehörde zum eigenen Vorteil oder zum Vorteil eines anderen und die Steuerumgehung (miszbräuchliche Benutzung von steuerlich günstigen Rechtsformen des Privatrechts; vergleiche oben unter II 2a) unter vorsätzlicher Verletzung von Pflichten, die dem Täter im Interesse der Ermittlung einer Steuerpflicht obliegen (dies sind besonders die oben unter II 1 genannten Pflichten). Die Strafe der Steuerhinterziehung ist Gefängnis bis zu 5 Jahren und Geldstrafe von unbeschränkter Höhe, sowie Einziehung der steuerpflichtigen Erzeugnisse und zollpflichtigen Waren, hinsichtlich derer die

Hinterziehung begangen worden ist, sowie der zur Tat benutzten Beförderungsmittel.

2. *Steuergefährdung*, d.h. die fahrlässige Bewirkung der Verkürzung von Steuereinnahmen oder der unrechtmäszigen Gewährung oder Belassung von Steuervorteilen: Geldstrafe bis zu 100.000 DM.
3. *Bannbruch*, d.h. die verbotswidrige Einfuhr, Ausfuhr oder Durchfuhr von Gegenständen ohne ordnungsmäszige Vorlegung bei der zuständigen Zollstelle: strafbar wie die Steuerhinterziehung.
4. Gewerbsmäsziger, bandenmäsziger und gewaltsamer (schwerer) *Schmuggel:* zusätzlich zur Strafe der Steuerhinterziehung und des Bannbruchs strafbar mit Gefängnis nicht unter drei Monaten.
5. *Steuerhehlerei*, d.h. der Ankauf, das Zum-Pfande-Nehmen, An-sich-Bringen, Verheimlichen oder Absetzen von Erzeugnissen oder Waren, hinsichtlich deren Verbrauchsteuer oder Zoll hinterzogen oder Bannbruch begangen worden ist, um des eigenen Vorteils willen: strafbar wie die jeweilige Vortat.
6. *Steuerzeichenfälschung* einschlieszlich der Beschaffung, Verwendung, Feilhaltung und des In-Verkehr-Bringens von Steuerzeichen und der Anfertigung, Beschaffung, Feilhaltung und des Überlassens von Materialien zur Ausführung einer Steuerzeichenfälschung: Gefängnis und Geldstrafe von verschiedener Höhe, bei vorsätzlicher Wiederverwendung; Beschaffung usw. bereits verwendeter Steuerzeichen Geldstrafe von unbestimmter Höhe.
7. *Steuerordnungswidrigkeit*, d.h. die vorsätzliche oder fahrlässige Zuwiderhandlung gegen ein Steuer- oder Aussenhandelsgesetz oder gegen eine Verfügung der Steuer- oder Aussenhandelsverwaltung, die einen Hinweis auf die Strafbarkeit enthält, oder gegen die Vorschriften über die Erlaubnisbedürftigkeit der geschäftsmäszigen Hilfe in Steuersachen oder über das Verbot des geschäftsmäszigen, in Angeboten oder Aufforderungen an einen gröszeren Personenkreis gerichteten Hinweises auf vom Gesetz nicht ausdrücklich zugelassene Möglichkeiten von Steuerersparungen: Geldstrafe bis zu 100 000 DM.
8. *Aufforderung zum Steuerstreik*, d.h. die öffentlich oder in einer Versammlung oder durch Verbreitung von Schriften oder anderen Darstellungen erfolgende Aufforderung oder Anreizung, einer Steuerpflicht nicht zu genügen oder die Durchführung der Vorschriften über diese Pflicht auf andere Weise zu hindern: Gefängnis nicht unter einem Monat und Geldstrafe in unbeschränkter Höhe.

b) Das deutsche Steuerstrafrecht enthält in mehreren Bestimmungen *Abweichungen vom allgemeinen deutschen Strafrecht*, die für das Problem der évasion fiscale von Bedeutung sind. So kennt es in § 393 der Reichsabgabenordnung auch eine *strafrechtliche Verantwortlichkeit juristischer Personen;* diese ist gegenwärtig allerdings infolge der neuerdings folgerichtigen Durchführung des Willensstrafrechtes im deutschen Strafrecht nur noch bei der Einziehung von Gegenständen ohne Rücksicht auf die Eigentumslage und bei der Haftung für die Geldstrafen und Verfahrenskosten von Bedeutung, die ihre Vertreter, Verwalter oder Bevollmächtigten verwirkt haben.

In der Anerkennung des unverschuldeten Irrtums über das Verbotensein einer Handlung (Strafrechts- oder *Verbotsirrtum*) als Schuldausschlieszungsgrund ging das deutsche Steuerstrafrecht in § 395 der Reichsabgabenordnung dem allgemeinen deutschen Strafrecht voran. Hieran ist bedeutsam, dasz die évasion fiscale durch diese Bestimmung formal nicht begünstigt wird, da als solche ja nur das *bewuszte* Ausweichen vor dem staatlichen Steueranspruch begriffen wird. Jedoch erscheint es möglich, dasz Steuerpflichtige zum Zwekke der évasion fiscale mit Erfolg einen solchen Verbotsirrtum vorzuspiegeln verstehen.

Als Verschärfung gegenüber dem allgemeinen Strafrecht sieht das deutsche Steuerstrafrecht für den *Versuch* der Steuerhinterziehung, des Bannbruchs, des schweren Schmuggels und der Steuerhehlerei sowie für die *Beihilfe* und *Begünstigung* hinsichtlich dieser Straftaten um des eigenen Vorteils willen in den §§ 397, 398, 401 a und b und 403 der Reichsabgabenordnung dieselbe Strafe vor wie für die vollendete Tat beziehungsweise wie für die Haupttat.

Eine erhebliche Begünstigung der évasion fiscale bedeuten die Vorschriften der §§ 410, 411 der Reichsabgabenordnung, wonach *Straffreiheit wegen tätiger Reue*, (genauer wegen *Selbstanzeige*, da moralische Reue nicht vorzuliegen braucht) bei Steuerhinterziehung, Bannbruch, Steuergefährdung und anderen Steuerdelikten bereits dann eintritt, wenn der Steuerpflichtige unrichtige oder unvollständige Angaben berichtigt oder ergänzt oder unterlassene Angaben nachholt. Diese Bestimmung ermöglichte es ursprünglich jedem Steuerpflichtigen, der Bestrafung nicht nur bei Gefahr der Entdeckung, sondern auch noch nach der Entdeckung seiner Steuerstraftat zu entgehen, soweit ihm nur noch nicht die Einleitung einer Untersuchung gegen ihn durch die Steuerbehörde eröffnet worden war. Seit einem Änderungsgesetz vom 7. Dezember 1951 tritt jedoch die Straffreiheit auch dann nicht ein, wenn beim Täter bereits ein Prüfer der Finanzbehörde zur steuerlichen oder steuerstrafrechtlichen Prüfung erschienen ist oder wenn der Täter im Zeitpunkt der Selbstanzeige wuszte oder damit rechnen muszte, dasz seine Tat ganz oder zum Teil bereits entdeckt war.

4. Die *internationale évasion fiscale* wird in den Fällen des Betreibens inländischer Unternehmen vom Ausland her durch Bestimmungen der Einzelsteuergesetze und durch § 14 des Steueranpassungsgesetzes bekämpft. Danach werden sowohl solche Unternehmen selbst als auch ihre Inhaber und leitenden Angestellten (besonders Vorstandsmitglieder und Prokuristen) und die an ihrer Geschäftsführung beteiligten Aufsichtsratsmitglieder der inländischen Besteuerung unterworfen. Die Bekämpfung der internationalen évasion fiscale durch völkerrechtliche Verträge, die der Zustimmung des Steuergesetzgebers bedürfen, steht in der Bundesrepublik Deutschland ebenso erst am Anfang, wie ihr contrarius actus, die Vermeidung internationaler Doppelbesteuerung (besser: Mehrfachbesteuerung) durch sogenannte Doppelbesteuerungsabkommen. Ferner gelten noch die Bestimmungen über die Reichsfluchtsteuer vom 8. Dezember 1931 (Reichsgesetzblatt Teil I Seite 699, Seite 731 ff), wonach Personen, die am 31. März 1931 Angehörige des Deutschen Reiches gewesen sind und in der Zeit nach dem 31. März 1931 ihren Wohnsitz oder ihren gewöhnlichen Aufenthalt im Inland aufgegeben haben oder aufgeben, eine „Reichsfluchtsteuer" in Höhe eines Viertels ihres gesamten steuerpflichtigen Vermögens entrichten müssen, wenn sie (im Falle der Zusammenveranlagung sie und die mit ihnen zusammenveranlagten Familienangehörigen) ein Gesamtvermögen von mehr als 50 000 DM oder ein Gesamteinkommen von mehr als 20 000 DM jährlich haben. Wird die Reichsfluchtsteuer schuldhaft nicht binnen einem Monat nach Entstehung der Steuerschuld gezahlt, so wird der Steuerpflichtige wegen Steuerflucht mit Gefängnis nicht unter 3 Monaten und mit Geldstrafe von unbeschränkter Höhe bestraft; sein Verschulden wird vermutet. Ferner werden gegen ihn ein Steuersteckbrief erlassen, sein Vermögen zur Sicherung der Ansprüche auf Reichsfluchtsteuer, Geldstrafe, Kosten etc. beschlagnahmt und Steuersteckbrief und Vermögensbeschlagnahme öffentlich bekanntgemacht.

B. DIE EVASION FISCALE UND DIE DEUTSCHE FINANZVERWALTUNG.

Die konkrete Ermittlung, Festsetzung, Erhebung und Beitreibung der Steuern obliegt der Finanzverwaltung. Ihr stehen dafür nach deutschem

Steuerrecht verschiedene Verfahrensweisen und zum Teil auch verschiedene, mit besonderen Befugnissen ausgestattete Organisationszweige zur Verfügung.

I. *Steuerermittlungs- und -festsetzungsverfahren* (*Steueraufsicht, Betriebsprüfung, Steuerfahndung*).

Als Grundsätze des *Steuerermittlungs- und -festsetzungsverfahrens,* durch das das Steuerverwaltungsverfahren eingeleitet wird, sind für die Frage der Bekämpfung der évasion fiscale in erster Linie die Herrschaft des Legalitätsprinzips, der Schriftform für die Steuererklärung des Steuerpflichtigen und für den Steuerbescheid, d.h. für die förmliche Festsetzung der Steuerschuld durch die Finanzbehörden, sowie des Amtsprinzips, der Untersuchungsmaxime und des Grundsatzes der freien Beweiswürdigung von Bedeutung. Noch wichtiger sind die besonderen Befugnisse zur Bekämpfung der évasion fiscale, die den Beamten der Finanzverwaltung in besonderen Verfahrensabschnitten des Ermittlungsverfahrens zustehen.

1. Im Rahmen des *Steueraufsichtsverfahrens;* das zur Vorbereitung des mehr technisch-rechnerischen Ermittlungsverfahrens dient und die Feststellung neuer Steuerfälle zum Ziel hat, besitzt die Finanzverwaltung umfassende Rechte zur Kontrolle der beruflichen Tätigkeit potentieller Steuerpflichtiger, ohne dasz ein besonderer Anlasz oder gar schon ein konkreter Verdacht einer begangenen évasion fiscale bestehen müszte. Hierher gehören vor allem die Rechte zur Einsichtnahme in Handelsbücher, Korrespondenzen, Karteien und in Geschäfts-, Fabrikations- und Lagerräume.

Verschärft sind diese Befugnisse gegenüber Inhabern von Betrieben und Unternehmen. Diese haben das beabsichtigte Gewinnen, Herstellen oder Umsetzen von Gegenständen, an deren Gewinnung, Herstellung oder Umsetzung eine Steuerpflicht geknüpft ist, oder das beabsichtigte Betreiben eines einer besonderen Verkehrsteuer unterliegenden Unternehmens den Finanzbehörden vor Eröffnung des Betriebes mitzuteilen. Sie dürfen ferner auf Grund der Ausführungsbestimmungen zu den Einzelsteuergesetzen bestimmte Gewerbehandlungen nur in angemeldeten oder in solchen Räumen vornehmen, deren Benutzung für diesen Zweck von den Finanzbehörden besonders genehmigt ist, und müssen von ihnen hergestellte Erzeugnisse in bestimmter Weise lagern, verpacken oder bezeichnen und betriebliche Vorgänge und Masznahmen, die für die Steueraufsicht wichtig sind, anmelden; allgemein haben sie ferner den Steueraufsichtsbeamten jede Auskunft zu erteilen und alle Hilfsmittel (Arbeits- und Aufenthaltsräume, Geräte, Beleuchtung) und Hilfsdienste zur Verfügung zu stellen. Die Steueraufsichtsbeamten können ferner auf besondere Anordnung Proben von steuerpflichtigen Erzeugnissen oder von zu deren Herstellung bestimmten Stoffen unentgeltlich entnehmen und einen etwaigen Kleinverkauf besonders überwachen.

Eine weitere Verschärfung der Steueraufsicht tritt gegenüber diesen Betrieben ein, wenn bei ihnen Fehlmengen vorliegen, wenn bei ihnen steuerstrafrechtlich eine Steuerhinterziehung festgestellt ist oder wenn in ihnen mit Wissen des Inhabers oder eines Vertreters Angestellte oder Arbeiter beschäftigt werden, die wegen Steuerhinterziehung in diesen Betrieben oder in Betrieben gleicher oder ähnlicher Art mit gewissen Mindeststrafen oder wiederholt bestraft sind. Werden von Steuerpflichtigen in der Absicht der Steuerhinterziehung Bücher oder Aufzeichnungen unrichtig geführt, unrichtige Geschäftsabschlüsse vorgelegt oder ähnliche arglistige Mittel angewandt oder liegen bei der Steueraufsicht unterliegenden Betrieben Tatsachen vor, aus denen hervorgeht, dasz ihr Inhaber steuerlich unzuverlässig ist, so kann dem betreffenden Steuerpflichtigen auf Zeit oder Dauer untersagt werden, seinen Betrieb oder Beruf fortzusetzen oder durch andere zu seinem Vorteil fortsetzen zu lassen oder sich in einem anderen Zweig des

betreffenden Gewerbes zu betätigen, wenn er aus den genannten Gründen mindestens zweimal rechtskräftig wegen Steuerhinterziehung bestraft ist. Schlieszlich können in Ausübung der Steueraufsicht für Zwecke der Zölle und Verbrauchsteuern bestimmte Gegenstände sichergestellt und in das Eigentum des Staates überführt werden.

2. In engem Zusammenhang mit der Steueraufsicht steht die steuerliche (*Buch- und*) *Betriebsprüfung*, die über die allgemeinen Befugnisse der Finanzbehörden, die Bücher und Betriebe aller Steuerpflichtigen zu überprüfen, hinaus bei Groszbetrieben mindestens alle drei Jahre durchgeführt werden musz. Für diese Prüfung, die nur durch entsprechend vorgebildete Beamte oder Sachverständige durchgeführt werden darf, ist in der deutschen Finanzverwaltung ein auch organisatorisch besonderer Betriebsprüfungsdienst eingerichtet worden.

3. Steueraufsicht und Betriebsprüfung werden in den Fällen, in denen ein Verdacht konkreter Steuerstraftaten vorliegt, durch einen weiteren Sonderzweig der deutschen Finanzverwaltung, den *Steuerfahndungsdienst* ergänzt. Er hat die Aufgabe, an Stelle der für das Steuerwesen nicht sachverständigen allgemeinen Polizei bei der Bekämpfung und insbesondere bei der Ermittlung von Steuerstraftaten mitzuwirken. Die Steuerfahndungsbeamten und die Zollfahndungsbeamten sind regelmäszig planmäszige Beamte des gehobenen Dienstes und haben wie die Beamten der allgemeinen Polizei, die mit der Verbrechensbekämpfung befaszt sind, die Rechte von Hilfsbeamten der Staatsanwaltschaft. Steuerstrafverfahren werden jedoch in der Regel nicht durch den Steuerfahndungsdienst, sondern durch die örtliche Finanzbehörde selbst eingeleitet.

II. *Vollstreckungsverfahren.*

Werden die im Steuerermittlungs- und - festsetzungsverfahren festgesetzten Steuern vom Steuerpflichtigen bis zum Zeitpunkt ihrer Fälligkeit nicht freiwillig bezahlt, so können sie von den Finanzbehörden im Wege der *Zwangsvollstreckung* beigetrieben werden. Voraussetzung der Beitreibung ist nicht wie in der zivilprozessualen Zwangsvollstreckung ein besonderer vollstreckbarer Titel, sondern nur, dasz dem Vollstreckungsschuldner die Zahlungsaufforderung bekanntgegeben und dasz seitdem eine Woche verstrichen ist. Vollstreckungsschuldner ist nicht nur der Steuerschuldner, sondern auch jeder, der an seiner Stelle nach den Einzelsteuergesetzen oder nach bürgerlichem und Handels-Recht haftet; auch der Verwalter fremden Vermögens hat gegebenenfalls die Vollstreckung darin zu dulden. Um einen vollen Erfolg der Beitreibung zu gewährleisten, kann dem eigentlichen Beitreibungsverfahren, das unmittelbar auf die Befriedigung des Steuergläubigers gerichtet ist, ein Sicherungsverfahren mit persönlichem oder dinglichem Arrest oder Beschlagnahme oder (und) ein Vorverfahren zur Ermittlung der Vermögens- und Einkommensverhältnisse des säumigen Steuerschuldners vorgeschaltet werden, in dem die Finanzbehörden unter Umständen die Vorlegung eines Vermögensverzeichnisses und die Leistung des Offenbarungseides verlangen können.

III. *Steueranspruch und Konkurs des Steuerpflichtigen.*

Besondere Probleme entstehen für die Finanzverwaltung im Hinblick auf die évasion fiscale beim Zusammentreffen von Steueransprüchen und *Zahlungsunfähigkeit*, insbesondere Konkurs des Steuerpflichtigen.

1. Die bei Konkurseröffnung bereits bestehenden Steueransprüche, die im letzten Jahr vor der Konkurseröffnung fällig geworden sind, sind zwar dem allgemeinen Konkursverfahren unterworfen, werden aber bei der Befriedi-

gung der Konkursgläubiger an zweiter Stelle (hinter den Lohnforderungen an den Gemeinschuldner) vorzugsweise vor allen anderen Konkursforderungen befriedigt. Mit der Anmeldung der Steueransprüche zur Konkurstabelle ist auch für den steuerlich im allgemeinen nicht sachverständigen Konkursrichter bindend festgestellt, dasz der geltend gemachte Steueranspruch besteht; Einwendungen gegen ihn können nur im ordentlichen Rechtsmittelverfahren vor Finanzbehörden und Finanzgerichten erhoben werden.

2. Steueransprüche, die erst während der Konkursverwaltung entstehen, sind dagegen sogenannte Massekosten und als solche ebenfalls und noch vor den vorkonkurslichen Steueransprüchen aus der Masse zu befriedigen.

IV. *Allgemeine Zwangsmittel der Finanzbehörden.*

Die Finanzbehörden können rechtmäszige Anordnungen, die sie im Rahmen der vorgenannten und im Rahmen ihrer sonstigen Verfahren treffen, mit Hilfe von *Zwangsmitteln* durchsetzen. Als Zwangsmittel sieht das deutsche Steuerrecht im einzelnen Geld„strafen"[1]) bis zu 5 000 DM (bei Uneinbringlichkeit ersatzweise Haft bis zu 4 Wochen), Ausführung auf Kosten des Steuerpflichtigen (sogenannte Ersatzvornahme) und unmittelbaren Zwang, für den Fall der Nichteinhaltung von Bedingungen, unter denen Steuervergünstigungen oder Steuererleichterungen gewährt wurden, ferner auch Geldbuszen als Ungehorsamsfolgen (sogenannte Sicherungsgelder) vor. Die Anwendung von unmittelbarem Zwang ist jedoch nur zulässig, wenn die Anordnung sonst nicht durchführbar ist oder Gefahr im Verzuge liegt. Alle zwangsmittel müssen vor ihrer Festsetzung unter der Aufforderung, die zu erzwingende Handlung innerhalb einer angemessenen Frist vorzunehmen, schriftlich angedroht werden. Die Kosten der Ersatzvornahme und des unmittelbaren Zwanges können im voraus zwangsweise eingezogen werden.

C. DIE EVASION FISCALE UND DIE DEUTSCHE (FINANZ-) GERICHTSBARKEIT.

Die Gerichtsbarkeit auf dem Gebiete des Finanzwesens obliegt in der Bundesrepublik Deutschland den Finanzgerichten und den Behörden der Steuerstrafgerichtsbarkeit.

I. *Finanzgerichte.*

Die *Finanzgerichte* dienen als Finanzverwaltungsgerichte auf der Grundlage der weit gespannten Rechtsschutzgarantie des Artikels 19 Absatz 4 des Bonner Grundgesetzes in erster Linie dem Schutze der Steuerpflichtigen durch Gewährung umfassenden Rechtsschutzes gegen alle ungesetzlichen Übergriffe der Finanzbehörden. Damit stehen sie nur mittelbar im Kampf gegen die évasion fiscale, soweit sie nämlich ungerechtfertigten Rechtsmitteln der Steuerpflichtigen den Erfolg versagen.

II. *Behörden der Steuerstrafgerichtsbarkeit.*

Als *Behörden der Steuerstrafgerichtsbarkeit* kommen in der Bundesrepublik Deutschland sowohl die Finanzverwaltungsbehörden als auch die allgemeinen (ordentlichen) Strafgerichte und Strafverfolgungsbehörden (Staatsanwaltschaften) in Betracht.

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[1]) Auch Ungehorsams-, Zwangs- oder Beugestrafen genannt, richtigerweise aber nicht als Strafen zu bezeichnen, da sie nicht repressive, sondern nur zur Herbeiführung eines bestimmten Verhaltens dienende Masznahmen darstellen und im Gegensatz zu kriminellen Strafen sowie zu Ordnungs- und Verwaltungsstrafen auch mehrmals aus demselben Grunde, und zwar solange verhängt werden können, bis ihr Zweckerreicht ist.

1. Den *Finanzverwaltungsbehörden* liegen auszer der Einleitung von Steuerstrafverfahren auch die Durchführung des steuerstrafrechtlichen Ermittlungsverfahrens (Ausnahme nur bei Festnahme und Vorführung vor dem Richter) und die Strafentscheidung bei Steuervergehen ob, die nur mit Geldstrafe und Einziehung oder einer dieser Strafen bedroht sind oder bei denen die Finanzbehörden nur auf diese Strafen oder darauf erkennen wollen, dasz die Verurteilung auf Kosten des Verurteilten bekanntzumachen sei. Sie sind jedoch befugt, die Sache an die zuständige Staatsanwaltschaft abzugeben.

2. Die sachliche Zuständigkeit der *Staatsanwaltschaften und der allgemeinen* (*ordentlichen*) *Strafgerichte* ist dagegen auszer primär in allen anderen Fällen von Steuervergehen auch sekundär in den Fällen finanzbehördlicher Strafentscheidung auf Antrag des Steuerpflichtigen und in den Fällen der Übertragung von zur Zuständigkeit der Finanzbehörden gehörenden Sachen gegeben. Doch kann auch die an sich primär zuständige Staatsanwaltschaft die Finanzverwaltungsbehörde ersuchen, den Sachverhalt eines Steuervergehens zu ermitteln; entspricht die Finanzbehörde diesem Ersuchen, so ist sie auch im Rahmen ihrer oben genannten Strafbefugnisse selbst zur Strafentscheidung befugt. Entscheidungen der allgemeinen Strafgerichte sind hinsichtlich der von ihnen steuerstrafrechtlich zu beurteilenden steuerrechtlichen Fragen an die Entscheidung des Obersten Finanzgerichtes (früher des Reichsfinanzhofes, seit 1950 des Bundesfinanzhofes in München) gebunden. Liegt eine solche Entscheidung nicht vor, so haben sie ihr Verfahren bis zu einer steuerlichen Entscheidung durch die Finanzbehörde oder durch ein Finanzgericht auszusetzen. Wollen sie dann von dieser Entscheidung abweichen, so haben sie vorher eine für sie bindende Entscheidung des Bundesfinanzhofes einzuholen. Auch diese Regelung dient der Vermeidung der évasion fiscale durch unsachgemäsze Entscheidungen der steuerlich im allgemeinen nicht genügend vorgebildeten Richter der allgemeinen Zivil- und Strafgerichtsbarkeit.

D. DIE EVASION FISCALE UND DIE RECHTSSTELLUNG DER STEUERBERATENDEN BERUFE.

Die Kompliziertheit und Unübersichtlichkeit des deutschen Steuersystems und vieler Einzelsteuergesetze sowie die früher unvorstellbare Überhöhung der Steuersätze insbesondere der Besitzsteuern in der Bundesrepublik Deutschland haben die Bedeutung der steuerberatenden Berufe mehr und mehr gesteigert. Selbst der Bundesminister der Finanzen und mehrere Länderfinanzminister haben gelegentlich erklärt, dasz sie sich für ihre persönlichen Steuererklärungen Steuerberater halten müszten. In Anbetracht dieser Sachlage kommt auch gerade im Hinblick auf die évasion fiscale der Frage der Rechtsstellung der steuerberatenden Berufe gröszte Bedeutung zu.

I. *Die steuerberatenden Berufe.*

Als *steuerberatende Berufe* kommen nach deutschem Steuerrecht Rechtsanwälte und Notare (vielfach als „Fachanwälte für Steuerrecht" firmierend), Steuerberater und Helfer in Steuersachen in Betracht.

1. Die uneingeschränkte *Vertretung der Steuerpflichtigen* steht nur Rechtsanwälten oder Notaren sowie Personen zu, die von einer mittleren Finanzbehörde (heute: Oberfinanzdirektion) als *Steuerberater* zugelassen sind. Diese Zulassung ist jederzeit widerruflich. Die Steuerberater müssen für ihre Zulassung abgeschlossene juristische oder volks- oder betriebswirtschaftliche Hochschulbildung oder eine gleichwertige Vorbildung, einen dreijährigen praktischen Vorbereitungsdienst, einen Abschluszlehrgang einer staatlichen Finanzschule und das Bestehen der Steuerberaterprüfung sowie

eine mindestens halbjährige Tätigkeit als amtlich zugelassener Helfer in Steuersachen nachweisen. Sie unterstehen, obwohl sie an sich Vertrauensleute der Steuerpflichtigen sind, der Disziplinargewalt des Oberfinanzpräsidenten (des Leiters der Oberfinanzdirektion). Die Vereinbarung von Erfolgshonoraren und in der Regel auch die Werbung sind ihnen verboten.

Sonstige Bevollmächtigte des Steuerpflichtigen können von den Finanzbehörden zurückgewiesen werden, wenn sie aus der Erteilung von Rat und Hilfe in Steuersachen ein Geschäft machen oder wenn ihnen die Fähigkeit zu geeignetem schriftlichen oder mündlichen Vortrag mangelt. Neben allen diesen sonstigen Bevollmächtigten können sich die Finanzbehörden auch an den Steuerpflichtigen selbst wenden, wohingegen sie einen vom Steuerpflichtigen bevollmächtigten Steuerberater nicht umgehen dürfen.

2. Auch Personen, die geschäftsmäszig nur *intern Rat und Hilfe in Steuersachen* erteilen, bedürfen dazu der vorherigen allgemeinen und ebenfalls jederzeit widerruflichen Erlaubnis der örtlichen Finanzbehörden, als *„Helfer in Steuersachen"* tätig zu sein, soweit es sich bei der Hilfeleistung nicht um die zu 1 genannten Personen oder um die Tätigkeit einer zuständigen Behörde, eines Verwahrers oder Verwalters fremden oder zu treuen Händen oder zur Sicherung übereigneten Vermögens, eines Kaufmannes im Zusammenhang mit einem Handelsgeschäft gegenüber seinen Kunden, eines Prüfungs-, Treuhand- oder Berufsverbandes gegenüber seinen Mitgliedern oder von Angestellten für ihren Dienstherrn sowie um die Erstattung wissenschaftlicher Gutachten handelt. Auch der Helfer in Steuersachen hat seine fachliche Eignung durch Ablegung einer Prüfung nachzuweisen und unterliegt der Berufsaufsicht des Oberfinanzpräsidenten sowie einem Werbe- und Erfolgshonorarverbot.

II. *Steueraufsicht und steuerberatende Berufe.*

Steuerberater und Helfer in Steuersachen unterliegen einer besonderen *Steueraufsicht*. Sie haben den Finanzbehörden auf Verlangen Einsicht in ihre Geschäftspapiere zu geben. Wenn sie (ebenso, wenn Rechtsanwälte und Notare) wegen Steuerhinterziehung oder Teilnahme an einer solchen rechtskräftig verurteilt worden sind, kann ihnen der Oberfinanzpräsident untersagen, ihre Tätigkeit fortzusetzen. Wie allen anderen Personen, so ist auch den Angehörigen der steuerberatenden Berufe verboten, geschäftsmäszig in Angeboten oder Aufforderungen, die an einen gröszeren Personenkreis gerichtet sind, darauf hinzuweisen, dasz bei Geschäftsabschlüssen „in bestimmter Weise", die sich nicht aus dem klaren Willen des Gesetzes ergibt, auszer dem geschäftlichen Zweck noch Ersparnisse oder Vorteile bei der Besteuerung erreicht werden können.

REGIME FISCAL COMPARE DES RESERVES DE SOCIETES EN FRANCE ET EN ALGERIE

par

Maître EMILE BROCHIER

Conseil juridique et fiscal de Sociétés. Licencié en Droit, Diplomé de l'Ecole de Notariat de Lyon, Diplomé Notaire à Alger.

Le régime fiscal des Sociétés est aujourd'hui assez différend, eu égard aux impôts et taxes supportés par les réserves de Sociétés, dans la Métropole et en Algérie.

Les divergences se sont encore accentuées depuis la réforme fiscale qui a institué, en France, à partir du 1er Janvier 1949, un nouveau système de taxation sous les appellations „Impôts sur les personnes physiques" et „Impôts sur les personnes morales", alors qu'en Algérie l'ancienne formule de contributions avec l'impôt sur les bénéfices (industriels, commerciaux, agricoles ou non commerciaux) B.I.C., B.A., B.N.C. et l'impôt sur le revenu des valeurs mobilières (I.R.V.M.) subsiste toujours, sous réserve de certaines modalités particulières d'application.

La fiscalité algérienne semble donc devoir s'éloigner, en cette matière, des principes d'assimilation, généralement suivis jusqu'ici.

Un rapide tour d'horizon sur ce problème fiscal, dans la Métropole, postérieurement au 1er avril 1939, avant et depuis le 1er septembre 1942, avant et depuis le décret du 9 décembre 1948, modifié par l'article 20 de la loi de finances du 31 décembre 1949, avant et depuis le décret du 30 Juin 1952, établissant un nouveau régime des capitalisations de réserves et de bénéfices, et, en Algérie, avant l'application de la loi du 12 août 1942, et depuis, compte tenu des exonérations accordées par les décrets des 31 décembre 1945 et 31 janvier 1949 et des nouvelles dispositions résultant du décret du 17 mai 1952, permettra de se faire une idée assez exacte sur la question d'imposition des réserves et sur les décisions à prendre à

leur sujet par les chefs d'entreprises, administrateurs ou gérants de sociétés.

A. DANS LA METROPOLE

I. SOCIETES DE PERSONNES.

a) *Réserves ordinaires.* — Pour les Sociétés relevant de l'impôt sur les revenus des sociétés de personnes, c'est à dire les sociétés en nom collectif ou en commandite simple pour la part des commandités, les sociétés civiles de personnes qui n'ont pas opté pour leur assujettissement à l'impôt sur les sociétés de capitaux, les bénéfices mis en réserve sont passibles, dès leur constatation, des mêmes impôts que les bénéfices immédiatement distribués aux Associés ou répartis aux ayants droit, c'est à dire, de la taxe proportionnelle et de la surtaxe progressive.

Jusqu'au 5 Octobre 1951, la capitalisation de ces bénéfices ou réserves était exempte du droit d'enregistrement d'apport.

Depuis cette date, l'opération est sujette au droit d'enregistrement de 1,20 pour cent, liquidé à 1,40 pour cent depuis le 13 juillet 1952.

Le remboursement aux associés des bénéfices mis en réserve ou la capitalisation des bénéfices ou réserves, ne donnent ouverture à aucun impôt, sauf, le cas échéant, le droit d'apport.

b) *Réserves spéciales.*

La réserve spéciale de réévaluation échappe à l'impôt sur le revenu des personnes physiques.

Jusqu'au 5 Octobre 1951, la capitalisation de cette réserve échappait même au droit d'apport.

Aprés cette date, l'opération supportait à la fois le droit d'apport à 1,20 pour cent et la taxe additionnelle à 6 pour cent, soit ensemble 7,20 pour cent.

Depuis le 13 juillet 1952, seul le droit d'apport, au taux majoré de 2 pour cent, est exigible.

En cas de remboursement de la réserve spéciale de réévaluation, capitalisée ou non, il y a lieu à perception de l'impôt sur le revenu des personnes physiques (taxe proportionnelle de 18 pour cent et surtaxe progressive).

Toutefois, si le remboursement est la conséquence d'une cession

d'entreprise intervenant plus de cinq ans après le commencement de l'exploitation et si la réserve spéciale correspond à des éléments d'actif immobilisés compris dans la cession, il n'est perçu que l'impôt sur les personnes physiques au taux de 6 pour cent, exclusif de la taxe progressive.

Les autres réserves spéciales, provenant par exemple de provisions pour renouvellement de stock, ou d'indemnités de reconstitution de stock sinistré, supportent, en cas de capitalisation, le droit d'apport à 1,40 pour cent, mais sont exonérées d'impôts, en cas de distribution, avant ou après capitalisation.

II. SOCIETÈS RELEVANT DE L'IMPOT SUR LES SOCIETES

a) *Réserves ordinaires.* — Les bénéfices mis en réserve dans les sociétés anonymes ou en commandite par actions, les sociétés à responsabilité limitée, les sociétés en commandite simple pour la part des commanditaires et les sociétés de personnes ayant opté pour les sociétés de capitaux, étaient avant le 1er Juillet 1949, passibles du seul impôt B.I.C.

Ils sont actuellement soumis à l'impôt sur les sociétés dans les conditions suivantes:

Capitalisation des réserves. — Jusqu'au 1er septembre 1942, les capitalisations des réserves des sociétés par actions et à responsabilité limitée donnaient prise, d'une part, au droit d'apport, et d'autre part, à la taxe de distribution (alors appelée impôt sur le revenu des valeurs mobilières) et à l'impôt général sur le revenu; dans ce régime, le remboursement des réserves capitalisées échappait à tout impôt.

A partir du 1er septembre 1942, la taxe de distribution et l'impôt général ont été remplacés par une taxe additionnelle au droit d'apport.

Le décret du 9 décembre 1948 a maintenu le droit d'apport, ainsi que la taxe additionnelle; mais depuis le 1er janvier 1949, les remboursements de réserves capitalisées sont considérés comme des distributions ordinaires, passibles de la taxe de distribution (sauf imputation de la taxe additionnelle) et de la surtaxe progressive.

Enfin, depuis le 13 juillet 1952, les capitalisations sont assujetties au seul droit d'apport, au taux majoré de 6 pour cent; aucune imputation de ce droit n'était faite lors du remboursement, lequel

déclenchera l'exigibilité de la taxe de distribution et de la surtaxe progressive.

Toutefois, il importe de noter que le droit d'apport ordinaire au taux de 1,40 pour cent peut être applicable à certaines réserves des sociétés relevant de l'impôt sur les Sociétés. Il en sera ainsi notamment:

1° Pour les sociétés provenant de la transformation de sociétés de personnes en ce qui concerne les réserves constituées avant la transformation.

2° Pour les sociétés ayant opté pour leur assujettissement à l'impôt sur les sociétés en ce qui concerne les réserves constituées avant l'option.

Enfin, dans les sociétés en commandite simple, le taux de 6 pour cent est désormais applicable à la fraction des réserves correspondant aux droits des commanditaires et le taux de 1,40 pour cent à la fraction correspondant aux droits des associés en nom: ces droits se substituent à celui de 1,20 pour cent seul applicable avant le 13 juillet 1952 sur la totalité des réserves capitalisées.

b) *Remboursement des réserves.* — Des distinctions s'imposent:

1° les réserves n'ont pas été capitalisées. — Leur répartition entre les associés donne ouverture dans tous les cas et sans atténuation, à la taxe proportionnelle de distribution et à la surtaxe progressive.

2° les réserves ont été capitalisées. — Il faut alors tenir compte du régime fiscal en vigueur au moment où l'incorporation a été réalisée:

a) S'il s'agit de réserves incorporées au capital antérieurement au 1er janvier 1949, et si le remboursement est consécutif à la liquidation de la société, il est effectué en franchise de tout impôt.

En cas de réduction de capital intervenue avant la liquidation de la société, il y a lieu, en principe, d'imposer une deuxième fois ces réserves, bien qu'elles aient supporté déjà, lors de leur incorporation, soit l'impôt sur le revenu des valeurs mobilières, soit la taxe additionnelle, qui, sous le régime antérieur au 1er janvier 1949, tenait lieu de l'impôt de distribution. Cependant l'Administration fiscale paraît disposée à ne pas exiger d'impôt tout au moins, si l'opération aboutit à éliminer totalement un associé de la Société.

b) Si la capitalisation a été réalisée entre le 1er janvier 1949 et

le 13 juillet 1952, la taxe proportionnelle de distribution et la surtaxe progressive sont exigibles sur les sommes remboursées qui proviennent des réserves capitalisées, toutefois, la taxe additionnelle perçue sur cette capitalisation doit être imputée sur le montant de l'impôt de distribution.

c) Si le capitalisation est intervenue à compter du 13 juillet 1952, le remboursement donners a prise à la taxe proportionnelle de distribution et à la surtaxe progressive sans aucune atténuation, c'est à dire, comme si le capitalisation n'avait pas eu lieu.

c) *Réserves spéciales.* — La réserve spéciale de réévaluation est constituée en franchise provisoire de l'impôt sur les Sociétés, sauf à devenir exigible en cas de répartition.

Jusqu'au 13 juillet 1952, l'incorporation de la réserve spéciale de réévaluation au capital, donnait ouverture au droit d'apport et à la taxe additionnelle au taux réduit, remplaçant la taxe de distribution avant le 1er janvier 1949 et considéré comme un acompte sur cette taxe à partir du 1er janvier 1949.

Depuis le 13 juillet 1952, le droit d'apport au taux de 2 pour cent est seul exigible lors de l'incorporation de cette réserve au capital.

En cas de remboursement ou de répartition de la réserve spéciale de réévaluation entre les associés, la situation se présente comme suit:

Si la réserve n'a pas été capitalisée, la répartition entraîne ipso facto l'impôt sur les sociétés au taux réduit de 8 pour cent, la taxe de distribution à 18 pour cent et la surtaxe progressive.

Si la réserve spéciale a été capitalisée, il y a lieu de considérer la date de capitalisation:

Si celle-ci est antérieure au 1er janvier 1949, et si le remboursement est consécutif à la liquidation de la société, il apparaît que le seul impôt exigible est celui sur les sociétés au taux de 8 pour cent.

Si la capitalisation a été réalisée entre le 1er janvier 1949 et le 13 juillet 1952, l'impôt sur les sociétés, la taxe de distribution et la surtaxe progressive seront exigibles, sauf imputation de la taxe additionnelle perçue lors de la capitalisation.

Enfin, si la capitalisation est postérieure au 13 juillet 1952, l'impôt sur les sociétés, la taxe de distribution et la surtaxe seront perçus sans atténuation ni imputation.

B. EN ALGERIE

I. SOCIETES DE PERSONNES.

a) *Réserves ordinaires.* — Dans les sociétés de personnes chaque associé est tenu, pour sa part virile, et considéré au regard de l'administration fiscale algérienne comme un particulier.

Il est donc imposable personnellement sur tous les bénéfices qui lui reviennent, au prorata de ses droits sociaux, que ces bénéfices soient ou non mis en réserve ou capitalisés.

Toutefois les impositions ainsi comprises dans les rôles des impôts directs, n'en demeurent pas moins des dettes sociales.

Ces bénéfices ne supportent que l'impôt sur les B.I.C. et ne sont pas assujettis à l'I.R.V.M.

En cas d'incorporation de réserves provenant de bénéfices au capital, seul le droit d'enregistrement d'apport actuellement de 1 pour cent est exigible.

b) *Réserve spéciale de réévaluation.* — Elle échappe, dans les sociétés de personnes, tant aux B.I.C., qu'à l'I.R.V.M.,

En cas de capitalisation, le droit d'enregistrement de 1 pour cent est seul dû.

Il en est de même des autres réserves spéciales.

c) *Capitalisation directe de bénéfices.* —

Même régime que pour les capitalisations de réserves.

Ces règles s'appliquent seulement aux sociétés en nom collectif, aux commandités dans les Sociétés en commandite simple et aux sociétés civiles de personnes n'ayant pas opté pour les sociétés de capitaux.

Le taux principal des B.I.C. est de douze pour cent pour les particuliers et sociétés de personnes et de 16 pour cent pour les sociétés de capitaux ou les sociétés de personnes ayant opté pour le régime des sociétés de capitaux. A ces taux, s'ajoutent les centimes additionnels perçus au profit des collectivités locales, centimes qui font en général, plus que doubler le principal.

II. SOCIETES RELEVANT DE L'I.R.V.M.

Dans les sociétés anonymes ou en commandite par actions, les sociétés à responsabilité limitée, les sociétés en commandite simple, pour les parts des commanditaires et les sociétés de personnes ayant opté pour les sociétés de capitaux, qui relèvent de l'impôt

sur les B.I.C., les bénéfices mis en réserve ne deviennent taxables à l'I.R.V.M., qu'au cas de mise en distribution sous une forme quelconque.

Le taux de cet impôt sur le revenu des valeurs mobilières est de 18 pour cent actuellement (autrefois 24 pour cent).

Il est réduit de moitié en cas d'incorporation de réserves au capital.

a) *Capitalisation des réserves ordinaires.* — Les réserves provenant de bénéfices ont toujours été passibles de l'impôt sur les B.I.C.

Leur capitalisation ou distribution, sous forme d'augmentation de capital, avec attribution gratuite d'actions ou de parts aux actionnaires ou associés, entraîne la perception de l'I.R.V.M. tel qu'il est prévu par l'article 35 du Code Algérien des Valeurs Mobilières.

Les distributions de réserves effectuées entre le 1er avril 1939 et le 30 septembre 1940, sous forme d'augmentation de capital, bénéficiaient déjà d'une réduction de moitié de l'I.R.V.M.

Le droit commun est redevenu applicable jusqu'au 1er janvier 1946.

En exécution des décrets des 31 décembre 1945 et 31 janvier 1949, les distributions effectuées dans les Sociétés ayant leur siège en Algérie, à compter du 1er janvier 1946, sous la forme d'augmentation de capital réalisée définitivement avant le 1er juin 1951, étaient exonérées complêtement de l'I.R.V.M.

Depuis le 1er juin 1951, c'est l'article 128, paragraphe I du Code Algérien des Valeurs Mobilières qui redevient en vigneur savoir:

„Les distributions de réserves effectuées sous la forme d'aug-
„mentation de capital, bénéficient d'une réduction de moitié de
„l'impôt sur le revenu des capitaux mobiliers. (C'est donc le taux
„de 9% qui s'applique désormais à ces opérations).

„Toutefois, lorsque ces distributions sont consécutives à une
„réduction de capital non motivée par des pertes sociales ou à
„une opération quelconque impliquant remboursement direct ou
„indirect de capital en franchise de l'impôt sur le revenu, réalisée
„postérieurement au 1er novembre 1948 et depuis moins de dix ans,
„elles ne peuvent bénéficier de la réduction prévue à l'alinéa précé-
„dent que si et dans la mesure où l'augmentation de capital en
„résultant excède le capital remboursé.

„Lorsque les distributions sont suivies dans le délai de dix ans,

„d'une réduction de capital non motivée par des pertes ou d'une „opération quelconque impliquant remboursement direct ou indi„rect de capital en franchise d'impôt, elles sont déchues, pour une „somme égale au montant du remboursement, de la réduction dont „elles avaient bénéficié et les droits exigibles doivent etre acquittés „dans les vingt premiers jours du trimestre suivant celui de l'évène„ment qui a entraîné la déchéance."

En outre, le droit d'enregistrement de 1 pour cent est toujours exigible.

Il est à remarquer que ce texte, d'une part, ne vise pas les capitalisations directes de bénéfices, mais ne concerne que les distributions de réserves, et que, d'autre part, il ne fait aucune distinction entre les réserves ordinaires et les réserves spéciales, alors que la législation métropolitaine a, au contraire, prévu ces divers cas avec des taxations différentes, en accordant même des exonérations substantielles dont le contribuable algérien devrait bien bénéficier.

b) *Réserves spéciales.* — Sont, en principe, exonérées de l'impôt direct sur les B.I.C., les réserves et provisions dites „réserves spéciales de réévaluation" „réserves de renouvellement ou reconstitution de stock" et autres de même nature qui sont constituées provisoirement en franchise d'impôt qu'elles soient ou non capitalisées.

Mais en cas de remboursement ou de répartition ultérieurs, le B.I.C. deviendra exigible sur les résultats de l'exercice où l'opération aura été effectuée.

En cas d'incorporation au capital et de capitalisation de ces réserves spéciales, il sera dû le droit d'enregistrement de 1 pour cent, même s'il n'y a pas d'acte les constatant, et, en outre, l'article 128.1 précité du Code Algérien des Valeurs Mobilières jouera, c'est à dire l'exigibilité de la moitié de l'impôt I.R.V.M. de 18 pour cent, soit 9 pour cent, avec toutes ses conséquences.

c) *Capitalisation directe de bénéfices.* — Cette opération qui, depuis l'entrée en vigueur du décret de réforme fiscale du 9 décembre 1948, était, dans la Métropole, totalement exonérée de droit d'enregistrement et de taxe quelconque, et qui, comme conséquence à l'application de l'article 20 de la loi de finances du 31 décembre 1949, n'est plus considérée, en France comme une distribution taxable et échappe à la taxe proportionnelle sur le revenu des

capitaux mobiliers (18 pour cent) pour être assujettie à la taxe additionnelle (12 pour cent) et au droit d'enregistrement, a toujours été considérée, à tort ou à raison, par l'Administration Algérienne, comme un produit taxable à l'I.R.V.M., au taux de 24 pour cent et 18 pour cent par application de l'article 35, n°s 1 et 2 et antépénultième deuxième alinéa du Code Algérien de Valeurs Mobilières.

Il est regrettable qu'en l'état actuel de la législation algérienne et par application du principe de l'interprétation littérale des textes fiscaux, il ne soit pas possible d'obtenir pour les Sociétés algériennes, des allègements au moins identiques à ceux dont profitent les Sociétés métropolitaines, et il serait à souhaiter que l'Assemblée Algérienne, avec le concours de la Direction Générale des Finances, se penche sur ces problèmes dont une solution libérale rendrait service à l'Economie Algérienne.

d) *Sociétés algériennes d'armement.* — Exceptionnellement, les distributions de réserves effectuées par les Sociétés algériennes d'armement, sous forme d'incorporation au capital de la réserve de reconstitution de la flotte, ont été exonérées de l'impôt sur le revenu des valeurs mobilières, à la condition d'avoir réalisé définitivement l'augmentation de capital avant le 1er janvier 1952.

Bien entendu les dispositions de l'article 128 précité du Code Algérien des Valeurs Mobilières, sont applicables à ces distributions.

e) *Sociétés ayant pour objet des biens situés en Tunisie.* — Lorsqu'une Société, Compagnie ou Entreprise, ayant son siège en Algérie, a pour objet des biens situés en Tunisie, l'impôt sur le revenu dû de ce chef dans la Régence est imputé sur l'impôt exigible en Algérie pour le même exercice.

II

REVIEW OF THE NORWEGIAN TAXATION SYSTEM

by

MORTEN H. MAGNUS

In Norway, taxes are collected at three administrative levels: the municipal, the county and the state. The municipalities levy direct taxes on accrued capital and income, in the main, though they also claim a share of the property tax as well as collect certain excises, such as the dog-tax. Property taxes are levied by the counties, partly as direct taxes and partly as repetition taxes on the rural municipalities (herredene). The state, in turn, levies direct taxes on capital and income, in addition to collecting a series of indirect taxes or excises and fees.

The power to levy taxes is vested in the Storting or national parliament. Both municipal and county taxes are collected on the basis of this authority extended by the Storting in the form of tax statutes and authorizing the collection of taxes by these lower authorities, within such frameworks as the Storting may set up at any given time.

Our prevailing tax statute dates from August 18, 1911 and applies to state as well as municipality tax assessment. Paragraphs relative to municipal taxation are drawn up in two separate sections: one for urban and one for rural municipalities (herredene). Since its introduction in 1911, this law has been broadened by numerous supplementary statutes, the most important of which includes the following: Each year, since 1918, a law has been passed giving the municipalities recourse to draw up a surtax on larger incomes: as far as state tax is concerned, the law of July 13, 1921, concerning taxation of joint stock companies and shareholders is particularly applicable in this context. Provisions governing taxation of bank deposits are covered by the statute of January 24, 1936, concerning levying of municipal accrued-capital and

income taxes on bank deposits and deposit earnings, respectively. Finally, mention should be made of the statute of July, 1936 providing for an Old-Age Pension levy as well as the "resolution" of May 13, 1943 concerning a similar levy for war pensions, and the statute of March 13, 1947 regarding taxation of seamen. Aside from these special statutes and their later supplements, a great deal of supplementary legislation has also broadened the general tax laws of 1911.

1. *Property Tax*

Payment of a municipal property tax is obligatory in every urban municipality, the assessment being in the form of a gross tax levied at a rate of from 2 (minimum) to 7 (maximum) per thousand assessed valuation. The assessed valuation of all property is set through general assessment every 10th year, and is based on assumed sales value on the open market. Included in the assessed valuation of factories and other industrial enterprises, is the value of all machines and fixtures appertaining and necessary to the operation of the plant concerned.

While not obligatory in rural municipalities, the property tax is nevertheless widely used; the ceiling rate being set at four kroner per skyldmark. *) In rural areas, this property tax is levied partly on the basis of registered farmproperties and partly on mill and industrial properties (verker og bruk). In the case of the latter, the skyldmark rating is obtained by dividing the assessed valuation of the property concerned by the average value of the skyldmark in that particular county.

Payment of property tax to the county *is* obligatory, with assessment being based on the skyldmark, at rates varying between two and five kroner per skyldmark.

2. *Taxes on Income and Capital*

The Norwegian Taxation Acts make a distinction between the "income year" and the "tax year". The "income year" is regarded as the period during which the taxpayer earns that particular block

*) The "skyldmark" is an assessment norm for landed properties which originated in Norway at a very early date. The last subdivision into "skyldmark" took place during 1850.

of income on which his income tax is to be calculated. As a rule, this "income year" coincides with the calender year, but in event a taxpayer's financial year does not coincide with the calender year, his "income year" is regarded as the last expired financial year before January 1st of the calender year during which assessment is made. The "tax year", on the other hand, coincides with the state and municipal budget year, extending from July 1st to June 30th, with assessment taking place between the termination of the "income year" and the beginning of the "tax year" — in other words, between January 1st and June 30th.

Extent of Tax Liability

All persons domiciled or continuously resident in the country are obliged to pay tax on their income and accumulated capital. This tax liability applies to each and every individual regardless of age or marital status, and is determined with respect to time — in the case of physical persons — in conjunction with the individual's place of residence on January 1st of the tax year. Transference of residence to within the Kingdom immediately *after* January 1st, however, involves no tax liability — either full or partial — under assessments made that year. On the other hand, persons leaving the Kingdom immediately *after* January 1st of the tax year are held liable for taxation that year. A chance or temporary visit, taking the taxpayer outside the country on January 1st, does not relieve him of his tax liability in Norway, unless the visit is of at least four years duration. Persons who on January 1st have resided abroad for at least one year, are not taxed in Norway if they can produce evidence of having paid income, or a corresponding tax in another country for the previous year; the assumption here being that — despite his or her absence — the person concerned still claims legal residence in Norway. If, however, such a transfer of residence before January 1st is intended to be of permanent duration, tax liability is terminated coincidental with the ensuing assessment.

This tax liability is also incumbent on all domestic corporations, purchasing, consumer and production associations and other companies and combinations operating under independent management.

Here it should be noted that the persons and companies described above as unreservedly tax-liable in principle, are not required to pay tax on capital consisting of real estate owned abroad or plant and equipment owned outside the country. They are taxed on but 50 % of the income from such properties, plants or businesses attached to such plants. This tax exemption therefore applies only to capital and income associated with real estate or plant, and not capital and income associated with other capital investments abroad. Neither does this exemption apply if the taxpayer concerned holds shares in a company abroad owning real estate or plant outside of Norway, *unless* this taxpayer holds at least 95 % of the foreign company's share capital. In such event, the taxpayer is regarded as owner of the property or plant concerned — his degree of ownership being set in relation to the amount of share capital he controls. Deficits arising from undertakings of this type are listed merely as deductions from the taxpayer's domestic income and are entered at 50 % of the figure involved.

According to legal practice, the United States offices of a Norwegian insurance firm may be regarded as "plant". Negotiable securities transferred to the American undertaking are regarded as capital in this „plant" and proceeds from these securities are classified as income from the same. Profits derived from the sale of real estate abroad have only been entered as taxable income at the rate of 50 % of the amount involved.

Norwegian citizens or persons enjoying domiciliary rights in Norway, who, following a period of residence abroad settle permanently in Norway, are not taxed on income accruing abroad during the first two years of their renewed Norwegian residence. Neither are they taxed, during the same period, on capital invested abroad.

Restricted tax liability is incumbent upon all physical persons residing abroad, as well as foreign corporations and other combinations which operate or participate in a business or enterprise operating in or managed from Norway; or which own real estate and chattels; or which receive income (pensions) or other remunerations as directors, board members in companies or combinations situated in Norway; or which receive commissions or the like from

such combinations. Tax liability for the above is restricted to income from and capital in such business undertakings.

Shareholders in Norwegian companies, who are resident or permanently domiciled abroad, do not pay a capital tax on the share-value of their holdings, but pay 25 % of their stock earnings to the state in the form of income tax.

When figuring their accrued capital tax, persons and companies subject to this restricted tax liability can deduct debts incurred through business operations in Norway; in general, however, this deduction can be no greater than 50 % of the taxable gross capital. Only interest on such debts as can be deducted when computing this accrued capital tax, can be admitted deductable from taxable gross income. Interest on all other debts is classified as non-deductable.

3. *Taxable Income Defined*

Taxable income is held to include all income accruing to the tax-liable party in the form of money or its value-equivalent in property, capital, labor or services. Profit derived through the sale of real estate is regarded as income accruing to the seller if the latter has obtained title to the property through any means other than inheritance during the 10-years preceeding sale. In instances where property obtained as a gift is sold within 10 years following transfer of title, any increase in the property's value is regarded as income accruing to the recipient of the gift. Profit stemming from the sale of property assumedly acquired by the owner in the interest of speculation, is always regarded as taxable. Profits derived from the sale of lots, patents, author's rights, business undertakings and operational media are also regarded as income. Profits on the converting of stocks and other secutities are not regarded as taxable income unless the sale is made as a constituent of the seller's business. If all shares, or a certain portion of the shares, in a company are sold under circumstances indicating that the sale actually involves a conversion of the firm's operational funds — or of the whole firm itself — the profits on the sale are taxed as income.

That portion of a corporation's profit which it distributes to its shareholders, is taxed by the state both before (as corporation earnings) and following distribution (as shareholder earnings). The

corporation is not taxed, however, for dividends earned on stocks held in other companies, though this rule is not without its exceptions. Norwegian corporations *are* taxed on dividends earned in foreign companies as well as on dividends earned in a number of listed Norwegian firms where the state owns greater or less percentages of the share capital.

In addition to the ordinary income tax which they pay to the state (company tax), the corporations also pay tax on that portion of their surplus not distributed in the form of dividends but set aside as a legally prescribed reserve fund. This is known as a fund tax.

Taxable income comprises the actual income accruing during the tax year. The earlier ruling under which business enterprises could strike an income average based on the preceeding three years of operation was discontinued as of the tax year 1951. All incomes totalling less than 1000 kroner for the year are exempted from state taxation; for the municipalities, the exemptible minimum may vary. In the case of the individual taxpayer, residing in Norway and with no dependents, the state deduction figure is set at 3000 kroner. This exemption increases in relation to dependents, according to the following scale:

(For the Budget Year 1952–53)

Number of Dependents	*Deduction from State Tax*
1	4000 Kr.
2	5000 ,,
3	6000 ,,
4	7000 ,,
5	8000 ,,
6	9500 ,,
7	11000 ,,

These tax-free deductions are not accorded to corporations and business combinations; neither are they extended to tax-liable foreigners or persons receiving wages from the Norwegian government not permanently domiciled in the Kingdom, *unless* they have been forced to take up residence abroad as a consequence of their accepting employment in the Norwegian government service.

The above mentioned tax-free maximums are not to be confused, however, with the class-deductions accorded the individual non-

foreign tax payer. If an individual taxpayer's gross income exceeds the tax-free amount in his particular taxclass, a so-called class deduction is subtracted from his gross income — the size of which deduction is set forth in the following table:

(1952–53)

Class	1	(No dependents)	Class Deduction	1100
,,	2	(1 dependent)	,, ,,	2000
,,	3	(2 dependents)	,, ,,	3200
,,	4	(3 dependents)	,, ,,	4500
,,	5	(4 dependents)	,, ,,	5900
,,	6	(5 dependents)	,, ,,	7400
,,	7	(6 dependents)	,, ,,	9000
,,	8	(7 dependents)	,, ,,	10700

For those supporting a greater number of persons than are required to place them in Class 8, the classified deduction is increased by 1800 Kr for the first additional person, 1900 Kr. for the second, etc.

A corresponding class-division also applies in the case of municipal tax. The individual municipalities are free to chose from among various deduction tables where, in each class, the deduction figure is below that listed in the state table.

Expenses essential to the acquisition of the year's income may be subtracted from the gross income figure. Other deductions include interest on debts, periodical support-in-aid, life insurance premiums up to 300 Kr. per year for single persons and 500 Kr. per year for persons with dependents, compulsory pension deductions, health insurance premiums, etc.

Business losses or deficits may be deducted from incomes accruing from other sources.

4. *Taxable Capital Defined.*

A person's taxable capital is determined as of January 1st of the year of assessment, by taking the actual value of his goods, chattels and real estate (as based on prevailing prices), adding outstanding claims and deducting his accounts payable. Shares in Norwegian corporations as well as deposits in domestic banks are not regarded as taxable capital for municipal assessment. Shares in the listed companies earlier mentioned, whose dividends can not be listed as

tax-free income under municipal assessment, can not be regarded as tax-free capital where municipal assessment is concerned. It should be noted here that the tax on bank deposits is a combined income and capital tax levied by the municipalities on deposits and the interest accruing from them.

5. *Computation of State Taxes on Capital and Income.*

State income tax for individual taxpayers (physical persons), is computed on a progressive scale where the rate of progression increases as the number of dependents decreases. The following table lists the state tax due on eight selected incomes:

Taxable Income (in Kroner)	Tax Class and Tax (in Kroner)				
Without Class Deduction	1	2	3	4	5
4000	112	30	—	—	—
6000	230	150	101	30	—
8000	398	275	173	121	69
10000	614	421	269	190	135
12000	937	621	370	285	203
15000	1784	1322	721	512	359
20000	3478	2895	2146	1695	1248
50000	15238	13755	12286	10806	9835

Capital tax on the capital accumulations of physical persons is computed according to the following table:

(1952–53)

Tax on first	20,000 Kr.	accumulated capital	2	per thousand
,, ,, next	40,000 ,,	,, ,,	3	,, ,,
,, ,, ,,	40,000 ,,	,, ,,	6	,, ,,
,, ,, ,,	40,000 ,,	,, ,,	9	,, ,,
,, ,, ,,	40,000 ,,	,, ,,	12	,, ,,
,, ,, ,,	40,000 ,,	,, ,,	15	,, ,,
,, ,, ,,	80,000 ,,	,, ,,	18	,, ,,
,, ,, additional amount		,, ,,	20	,, ,,

The income tax on domestic corporations and companies similarly classified is 30 % of total income (company tax) and 10 % of that segment of income not distributed to shareholders (fund tax). Capital tax for these same firms is computed at 2 per thousand.

Cooperative purchasing and consumer associations are taxed according to their own schedules with progressive income and capital taxes. Capital tax on Savings banks and mutual damage-insurance companies is at the same rate as that for corporations — 2-per-thousand; income tax, however, is computed according to their own progressive table. Mutual life insurance companies have a capital tax of 2-per-thousand and a 30 % income tax, though only 18 % of that portion of surplus which, according to law, must be set aside in a security fund.

Foreign corporations and companies similarly classified — with the exception of insurance companies — pay 7-per-thousand on capital and 30 % of income.

Shareholders residing abroad and who are part owners of Norwegian corporations or companies similarly classified, pay a 25 % income tax, unless this had been supplanted by a different rate established through a tax agreement with the shareholder's state of residence. Members of the Norwegian Foreign Service and Norwegians permanently employed by the North Atlantic Treaty Organization at posts abroad, are excepted from this ruling.

6. *Old Age Pension and War Pension Levies.*

Physical persons residing in the Kingdom as well as domestic corporations are obliged to pay old-age and war-pension levies. For the former, computation is on the basis of state-assessed taxable income without class deduction; the computation basis, in the case of the latter, is the same as that for fund tax. In both instances, the levy is at the rate of 1.3 %.

7. *Computation of Municipal Tax on Capital and Income.*

Under municipal tax computations, all taxpayers are subjected to the same rates. Individual taxpayers are accorded tax-free deductions according to a table selected by each municipal council from among eleven alternatives. Municipal assessment rates vary between 15 % and 20 % of taxable incomes. Considering the country as a whole, the average rate of assessment at the present time is approximately 17.5 % (Oslo 16.5 %).

Municipal income tax entails a progressive levy for all taxable incomes over 20,000 Kr. However, computations of taxable income

involve the same tax-free deductions as apply in the case of the state tax, even though taxable income — in the case of ordinary municipal tax — is set in accordance with the special deduction tables mentioned earlier. The taxable income secured through subtracting state-assessed class deductions from municipal-assessed income is thereupon supplemented by a percentile addition computed according to the following scale:

When the Taxable Income is Over.

20,000	Kr.	but	not	over	30,000	Kr.	the	addition	will	be	6%
30,000	,,	,,	,,	,,	40,000	,,	,,	,,	,,	,,	9%
40,000	,,	,,	,,	,,	50,000	,,	,,	,,	,,	,,	12%
50,000	,,	,,	,,	,,	60,000	,,	,,	,,	,,	,,	15%
60,000	,,	,,	,,	,,	80,000	,,	,,	,,	,,	,,	18%
80,000	,,	,,	,,	,,	100,000	,,	,,	,,	,,	,,	21%
100,000	,,	,,	,,	,,	125,000	,,	,,	,,	,,	,,	24%
125,000	,,	,,	,,	,,	150,000	,,	,,	,,	,,	,,	27%
150,000	,,	the additional will be									30%

Once adjustment is made according to the above table, the municipal tax on income is obtained by multiplying the taxable income by the municipal assessment rate.

In nearly all instances, municipal capital tax is 4-per-thousand of taxable capital based on municipal assessment. In rural municipalities capital accumulations under 3000 Kr. are normally held tax-free, while the corresponding minimum is normally set at 6000 Kr. in urban municipalities.

8. *Limitation Provisions*

In event the combined state and municipal income and capital taxes owed by an individual person exceed 90% of his taxable income, according to any of the progressive scales used for determining the state tax, the assessed state income tax is to be reduced to the point where the combined taxes will be brought below the 90% figure.

If income according to the 1952–53 assessment is found to exceed the average incomes for the two preceeding assessments by more than $33^1/_3$%, a certain modification of the state income tax progression rate will be allowed upon application.

9. *Deduction Allowance for Taxes Paid.*

The following domestic taxes can be deducted from gross incomes: "Taxes or excises incumbent upon real property or particular trades or business". Involved in this context, then, are property taxes and all indirect taxes such as sales tax, export levies, etc. Income and capital tax to state and municipality, on the other hand, are not deductable.

Aside from such provisions as are stipulated in the individual taxation agreements into which Norway has entered with a number of foreign countries, there are no precise provisions regarding deductions for taxes paid abroad. In practice, however, regular deductions are accorded for taxes paid abroad by persons residing in Norway or by firms with home offices in the Kingdom. The following provision is noted under point D of the 1952–53 Tax Act: "If income to any extent accrues from dividends earned in a Swedish company, and it, with the distribution of these earnings a tax is withheld in Sweden, the income tax computed according to the above regulations can be reduced by 5 % of the gross dividend.

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II

MISCELLANEOUS — FAITS DIVERS

TAX MEASURES IN RELATION TO THE INDUNDATIONS OCCURRED ON FEBRUARY 1, 1953

Belgium

An Act of February 14, 1953 (Moniteur Belge of 15.2.1953) provides for tax reliefs from the ,,taxe professionnelle'' and the complementary income tax in respect of gifts to the Belgian Red Cross and the National Fund in aid of the victims. The reliefs are granted for gifts made before April 1, 1953.

Proposals for an increase of direct taxes by 5 % have been withdrawn and replaced by proposals to cut government expenditure by 10 %.

Netherlands

Reliefs from income tax, wage tax and corporation profits tax, turnover tax, gift duty and excise duty will be granted for gifts to the Netherlands Red Cross and the National Fund in aid of the victims of inundation.

Western Germany

Le Ministre des Finances a décrété que les dons cédés en faveur des victimes de l'inondation aux Pays-Bas, en Belgique et en Grande-Bretagne, pourront être déduits pour la détermination de l',,Einkommensteuer'', respectivement du ,,Körperschaftsteuer.'' Il faut, cependant, que les dons soient faits aux autorités officielles dans les territoires cités. Pour la Hollande, par exemple, au ,,Rampenfonds'' à La Haye ou à la Croix Rouge Néerlandaise.

FACILITES FISCALES POUR FAVORISER L'EXPORTATION

(Voir: J. C. L. Huiskamp, Bull. Vol. VI, no. 5, p. 285)

France

Un arrété du 31 janvier 1953 a amplifié encore davantage les facilités fiscales pour stimuler l'exportation. Il s'applique à plusieurs articles. La restitution de la taxe sur le chiffre d'affaires, prévue dans l'arrêté du 30 juin 1952 (no. 2) fut majorée de 5 % resp. 8 % à 5.45 resp. 8.72 % avec effet rétroactif à partir du 1er janvier 1953. Pour la viande de 16 fr. à 16.66 fr. 1e Kilo. Pour le vin elle s'élèvera à 3.16 fr. le litre.

Sweden

With a view of furthering the Swedish export to the dollar area the government has lately introduced a number of propositions with the Parliament, aiming at the granting of several tax facilities to exporters to the dollar area.

5 % of the yield of dollar exports may be paid, during the years 1953–1958, into a fund exempt from taxation.

Losses on dollar-exports, writing-offs on advertising- and organization-costs, losses on shares in foreign enterprises, writing-offs on buildings, machines and inventories may fall upon this fund.

It is stipulated, that the amounts reserved in this way must be wholly used before the end of 1964. The remainder will then be added to the taxable profit of the enterprise.

AMENDEMENTS LEGISLATIFS

Allemagne Occidentale — *Erstes gesetz zur Förderung des Kapitalmarkts*

Le 21 novembre 1952 le ,,Bundestag'' a voté la loi ,,zur Förderung des Kapitalmarkts.''

Dans le Bundesgesetzblatt du 16 décembre 1952 cette loi, en date du 15 décembre 1952, fut proclamée. Elle apporte un changement radical dans l'impôt sur le revenu.

L'impôt sur le revenu allemand a une structure synthétique, partant du principe de la capacité contributive. Pour des raisons économiques urgentes le législateur jugea propre de dévier de ce principe, de sorte que l'impôt revête un caractère plus objectif (impôt sur le revenu analytique). Ce n'est pas l'individu qui compte en premier lieu, mais la nature de ses revenus. La loi ajoute un nouvel article, le § 46a, laissant au contribuable le choix, d'ajouter les revenus de certains investissements (placements) ou bien au restant de ses revenus afin de calculer le montant imposable, ou bien encore de les faire imposer comme entité séparée au taux de 30 ou 60 %.
D'autres modifications sont:

1) Certains intérêts sont exonérés de l'impôt sur le revenu (entre autres les investissements désirables du point de vue économique, ne donnant pas d'intérêts plus élevés que 5 %, § 3a EStG).
2) Certains dividendes sont complètement exonérés de l'impôt sur le revenu (entre autres les participations dans des sociétés de bâtiments).
3) Le ,,Kapitalertragsteuer'' (prélèvement de 25 % sur les *distributions* de bénéfices) est également rendu applicable à certains intérêts.
4) Dans certain cas, le taux de 25 % sera porté à 30 ou 60 % pour des intérêts. Le contribuale aura la liberté du choix, ainsi qu'il est indiqué ci-dessus. Si le contribuable choisit le calcul séparé, le ,,Kapitalertragsteuer'' aura le caractère d'une taxe sur les coupons.
   Le ,,notopfer Berlin'' est calculé d'apres le revenu imposable. Les intérêts exonérés d'impôt ne font pas partie de ce revenu, mais bien les intérêts frappés de la taxe sur les coupons.

Dégrèvement de l'impôt sur le revenu (Impôt sur les salaires)

Dans le *Bundesgesetzblatt* du 11 décembre no. 52 la première loi (du 10 décembre 1952), visant la simplification de l'impôt sur le revenu, a été publiée.

La déduction forfaitaire pour des dépenses extraordinaires à partir de l'année fiscale 1953 a été porté de DM 468 à DM 624.

Australia

The ,,Income Tax and Social Services contributions assessment Act (No 3) 1952 and the ,,Income Tax and Social Services contribution Act 1952'' were assented to 18th November 1952.

The Acts concern the following items:

1) Fixing the rates of the Income Tax of natural persons and societies for the fiscal year 1952/53.
2) Alteration of the provisions concerning the non-shared out profits of private companies.
3) Alteration of the provisions concerning the hiring out of ,,goodwill''.
4) Alteration of the Act concerning the fiscal handling of stocks and of the writing-off of the working-capital on transfer of a share in a company.
5) The granting of alleviation on compulsory sale of cattle owing to fire, drought, and forest-fire; making a settlement concerning gifts of cattle.
6) The withdrawal of the exemption in force for agricultural industries in the ,,Northern Territory'' and the making of special temporary provisions.
7) The granting of exemptions to ,,non-profit'' clubs and organizations.

8) The increase of the deduction on contributions by employers to superannuation-funds and exemption on the income of certain superannuation-funds.
9) The granting of deduction for certain expenses of education.

Belgium

Repeal of the turnover-tax on export. Increase of the turnover-tax on imported goods.

According to the Royal Decree of February 24th 1953 (Moniteur Belge 26.2.1953) the turnover-tax on export, introduced with the temporary provisions enacted in the Royal Decree of November 22nd 1951, was abolished.

On the contrary, a Royal Decree of March 11th 1953 (Moniteur Belge 14.3.1953) provides for an increase of the turnover-tax and the luxury-tax with respect to a certain number of imported goods.

New Zealand

In the Budget for 1953 a number of alterations in the fiscal legislation are introduced. Consequently, the "Income tax surcharge" will be lessened by 50 %. It will then amount to 5 %.

A decrease of 20 % of the Death Duties on the inheritances of persons, deceased on or after August 7th 1952, is proposed.

(Source: the Taxpayers' Bulletin, October 1952)

Netherlands Antilles

Tax facilities to foreign investment-companies and holding-companies.

In a governmental Ordinance of January 6th 1953, a number of provisions have been embodied, with a view of encouraging foreign investment companies to choose the Netherlands Antilles as their domicil.

For them, the tax on profits on the yields of securities will only amount to 1/10th of the normal tax (= 24 %), whereas the gains resulting from the decrease of the value or alienation of securities will not be considered.

This provision is meant, in principle, for companies acting exclusively as investment-companies or holding-companies, but in order to prevent unfairness, the inspector of taxes is empowered to make a fictitious subdivision on request of the tax-payer, between investment-company and the remainder of the business, in case that the company carries on an other trade besides the investment company.

CONVENTIONS

Western Germany - Italy

The convention, concluded between Germany and Italy on October 31st 1925 to avoid double taxation, is again applicable from January 1st 1951 with retroactive action, between the Western German Federal Republic and Italy.

It concerns the following taxes:

Under Italian legislation.

a. The land tax
b. The tax on buildings.
c. The tax on income, derived from movable property.
d. The tax on income derived from agricultural property.

Under German legislation.

a. The "Einkommensteuer" (income tax).
b. The "Körperschaftsteuer" (tax on corporate bodies).
c. The "Grundsteuer" (land tax).
d. The "Gebäudesteuern" (taxes on buildings).
e. The "Gewerbesteuern" (taxes on industry).
f. The "Hauszinssteuern" (taxes on rents).

France - Canada

The convention to avoid double income tax and death duties, concluded between Canada and France on March 16th 1951, was ratified on December 22nd, 1952 by France.

It concerns the following taxes:

For income:

In Canada:

Income taxes, including surtaxes, which are imposed by the Government of Canada.

In France:

a) The tax on the income of natural persons (taxe proportionnelle and surtaxe progressive).

b) The tax on companies (Impôt sur les bénéfices des sociétés).

For death duties:

In Canada: The death duties imposed by the Government of Canada.

In France: The tax on inheritance (droit de mutation par décès).

France - Monaco

The agreement between France and Monaco for the avoidance of double taxation and the establishment of rules and reciprocal assistance with respect to Death Duties, signed on April 1st 1950, was ratified on February 7th 1953.

Australia - United States of America

In the course of this parliamentary year a draft-bill will be introduced for the ratification of the convention for the avoidance of double taxation between Australia and the U.S.A. The negotiations in this respect are nearly closed.

(Source: The Taxpayers' Bulletin, October 1952)

PROPOSITIONS D'UN SYSTEME FISCAL EN RHODESIE DU NORD, RHODESIE DU SUD ET AU NYASA DES LEUR CONFEDERATION EVENTUELLE.

En rapport avec les propositions visant la constitution d'une fédération comprenant la Rhodésie du Sud, la Rhodésie du Nord et le Nyasa, une commission a été instituée par les gouvernements du Royaume Uni et ceux des pays susmentionnés. Cette commission a la tâche d'examiner la forme d'imposition des revenus répondant le mieux aux besoins d'une pareille fédération. Le rapport de cette commission vient de paraître. Ce rapport dit au sujet de l'impôt sur le revenu, que les trois systèmes d'imposition en vigueur à présent ne diffèrent pas au fond, de sorte que le projet d'un seul système ne suscitera pas de difficultés. La commission recommande de baser le nouveau système fédéral d'imposition sur celui valable dans la Rhodésie du Sud, vu que la loi sur l'impôt sur le revenu, en vigueur dans ce pays, est basée sur le Income Tax Consolidation Act 1948 très récent, laquelle présente une grande ressemblance avec la législation Sud-Africaine. Une partie du rendement de cet impôt fédéral sur le revenu est destiné au Gouvernement Fédéral, une autre partie aux trois territoires constituants. À côté de leur part dans l'impôt fédéral sur le revenu, les Gouvernements des trois territoires individuels sont qualifiés pour la perception d'une „surcharge''. En outre, le Gouvernement Fédéral aura la compétence de percevoir une surcharge en temps de guerre et de crise.

Le système fédéral d'imposition sera un système d'imposition progressif inconnu en Rhodésie du Nord jusqu'à présent. Pour les classes de revenus au dessus de £ 3000, une certaine augmentation d'impôt en résultera, mais, par contre, une diminution d'impôt pour les classes de revenus inférieurs s'ensuivra.

(Source: The Accountant. Vol. CXXVII no. 4065).

ALLEMAGNE OCCIDENTALE — IMPOSITION DE LA FEMME MARIEE.

Dans le ,,Bundestag'' est venu à discussion l'imposition individuelle, en ce qui concerne l'impôt sur le revenu, de la femme mariée, pour les revenus de travaux indépendants dans un commerce, n'appartenant pas à son mari. Dans le cas où elle travaille dans le commerce de son mari, cette déclaration individuelle serait supprimée, mais une déduction de 1200 DM par an serait accordée à son mari (proposition de la ,,Föderalistische Union''). Les partis de coalition se sont opposés à cette dernière proposition.

NEW ZEALAND — INLAND REVENUE DEPARTMENT

In accordance with the Inland Revenu Department Act 1952, the Land and Income Tax Department and the Stamp Duties office from 1st November 1952, shall be known as the Inland Revenue Department, under the control of the Commissionner of Inland Revenue.

This Department will be in two divisions: The Taxes Division (formerly the Land and Income Tax Department) and the Duties Division (formerly the Stamp Duties Offices).

The classes of taxes and duties dealt with by these divisions will remain unchanged.

(Source: The N.Z. Economist and Taxpayer Vol. 14 No. 8 p. 203)

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IV

REVIEWS — COMPTES RENDUS

Dr. Philipp BUSSIGEL: *Wareneingangsbuch und Warenausgangsverordnung*. Industrie-verlag Carlheinz GEHLSEN vorm. SPAETH & LINDE Siegburg-Rhld. 1949.

In Western Germany there are laws of the pre-war period still in force prescribing the keeping of books especially for taxing purposes. These laws — it is confirmed by the law of April 20, 1949 — are now to be more strictly observed.

The booklet, issued as number 2 of the tax-library, aims at clarifying for the tax-payer many legal definitions as well as the way of keeping the accounts by giving models.

T. F. KINLOCH, M. A.: *Six English economists*. Fourth edition. Gee and Company (Publishers) Limited, London, 1950.

En effet, ce petit livre consacre un bref aperçu de la vie et des oeuvres de sept economistes anglais les plus célèbres, à savoir, d'Adam SMITH, de Thomas Robert MALTHUS, de David RICARDO, de John STUART MILL, de W. S. JEVONS, d'Alfred MARSHALL et enfin dans le chapitre intitulé „the new economics" de Lord KEYNES.

L'auteur s'efforce à captiver en quelques pages les qualités les plus marquants de chacun de ces sept auteurs célèbres ainsi que leurs doctrines.

Dans le dernier chapitre la critique de divers côtés est exposée dans une manière concise mais compréhensible.

S. H. GILLETT, M.C., F.C.A.: *Management and the accountant*. Gee and Company (Publishers) Limited, London, 1950.

Une série de six conférences faites à la société des experts-comptables de Londres et des districts sont publiées dans ce petit livre, toutes concernant la gestion des affaires, dans laquelle l'expert-comptable est intéressé à cause de sa profession. Ainsi on y trouve la lecture donnée par Sir Charles RENOLD sur „la fonction de la gestion", celle de M. G. HELIOTI sur la relation de la gestion et l'expert comptable, celle de M. N. G. LANCASTER, M.B.E., A.C.A. sur „la relation de l'expert-comptable et la gestion", celle de M. Lawrence W. ROBSON, F.C.A., F.C.W.A. sur les types de coûtes, comme aide de contrôle, celle de M. J. RINDOCH, C.A. sur „le contrôle de la production et l'expert-comptable" et enfin celle de M. S. H. GILLETT lui-même sur „la gestion et l'expert-comptable".

Henry DRUMMUND-WOLFF: *Commonwealth*. Hutchinson & Co (Publishers) Ltd, London, New York, Melbourne, Sydney, Cape Town.

Bien que ce livre ne soit pas daté, il doit être écrit après le 20 octobre 1949 étant le dernier évènement mentionné dans le livre l'élection de Yougoslavie comme membre du Conseil de la Sécurité des Nations Unis. En récitant les évènements politiques depuis la première guerre mondiale l'auteur expose très brièvement le problème mondial d'une paix durable et donne sa solution en 20 clauses.

Eleanor RATHBORN: *Family allowances*. Enlarged new edition. George ALLEN and UNWIN Ltd, London, 1949.

Selon l'épilogue de Lord Beveridge la campagne pour les allocations familiales en Grande Bretagne a été emportée vivement par la publication, il y a vingt quatre années de la première édition de ce livre intitulé „The Disinherited Family": cette campagne est couronnée par l'adoption de la loi sur l'allocation familiale de 1945 (Family Allocation Act, 1945).

Cette nouvelle édition est élargie avec la nouvelle expérience dans le domaine de la sécurité sociale en Angleterre ainsi qu'à l'étranger.

Frances KELLER: *American arbitration*. Harper & Brothers Publishers New York, London. 1948,

Dans le monde entier, la société humaine a toujours besoin, auprès de l'organisation judiciaire de l'état, d'une organisation privée, qui se charge de décider d'une manière prompte et équitable les conflits, dont la considération par le juge officiel prendra trop de temps. Dans ce livre l'auteur a peint le développement et les fonctions ainsi que les résultats de l'arbitration en Amérique.

John M. WHITE, A. I. C. A. & E. A. B. MACFARLANE, F. F. I. A: *The* 1948—1949 *Income-tax guide*. Taxpayers' Publishers Pty Ltd Sydney. 1949.

L'imposition du revenu constitue un nombre de difficultés techniques en ce qui concerne la définition du revenu imposable.

Le contribuable moyen australien à qui est consacré ce guide profitera certainement de maints renseignements que les auteurs s'efforcent à donner dans une manière compréhensible.

F. A. B. MACFARLANE, F. F. I. A., John M. WHITE, A. I. C. A. & BEN DOIG B.A. 1946—1949 *Income tax chart calculator*. Taxpayers' Publishers Pty. Ltd. Sydney 1949.

Dans une certaine mesure cette table de calculs peut être considérée comme un supplément du guide ci-dessus annoncé. On y trouve des additions des revenus imposables et des impôts eux-mêmes dans maints cas.

Rienzi Wilson JENNINGS: *Taxation of thoroughbred racing*. University of Kentucky, Lexington, Kentucky, 1949.

Le sport hippique se prouve une entreprise prodigieuse et,quant aux paris qui en sont les conséquences, aussi favorable à l'imposition.

Selon les statistiques mentionnées dans ce livre les impôts des 16 états se totalisaient, en 1935, jusqu'à $ 8.404.673 et jusqu'à $ 102.820.651 en 1946. Ce sont des contributions essentielles au budget.

Orba F. TRAYLOR: *The whisky production tax in Kentucky*, 1933—1947. University of Kentucky, Lexington, Kentucky, 1949.

Kentucky produit plus que la moitié de la production totale de whisky des Etats Unis d'Amérique. C'est peut-être pourquoi l'auteur a consacré une étude à l'imposition de cette boisson alcoolique. L'impôt sur la production ne constitue qu'une petite partie des coûtes, et l'auteur suggère que l'impôt est un facteur insignifiant de compétition entre les états producteurs rivaux de whisky.

CANADIAN TAX FOUNDATION: 1948 *Tax conference report* Toronto.

Les avocats et les experts-comptables qui sont les organisateurs de cette conférence—paraît-il—ont mis à l'ordre du jour des discussions entre d'autres sujets: l'impostition des sociétés . . . la dépréciation, l'évaluation de l'inventaire etc.

Quatre opuscules très petits — le plus grand ne renferme que dix pages — donnent des renseignements sur le droit fiscal de la principauté de Liechtenstein, à savoir:

1. *Die Abgaben von Juristischen Personen in Liechtenstein.* Alg. Treuhand Aktiengesellschaft, Vaduz.

Cet opuscule contient une énumération des lois relatives à l'imposition des personnes morales, et en donne un résumé très succinct des sujets les plus importants, d'abord en ce qui concerne les taxes dues à l'occasion de l'établissement d'une société par actions. Est perçu un droit de timbre se montant, en général, à 2 p.c., réduit à 2 p. mille s'il s'agit de fondations ou d'associations dont le capital n'est pas divisé en actions. En cas d'un „trust", le droit est de 1 p. mille. En outre quelques droits sont perçus au profit du registre du commerce.

Ensuite il est question des impôts annuels: le „Kapitalsteuer" perçu du capital, au taux der p. mille (pour un trust: 0,5 p. mille). Le taux de 1 p. mille subira une diminution en rapport avec l'augmentation des dividendes, vu que, dans ce cas, le revenu de la taxe sur les coupons augmente aussi.

Il n'y a pas d'impôt sur les bénéfices en Liechtenstein, mais il est perçu un impôt frappant les intérêts d'obligations, ainsi qu'une taxe sur la circulation de valeurs mobilières, une sorte de taxe sur le chiffre d'affaires.

2. Guido Feger: *Die Familienstiftung nach Liechtensteinischem Recht.* Verlag für Steuer und Recht, Vaduz.

Cet opuscule contient des renseignements concernant les sujets suivants: fondation; formation d'une fondation; acte; possibilité de publier l'acte de fondation; siège; organisation; etc.

En ce qui concerne les impôts et taxes, l'auteur traite le droit de timbre susmentionné, ainsi que la taxe due en cas de publication de l'acte. Les biens de la fondation sont frappés d'un impôt annuel (1 p. mille), tandis que le fondateur qui a son domicilie en Liechtenstein doit payer un droit de donation.

3. *Steuerpauschalierung nach liechtensteinischem Steuerrecht.* Alg. Treuhand A.G., Vaduz.

Le troisième opuscule donne un résumé intéressant du système, souvent appliqué en Liechtenstein, de fixer, en concordance avec le contribuable, un montant forfaitaire, même pour des années. Alors, il n'est pas question d'une déclaration, et les taux d'impôt ne sont pas même appliqués. L'intention de ce système est claire: attirer des capitaux étrangers. On peut se demander s'il n'en résulte pas un fardeau fiscal différent selon que l'on use de cette possibilité ou non. Quoi qu'il en soit, le résultat semble avoir été satisfaisant: on n'a plus besoin de calculer l'intérêt que tire le rentier de sa fortune; on prend comme base 8 fois la valeur locative de sa maison. Il est possible même de conclure un concordat sur le montant dû, après le décès du contribuable, à titre de droits de succession. Dans ce cas, il faut payer immédiatement la moitié du montant fixé à forfait, donc pendant sa vie déjà.

Il y a d'autres impôts et taxes encore, perçus sur les entreprises et autres personnes morales et pour lesquels cette méthode est applicable.

4. *Die Steuerbelastung des Rentners im Fürstentum Liechtenstein.* Alg. Treuhand A.G., Vaduz.

Cette brochure donne, d'une manière très succincte (elle ne contient que 9 pages), un aperçu de l'impôt sur la fortune (la fortune est évaluée selon la valeur circulative), de l'Erwerbssteuer" perçu des revenus dont la source ne tombe pas sous l'impôt sur la fortune, par exemple des pensions. Il y a beaucoup d'abattements et éléments déductibles. Ensuite on trouvera un résumé des droits de succession, perçus sous la forme de „Nachlaszsteuer" de tout l'héritage, et sous la forme de „Erbanfallsteuer" de l'acquisition, tandis que les donations aussi sont frappées d'un impôt.

Drs. J. & E. Henggeler: *Eidgenössische Wehrsteuer.* Textausgabe mit sämtlichen Erlassen und Ergänzungen sowie des eidgenössischen Finanz-

und Zolldepartments, einschlieszlich der Verrechnungssteuer und der Alters- und Hinterlassenen Versicherung mit einer systematischen Darstellung des materiellen Steuerrechts und einem alphabetischen Sachregister. Stand November 1952. Verlag für Recht und Gesellschaft A.G., Bâle.

Après une brève introduction, les auteurs donnent d'abord un aperçu systématique des sujets suivants:
I. Wehrsteuer; II Quellensteuer; III Ergänzungen des Wehrsteuerbeschlusses. Ensuite l'ouvrage comprend les textes de lois et les taux (pour mariés et célibataires), ainsi que l',,Ergänzungssteuer vom Vermögen''.

L'ouvrage est complété par la loi fédérale sur l'assurance relative à la vieillesse et aux descendants, du 20 décembre 1946, y compris les décrets d'exécution, et il se termine par un aperçu de l'impôt compensatoire, et les textes officiels y afférents.

Il s'agit ici d'un ouvrage à feuillets mobiles, et pourvu de tables pratiques.

Par des suppléments (les derniers, 16 et 17) datent de Février et de Novembre 1952, respectivement, cet ouvrage est donc tenu constamment à jour, raison pour laquelle il constitue un manuel de premier ordre.

Prof. Dr. Jur. FRIEDRICH KLEIN: *Grenzen gesetzlicher Ermächtigungen zum Erlass steuerlicher Rechtsverordnungen.* — Institut ,,Finanzen & Steuern'' Bonn, 1951.

Cet ouvrage de 35 pages, paru dans la série des publications relatives au droit fiscal, éditée par l'Institut ,,Finanzen und Steuern'' sous le no. 10, concerne les limites de délégation de pouvoirs législatifs dans le domaine fiscal:

On y critique les compétences, telles qu'elles sont accordées au gouvernement d'après quelques projets de loi allemands de 1951 (entre autres la Einkommen- & Körperschaftsteuergesetz).

L'auteur termine en indiquant le grand danger, qui existe pour les formes d'un gouvernement démocratique, d'une délégation trop étendue. Il cite quelques exemples empruntés à l'histoire: la république de Rome, la première république française, le troisième Empire et l'U.R.S.S.

Capital Gains Taxation. — Tax Institute New-York 1946.

Le ,,Tax Institute'' a organisé un ,,Panel Discussion'' sur le problème de la taxe sur le profit en capital (capital-gains), et dont les participants se composaient de personnalités notables dans le domaine du droit et de l'économie.

Dans la préface, la taxe sur le profit en capital est définie comme suit: ,,the subject that has created more controversies than almost any other single feature of revenue system''. Le but de cette conférence était le caractère des profits en capital en discutant le sujet et d'étudier à quel point une taxe était désirable. Du compte rendu on peut déduire clairement les difficultés auxquelles on se heurte en approfondissant cette question.

Une liste détaillée d'ouvrages à ce sujet et un registre alphabétique complètent cette intéressante étude de 104 pages.

P. C. VAN TRAA: *Optimale Belastingdruk.* — Ed. J. B. Wolters, Groningen-Djakarta, 1951.

The tax-pressure has increased in the Netherlands, too; as compared with the average of 1905/1914 it amounted to about double in 1930, now to triple. The great disasters, frequently foretold when taxes were increased, mostly failed to materialize.

Is there, however, not an extreme limit and if this is the case, has it already been reached or is it in sight? For certain taxes this can be ascertained, but the reasoning in their case fails when it concerns a general increase of the fiscal pressure. There are other ways conceivable to obtain

an impression of the transgressing of the extreme leyving percentage. The author points to the increasing emigration, the growing evasion of taxes, but especially to the decrease of the social income itself. He refers to the real income, not the income expressed in money, and points out that the increase of the tax pressure will not necessarily bring about a decrease of the national income; there is no decrease if by the levying of the tax, purchasing-power is not withdrawn from trade, but only displaced. What influence has this displacement? Here one enters a chaotic territory, according to the author, which has not yet been clearly mapped out by science. He only discusses some shiftings in connection with the most important aims he has as his purpose: 1. covering the costs of part of the public production, 2. correction on the division of the national income. The first point brings him to a discussion of the satisfaction of collective needs, the second to the levelling of incomes.

Concerning the first point the author argues that continued tax increase serving the expansion of the public production need not lead to a decrease of the national income, but does lead to an alteration in the social structure. As for the levelling of incomes, the private saving and saving in businesses for the purpose of selffinancing is hampered, against which can be put more saving with the institutional investors and with the State. Consequently the national income *may* be left unaffected.

Finally the author asks himself, if nevertheless the national income is not affected in a psychological way: There are all kinds of possibilities for the authorities to prevent this. The conclusion is that the authorities cannot be called to a halt on economic grounds when increasing the tax pressure, but that an increase leads necessarily to abandoning more and more the free economy and opening the door wide to planned economy. Of course there need not be limits to the tax pressure, provided the State takes the entire ordering of economic affairs into its hands.

P. B. Dertilis: *La Grèce et le Plan Marshall.* — Ismail Akgün Matbaasi, Istanbul, 1951.

The purpose of this 16 page booklet is not to give a description of the Marshall-plan, but a very succinct view of its significance for Greece. . . . The economic condition in Greece was hardly ever in equilibrium: the last few years such heavy burdens have been laid on the people, that they could no longer be borne. And here lies a danger for other countries. The author explains the great significance of the Marshall plan for Greece. He starts by discussing the pre-war programme for public works, afterwards the post-war conditions and the great importance of the Marshall Aid. Agriculture, Industry and Tourism are specially mentioned.

The fiscal aspect is not discussed.

The author refers to his article in the „Revue de Science et de Législation Financière" of July-September 1948.

Hans R. Scherrer: *Die Steuerpolitik des Bundes während der Wirtschaftsdepression der Dreissigerjahre* (1930-1938). — Juris-Verlag, Zürich, 1949.

This thesis, finished in 1948 and maintained by the writer in the „Rechts- und Staatswissenschaftlichen Fakultät der Universität Zürich" had to wait a long time for review.

In our times, in which development is so swift, this study of 160 pages bore already at its appearance a more or less historical character.

The Reform of the Federal finances in 1938 lay already far behind us, the second war had followed and had placed all problems on a different level. So it is especially for the description of the connection between economic circumstances, particularly those of the conjuncture and the levying of taxes during a certain period, that this study deserves the attention.

First a survey is given of the tax policy of the Federation up till 1930, the economic situation is described and the condition of emergency when the conjuncture broke. Crisis-measures were necessary, and these were found in the financial programme 1933, with the increase of import-duties, the "Krisenabgabe", the increase of stamp duties and excise-duties, in which connection the tobacco-tax is especially conspicuous. In a table the financial results of this reform are shown.

In 1936 already a new programme was necessary. The same taxes were reviewed again as well as others. We see the results in another table.

And then the difficulties arise in 1938. The emergency-measures are prolonged for a year, but afterwards the wish is expressed to return to more regular conditions. So in 1939-1941 the fourth programme comes into existence. The results are to be found in a new table.

The study ends with a survey of the principal problems.

JEAN DELHAY: *Le régime fiscal des Sociétés Coloniales I.* — Imprimerie Clarence Denis. Bruxelles. 1952.

A decree of September 10th 1951 has introduced a supplementary tax on the profits realized by societies and other assessable persons, subject to the Act of June 21st 1927.

This Act has a specific fiscal regulation for those assessable persons, who have their social seat or their principal administrative branch in Belgium and of which the businesses are lying in the Congo.

This work gives an extensive commentary on the supplementary tax introduced by the decree of September 10th 1951.

The book is divided into three parts: the first with the report of the "Conseil Colonial" about the decrees; the second part includes the complete text of the Act, while in the third part the commentary has been incorporated.

The Act is treated per article, many examples and references to case law elucidate this commentary.

The second part, which has already been announced, will be devoted to the aforesaid Act of June 21st 1927.

K. SNEEP: *Medicus en Fiscus.* — Born N.V. Assen, Netherlands.

L'ouvrage traite en XVII chapitres les impôts et les problèmes fiscaux, qui peuvent toucher les médecins. Le but en est de donner des renseignements fiscaux élémentaires à tous ceux qui exercent la profession de médecin, afin que, tout en n'étant pas experts dans ce domaine, ils puissent juger des obstacles qui se présentent et puissent en tenir compte.

L'auteur a certainement bien réussi et l'on peut donc s'attendre que l'ouvrage aura le succès mérité dans les cercles médicaux.

C. KOOYMAN & A. STOOP: *De Omzetbelasting in de practijk.* — N.V. Boekhandel en Drukkerij v/h Warekamp & Co., Medan, Indonesia, 1951.

On January 1st 1951 the sales-tax was introduced in Indonesia, a tax wholly unknown in that country hitherto.

The introduction of this tax was proceeded to in connection with the necessity to enlarge the yield of the revenue, which expansion could not be attained with the existing taxes. The system of this sales tax is that of the multiple levying, so that for every transfer of goods a sales-tax will be indebted, irrespective of the number of times that a good changes hands, before reaching the consumer. The rendering of services, too, is subject to sales-tax, while when importing a tax is levied instead of a sales-tax, apart from the normal import duty.

The authors treat the new Act per article and have tried to make this work a guide for anyone having anything to do with the sales-tax. As no literature existed in this field, the booklet will, no doubt, fill a great want.

SHRI R. BHARGAVA: *Income Tax assessment manual* 1952. — Taxation, Taxation Buildings, Delhi, 1952.

Ce livre de 625 pages écrit à l'usage de la pratique est un guide pour les problèmes nombreux qui se présentent à l'application de l'Income Tax à l'Inde.

L'ouvrage comprend 64 chapitres, dans lesquels sont traités tous les sujets qui soulèvent des difficultés. Beaucoup d'exemples complètent ce commentaire, tandis qu'en outre la jurisprudence est citée et discutée, pour autant qu'il est nécessaire.

Un registre alphabétique et un index permettent de se retrouver facilement dans cet ouvrage.

Le texte intégral de l'Income Tax dans sa forme actuelle est reproduit en appendice.

ERICH SIEGERT: *Zollgesetz vom 20. März* 1939. — Industrieverlag Carlheinz-Gehlsen vorm Spaeth und Linde, Siegburg-Berlin, (1950).

La „Zollgesetz" de 1939 a remplacé la loi du 1er juillet 1869. Cette dernière loi était basée sur la „Zollgesetz" prussienne de 1818 et la première „Vereinszollgesetz" de 1838.

La loi de 1869, en vigueur pendant 70 ans, était devenue caduque, surtout du point de vue technique juridique. Des tentatives antérieures pour remplacer la loi de 1869 avaient déjà été faites, mais pour des raisons de nature politique, aucun de ces essais n'avaient été couronnés de succès.

Maintenant encore, après la seconde grande guerre, cette loi est toujours en vigueur, tant dans la République Fédérale d'Allemagne que dans la zône orientale.

La troisième édition de ce commentaire sur la „Zollgesetz" (la première édition parut en 1939) tient compte, autant que possible, des arrêtés d'après-guerre. Le commentaire est donné par article. Un index et un registre alphabétique terminent cet ouvrage, qui devient ainsi un excellent guide pour ceux qui ne seraient pas fort au courant du système de cette loi.

MIGUEL COELHO: *Manual do Imposto profissional e do fundo de desemprêgo.* — Lisboa 1939. Editado pelo autor.

Cet ouvrage de 139 pages traite les deux catégories constituant l'impôt professionnel au Portugal avant la guerre. En premier lieu la catégorie des employés qui travaillent pour compte d'autrui. Les taxes étaient alors 1 %, 2 % et 8 %, selon le mode de rémunération. Un directeur de société (anonyme) par exemple, payait 5 %, un salarié payait 1 %.

En second lieu l'auteur traite l'impôt sur les bénéfices des professions liberales.

C'est un impôt de répartition, puisque le fisc doit recevoir de chaque groupe — indiqué dans une liste officielle — une moyenne variant selon la profession.

Des modèles de déclarations, propres à servir dans différents cas, complètent cet opuscule.

Voir, pour le système actuel, *Bulletin* Vol. IV, No. 8-9, p. 363.

MIGUEL COELHO: *Impuesto sôbre a aplicaçâo de capitais.* — Procuradoria Fiscal. Lisboa 1951.

Cet ouvrage traite, par article, l'impôt sur l'emploi des capitaux. L'impôt est divisé en deux sections. Dans la première se trouvent entre autres les capitaux faisant l'objet d'un prêt.

Le taux de ce groupe est 14 % des intérêts qui seront estimés à 6,5 %, sauf si d'autres plus élevés sont stipulés dans le contrat. Dans la deuxième section sont classés les dividendes d'actions et les intérêts d'obligations. Le taux est de 14 %. Un index détaillé complète cet opuscule pratique.

V

INTERNATIONAL CHAMBER OF SHIPPING
DOUBLE TAXATION OF SHIPPING PROFITS

MEETING IN LONDON 21st JANUARY, 1953

After the International Chamber of Shipping, on 9th November, 1949, passed a resolution on Double Taxation (see I below), growing differences between various countries' conceptions of what constitutes a taxable profit, coupled with increasing rates of taxation, made it desirable that the I.C.S. should re-examine the whole matter. Any expression of the Chamber's views should not be limited to the practical difficulties of ascertaining the precise amount of profit in each country but should deal with the basic principles involved.

The accompanying memorandum is put forward as the basis for a further recommendation by the I.C.S. on the double taxation of shipping profits.

I — Resolution of 9th November, 1949

DOUBLE TAXATION

The I.C.S.

(1) re-affirms the principle that in order to avoid double taxation and having regard to the international character of the Shipping Industry, shipping should only be taxed in the country of residence of the ship-owning company;

(2) recalls that this principle was widely recognised by Governments before the war and endorsed by the League of Nations, as a result of which a world-wide chain of agreements for the reciprocal exemption of shipping from double taxation was created;

(3) notes with concern the recredescence of double taxation of shipping since the war in a number of countries;

(4) calls upon all Governments to restore and extend the application of the established principle of taxation of shipping in the country of residence only.

This resolution was based on the Chamber's Memorandum on Double Taxation of Shipping dated 20th October, 1949.

II — Memorandum presented to the meeting of the I.C.S. on 21st January, 1953

1. The International Chamber of Shipping regrets that the conclusion of Double Taxation Relief Agreements between the countries of the world is not proceeding more rapidly. Growing differences in the conception of what constitutes a taxable profit, coupled with increasing rates of taxation, have added to the difficulties which double taxation presents to the shipping trade, and it therefore seems appropriate that the International Chamber of Shipping should re-state its views.

General Principles of taxation of profits derived from activities abroad.

2. Although the law on this subject differs in the different countries there is a certain consensus of opinion, which has been concisely embodied in Article IV of the London Model Tax Convention, contained in the last publication of the League of Nations, Geneva, November, 1946, reading:

„1. Income derived from any industrial, commercial or agricultural enterprise and from any other gainful occupation, shall be taxable in the State where the taxpayer has a permanent establishment.

2. If an enterprise in one State extends its activities to the other State without possessing a permanent establishment therein, the income derived from such activities shall be taxable only in the first State.

3. If an enterprise has a permanent establishment in each of the contracting States, each State shall tax only that part of the income which is produced in its territory.''

3. The principles embodied in this Article have already been included in numerous tax conventions, and narrow down, in practice, to the following:

(I) In the country of residence:
the whole of the income is taxed, with either full or partial exemption for any part of the income taxed also abroad.

(II) In countries other than that of residence:
only that part of the income which is produced in the territory of such countries is taxed in them.

4. The Economic and Social Council of the United Nations, during its Session held in Geneva on 10th August, 1951, adopted a Resolution (B. II) [1]) on international tax problems as affecting the relations between under-developed countries and countries in a more advanced state of development. That Resolution asserted that ,,the country in which income arises has an undoubted right as a general principle to tax that income.''

5. This brief statement introduces, in its reference to the income *arising* in a country, a different concept from the income *produced* in a country which is referred to in the section of Article IV of the London Model Tax Convention dealing with activities in countries abroad.

6. Under Article IV of the London Model Tax Convention, the measure of the taxable profit derived by an industrial, commercial or agricultural enterprise from activities in a foreign country in which it has a permanent establishment is the income which is produced in that foreign country, i.e. the income from the operations which are carried out in that country. Although for some types of undertaking there may be identity between the country in which income is produced and the country in which that income arises, such identity does not exist in the case of transport undertakings.

Application to Shipping of the general principles of taxing profits from activities outside the country of residence.

7. The actual income from sea carriage is produced only to a very limited extent in foreign countries, i.e. through the zone of territorial waters. Considered on a mileage basis, the transport through such zones is in practice negligible. The specific shipping activity, namely, the carriage of merchandise and passengers from one port to another, is fulfilled almost entirely outside territorial waters.

8. In general, all major decisions affecting the operations take place at the seat of management in the country of residence and not at ports of call. Whether or not a particular cargo should be carried, the determination of rates of freights, where a ship shall load and discharge, how long she should stay in a port, these and a host of other matters, all combining to produce a profit or loss on the voyage, are subject to the over-riding jurisdiction of the Head Office in the country of residence.

9. It is in theory true that, since some of the shipping concern's activities take place within the territory of the country of the port of call, a corresponding part of the profit may be said to be produced in that country, but this part can hardly be other than infinitesimal. The activities connected with the ship's call at the port, such as the receiving and stowage of the cargo and the procision of port facilities, e.g. pilotage, towage and bunkering, are carried out by local undertakings and the profits from these and the commission paid to local agents for booking passengers and cargo and for servicing the ship are already subject in full to the taxation imposed by the individual country concerned. Moreover, dues and charges are levied locally for the use of the port itself.

[1]) See *Bulletin* Vol V p. 313.

10. The non-taxation of shipping profits in countries other than those of residence should be looked upon, not as a favour granted specially to international shipping, but as the application of sound and acknowledged principles of taxation. Norway, Denmark and the Netherlands may be cited as examples of both the acceptance and application of this principle. The principle is also expressed in Article V. of the London Model Convention, which reads:

> "Income which an enterprise in one of the contracting States derives from the operation of ships or aircraft engaged in international transport is taxable only in the State in which the enterprise has its fiscal domicile."

11. The International Chamber of Shipping understands that it has, on occasions, been suggested that under-developed countries derive financial advantages from the taxation of profits of nonresident shipping. In the opinion of the Chamber, any such financial advantages are short term and probably not as great as may be supposed, but in any event, it is the view of the International Chamber of Shipping that it is wholly wrong to attempt to solve the question of the grant or provision of financial aid to under-developed countries by acquiescence in a form of taxation which is unsound in principle. In other words, the taxation of the income or profits of transport services should be dealt with on properly defined and sound principles and not confused with economic aid to under-developed countries which must be dealt with on merits and according to the broad financial needs of those countries.

12. The I.C.S. has also noted with appreciation the efforts of organisations such as O.E.E.C. and G.A.T.T. to promote the free flow of international trade. It is submitted that the principle of ,,double taxation'' is directly contrary to such a policy of liberalisation and that the short term financial advantages arising from such taxation are far outweighed by the long term economic benefits which would accrue to all countries subscribing to a full and free interchange of goods and services.

III — Resolution of the International Chamber of Shipping, 21st January, 1953

With the above considerations in mind, the following Resolution was unanimously [1]) adopted at the meeting of the International Chamber of Shipping held on the 21st January, 1953:

The International Chamber of Shipping:

(a) regrets that the conclusion of agreements for the avoidance of double taxation between the countries of the world is not proceeding more rapidly;
(b) confirms its previously expressed view that profits derived from sea transport services should be taxed only in the country of residence of the shipping undertaking;
(c) urges that renewed endeavours be made to secure general acceptance of this principle through —
  (I) unilateral legislation;
  (II) reciprocal agreements for the exemption of shipping profits from double taxation;
  or
  (III) reciprocal arrangements for the general exemption of profits and income from double taxation.

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1) The Indian delegation supported the principle of avoiding double taxation, but expressed its view that income should be taxed in the country in which it arises.

See also: *Report on the meeting of the United Nations Fiscal Commission,* Lake Success, May 7-17, 1951, *Bulletin,* Vol. V p. 309.

I

FISCAL RELATIONS IN THE CANADIAN FEDERATION

by

J. H. PERRY,

Director of Research, Canadian Tax Foundation.

No more fascinating aspect of relations in a federal state offers itself for study than the fiscal relations. In this respect Canada is a striking example. One of the newer federations of the world this country is today engaged in a novel experiment with a variety of solutions to the complex problems of federal finance.

I. VERTICAL JURISDICTION

A. Historical Background

Canada, in common with most other parts of the western hemisphere, was discovered by European adventurers in the latter part of the fifteenth century. Its early history was dominated largely by conflicts between the English and French for control of the fish and fur trade, a war in which the French were at first supreme. For a century and a half prior to 1763 the area which now forms Canada was under French control, and British settlement was restricted to the Atlantic coastline of what is now the United States. Under the French the government of the colony was centralized in Paris, and except in minor matters neither the local governor nor the settlers had any authority. Colonial trade was forbidden with any but the mother country, and for considerable periods complete control of New France was in the hands of trading companies holding an exclusive charter from the French King.

The first taxes in the colony, imposed about 1650, took the form of exports levies on moose and beaver pelts. A customs tariff, with rates levied mainly on luxuries such as liquor and tobacco, was gradually introduced by the French. For local purposes, such as roads, the colonial governor levied contributions mainly in the form

of labour, but the principal funds expended in the colony by the mother-country were for military fortifications.

The French rule ended with the fall of Quebec to the English under General Wolfe in 1759, and British control was confirmed by the Treaty of Paris in 1763. The French in Canada were assured their language and other rights under the new regime by the Quebec Act, 1774, and the trade and government of the country went on much as it had previously for a time. The British enforced exclusive commerce with England, and final authority for most acts of government lay in London. This rigid control was gradually relaxed following the American revolution, which started in 1775. This event itself demonstrated the weaknesses of the old system, and the arrival of many loyal but independent colonists from the United States assured its ultimate end. A major concession was made by the British as early as 1778. The Declaratory Act of that year provided that henceforth all revenues collected in the colonies would be spent in the colonies.

The regional divisions that were later to become the Canadian provinces were created during this period. On the Atlantic coast Prince Edward Island was separated from Nova Scotia in 1769, and a second new province, New Brunswick, was also separated from Nova Scotia in 1784. The Constitution Act established Upper and Lower Canada, now Ontario and Quebec respectively, as new provinces in the central regions in 1791. These regions were under the direct control of governors appointed from England, although in time legislative bodies of a sort were introduced in all the colonies.

The legislative assemblies for long had little real power. They were permitted to levy tariffs for local purposes, but control over the expenditure of funds, the appointment of all public officers and the disposal of all patronage and public properties (including natural resources) remained with the governors. At the same time the governors, who were very influential in each colony, were themselves under jealous supervision from London, and their actions were subject to approval by the Imperial government. Since the governor of each of the colonies was finally responsible to the Colonial Office in London there was no effective centralization of authority in Canada and authority was only slowly delegated to the colonial governments.

This process was accelerated following the Report of Lord Durham, who had been sent to Canada in 1838 to investigate the causes of open rebellion that had occurred in two of the colonies in 1837. He urged the necessity of allowing more autonomy to the local governments and proposed the adoption of the system of responsible government then in effect in England. He also suggested that the two largest colonies, or provinces as they had become known — Upper and Lower Canada — be joined under a single government. There were many other significant recommendations, most of which were adopted.

This development coincided with the emergence in England of the free trade movement and a new and more liberal philosophy of empire. The practical effect of the change in outlook was that during the 1840's the preferential tariffs granted on colonial produce in the British market were withdrawn and the last of the restrictions on trade with the colonies by other countries were removed.

By 1850, therefore, the provinces of Canada, while still nominally under British rule, had in fact been given almost complete freedom to levy their own taxes, to spend their funds and in most matters to conduct their own government. Such had been the nature of the previous control that the provinces found themselves in this state with virtually no contact or inter-communication, except for Upper and Lower Canada, which were united under one government. Several forces operated, however, to bring the provinces together into a union. The economy of all provinces had been shaken by the withdrawal of the preferential tariff entry into the British market during the 1840's. A trade treaty with the United States entered into in 1854 provided a new market for a time, but the disturbance was all the greater when the treaty was renounced by the United States after little more than a decade. The loss of external markets was thus important in leading the provinces to look to each other for trade.

The possibility of opening the vast country by railways, then in their infancy, also offered a promise and a challenge that could only be accepted if the provinces were prepared to join in assuming the heavy financial outlay. The warlike and unfriendly attitude of the American North, victorious in the bloody conflict of the Civil War, also caused Canadian leaders to fear for the independence

of Canada in its existing state of disunion. Another factor was the failure of the political union of the English in Upper Canada and the French in Lower Canada, and an apparent sentiment that a broader union would have a greater chance of success.

All these and other circumstances led, after events which need not be described in detail here, to the union in 1867 of four of the existing provinces in a national government in the federal form. This step was finally taken with the blessing of the Imperial Government in London, and the instrument of its accomplishment was the British North America Act, passed by the Imperial Parliament in 1867. While only four provinces formed the original union within six years three more had joined and with the settlement of the western prairies an additional two provinces had been added prior to the first war, making nine in all. The tenth province, Newfoundland, which had withdrawn from the original plan in 1867 and remained a British dependency throughout, joined the union only in 1949, making the present total of ten.

Many of the Canadian leaders of union appear to have been strongly influenced by the American Civil War. To them the lesson it suggested was that too much power had been left to the states, and not enough to the central government. There is evidence indeed that some of the founding fathers wanted a unitary state, and accepted a federation only as a compromise. The result of this attitude was that under the terms of the British North America Act (Sections 91 and 92) the general powers were allotted to the national governments, and the specific powers to the provincial governments, although for greater certainty certain specific powers for the national government were enumerated.

The major provincial powers (other than financial, which will be dealt with in a moment) included legislation respecting education, municipal institutions, natural resources, prisons, public institutions, such as hospitals and asylums, local works, incorporation of provincial companies, solemnization of marriage, the administration of justice and "Property and Civil Rights in the Province." The national government, on the other hand, was given power to legislate on "all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces", and for greater certainty the following powers were enu-

merated: the regulation of trade and commerce, postal service, census and statistics, defence, navigation and shipping, sea-coast and inland fisheries, currency and coinage, banking, weights and measures, various matters relating to finance and money, patents, copyrights, marriage and divorce, the criminal law and penitentiaries.

In the case of agriculture and immigration joint jurisdiction was given.

From this brief description of the enumerated powers assigned to the national government and the all-important fact that it was given the general power of legislation the intention of the founders that it be the strongest element is apparent. Despite this appearance, such has not been the case. In a long series of decisions in cases of conflict between the federal and provincial power the Judicial Committee of the Privy Council in London, until recently the final court of appeal for Canada, indicated strong provincial sympathies and greatly broadened the content of provincial powers. By a broad interpretation of the power given the provinces over "Property and Civil Rights" the Privy Council has, in the view of many constitutional experts, given over to provincial jurisdiction powers which were clearly intended to be held by the national government.

While the present-day significance of these subjects could certainly not have been foreseen by the founding fathers, on any reasonable interpretation of their views it seems likely that they would have classed as matters of national concern the regulation of intra-provincial production, trade and marketing; wages; hours of labour; unemployment insurance; industrial disputes; trade union legislation; health regulations and insurance legislation. In fact by judicial interpretation these functions, many of them involving heavy financial responsibilities they were not equipped to bear, have been assigned to the provinces.

Of actual statutory amendments to the British North America Act there have been relatively few in the 85 years since its passage. Such as have been made were designed principally to give the national government certain powers held to belong to the province (such as the right to institute a national system of unemployment insurance and to levy a specific tax for old age pensions), or to amend the financial provisions of the terms of union, which may now be discussed.

The financial arrangements were influenced by the fact that the provinces at union turned over to the new government their principal source of revenue, the tariff. In keeping with the general attitude of the founding fathers the national government was given full and unrestricted power to levy any form of taxation. The provinces, however, were restricted to direct taxation. Direct taxes were quite unpopular in the mid-nineteenth century, but it was confidently expected that in view of the relatively limited functions being given the provinces they would have no need to impose taxes of any significance in any event. However, since the municipalities were already using the only direct tax to which Canadians of the period had resigned themselves — the property tax — it became necessary to provide the provinces with some alternative form of revenue. This was done by means of direct subsidies from the national government to the provincial governments, the principal element in which was a per capita payment.

These subsidies have undergone a long and chequered career, and are still paid today, long after the provinces have found that their power of direct taxation is a very broad one. The relationship between federal subsidies and provincial taxation has always been extremely close, and the interplay between the two tells much of the story of government finances in Canada. Recently under the "tax agreements" the subsidy mechanism has once again been adapted to the changing needs of finances in our federal system.

The historical development that has culminated in these agreements may be briefly summarized.

Almost from the beginning the constant problem has been, as in most federations, to maintain a balance between the financial capacities of each level of government and the functions that that level was expected to perform. The fact that the Privy Council upset the original balance designed by the founding fathers has seriously complicated this task. Always there has been the problem too of finding ways of giving additional help to the poorer provinces.

For about the first forty years the original plan worked reasonably well. Provincial activities were circumscribed, and by frequent small increases in the subsidies the federal government was able to meet their needs. These adjustments climaxed with a general overhauling of the subsidy plan in 1907. Conditions changed dras-

tically with the twentieth century, however. Economic development accelerated rapidly, and with it provincial and municipal expenditures soared. Some of the provinces had previously experimented with their direct tax powers by imposing corporation taxes and death duties, and the new century rapidly brought all provinces into these fields. Two of the provinces and several municipalities also levied income taxes. The federal government made no attempt to forestall this development, and in fact tended to encourage it by restricting itself to indirect taxes, depending until the first war entirely on revenues from the tariff and excises on liquor and tobacco. However the first world war forced the introduction of a national income tax, and temporarily halted the expansion of provincial and municipal expenditures on roads, schools, municipal services, and so on. This activity resumed on a very large scale during the twenties, and the federal government experimented briefly with shared-cost grants to assist in financing it. The help thus given to the local and regional governments was trivial in comparison with their needs, and as a result a marked expansion of provincial revenues from other sources was necessary. New revenues were found from motor vehicle licences, gasoline taxes and the monopoly sale of alcoholic beverages.

During the economic collapse of the thirties very substantial grants were made to assist the provinces in meeting their constitutional responsibility for relief, but these did not prevent the exploitation of almost every form of direct taxation by the provinces on such a scale and with such an intensity that the Canadian tax structure was reduced almost to chaos.

The precarious financial position of several provinces and the chaotic state of the tax system resulted in the appointment by the national government of the Royce Commission on Dominion-Provincial Relations in 1937. After 3½ years of study the Commission submitted a report in 1940 which recommended on the one hand the assumption of provincial debt and relief costs and the payment of fiscal need grants by the national government, and on the other the permanent surrender by the provinces of their right to impose income taxes on corporations and individuals, other forms of taxes on corporations, and death duties.

At a Conference early in 1941 these recommendations were

rejected by several of the provincial premiers, and were temporarily dropped by the national government. However the drastic increase in federal taxation for war purposes made essential some form of arrangement with the provinces for the use of the direct tax fields, and this was accomplished under temporary contracts, now known as the Wartime Tax Agreements. Under these agreements the provinces suspended their levies on personal and corporate incomes and other corporation taxes (but not death taxes) for the six years 1941 to 1946 inclusive, an arrangement very similar to that also adopted by Australia during the war. Substantial fixed subsidies were paid by the national government to the provinces for the suspension of their taxing rights, a feature of the agreements consistent with the traditional Canadian attitude toward inter-governmental payments.

In August, 1945, the federal government called a Conference to consider renewal of the tax agreement arrangements for peacetime. Sweeping proposals for new subsidy payments and a broad social security programme, including old age and health insurance, were submitted for provincial consideration. The Conference adjourned and met intermittently until May, 1946. During these months, despite considerable modifications in the original federal proposals and the submission of alternative plans by some provinces, no agreement was reached, and the last meeting in May, 1946, broke up in failure.

Shortly after this event the federal Minister of Finance set out a new proposal in his budget speech that was so designed that any province could accept or not at its own option. Under this plan eight of the ten provinces (all except Ontario and Quebec) entered into agreements to suspend for a five year period (1947 to 1951) their income taxes on individuals and corporations, all their other taxes on corporations (paid up capital, places of business, insurance premiums, etc.) and their taxes on deaths. For this suspension they were re-imbursed by the national government on bases which reflected tax potential in some cases and fiscal need in others (insofar as fiscal need is recognized in a flat per capita grant). By contrast with the fixed character of the wartime tax agreement subsidies these payments were adjusted annually to take account of growth in provincial population and gross national

product per capita. By the end of the agreement period the annual payments had reached a level 50 per cent higher than their basic minimum amount by virtue of these adjustments.

The devices employed by the federal government to facilitate an integration of the national tax structure with the taxes levied by Ontario and Quebec — the non-agreeing provinces — are of particular interest. Since some of these have been modified under the position now prevailing it will be well to examine them here before passing on.

The situation to be provided for by the national authority in 1946 after failing to achieve general agreement was that an unknown number of provinces might choose to re-instate the taxes that had been suspended during the war and of course to continue to impose death duties, which had not been suspended. To meet this situation three devices of integration were put forward: (1) tax credits; (2) offsetting provincial taxes in the agreeing provinces; and (3) deductions from income.

The tax credit mechanism was employed for the personal income tax and death duties. For the personal income tax the credit was to be an amount equal to one-twentieth of the federal tax, a proportion that would have permitted the re-instatement of pre-war rates in most provinces. This credit was in fact never brought into operation, since neither Ontario or Quebec (the two non-agreeing provinces) exercised their right to impose personal income taxes during the five years in question. For death duties the situation was more complicated. Since death taxes were being withdrawn in eight of the provinces the national duties would have to be increased to maintain about the same level of rates as had existed previously. This meant that they would have to be about doubled. At the same time provision would have to be made to allow Ontario and Quebec to continue to levy their provincial duties without imposing a severe burden when combined with the increased national rates. To overcome this problem the federal government took the simple step of doubling its own rates and undertaking to allow a deduction for duties paid to Ontario and Quebec up to the amount of one-half the increased rates. This preserved about the same level of total burden as had previously prevailed in all provinces.

The use of offsetting taxes levied by an agreeing province proved to be a satisfactory device in the case of corporation income taxes. The federal government had to anticipate in 1946 that a non-agreeing province would probably levy a corporation profits tax at least as high as the pre-war average provincial level of 5 per cent. To accommodate such a tax it might have allowed a tax credit against the federal levy, but this would have involved too great a loss of revenue in the immediate post-war years. This revenue loss the federal government could have overcome by increasing its rate by 5 points and then allowing a tax credit, but it was debarred from this route by a clause in the Wartime Agreements that required it to *reduce* its rate on expiry of the agreement. To provide room for a tax that could be levied by a non-agreeing province without discriminating against its corporations the federal government took the unusual step of virtually forcing the eight agreeing provinces to impose a 5 per cent corporation income tax on their corporations.

This tax was in effect for the full five years, (1947 to 1951) and represented a most interesting experiment in regional taxation of corporation profits. The law itself was uniform in all provinces, having been modelled on the national law, and was administered by the national tax authority. The basic taxable income was therefore the same as that subject to the national tax, and the administration the same as that which enforced the national law. The rules for allocating the income of corporations carrying on business in several provinces were drawn up in consultation between the federal and provincial authorities. In general they followed the concepts now well-known in international tax treaties, such as the permanent establishment, the use of the accounts of the permanent establishment and the adjustment of these accounts where appropriate. Provision was also made for the use of a general allocation formula where the accounts were not satisfactory. This employed ratios based on the salaries and wages and gross revenues of the permanent establishment to total salaries and wages and gross revenues of the corporation. Special allocation ratios were provided for banks, insurance and trust companies, railways and airlines, grain elevator companies and one or two others.

As a tax mechanism this measure worked with considerable

success, causing little inconvenience to taxpayers and creating almost no litigation. As a means of integration with the provincial tax it also worked moderately well. The provinces of Ontario and Quebec both levied taxes at a 7 per cent rate rather than 5 per cent, so that they were not completely offset by the tax levied in the agreeing provinces. The rules for allocating income in Ontario and Quebec varied in some respects from those under the uniform law. Different bases were used for establishing liability in a province (head office, branch office, sales office, sales representative, holding assets, etc. in place of permanent establishment) and a ratio based on sales to persons in a province was employed in place of salaries and wages and gross revenues of a permanent establishment in a province. These differences undoubtedly resulted in some double taxation on income between agreeing and non-agreeing provinces.

The device of a deduction from income was adopted in connection with minor taxes on paid-up capital, places of business and other aspects of corporate entreprises levied by Ontario and Quebec. The national government has allowed such taxes as a deduction from income subject to its own income tax to the extent that they do not exceed the pre-war level. This has meant that in practise most of these taxes are deductible.

While the actual disposition of taxes has been considerably altered by the tax agreements it should be pointed out that the basic constitutional provisions governing taxation stand today almost exactly as they did at the time of union. On at least two occasions — in 1936 and again in 1951 — the federal government has been prepared to request the British Parliament to amend the British North America Act to allow the provinces to impose an indirect sales tax. Neither time, for various reasons, was the step actually taken, so that today the provinces are still limited entirely to the field of direct taxation. In fact, however, this is hardly a restriction. Decisions of the Privy Council have given a very broad interpretation of this power, so that today it is quite within the capacity of the provinces to levy retail sales taxes, gasoline taxes, amusement taxes, tobacco taxes — all ordinarily regarded as indirect — as long as certain formalities laid down by Privy Council are observed. Since the municipalities may exercise any provincial power delegated to them by the province the Canadian munic-

ipalities either have or can be given similar broad powers.

The federal taxing power, being unlimited, has undergone little change through judicial interpretation. It has been established by the Courts that neither level of government may exercise its taxing power in such a way as to undermine the other level. The right of the federal government to tax non-residents has also been established by judicial process.

So much then for a broad survey of the historical development of fiscal relations in Canada to recent times. After a brief look at the character of the governments concerned as they stand today the position of fiscal relations as they stand at the present moment will also be reviewed.

B. Governments Concerned

While it may be truly said (in a constitutional sense) that there are only two levels of government in Canada it would be a mistake to assimilate the municipalities to the provinces simply because they are provincial creations. In fact the municipal level of government is an active, energetic and influential political sphere in its own right, and must be counted as such. In a realistic sense, therefore, there are three levels of government in Canada, the national, the provincial and the local.

The national government, with its seat in Ottawa, is organized basically along the lines of the British system of responsible government. The elected assembly is the House of Commons, and the executive is responsible to that assembly and is drawn from the majority party in it. The 262 members of the House are elected for a maximum term of five years. They represent the 14½ million national population on a constituency basis drawn up in proportion to provincial population. There is also a Senate, composed of 102 members, who are appointed for life on a fixed basis of provincial representation. A Governor-General represents the British Crown in the national capital, but his functions in the government of the country are now largely formal. The constitutional functions of the national government have been described earlier.

With the exception of the northern parts of the country, which are still governed by the federal authority, the land area of Canada is divided into ten provinces. These vary greatly in population, size,

wealth, tradition, culture and language. They range from Prince Edward Island with a population of 103,000 and an area of 2,184 square miles, to the largest provinces of Ontario and Quebec, having populations of 4,800,000 and 4,200,000 and land areas of 412,582 square miles and 594,860 square miles respectively. The central provinces of Ontario and Quebec have become highly industrialized, and one or two others, particularly British Columbia and Alberta, are also developing in this direction. This is true in lesser degree of the other six provinces, which however depend mainly on the exploitation of some staple produce, such as lumber, grain, cattle or fish. Mining is also carried on extensively in almost every Canadian province, and the pulp and paper industry is one of the largest in the country. There are great differences in natural wealth and commerce among the provinces, however, a factor that has conditioned the Canadian approach to federalism in many directions. The predominantly French population in Quebec has also exerted a profound influence on all aspects of Canadian life, not the least on the nature of government.

Provincial governments are similar to the national government in basic organization, except that only in Quebec is there still found an upper legislative assembly. The provinces perform many functions, but the cost of highways, social services, hydro and other public utilities and assistance to municipalities in various forms are now their largest expenditures.

The following table gives the population and land area of all ten provinces in 1952:

Newfoundland (and Lab.)	374,000	155,364
Prince Edward Island	103,000	2,184
Nova Scotia	653,000	21;068
New Brunswick	526,000	27,985
Quebec	4,174,000	594,860
Ontario	4,766,000	412,582
Manitoba	798,000	246,512
Saskatchewan	843,000	251,700
Alberta	970,000	255,285
British Columbia	1,198,000	366,255

Local governments in Canada now number about 4000, ranging from hamlets of 10 or 15 to cities of 1½ million persons. In general

they carry on the usual community services — fire and police protection, water, sewage, roads, etc. and are primarily responsible for the financing of education and social services. The cost of the latter two functions is now the most pressing problem of municipal finance, and substantial assistance is given by all provincial governments.

The form of local government varies from province to province. In some provinces there is an intermediate level known as a county or parish, but in others this is absent entirely. The largest urban centres, Montreal in Quebec and Toronto in Ontario, are faced with serious metropolitan problems as a result of rapid growth, but no satisfactory solution has yet been found in either city.

By way of concluding this survey of existing levels of governments and giving a perspective to later discussion a brief summary of the taxes levied by each may be of interest.

The three principal tax sources at the federal level are a corporation income tax, a personal income tax and a general manufacturers sales tax. There are also heavy taxes on liquor and tobacco and more moderate excises on a wide range of consumer articles, such as automobiles, radios, electrical appliances, candy, soft drinks, cosmetics, and so on. A death duty and the customs tariff round out the federal tax structure.

The principal revenue sources today at the provincial level are gasoline taxes, motor vehicle licences and the monopoly sale of alcoholic beverages through state-owned stores. These sources are found in all ten provinces. A source of growing importance is the retail sales tax, now levied in 5 provinces, among them Quebec, the second largest. Miscellaneous tax sources include taxes on amusements, tobacco, race track betting and meals. In several provinces revenue from natural resources is also important. Under the present tax agreement arrangements provincial corporation income taxes have been suspended in all but one province and provincial death duties in all but two. There are no personal income taxes levied today at the provincial level.

Almost the sole source of municipal tax revenue is the property tax, except in the province of Quebec, where sales taxes are levied by the municipalities. The property tax field is now left entirely to the local level, all former provincial property taxes having been

withdrawn. Miscellaneous other municipal sources include business and poll taxes, various charges and licence fees and revenue from publicly owned utilities.

C. Present Situation

The present situation in Canada reveals several aspects of interest to the student of taxation in a federal state. The basic constitutional arrangement of taxing powers has in no way been disturbed, but the actual exercise of these powers is today altered beyond recognition by the effect of the temporary tax agreements.

As mentioned earlier, the tax agreements of the immediate post-war period expired with 1951. Following proposals made by the federal government for their renewal however they have been again entered upon by the previous eight provincial governments for the five years 1952 to 1956 inclusive, and in addition Ontario has now also entered into an agreement for the same period. This leaves Quebec, at the present time, as the only province that has not signed up. The basis of compensation under the new agreement was not substantially altered, although a change in the method of calculating the adjustment helped all provinces and a new option based almost entirely on tax potential made the offer more attractive to Ontario. (Ontario also exercised an option in the arrangement to retain its death taxes, with an offsetting reduction in its compensation).

With the removal of the tax agreements the federal government has re-arranged its previous scheme for integration of federal and provincial corporation income taxes. The 5 per cent uniform levy imposed by the agreeing provinces was withdrawn, effective for profits earned to the end of 1951, and in its place a corresponding increase was made in the federal rate, effective from the beginning of 1952. Concurrently the federal government undertook to allow a credit against its corporation income tax for a provincial tax up to a rate of 5 per cent. In the actual outcome this credit will come into operation with respect to the corporation income tax in Quebec, which continues to be imposed at a 7 per cent rate and will therefore not be entirely absorbed. The federal government having patterned its rules for allocating income to Quebec for purposes of the 5 per cent tax credit after the rules formerly followed under the uniform

act there will also be some lack of integration to the extent that these rules produce a different allocation of income from that actually taxed by the province under its own rules. It is a unique feature of the measure however that in respect of income allocated to the province on the basis of the federal rules a tax credit will be allowed against the federal levy *whether or not* any tax has been paid by the company to the province.

The federal credit for a provincial personal income tax remains in the law and there is no apparent intention to withdraw it. At the same time there is no indication that Quebec intends to avail itself of this opportunity by imposing such a tax. At least, no such intention has been announced at the time of writing, and the possibilities are very doubtful.

When it is realized that the power to impose direct taxes (income taxes, death taxes etc.) is given by the constitutional arrangements to ten provinces and some 4000 municipal bodies in Canada, and that in practice these powers have been fully exercised by many of these bodies in the past, it is very striking that in Canada today there is one personal tax levy (the federal); two corporation income tax levies (the federal and that of Quebec) and three levies for death taxes (the federal, and that of Ontario and Quebec). Furthermore this situation will now prevail, unless Quebec decides to enter the agreement, which it may do at any time, for the next five years. This delimitation of jurisdictions has the very important advantage that it is a temporary arrangement only, and may be completely abandoned at the end of the period if circumstances dictate some other solution. The right and ability of an agreeing province to do so at the termination of the agreement is protected by a federal undertaking to allow liberal tax credits, for a five year period, in respect of provincial personal and corporate income taxes and death duties.

There are few instances to be found in Canada of concurrent jurisdiction in tax sources after the effect of the federal-provincial tax agreements are taken into account. The vestiges of concurrent jurisdiction in the case of corporation income tax and succession duties have been mentioned and the devices for achieving integration explained. Certain forms of tax are levied by both federal and provincial governments and certain commodities are taxed in

common, but the nature of these taxes is different because of the constitutional restrictions and there is little or no conflict in administration or jurisdiction. For example, the federal government and five of the provinces now levy a general sales tax, but the federal levy is an indirect tax imposed on the manufacturer, while the provincial levies are direct taxes imposed on the consumer and collected by the retailer. All jurisdictions have their own administrative staffs, and as long as the taxes are imposed at their present points of collection there is little possibility of either conflict or cooperation. It has of course been suggested that all sales taxes be brought to a common level, preferably the retail, and collected by one administration.

Much the same situation prevails with regard to tobacco taxation, where the national government and three of the provinces have specific taxes. Perhaps the closest approach to concurrent jurisdiction is in the case of liquor. Although the principal source of provincial revenue from alcoholic beverages is the monopoly sale through state outlets, in some provinces there are separate levies collected in addition at the distilleries and breweries. Since the federal liquor levies are also collected at the distilleries and breweries it may be said that there is concurrent jurisdiction in this field. In fact the federal and provincial charges are entirely different in form and there appears to be neither conflict nor cooperation to any extent in this field, although undoubtedly the provinces rely on the very extensive federal excise supervision to protect their interests as well as those of the public at large.

One of the most interesting instances of concurrent jurisdiction under centralized administration is found in the province of Quebec. One of the principal revenue sources in this province is a provincial sales tax, and under uniform laws and regulations the provincial administration collects a sales tax for most of the larger cities and also for the educational authority in several of these cities. Thus in Montreal and Quebec, the two largest centres, there is now a total retail sales tax of 5 per cent — 2 per cent for the province, 2 per cent for the municipality and 1 per cent for the board of education — all collected by the provincial administration.

Until recently the western provinces revealed cases of concurrent jurisdiction of a different character. These provinces imposed taxes

on property, which were collected for them by the municipalities, on the basis of an equalized assessment made for the purpose by the province. These taxes have gradually been repealed, however, the last, that of Saskatchewan, having expired at the end of 1952.

D. Effects of Present Situation

The present situation is of course completely dominated by the federal-provincial tax rental agreements. The administrative advantages of these agreements are obvious. From an economic point of view they have served the dual purpose of assuring a uniform tax structure in all provinces and, through the relatively larger payments made to the poorer provinces, have met the essential condition of all federal arrangements of effecting a transfer of income from the wealthy to the less wealthy areas. Perhaps their greatest contribution has been to remove this vexing problem from the realm of constant bickering. In this respect they represent a major achievement in political amity.

On the other hand these agreements have been criticized, particularly by representatives of the province of Quebec, as an attempt on the part of the national government to centralize all the real taxing power in its own hands. They have also been criticized as being a temporary expedient, offering no final solution to what many government leaders, particularly those at the municipal level, regard as the major problem — a re-allocation of tax sources. It has also been alleged that the very large proportion of provincial revenues derived by the provinces from the national government (ranging from one-quarter to two-thirds) will undermine the independence of these governments in time. The compensation paid under the agreements is also criticized as unsatisfactory because it attempts to reconcile on the basis of general formulae (the details of which have not been given here) the arguments for large payments advanced by the poorer provinces because of their lack of tax potential, and by the wealthier provinces because of their high tax potential.

E. Alternative Solutions Proposed

Few concrete alternative plans have been advanced. Those that have seem to represent the viewpoint of the wealthier provinces. In Quebec there is constant pressure for a return to the basic

constitutional provisions, in order to assure each level of government "its own tax sources". Though he signed an agreement with the national government the Premier of Ontario indicated also that he regarded the arrangement as only a stop-gap, the ultimate ideal being, in his view, a system in which each province levied its own taxes and in addition received assistance from the national government on some fair basis to be determined by an Economic Committee composed of experts. The idea of specific, carefully calculated "fiscal need" grants has at various times appealed also to other provinces, and was the basis for the grants proposed by the Royal Commission on Dominion-Provincial Relations.

No serious attempt seems to have been made as yet to formulate a complete set of proposals as an alternative to the tax rental agreement approach, which appears to be distrusted by academic writers because it has never been the subject of doctrinaire examination and lacks any commendation except the practical test that it has produced results.

F. Conclusions

The conclusion of the present writer is that out of many frustrating experiences of the last decade and a half there has emerged in Canada a unique device for integrating the fiscal relations of the vertical levels of government. This device, the transfer of taxing powers under *ad hoc* agreements, while far from free of defects, has the supreme advantage of meeting fairly well the needs of the time without prejudice to any alternative arrangements that may be more suitable to different times perhaps no more than a decade hence. Too often there is a tendency, even among people who are fully conversant with the dynamic character of the scientific developments that are now changing our world, to expect permanence and stability in the structures and arrangements of government. One could say almost that every serious problem encountered in the federal form of government has arisen from the necessity of adjusting to changing times a scheme which its creators intended to survive unchanged to eternity. A flexible outlook, combined with an energetic and uninhibited will to experiment with promising new devices, are essential if a federal fiscal system is not to become frozen into rigidity.

II. HORIZONTAL JURISDICTION

In addition to removing most of the problems of conflicting jurisdiction between the federal and provincial governments the tax rental agreements discussed above have also removed most of the problems of conflict between provincial governments. This has resulted from the suspension of the forms of tax under which these conflicts most frequently arose, and the substitution in their place of taxes having national application. There are, however, some few points that may be mentioned.

Almost the sole constitutional restrictions on provincial taxing powers are contained in the words of Section 92(2) of the British North America Act which gave the provinces power to levy "Direct taxation within the Province in order to the Raising of a Revenue for Provincial Purposes . . .". The only other significant constitutional restriction is contained in section 121 of the Act, which enjoins that "all Articles of the Growth, Produce or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces". In practice the first restriction has been the more important, and the settlement of conflicts of jurisdictions has depended almost entirely on the judicial interpretation of the words "taxation within the Province".

In one of the earliest appeals on the provincial taxing powers (Bank of Toronto v. Lambe, 1887) the Privy Council ruled that to qualify as taxation within the province the subject matter of the tax, whether person or property, must be within the province. Of persons (and the same has been held of property) the decision said in part ". . . clause 2 of section 92 (of the B.N.A. Act) does not require that persons to be taxed in Quebec are to be domiciled or even resident in Quebec. Any person found within the province may be legally taxed if taxed directly."

The position of natural persons and tangible property under this interpretation is self evident. They may be taxed where found. The position of artificial persons, such as corporations, and intangible property, such as shares and bonds, is much more obscure, however, and has been productive of much litigation. In general it has been settled that a corporation is "within a province" if it carries on business there, and may be taxed in any manner or to any extent. It would seem therefore that in law a corporation

carrying on business in ten provinces could be taxed in each province on its total income. In exceptional cases this was done, but in practice under the pre-war provincial laws only the income earned in a province was taxed, except in the province where the head office was located, and in this case tax credits were allowed for taxes paid to other jurisdictions. The position during the five years of 1947 to 1951 has been explained earlier, and of course with the repeal of all provincial corporation taxes except that in Quebec all problems of inter-provincial conflict have disappeared.

By far the most prolific source of conflict of jurisdiction in Canada in the past were the provincial death duties. It was early established that a province could impose a duty on all real and personal property having its situs "within the province". The situs of real property presented no problem, but various legislative devices were adopted to bring the situs of personal property into the province by statute. This legislation was thwarted by a Privy Council ruling that it was beyond provincial competence, and that the common-law rules of situs must be followed. There followed a period in which the personal property of a person *domiciled* in the province was taxed no matter where located on the principle of *mobilia personam sequuntur* (moveable property follows its owner). This development was also forestalled by a Privy Council decision which denied the validity of this rule for death duty purposes.

These efforts had been directed at taxing the property itself, no matter where located. A more productive line of development appeared when the provinces adopted the plan of taxing the *transmission* of the property within the province. After some experimentation legislation was finally devised under which it was clearly established that the province had the right to tax personal property the subject of transmission in the province between a decedent domiciled in the province and a beneficiary either domiciled or ordinarily resident in the province.

In brief this meant that every province could tax on both the situs and domicile basis. The results were chaotic. Despite efforts of some of the more enlightened provincial leaders to have either one basis or the other adopted uniformly, and despite a halting and sporadic attempt to negotiate inter-provincial agreements for

tax credits and other forms of relief, the double or even triple taxation of estates in Canada was a regular feature of provincial death duties. Matters reached a sorry state in the late thirties, when provincial duties were at their peak and all inter-provincial agreements had been denounced, but were further complicated by the entrance of the federal government into the field of death taxation for the first time in 1941.

The Royal Commission on Dominion-Provincial Relations had recommended that the undesirable provincial situation be cleared up by turning the death duty field over to the federal government, but as previously indicated this recommendation was not acted up during the war. The post-war tax agreements however were extended to include death duties, and one of their greatest accomplishments has been the suspension of these duties in eight of the ten provinces. A further progressive step was taken in 1945 when Ontario and Quebec entered into a joint agreement for removing double taxation by means of tax credits. The withdrawal of eight provinces, the adoption of an effective method for removing double taxation between Ontario and Quebec and the integration of the Ontario and Quebec duties with the federal duties through the federal tax credit, all accomplished in the two or three years following World War II, has removed conflicts for which an answer has been sought for over half a century.

As yet no conflicts of jurisdiction between provinces seem to have arisen under such taxes as those on sales and gasoline. Apparently the provinces are adhering closely to the sound constitutional basis that they may clearly tax a person found in the province. Thus both the sales and gasoline taxes are levied on persons in the province in respect of purchases made in the province. An ingenious device, known as the "use tax", borrowed from the American states, is employed to tax persons in the province in respect of purchases outside the province. A person purchasing an automobile, for example, outside the province, is required by law to pay to the provincial government the same sales tax he would have paid on a car purchased in the province. The same applies to all other taxable goods, and the large mail-order houses voluntarily cooperate with provinces having sales tax by collecting the tax on goods being shipped in to residents of the province.

No attempt appears to have been made under any provincial levy of this sort to tax goods being sent out of the province to a purchaser in another province. For example, shipments of gasoline from one province to another leave the sending province free of tax; the same is true of goods subject to sales tax.

The prohibition against inter-provincial tariff or tax barriers contained in section 121 of the British North America Act undoubtedly was designed to prevent any return to the conditions of pre-Confederation times, when the provinces had their own individual tariffs. In the past there have been instances of actions which might be construed as indirect attempts to overcome this restriction. The imposition of higher fees or taxes on non-resident producers than on residents is an example, and the existing discrimination in most provinces against non-resident brewers and distillers may be a case in point although it has not been challenged. The constitutional validity of the "use" taxes, mentioned above in connection with the sales tax, was challenged on the grounds that they interfered with inter-provincial trade, but in a significant decision, the *Atlantic Smoke Shops* case, the Privy Council ruled that they did not offend on this score.

SUMMARY

The obvious conclusion to be drawn from Canadian experience with fiscal relations in a federal system is that great advantages can be derived from temporary contractual arrangements which introduce an element of elasticity into the basic constitutional provisions without making any permanent or fundamental changes in them. There are few in Canada who would defend the present position as a state of perfection; on the contrary it has many critics, and many obvious defects. Perfection in federal fiscal arrangements is a snare and delusion in any event. The important thing is that the problems of federal finance are being attacked in Canada with aggressiveness and imagination. Future developments will undoubtedly produce results of interest to all students of federal finance.

LES LOIS CONCERNANT LES FINANCES LOCALES EN ITALIE

par

le doct. GUSTAVO ADOLFO NOBILE – Juge

1) Dans l'organisation italienne, sont objets actifs d'impôt, non seulement l'Etat, mais aussi les établissements publics territoriaux (Régions, Provinces et Communes), qui sont investis par la loi d'un pouvoir financier.

L'imposition de la part de ces établissements publics peut être distinguée de celle de l'Etat, ou jointe à celle-ci, d'où se peut vérifier:

a) que l'Etat pourvoie à l'imposition et à la perception du tribut, et il en attribue ensuite le revenu, en tout ou en partie, à d'autres établissements publics, en le partageant suivant le critérium de la population, de l'importance, etc.; en ce cas un rapport juridique entre l'etablissement public et le contribuable n'existe pas, mais il existe seulement le rapport tributaire entre l'Etat et le contribuable;

b) qu'à l'etablissement public on attribue la faculté d'instituer des droits additionnels à des tributs dus à l'Etat; dans ce cas naît entre l'établissement public et le contribuable un rapport d'impôt accessoire à celui qui existe entre l'Etat et le contribuable; pour le fait que la vérification de l'impôt qu'on doit à l'Etat, constitue aussi le fondement invariable de l'impôt dû à l'établissement public;

c) que l'impôt dû à l'établissement public soit absolument distinct et indépendant des impôts de l'Etat; le rapport d'impôt donc se déploie exclusivement entre l'établissement public et le contribuable, soit pour la vérification que pour l'encaissement du tribut; l'intervention de l'Etat dans les actes administratifs relatifs se limite simplement au contrôle de légitimité ou de mérite, dans les formes établies par la loi.

2) La principale source législative en matière de tributs locaux est le T. U. pour les finances locales, approuvé par le R. D. du

14 Septembre 1931 n. 1175, qui pour la première fois a discipliné organiquement la législation financière des Communes et des Provinces. Au susdit T. U. des remarquables modifications ont été apportées successivement par plusieurs lois, parmi lesquelles il faut mentionner le T. U. de la Loi Communale et Provinciale approuvée par le R. D. du 3 Mars 1934 n. 383; le D. L. 8-3-1945 n. 62 apportant des mesures en matière de finances locales; le D. L. 29-3-1947 n. 177 apportant des mesures financières à l'avantage des Provinces et des Communes; le D. L. 26-3-1948 n. 261 sur l'arrangement des finances locales des Provinces et des Communes; la loi 30-7-1950 n. 575, et dernièrement la loi 2-7-1952 n. 703 apportant des dispositions en matière de finances locales.

3) Les établissements publics territoriaux, ainsi que l'Etat, peuvent mettre des impôts, des contributions et des taxes.

Il y a néanmoins des tributs *obligatoires*, c'est-à-dire des tributs que l'établissement public est en devoir d'instituer; et des tributs *facultatifs*, que l'établissement public peut instituer à sa discrétion.

Aux effets de l'application des tributs, les Communes sont partagées en neuf classes, selon la population résultant du dernier dénombrement officiel, et c'est-à-dire (art. II T. U. Fin. Loc.):

Classe	A	Communes de plus de	500.000 habitants
,,	B	,, de 200.000 à	500.000 ,,
,,	C	,, de 100.000 à	200.000 ,,
,,	D	,, de 60.000 à	100.000 ,,
,,	E	,, de 30.000 à	60.000 ,,
,,	F	,, de 15.000 à	30.000 ,,
,,	G	,, de 10.000 à	15.000 ,,
,,	H	,, de 5.000 à	10.000 ,,
,,	I	,, jusqu'à 5000.	

Pour le développement des fonctions de contrôle qui sont du ressort de l'Etat sur l'activité financière des établissements publics locaux, il y a chez le Ministère de l'intérieur la Commission centrale pour les Finances locales à laquelle sont transférées de nombreuses attributions, soit pour la normale application des tributs locaux, soit pour l'adoption des dispositions exceptionnelles nécessaires pour faire face au déficit de budget (D. L. 24 août 1944 n. 212,

modif. par l'art. 17 D. L. 26-3-1948 n. 261). Pour les Communes, qui ne sont pas chefs-lieux d'arrondissement et avec une population jusqu'à 20.000 habitants, les attributions de la Commission centrale pour les Finances locales sont transférées à la Yunte Provinciale Administrative (art. 9 loi 2-7-1952 n. 703).

4) En suivant la distinction du susdit paragraphe 1), nous pouvons remarquer qu'on a la participation des établissement publics territoriaux au revenu d'impôts de l'Etat dans les cas suivants:

a) les 3/5 du revenu total du droit additionnel du 5/00 pour chaque lire, des différents tributs de l'Etat, sont partagés entre les provinces en proportion du nombre des habitants (D. L. 30-11-1937 n. 245; D. L. 18-2-1946 n. 100; D. M. 30-7-1946).

b) Le revenu des droits de l'Etat sur les spectacles publics, sur les représentations cinématografiques, de variété, etc., et sur les paris, est transféré à la Commune, dans laquelle les droit mêmes sont perçus, nets de quelques contributions (art. 2 D. L. 26-3-1948 n. 261, modifié par l'art. 7 loi 2-7-1952 n. 703).

c) Le 7,50 % du revenu total de l'impôt general sur les rentes, perçu dans l'exercice financier précédent est attribué aux Communes, qui dépassent le premier limite des surtaxes foncières et il est partagé entre les Communes mêmes en proportion de la population résidente (art. I loi 2-7-1952 n. 703).

d) L'1 % du revenu total de l'impôt général sur les rentes, perçu dans l'exercice financier précédent est attribué aux Communes de montagne (situées au-dessus des 600 mètres sur le niveau de la mer et dont le revenu imposable moyen par hectare cadastré n'est pas plus grand que £.200) et à celles qui sont situées dans les petites îles (dont la superficie n'excède pas les 30.000 hectares et dont le revenu moyen par hectare cadastré ne dépasse pas les £.200 art. 3 loi 2-7-1952 n. 703).

e) Le 2,50 % du revenu total de l'impôt général sur les rentes, perçu dans l'exercice financier précédent est attribué aux Provinces, en proportion de la respective population résidente (art. 4 loi 2-7-1952 n. 703).

5) Comme nous avons déjà dit, aux établissements publics on peut attribuer la faculté de mettre des impôts additionnels sur des tributs donnés de l'Etat. Dans ce cas rentrent:

a) les surtaxes foncières, c'est-à-dire les droits additionnels aux impôts de l'Etat sur les terrains et les édifices, que les Provinces et les Communes peuvent imposer dans les limites établies par la loi (art. 16 D. L. 7-XII-1942 n. 1418, art. 3 D. L. 18-2-1946 n. 100 et les art. 255 e 256 T. U. Fin. loc.) et après l'autorisation de déterminés organes du gouvernement. Il y a d'abord un limite normal, qui est pour les Communes du 5 % du revenu imposable, soit sur les terrains soit sur les édifices; tandis que pour les Provinces il est du 6 % du revenu imposable sur les terrains et du 10 % du revenu imposable sur les édifices — Il y a de plus une deuxième limite qui est à l'avantage des Communes du 8 % pour les terrains et du 10 % pour les édifices, et pour les Provinces respectivement du 8 % et du 12,50 % — Cette limité peut être atteinte seulement lorsque les établissements publics ont déjà appliqué presque tous les autres tributs, que l'Etat leur permet, avec les taux les plus élevés. Enfin il y a une troisième limite, qui est en faveur des Communes du 10 % du revenu pour les terrains et du 12,50 % pour les éditices, et en faveur des Provinces respectivement du 10 % et du 15 %; cette limite peut être atteinte lorsque les Communes et les Provinces, malgré l'application des autres tributs avec les taux les plus élevés et la réduction des frais, ne sont pas à même d'atteindre l'équilibre de leurs budgets et qu'elles ajoutent en le même temps des impôts additionnels à l'impôt sur les industries, les commerces, les arts et les professions, et pour ce qui concerne les Communes, des droits additionnels à l'impôt sur la valeur locative ou bien à l'impôt de famille.

L'autorisation à surtaxer jusqu' à la troisième limite est donnée par la G.P.A. pour les Communes qui ne sont pas chefs-lieux d'arrondissement, et par le Ministère de l'intérieur, après avoir écouté la G.P.A. et la Commission Centrale pour les finances locales, pour les chefs-lieux d'arrondissement. Contre les décisions de la G.P.A. le préfet, le maire ou un contribuable quelconque peuvent recourir, pour le mérite aussi, au Ministre de l'intérieur. Contre le décret du Ministre est permis seulement le recours de légitimité au Conseil d'Etat en séance de jurisdiction.

L'autorisation à surtaxer est donnée aux Provinces par le Ministre de l'Intérieur de concert avec le Ministre des Finances, après avoir consulté la G.P.A. et avoir entendu la Commission Centr. de la Fin. loc.

b) L'impôt communal sur l'industrie, les commerces, les arts et les professions, qui est imposé à tous ceux qui exercent une industrie, un art ou une profession, dont ils tirent un revenu soumis à l'impôt de richesse mobile (art. 161 T.U.). Il frappe le revenu net, inscrit dans le rôle aux effets de l'impôt de Richesse mobile, qui est rapporté dans la Commune avec des taux jusqu'au 3%, s'il s'agit de revenus de Cat. B, et jusq'au 2,40% s'il s'agit de revenus de Cat. C I.

c) Le droit additionnel pour les Provinces aux impôts communaux sur les industries, les commerces, les arts et les professions. Ce droit additionnel peut être mis aussi au cas où la Commune n'a pas établi l'impôt principal et les taux peuvent arriver jusqu' à la limite de 1,50% sur les revenus de Catég. B et de 1,20% sur les revenus de Cat. C I (art. 164 T.U.).

6) Il y a enfin des tributs que la Commune peut imposer indépendamment des impôts de l'Etat. Ils sont:

a) les octrois. La loi (art. 10 loi 2-7-1952 n. 703 qui a modifié l'art. 20 du T.U.) établit les articles sur lesquels les Communes sont autorisées à recevoir des octrois; mais elle établit aussi que dans tous les cas certains articles de première necessité (le pain, les pâtes et farines alimentaires, le riz, le lait, les oeufs, les fruits frais, les objets de verre ou de terre cuite qui n'ont pas de valeur artistique, les tissus de coton ou de chauvre écru, les chaussures de travail, etc.) ne peuvent pas être objet d'imposition.

Les taux sont contenus dans le maximum établi par le tarif (dans l'art. 24 loi 2-7-1952 n. 703, qui a modifié l'art. 95 T.U.) pour quelques articles en rapport à leur volume, pour d'autres sur chaque objet, pour d'autres sur la valeur déterminée au mois d'octobre de chaque année, sur la moyenne des prix des 12 mois précédents, par une Commission provinciale nommée par le préfet et présidée par l'Intendent des Finances. Quant au système de recette, il varie suivant les articles taxés: par exemple l'impôt sur la viande est perçu d'ordinaire quand les bêtes sont assommées à la boucherie; l'impôt sur le gaz et sur l'énergie électrique est perçu au moyen de la liquidation faite par les centres de production à la charge du débitant, qui a pourtant le droit de s'en refaire sur les consommateurs; l'impôt sur les matériaux pour les constructions

d'édiles est perçu sur le compte métrique de la construction terminée, tandis que pour les réparations qui ne sont pas de petite manutention (lesquelles en sont exemptes) l'impôt est perçu au moyen d'un abonnement obligatoire. Les Communes peuvent pourvoir à la vérification et à la recette de l'octroi ou directement, toutes seules ou unies en consortium, ou bien au moyen d'une entreprise, qui peut être accordée à redevance fixe ou à agio, pour les Communes des Classes H et I . Contre la conduite des agents des octrois et des entrepreneurs est admis le recours, en séance administrative, au maire en première instance, et respectivement au préfet et au Ministre des Finances en deuxième et troisième instance, restant fixé l'action judiciaire, qu'on peut proposer dans les trois mois de la notification de la décision du Ministre.

b) L'impôt de patente, qui frappe tous ceux qui exercent même sans continuité une industrie, un commerce, un art et une profession, dont ils tirent un revenu qui ne puisse être soumis à l'impôt de Richesse mobile, ou qui en quelque façon ne soit pas encore vérifié aux effets de cet impôt (art. 31 loi 2-7-1952 n. 703 qui a modifié l'art. 166 T.U.).

c) L'impôt sur la valeur locative, qui frappe tous ceux, même les étrangers, qui ont un logis pourvu de meubles à leur disposition, dans le territoire de la Commune. Cet impôt est appliqué sur la valeur locative des locaux tirée du loyer réel ou presumé. Les taux (progressifs du 5 au 9%) sont établis par le maire avec une délibération qui doit être approuvée par la G.P.A., suivant la classe à laquelle la Commune appartient.

d) L'impôt de famille — Les Communes, qui n'imposent pas l'impôt sur la valeur locative, peuvent être autorisées par la G.P.A. à établir l'impôt de famille, qui frappe les richesses de la famille tirées des revenus ou des rentes quelqu'ils soient et de tout autre indice apparent de richesse. Au buts de l'application de l'impôt les G.P.A. établissent les cotisations de revenu correspondant au devis fondamental pour l'entretien de la famille, qui doit être exempte de l'impôt, en relation de la composition numérique de la famille; ils établissent aussi la progressivité des revenus imposables et les taux, qu'on doit partager en raison directe du revenu et en raison inverse de la population, de sorte que le taux le plus

élevé du 12% soit imposé aux revenus qui ne sont pas inférieurs à £.12 millions (art. 30 loi 2-7-1952 n. 703, qui modifie l'art. 118 T.U.).

e) L'impôt sur le bétail, auquel sont sujets les chevaux, les mulets, les ânes, les boeufs, les chèvres, les moutons et les porcs existant dans la Commune (art. 122 T.U.). L'impôt est égal à un taux percevable sur la valeur moyenne de chaque espèce de bétail, et il ne peut jamais dépasser le 2%.

f) l'impôt sur les chiens est obligatoire et il frappe les chiens de toute varieté ou race, distincts en trois catégories: les chiens de luxe, les chiens pour la chasse et pour protection, les chiens pour le commerce, avec un tarif qui est de £.4500, £.1500 et £.500 respectivement pour les chiens de la I, II, et III catégorie.

g) l'impôt sur les voitures, qui est distingué en impôt sur les voitures publiques et impôt sur les voitures particulières. L'impôt sur les voitures publiques frappe les véhicules (exclus les autos), avec lesquels on transporte au moyen d'une récompense, des personnes seules ou avec des marchandises. Cet impôt est distingué en deux catégories: 1) les voitures qui sont en service pour une période fixe mais avec une destination déterminée; 2) les voitures de louage, de remise ou de place, qui font des courses éventuelles au gré des voyageurs. L'impôt sur les voitures particulières frappe les voitures possedées par ceux qui n'excercent pas le service des voitures publiques.

Le maximum de l'impôt sur les voitures publiques est de £.3000 pour la I catégorie et £.2400 pour la II catégorie, dans les Communes de Classe A, tandis qu'il est inférieur, dans les Communes des autres catégories. La mesure de l'impôt sur les voitures particulières est au contraire de £.6000 dans les Communes de Cl.A, s'il s'agit de voitures avec quatre roues et deux chevaux; de £.4000 s'il s'agit de voitures avec un cheval; et de £.3000 de voitures avec deux roues; elle décroit dans les Communes des autres catégories (art. 12 de la loi 29-3-1947 n. 177).

h) l'impôt sur les domestiques, qui frappe tous ceux qui ont à leur service des domestiques de l'un ou de l'autre sexe; et même s'ils prêtent leurs services seulement pour quelques heures de la journée; mais en ce cas l'impôt est réduit de la moitié.

La mesure la plus élevée de l'impôt est de £.1000 pour une ser-

vante (£.3000 pour un serviteur), £.2500 pour une deuxième servante (£.5000 pour un 2 serviteur) et £.5000 pour chaque servante de plus (£.10000 pour chaque serviteur de plus) (art. 32 loi 2-7-1952 n.703).

i) l'impôt sur les pianos et sur les billards, qui frappe tous ceux, même sans en faire usage, qui possèdent ou nolisent un ou plus pianos ou billiards. La mesure la plus élevée de l'impôt est de £.1000 pour les pianos, £.2500 pour les billards et £.5000 pour les billards qui sont en des locaux publics (art. 15 loi 29-3-1947 n. 177).

l) l'impôt de séjour, qui est dû par quiconque loge temporairement en des Communes déterminées d'intérêt touristique (D.L. 24-2-1938 n. 1926); il est perçu pour chaque personne et pour chaque jour sur la base d'un tarif qui est de £.60 dans les Communes de Catégorie A et qui diminue jusque à £.5 dans les Communes de Catég. F.

m) l'impôt de licence, qui est appliqué à la valeur locative présumée, en régime de libre négociation, des locaux destinés aux exercices publics et il est dû par tous ceux qui exercent: 1) des hôtels, des pensions, des restaurants, des cafés, des clubs et d'autres exercices, dans lesquels on vend des boissons, même pas alcooliques; 2) des établissements de bains, des garages, etc.; 3) des salles pour les bals publics, les billards et les autres jeux permis.

Pour les exercices, dans lesquels on vend en détail des boissons alcooliques, l'impôt est appliqué avec un taux qui n'est pas inférieur au 10% ni supérieur au 20%; pour les exercices dans lesquels on vend en détail des boissons vineuses (les alcooliques exclues), les taux sont réduits respectivement au 5% et au 7,50%. Le minimum de l'impôt est de £.1000 (art. 33 et 34 loi 2-7-1952 n. 703).

En outre qui exerce des bars, doit payer, pour chaque machine à café type „exprès", une somme annuelle de £.5000 à £.3000 selon la catégorie à laquelle la Commune appartient (art. 16 D.L. 29-3-1947 n. 177). Pour les établissements de santé et de bains et pour les garages l'impôt est appliqué avec le taux du 4% de la valeur locative presumée en régime de libre négociation. Quant aux salles publiques pour les billards, les bals, etc. l'impôt est appliqué avec un taux qui n'est pas inférieur au 10% ni supérieur au 20% de la valeur locative presumée en régime de libre négo-

ciation (art. 36 et 38 loi 2-7-1952 n. 703, qui ont modifié les art. 187 et 188 du T.U. puisqu'en Italie le blocus des locations existe encore aujourd'hui).

n) l'impôt sur les enseignes, auquel sont soumis les avis, les inscriptions, les reclames, etc. à condition qu'ils soient permanents et visibles au public.

La taxe est appliquée sur la base du nombre des lettres et elle est graduée par catégorie selon l'importance des rues dans lesquelles les enseignes sont exposées et selon la classe de la Commune (art. 17 D.L. 29-3-1947 n. 177).

7) Comme nous avons déjà dit, les établissements publics, comme l'Etat, peuvent imposer non seulement des impôts, mais aussi des contributions et des taxes.

Dans la catégorie des contributions sont comprises:

a) La contribution d'amélioration. Elle se subdivise en une contribution d'amélioration spécifique, et une contribution d'amélioration générique: la première frappe l'accroissement de valeur des biens rustiques et urbains, exceptées les aires édifiables, pour la part d'accroissement de valeur qui dérive par l'exécution d'un ouvrage public communal; la deuxième frappe l'accroissement de valeur des aires édifiables, dérivé de l'expansion du lieu habité et de l'ensemble des travaux publics faits par la Commune.

La contribution d'amélioration spécifique peut être imposée par les provinces aussi, seulement sur les propriétés extra-urbaines, dont la valeur est augmentée par suite de l'exécution des travaux publics provinciaux (art. 236 T.U.).

La somme qu'il faut partager à la charge de tous les proprietaires frappés par la contribution d'amélioration spécifique ne peut excéder les 30 % de la dépense supportée par la Commune ou par la Province pour l'exécution de l'ouvrage et le taux qu'il faut appliquer à l'accroissement de valeur ne peut excéder les 15 % de l'accroissement même. Le taux pour la contribution d'amélioration générique ne peut pas excéder les 15 % de l'accroissement de valeur des aires.

b) La contribution pour les égouts publics. Les Communes des classe de A à D, celles qui sont chefs-lieux de Province et celles qui sont reconnues comme stations de cure, de séjour ou de tourisme,

peuvent être autorisées dans le cas de nécessité absolue à imposer des contributions pour la manutention des égouts de neuve ou de vieille construction, à la charge des proprietaires des immeubles qui directement ou indirectement y déchargent des matières de rebut.

La contribution est annuelle et elle ne peut pas dépasser les 2 cents. pour chaque lire de revenu imposable dérivant des rôles de l'année à laquelle la contribution se rapporte (art. 247 T.U.).

8) Rentrent dans la catégorie des taxes:

a) taxe pour l'occupation d'espaces et aires publiques. Les occupations d'espaces et aires publiques quels qu'elles soient, dans les rues, dans les boulevards, dans les places et dans les marchés publics et pareillement dans les espaces d'aires privées gravées de servitudes de passage public sont soumises à cette taxe. Sont également soumises à cette taxe les occupations d'espaces, qui sont au-dessus ou au-dessous du sol, comme les occupations pour conduites d'eau, gaz, etc. (art. 192 T.U. et art. 39 loi 2-7-1952 n. 703).

b) pour la circulation sur les routes publiques ou soumises au passage public de chars, de voitures et d'autres véhicules à traction animale il faut payer une taxe annuelle obligatoire en faveur des Provinces, des Communes et des Consortiums de ceux qui font usage des chemins vicinaux (art. 214 T.U.). La taxe est encaissée par l'Administration Provinciale pour compte des Communes et des consortiums aussi; et elle est partagée en proportion des dépenses supportées par ces établissements pour l'ordinaire manutention des respectives routes (art. 215 T.U.). La taxe est appliquée pour chaque catégorie de véhicules, sur la base de l'art. 9 D.L. 26-3-1948 n. 261; et elle est encaissée par les exacteurs communaux au moyen de la vente de spéciales marques métalliques (art. 216 T.U.).

c) Les Communes peuvent exercer directement ou donner en entreprise l'exercice avec un privilège exclusif du droit de poids public et de la mesure publique et aussi le privilège exclusif de louer des bains publics à condition que tous ces droits ne revêtent pas un caractère coactif (art. 209 T.U.).

d) Enfin les Communes peuvent administrer directement ou donner en concession le service des publics affichages et des ré-

clames analogues (art. 2 D.L. 9-10-1937 n. 1769 et D. 22-11-1937 n. 2040).

9) Les principes qui règlent la vérification des tributs locaux sont régulièrement analogues aux principes établis pour les tributs de l'Etat.

Dans le 20 sept. de chaque année les contribuables déclarent sur des modèles exprès, chaque source soumise aux taxes et aux impôts institués par la Commune ou par la Province. Sur la base de la dénonciation l'autorité communale (ou provinciale) prédispose les variations qu'il faut introduire dans les rôles de l'année en cours pour le prochain exercice, et aussi la formation des rôles des impôts et des taxes de nouvelle institution (art. 274 et 276 T.U.). Les rôles principaux et supplétifs peuvent regarder seulement les impôts prévus dans les budgets de l'année courante et des deux précédentes (art. 290 T.U.). La délibération de la Yunte est déposée dans le bureau communal ou provincial avec les rôles de l'année courante dans le mois d'octobre pour 20 jours consécutifs; dans le même délai les nouvelles inscriptions ou variations et les éventuelles rectifications des dénonciations sont notifiées aux intéressés (art. 277 T.U.).

Lorsque le recours se rapporte à des vérifications d'office, l'intéressé doit déclarer explicitement la base imposable et le montant du tribut qu'il croit devoir payer; faute de cette indication la Commune est autorisée d'inscrire au rôle jusqu'aux 2/3 de l'imposable vérifié ou rectifié d'office (art. 46 loi 2-7-1952 n. 703).

10) Pour ce qui concerne le contentieux pour les tributs communaux, il faut remarquer que contre l'avis de vérification les contribuables peuvent recourir dans les 30 jours successifs à celui de la notification à la Commission communale, constituée d'un nombre de membres qui varie selon la classe à laquelle la Commune appartient; cette Commission décide, en premier degré sur les réclamations (art. 47, 48, 49 loi 2-7-52 n. 703). Contre la décision de la susdite Commission les interessés peuvent dans les 30 jours de la notification recourir en appel à la Section Spéciale pour les tributs locaux de la G:P.A. (art. 50 loi 2-7-52 n. 703 et art. 14 et 15 D.L. 26-3-48 n. 261).

Quant aux tributs provinciaux, la compétence à pourvoir sur les réclamations appartient en premier degré à la G.P.A. et en deuxième degré à la susdite Section Spéciale de la même G.P.A. (art. 284 T.U.).

Contre les décisions de la Section Spéciale de la G.P.A. soit pour les tributs communaux que pour les tributs provinciaux le recours à la Commission Centrale pour les impôts directs est admis seulement pour des motifs de légitimité. Ce recours, qu'il faut proposer dans les 30 jours de la notification de décision réfutée, ne suspend pas l'inscription au rôle des tributs (art. 284 bis T.U.).

Les susdits recours épuisés, toutes les ultérieures querelles, qui se rapportent à l'éstimation de revenus ou à des vérifications de facto relatives à la matière imposable, peuvent être proposées seulement à l'autorité judiciaire. Le recours à l'autorité judiciaire doit être pourvu du certificat attestant que le payement des échéances d'impôts ou contributions déjà périmées a été effectué (solve et repete); et il doit être proposé dans les 6 mois de la date de la publication du rôle, dans lequel le contribuable a été inclus, sous peine de déchéance (art. 285 T.U.).

11) Dans le mois de décembre, la Junte Communale ou respectivement la Junte Provinciale a soin, sous le guide des rôles de l'année précédente pour les parties qui n'ont pas changé, de la compilation des rôles principaux en y comprenant les parties qui n'ont pas été contestées, les parts non contestées des parties soumises à la rectification d'office, de même que les sommes indiquées par le contribuable dans le recours même. Les parties contestées peuvent être inscrites au rôle, provisoirement après la décision de la première instance, dans la limite la plus élevée du 2/3 de l'imposable déterminé par la Commission (art. 51 loi 2-7-52 n. 703). Pour les parties omises et pour celles définies dans le mérite après la compilation des rôles principaux on constitue des rôles supplétifs dans lesquels on peut comprendre aussi les parties non réglées, limitativement aux sommes résultant de la dénonciation ou des recours des parties, sauf les éventuelles égalisations, après que la procédure est terminée (art. 287 T.U.).

L'EVASION FISCALE EN EGYPTE

CAUSES ET REMÈDES

par

Dr. DELAWER ALY

Directeur de l'Institut des Etudes des Finances Publiques et des Impôts,

Sous Doyen de la Faculté de Commerce Université d'Alexandrie*)

L'évasion fiscale est un moyen d'éluder l'impôt. Cela ne suppose pas nécessairement une violation des lois positives, mais peut consister à s'abstenir de l'activité donnant naissance à la dette fiscale ou à revêtir cette activité d'une forme non assujettie à l'impôt. Cette évasion est souvent rendue possible grâce aux ambiguïtés et aux insuffisances des textes de loi.

La Cour d'Appel Mixte d'Alexandrie avait admis la licéité, pour le contribuable, de bénéficier du silence de la loi fiscale. [1]) La jurisprudence belge en avait fait de même: [2]) De son côté, la doctrine française reconnaît, en principe, au contribuable, le droit de choisir la voie fiscale la moins onéreuse du point de vue fiscal, tant qu'il ne transgresse aucun texte de loi. [3])

Le contribuable pourrait, également, éluder l'impôt en en transférant la charge à un tiers, ou même en violant la loi positive. Ce procédé prend alors plus spécialement le nom de ,,fraude fiscale''. [4])

L'évasion fiscale, qu'elle soit licite ou illicite, aboutit à une diminution du produit de l'impôt. Cela amène l'Etat à combler le déficit des prévisions

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*) *N.d.l.r.* Dr. DELAWER ALY est également le fondateur de ,,La Gazette Fiscale, Commerciale et Industrielle'', organe paraissant en langue française à Alexandrie (B.P. n° 350) et donnant un tableau complet de la doctrine, de la jurisprudence et de la législation égyptiennes.

[1]) V. arrêté du 18 janvier 1947, dans *Répertoire Permanent de Législation Egyptienne*, V° Impôts, Jurisprudence Fiscale, p. 82, 92 s.

[2]) Liège, 14 mars 1944, *Revue critique de Jurisprudence Belge*, 1948, p. 187 s. et note.

[3]) D. LESCOEUR. V. *Bulletin de Documentation Fiscale Internationale*, Vol. 4, n. 4—5, 1950, p. 160—161.

[4]) CAMILLE ROSIER, *La Fiscalité Française devant l'opinion publique*, p. 94 s. CAMILLE ROSIER, *La Fraude fiscale*, Conférence au Conservatoire National des Arts et Métiers, 28 décembre 1935. GASTON JÈZE, *La Fraude fiscale*. GASTON LEROUGE, *Théorie de la fraude en droit fiscal*. D. LESCOEUR, *Pourquoi et comment on fraude le Fisc*. PIETRIE, *Justice et injustice fiscale*. BADIN, *Les mille et une manières de frauder le fisc*. PIATTIER, *L'évasion fiscale*. EDMOND MICHEL, *Les fraudes successorales*. Sir JOSIAH STAMP, *Public Finance* (1936, p. 115). Dr. ABDEL HAKIM RIFAI et Dr. HUSSEIN KHALLAF, *Théorie générale des impôts*, (en arabe), p. 170—184. Dr. MOHAMED ABDALLAH EL ARABI, *Les ressources de l'Etat*, (en arabe), p. 457—495. MOHAMED REZK AHMED, *L'évasion de l'impôt sur les bénéfices commerciaux et industriels et les moyens d'y parer*, (thèse en arabe), 1952. Dr. DELAWER ALY, *Principes de Finances publiques*, (en arabe), p. 121—136. SCAILTEUR, *Le devoir fiscal*, (1950).

en majorant le taux des impôts ou en créant de nouvelles taxes, entraînant, ainsi, un transfert des charges fiscales sur des personnes autres que celles qui devaient les supporter. Le sentiment de l'égalité devant l'impôt est compromis et le public perd la confiance qu'il pourrait avoir dans l'Administration fiscale. Cela amène, fatalement, une recrudescence de l'évasion et même de la fraude fiscale. En effet, le contribuable qui imagine être frustré du fait de l'évasion réalisée par des tiers serait justifié de présenter des déclarations incomplètes ou inexactes pour rétablir un équilibre que l'Administration s'est révélée incapable à maintenir.

Les facteurs qui favorisent l'évasion fiscale.

1. Une constatation générale est que le contribuable ne recourt pas à l'évasion si le taux de l'impôt est raisonnable. ,,Plus le taux de l'impôt est élevé, plus la fraude devient tentante'', écrit Colson. ,,Le taux de l'impôt ne doit point être élevé à un point tel qu'il constitue une prime à la fraude'', affirme, à son tour, Jèze.

2. Une économie dirigée serait, également, source d'évasion, où l'imposition se ferait, non point d'après la faculté contributive, mais selon un plan social préconçu.

3. Le zèle excessif des agents du Fisc qui semblent considérer le contribuable comme un fraudeur qu'il faut dépister.

4. Les formalités interminables et, parfois, vexatoires auxquelles l'Administration soumet le contribuable, ainsi que le caractère complexe de l'impôt.

5. Le fait par la loi fiscale de ne point éviter la double imposition, ce qui laisse croire au contribuable qu'il est tyrannisé par des taxes en cascade.

6. L'ambiguïté des textes législatifs. Trop souvent, cette ambiguïté est due aux modifications faites par un Parlement souverain et inspirées par la politique opportuniste et partisane, sans tenir compte de la technique fiscale.

7. La majoration constante du taux des impôts et de la modification répétée, ce qui ôte au contribuable la possibilité d'établir ses activités sur des bases permanentes et des prévisions logiques.

Les facteurs d'évasion fiscale propres à l'Egypte.

En ce qui concerne les facteurs de l'évasion fiscale en Egypte, on peut relever, outre les causes générales énumérées ci-dessus, des causes plus particulières. Nous les exposons, ci-après, en toute franchise, car c'est en décelant le mal qu'on réussit à guérir l'organisme malade.

I. Le régime fiscal est de création récente en Egypte. Les impôts directs mobiliers remontent à 1939 seulement. Deux années plus tard, en 1941, le législateur introduisit l'impôt sur les bénéfices exceptionnels à une époque où les agents du Fisc n'étaient pas encore familiarisés avec la science des impôts et n'avaient qu'une expérience limitée. Par ailleurs, les contribuables n'avaient pas une notion suffisante de leurs obligations envers la société et de la nécessité de contribuer aux charges, de plus en plus grandes, créées par les services publics et l'organisation étatique moderne.

II. L'absence d'organisation technique de l'Administration. Lorsqu'il a fallu créer, en 1938, un Département administratif pour l'estimation et la perception des impôts, le Ministère des Finances de l'époque a subi les interventions des partis politiques dans le choix du personnel. Celui-ci était, peut-être, représentatif des partis qui se succédaient au pouvoir, en

ce sens qu'il était recruté parmi les parents, amis et alliés de certains politiciens, mais était loin de présenter les qualités techniques nécessaires. Par ailleurs, le personnel insuffisant au point de vue qualité l'était également en nombre. Au début, le nombre des fonctionnaires techniques était de 97 seulement; il a atteint 1097 en 1947 et, actuellement, le chiffre de 1275. L'expert anglais, Mr. Cradock, disait à ce sujet: „The Fiscal Administration has never recovered from its bad start and it was not until 1947 that it began to gain the vast accumulation of errors".

Ce mauvais départ a fait que les affaires se sont accumulées, permettant à nombre de contribuables d'échapper à l'impôt. Les statistiques dressées par l'Administration lors de la révision de la loi fiscale en 1947 ont démontré que les retards dans les liquidations des cas se sont élevés aux taux suivants et ce en base des déclarations présentées par les contribuables:

1939	45 %
1940	65 %
1941	65 %
1942	71 %
1943	90 %
1944	99 %
1945	100 %
1946	100 %

Ces retards ont amené l'Administration à obtenir du législateur des prorogations successives de la prescription fiscale, jusqu'à atteindre dix ans.

Cette incapacité de l'Administration à liquider rapidement les situations fiscales a encouragé l'évasion fiscale. En effet, le contribuable espère toujours pouvoir échapper au contrôle d'une administration lente à se décider et il est tenté de présenter des déclarations incomplètes ou de n'en point présenter du tout.

Une législation caractéristique de cet état de choses est le récent décret-loi n. 240 de 1952 qui décide que l'estimation forfaitaire de l'année 1947 servira de base à l'estimation des bénéfices des années 1948 à 1951. Etrange législation, en effet; qui, en ne recherchant, en définitive, que le rendement global des impôts, s'inspire d'un point de vue bien plus statistique que fiscal: les impôts ne sont plus basés sur la capacité contributive du contribuable ou sur ses revenus réels, mais uniquement sur la taxation forfaitaire d'une année donnée.

III. Notre législation fiscale a été élaborée à la hâte, au lendemain de la suppression des Capitulations par les Accords de Montreux de 1937. La législation française a servi de modèle, alors qu'on s'accorde à reconnaître que cette législation est loin d'être harmonieuse et claire, ce qui a amené sa réforme, incomplète d'ailleurs, en 1948.

IV. L'Administration Fiscale n'a point respecté le principe de l'égalité dans l'application des lois fiscales. Elle a, parfois, opéré des liquidations de l'impôt par voie transactionnelle entre elle et les contribuables, et tout particulièrement les gros contribuables, alors qu'elle poursuivait impitoyablement certains autres contribuables au nom d'une interprétation plus que contestable des lois. Il n'est donc pas étonnant que l'Administration ait, ainsi, été déboutée dans les trois quarts des procès intentés contre les contribuables. Dans son rapport sur l'exercice financier 1950—1951, la Cour des Comptes a relevé que „beaucoup de Directions locales concentrent leurs efforts à vouloir vérifier et redresser les déclarations des petits contribuables, alors que les commerçants qui ont réalisé des bénéfices énormes, surtout pendant la période de guerre, sont négligés". Le dit rapport relève également que cette façon de procéder a permis à certains contribuables

étrangers de liquider leurs activités et de quitter définitivement le pays sans avoir réglé les impôts qu'ils devaient.

Dans un rapport subséquent, la même Cour des Comptes remarque qu'en 1950 et en 1952, les déclarations concernant l'impôt général sur le revenu se sont élevées, respectivement, à 13.089 et à 13.368. Or, il est inconcevable, dans les circonstances actuelles — alors que la circulation fiduciaire est élevée et que les revenus ont augmenté dans une grande proportion — que le chiffre des contribuables dont le revenu est supérieur à Livres Egyptiennes mille par an soit aussi réduit.

Ayant examiné quelles étaient les causes de l'évasion fiscale, abordons rapidement les remèdes qui peuvent être proposés.

La loi n. 14 de 1939 a prévu, en son Livre IV, la possibilité, pour l'Administration Fiscale, de demander la communication des livres et documents de l'entreprise. La loi n. 146 de 1950 a complété ce droit en rendant possible de faire des vérifications auprès d'un tiers des indications concernant un contribuable déterminé.

Cependant, le droit de communication de l'Administration ne saurait, à lui seul, prévenir la fraude fiscale. Nous préconisons le recours aux mesures suivantes:

1. Amender les lois fiscales de manière à les rendre homogènes, en perfectionner la rédaction et parer à l'ambiguïté du texte et à ses lacunes. Cette révision, qui pourrait s'accompagner d'une réforme plus importante en harmonie avec l'économie du pays et avec ses tendances sociales actuelles, devrait être confiée à un Comité spécial composé de financiers, d'économistes et de théoriciens du droit fiscal.

2. Des lois fiscales parfaites ne peuvent être appliquées équitablement et réussir à déjouer l'évasion que si elles sont appliquées par des fonctionnaires compétents. Il faut donc veiller à la formation des fonctionnaires et n'engager que ceux qui ont fait des études techniques spécialisées et les soumettre à un stage sérieux. Les nominations et promotions n'auraient lieu qu'en vertu de concours.

3. Le Département du Trésor des Etats-Unis prête une attention tout particulière à l'interprétation des lois fiscales et leur harmonisation. Un Bureau est affecté à ce but, composé de spécialistes, dont certains sont délégués pour assister aux séances du Congrès et donner tous avis utiles lors des discussions des lois financières.

En Egypte, il serait très utile d'adopter pareil système. En effet, les lois ont été souvent modifiées d'une façon assez désordonnée et les instructions de l'Administration sont loin d'être cohérentes, semant ainsi la confusion dans l'esprit des contribuables.

4. Alors qu'il était Président des Etats-Unis, Mr. ROOSEVELT — s'étant rendu compte de l'étendue des évasions fiscales, ce qui avait entraîné la majoration des impôts et la création de taxes nouvelles — eut recours à l'application du plan dit „*Pay as you go*". Une bonne partie de l'impôt sur le revenu des personnes physiques est perçu à la source et versé, mensuellement, au Trésor. D'autres contribuables doivent opérer des versements trimestriels. En fin d'année, les ajustements nécessaires sont faits en base des bénéfices réels. Si la différence payée en moins lors des déclarations trimestrielles dépasse le dix pour cent et s'il est établi qu'elle est due à la mauvaise foi du contribuable, celui-ci est passible de sanctions sévères. "

D'autres pays, et en particulier la France, connaissent le régime dit des acomptes provisionnels. En Allemagne, les contribuables sont tenus de présenter tous les trois mois une déclaration de leurs revenus en base du

dernier bilan approuvé par l'Administration, quitte à régler les différences dues par la suite.

Pareil système, s'il était adopté en Egypte, permettrait d'augmenter les ressources du Trésor et de lui procurer des sommes immédiatement disponibles, ce qui éviterait la majoration des impôts, et rendrait plus aisé aux contribuables eux-mêmes le paiement des taxes.

5. Inculquer au public la notion du devoir fiscal, par des publications, des conférences, des émissions radiophoniques, etc. Pour lutter contre la fraude fiscale, l'Administration des Etats-Unis est autorisée à divulguer, par radio, les déclarations frauduleuses rendant ainsi publiques les manoeuvres des contribuables de mauvaise foi. Bien plus, les déclarations inexactes, si elles ne peuvent être invoquées par le contribuable, peuvent l'être par des tiers s'ils y trouvent un intérêt, sans que le contribuable fraudeur puisse opposer à ces tiers la non-véracité de ces déclarations.

6. Nécessité de prévoir dans la Constitution un texte donnant au contribuable le droit de discuter le mode d'établissement et de perception de l'impôt.

7. Etablir un contrôle sur les experts fiscaux, qu'il s'agisse d'avocats ou de comptables, et réprimer sévèrement, en qualité de complice, quiconque aide un contribuable à perpétrer une fraude fiscale. Il serait également opportun de percevoir des intérêts moratoires en cas de retard dans le paiement des impôts, comme aussi de rendre l'expert solidairement responsable des montants dus au cas où il aurait prêté son concours à la fraude.

8. Refuser aux contribuables, et en particulier aux étrangers, le droit de quitter le pays, sans un certificat préalable de l'Administration déclarant qu'ils sont en règle du point de vue fiscal.

9. Etablir entre l'Administration Fiscale et les différentes administrations de l'Etat — et en particulier les Douanes et le Contrôle des Changes — un système de coordination, afin de pouvoir retracer des opérations qui tendraient à frauder le Fisc.

10. Instituer des rapports étroits avec les établissements bancaires afin de surveiller le mouvement des fonds qui, bien souvent, dissimulent des opérations commerciales et, par conséquent, source de revenus imposables.

11. Réorganiser l'Administration Fiscale en unifiant et en centralisant les différentes administrations s'occupant de la perception des divers impôts.

12. Fusion ou du moins rapports étroits entre l'Administration du Registre du Commerce et l'Administration Fiscale. La première serait chargée de dresser les listes annuelles des contribuables, de déterminer le genre d'activités commerciales, industrielles et artisanales auxquelles se livrent ces contribuables.

13. Répartir les charges entre les différents Bureaux locaux selon une compétence spécifique et non point géographique. On pourrait s'inspirer, en ce sens, de l'organisation française de ,,La brigade nationale''. Ce corps de fonctionnaires serait chargé d'établir par des comparaisons et des études entre les différents cas qui se présentent, des types généraux de contribuables répartis selon leurs activités, leur résidence, etc.

14. Supprimer les Directions locales, ainsi que le préconisait M. l'expert CRADOCK. En effet, ces Directions absorbent un grand nombre de fonctionnaires dont le rôle se réduit, souvent, en cas de difficulté d'application de l'impôt, à la transmission pour avis du dossier à l'Administration Centrale. La plupart de ces Directions locales ont bien à leur tête des techniciens compétents, mais ceux-ci craignent de prendre des décisions pour éviter toute suspicion.

15. Rattacher les Commissions de recours, actuellement composées de fonctionnaires désignés par le Ministère des Finances, au Conseil d'Etat, et les transformer en une véritable juridiction administrative. Le président permanent relevant de la Cour du Contentieux administratif aura une position stable et pourra se spécialiser en matière fiscale. Telle était, d'ailleurs, l'intention du législateur lors de l'institution du Conseil d'Etat en 1946. Le seul obstacle à la réalisation de ce projet était la présence des Tribunaux Mixtes qui auraient eu compétence à l'égard des étrangers si l'on avait fait des Commissions de recours une véritable juridiction. La suppression des Tribunaux Mixtes en 1949 rend, actuellement, possible la réalisation du projet initial.

Telles sont les grandes lignes d'un programme permettant de combattre efficacement la fraude fiscale.

Le régime politique nouveau inauguré en Egypte se caractérise par une lutte contre la concussion et la fraude dans tous les domaines. Une répression de l'évasion fiscale contribuera, sans aucun doute, à assainir l'économie nationale.

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II

TAX REFORMS

In the spring of 1953, in many countries of the world projects were submitted for discussion, in order to come to certain modifications in the national legislations. For a long time the idea had lain dormant, especially in the Western European countries, that an adaption of the burden of taxation on tax pressure on the economic circumstances was desirable. The heavy expenditure for defence and the aftermath of World War II had compelled the governments to follow more and more the path of the tax increase.

From a cumulation of facts it appeared, that the tax increases were greatly hampering the activity in the countries with the unavoidable consequence, that the tax yields lessened too, which was not in accordance with the budgetary demands. By calling all kinds of exceptional rules into existence, the legislation and especially the sales-tax had grown very complicated.

Quite apart from the aim at unification of the systems of sales-tax in the Western European countries, schemes have been devised for some time in certain countries, in order to arrive at a simpler method of levying for the sales-tax. As already quoted in "Systems of Sales Taxes" (J. C. L. HUISKAMP), Bulletin VI, no. 3, p. 143 et seq., in the Netherlands a draft bill for the amendment of the sales-tax was put forward. The government Pinay created in France, after an exhaustive investigation by Mr. Abelin, the project for the constitution of a "taxe sur la valeur ajoutée" (Bull. VI, no. 4 p. 221 et seq.). In Western Germany a sales-tax reform was also raised.

Let us review the propositions for tax reforms which were introduced with the Chambers in some Western European countries, Canada and Pakistan.

FRANCE.

The French projects were put forward on March 10th in the Chambers. The underlying ideas, which were included in the

amendments, are wholly identical with the proposition made by the government Pinay last year:

1) substitution of the "taxe sur les transactions" and the "taxe à la production" by a "taxe sur la valeur ajoutée" (value added tax).

As a rule the rate will amount to 20 % of the sales-price, with the understanding that may be deducted in any case:

a) the complete "taxe sur la valeur ajoutée", which has pressed on the purchase of the product itself or the raw materials.
b) half of the tax, which has pressed on the purchase of the auxiliary materials.

It may be observed that a tax of the same nature was introduced lately in Cameron.

2) The income-tax undergoes a modification. The rate of the "taxe proportionnelle" will be reduced from 18 % to 16 %.

The "surtaxe progressive", the French surtax for natural persons, will undergo a general reduction by one third, with the outlook that for the assessment years 1953—1955 both taxes will be reduced again by one third.

WESTERN-GERMANY.

Per May 1st. the so-called "Kleine Steuerreform" has been proposed (Minister Schäffer in his speech of February 1953). Owing to the extensive preliminary work, the proposal was assented to by the „Bundesrat" only on the 24th of June, 1953 (Gesetz zur Aenderung steuerlicher Vorschriften und zur Sicherung der Haushaltsführung, Official Gazette 1953, I, 30. p. 413 et seq. The original bill was only slightly amended.

The alterations are in broad outline:

1) The income-tax, only applicable to natural persons, will be reduced by an average of 15 %. The income-tax for corporate bodies (Körperschaftsteuer) remains unaltered, with the understanding, however, that it is the purpose to tax no longer that part of the profit, that will be paid out; by 60 % but by 30 %.

It should be noted that the conception "running costs" will undergo a modification and will be restricted so much, that only those expenses will still be regarded as such insofar as they are not to be considered as unacceptable when the business is conducted

in an economic way and when normal conceptions of trading are observed. Purpose of this regulation is to check irrational expenses, made in connection with the high taxes, in order to benefit from the progressive rate.

2) In the domain of the consumption taxes no further ideas have been developed yet. If the "Kleine Steuerreform" is a success, i.e. if both the activity and the tax yields increase, it is the intention to work out a general consumption tax reform in the spring of 1954.

THE NETHERLANDS.

In a note of March 19th, presented by the prime minister to the Chambers, the following tax-measures are proposed, i.a. and which in June were laid down in a tax reform bill:

1) A reduction of the corporation profits tax from 45 — 52 % to 42½—46 %. For natural persons, the extra income-tax on the business profits will be suppressed, while for everybody the term for compensation of losses will be extended from 4 to 6 years. Moreover, some favourable measures are proposed with regard to the advanced possibilities of writing-off. The so-called tax on profits from speculations, existing as part of the income-tax on alienation of immovables, securities and other items (§ 35 I Income Tax) will be suppressed. These measures are to take effect retroactively from January 1st, 1953.
2) The sales-tax on domestic fuel and footwear will be abolished, while certain excise-duties will be reduced. This last proposed reduction is a consequence of the increased standard of rents, planned for 1954, in the Netherlands, which have been kept artificially low after the war. These measures will come into force on 1.1.1954.

It may be observed that in connection with these measures, the Government contemplates to withdraw the draft-bill introduced in 1952, containing special tax facilities for the furthering of export (See for this subject J. C. L. HUISKAMP: "Tax facilities for the furthering of the export", Bull. VI, no. 5, p. 285 et seq.).

Apart from these proposals, the "super luxury-rate" of the sales tax was reduced, per May 14th, 1953, from 30 to 15 %, and thus is adapted to the normal luxury rate.

ENGLAND.

In his budget speech on April 14th 1953, Mr. R. A. BUTLER, Chancellor of the Exchequer, has announced a general reduction in the burden of taxation with a view to giving an incentive to industry and to encourage private saving.

He has proposed:

1) To reduce the standard rate of income-tax by 6 d. from 9 s. 6 d. to 9 s. in the £ (from 47½% to 45%) and to cut each intermediate stage by 6 d.
   To increase the income limit for age relief from £500.— to £600.— and the housekeeper allowance and dependent relative allowance from £50.— to £60.—.
2) To reinstate the system of initial allowances for capital expenditure on plant and machinery, on the construction of industrial buildings and on mining works.
   These initial allowances will operate for profits-tax as well as income-tax.
3) To withdraw the excess profits levy with effect from January 1st 1954.
4) To reduce the rates of the purchase-tax by about one-quarter.
   For further details, see pag. 117 of this issue.

CANADA.

Mr. DOUGLAS ABBOTT, Minister of Finance, announced in his budget speech of February 19th last a tax-reform per July 1st 1953.

1) The income-tax for natural persons is reduced by 11%. The rates of tax on corporation profits, till now standing at 20% on the first $10,000 and 50% on the excess, is replaced by 18% on the first $20,000 and 47% on the excess. In the Canadian systems of taxes a tax credit is given for the amount, which the dividends constitute of the total income. For 1953, recipients of dividends from Canadian taxable corporations may now reduce their personal income tax by 20% of the dividend amount. The percentage was 10%.
2) The sales of books and other similar objects will be exempted from the 10% manufacturers' sales tax, while moreover some alleviations in the domain of excises are on the programme.

PAKISTAN.

This year's Pakistan Budget contains fiscal changes which are designed to encourage a much higher rate of saving and investment.

1) Anyone who invests up to 20 per cent of his income in approved industrial undertakings is relieved of all income-tax on the money invested in Government securities and in Post-Office savings certificates.
2) Double the normal depreciation allowance is given for any newly installed plant and machinery, and new factories are allowed an initial writing-off.

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MISCELLANEOUS — FAITS DIVERS

Tax exemption for Flood Funds in the United Kingdom.

The Lord Mayor's Flood and Tempest Relief Fund has been recognized by the Inland Revenue as a charity, and is therefore entitled to exemption from income-tax. Any income or interest from the investment of any part of the subscribed capital will be tax free. But the chancellor has refused a suggestion that tax relief should be granted in respect of donations to the Fund.

Taxation Vol. L-1327-468.

Ecuadoran Tax on Air Traffic.

By a decree-law of May 8, 1953, the Ecuadoran Government increased landing fees for both domestic and international aircraft, established a new tax on airplane passenger fares, and imposed a per capita levy on passengers entering Ecuador. Landing fees will range from US $14 to US $92 for international aircraft, and from 17.50 sucres to 1.050 sucres for domestic aircraft. Surcharges for night landings of international aircraft will be made at $10 for the first hour of landing and $2 for each additional hour (170 sucres and 34 sucres, respectively, for domestic aircraft). The ad valorem tax on domestic airplane passenger fares has been increased from 5 per cent to 10 per cent; passengers are to be taxed 5 per cent on fares for outgoing international flights; and a levy of $2 is to be collected for each air passenger entering Ecuador. New domestic airlines are to be exempted from these taxes and fees for a maximum period of one year; domestic airlines that incur operating losses may also be exempted from their payment, partially or wholly, depending on the decision of the National Directorate of Civil Aviation.

The revenue derived from the new tax law is to be applied primarily to the servicing of domestic loans and of a prospective $4 million loan which the Ecuadoran Government expects to obtain from the Export-Import Bank of Washington for financing improvements in the airports of Quito and Guayaquil. Part of the revenue is also to be applied to operating and maintenance expenses of all Ecuadoran airports:
(Sources: El Comercio, Quito, Ecuador, May 5 and 9, 1953).

Argentine — A decree has been issued suspending the requirement of a tax certificate as one of the conditions on which a person may leave Argentina. An exception is made in the case of temporary residents who may have obtained an income from an Argentine source during their stay in this country. The latter will still be required to produce a certificate, showing that they have left no taxes unpaid, before going abroad. However, the fact that they have received the certificate for travelling does not in itself exempt them from the obligation to submit the sworn annual declaration of income, if the latter applies to them.
(Source: Bank of London and South America Ltd. Vol. 18 - nr. 437 - p. 425).

Ecuador — A decree dated 22nd May, published in the local Press on 2nd June, announces that extraordinary taxes are to become effective from the date on which the decree is published in the Registro Oficial. These taxes are as follows:— on all imports, a tax of 1 per cent on their c.i.f. value (which is not to include consular dues); on exports of rice and barley, 1.00 sucre, of cocoa, 2.00 sucres and of coffee, 3.00 sucres per quintal of 46 kilos and on banana exports, all at the rate of 0.25 sucres per stem. Additional taxes ranging from 1 to 2 per cent are to be levied on earned and unearned income. An additional 1 per cent on undistributed dividends or profits of Ecuadorean companies and 1 per cent on foreign companies' net profits which are credited or remitted abroad.
(Source: Bank of London and South America Ltd. Vol. 18-nr. 437 - p. 439).

State-Federal Fiscal Study recommended — United States of America[1]).

President Eisenhower on March 30 sent a special message to Congress recommending the creation of a commission to study governmental functions and fiscal resources and their allocation among the federal, state and local governments of the United States. In his message the President said:

The present division of activities between Federal and state governments, including their local subdivisions, is the product of more than a century and a half of piecemeal and often haphazard growth. This growth in recent decades has proceeded at a speed defying order and efficiency. One program after another has been launched to meet emergencies and expanding public needs. Time has rarely been taken for thoughtful attention to the effects of these actions on the basic structure of our Federal — state system of Government.

Now there is need to review and assess, with prudences and foresight, the proper roles of the Federal, state and local governments. In many cases, expecially within the past twenty years, the Federal Government has entered fields which, under our constitution, are the primary responsibilities of state and local governments. This has tended to blur the responsibilities of local government. It has led to duplication and waste. It is time to relieve the people of the need to pay taxes on taxes.
(Source: Tax Administrators News, April 1953 — p. 38).

State-Federal Fiscal Study recommended — Canada[2]).

The Premier of Quebec announced the appointment of a Royal Commission to study constitutional questions and the subject of taxation rights. The Premier has stated on a number of occasions that Quebec will not give up any of its autonomy by following the example of Canada's nine other provinces in signing an agreement to rent certain tax fields to the Federal government in return for annual payments.
(Source: Taxation, Vol. L. No. 1325 of February 28th, 1953).

Belgique — Evasion fiscale.

Dans le Moniteur Belge du 31 mai 1953 est publié un arrêté royal du 17 avril 1953 créant une commission chargée de l'examen du problème de la répression pénale de la fraude fiscale et en particulier, de celle qui est commise en matière des taxes assimileés au timbre.

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1) See Mr. James W. Martin's study on this subject in *Bulletin* Vol. III No. 2/3, p. 55.
2) See Mr. Perry's study on this subject in *Bulletin* Vol. VII No. 2, p. 65.

IV

REVIEWS — COMPTES RENDUS

UNITED NATIONS: *Government accounting and budget execution.*

Sous le titre ,,Government Accounting and Budget Execution'' les Nations Unies ont publié une étude sur les qualités requises pour le bon fonctionnement d'un système d'administration de magistrature centrale.

Dans ce but quatre pays, possédant un bon système, ont fait l'objet d'une étude approfondie, à savoir la France, les Pays-Bas, la Suède et les Etats-Unis.

Cette étude a été préparée par ordre de la ,,Fiscal Commission and the Economic and Social Council'', afin d'améliorer les méthodes appliquées dans la pratique.

Dr. jur. GLÖGGLER: *Gesellschaftsteuer.* Fachverlag für Wirtschaft und Steuerrecht. Stuttgart 1950.

Cet ouvrage de 145 pages traite uniquement le premier des trois impôts compris dans la ,,Kapitalverkehrsteuergesetz'' de 1934, savoir le ,,Gesellschaftsteuer'', le ,,Wertpapiersteuer'' et le ,,Börsenumsatzsteuer''. C'est un impôt perçu sur des droits obtenus par le premier acquéreur (par exemple en qualité de fondé de pouvoirs ou d'associé commanditaire) dans une société ou une autre personne morale en cas de versements relatifs à des actions non libérées entièrement et dans d'autres cas similaires. L'ouvrage contient le texte de la ,,Kapitalverkehrsteuergesetz'' en question, plusieurs arrêts et d'amples commentaires, ainsi que des notes sur les dispositions d'exécution. Maintenant que tant de sociétés sont en formation, cet ouvrage sera certainement un guide précieux.

State Taxes on Natural Resources. Research Report no. 30. Federation of Tax Administrators, Chicago 37, Ill.

Ce rapport est une étude des sources naturelles pouvant être, en général, objets de propriété ou d'échange et qui sont donc assujettis à l'impôt. L'auteur n'a pas essayé d'analyser tous les impôts applicables, mais il s'est borné aux impôts généraux et plus spécialement à la méthode et à la technique de la perception de ces impôts. Il énumère en outre quelques taxes imposées pour le privilège de pouvoir retirer les produits naturels de la terre ou de l'eau.

RONALD STAPLES: *Key to Profits Tax.* Finance Act 1951 Provisions. Published by Taxation Publishing Company Ltd. London.

Cet ouvrage traite, d'une façon systématique, le Profits Tax, et permet ainsi de s'orienter dans le système de législation compliqué avec ses Finance Acts annuels. L'ouvrage est subdivisé en sept chapitres, tandis que chaque chapitre contient un index alphabétique. Le dernier chapitre, intitulé ,,Legislation on Profits Tax'' donne un aperçu de la législation en matière de Profits Tax depuis 1937, l'année de son introduction, en reproduisant les dispositions des divers Finance Acts relatifs au Profits Tax.

Dr. Otto MODEL: *Kommentar zum Erbschaftsteuer-Gesetz.* 1949. Verlag Dr. Otto SCHMIDT K.G. Köln. Mit Nachtrag 1951.

La loi allemande de 1925 relative aux droits de succession était le résultat d'un long développement. En 1934, un amendement fut adopté, suivi de plusieurs autres après la guerre. Parmi eux la loi du 30 juin 1951, à laquelle est consacré principalement le ,,Nachtrag'', retient spécialement l'attention.

Le commentaire (130 pages) mentionné dans l'entête donne des annotations sur les articles de loi, réfère à la jurisprudence et on y montre les relations avec d'autres lois.

L'auteur expose ici les amendements de 1951 apportés dans la loi: l'Allemand décédé dans les deux ans qui suivent son départ du pays, était considéré comme domicilié de sorte que les droits de succession étaient perçus sur son héritage entier. Cette disposition fut abolie parce que — selon l'auteur — elle se trouva être quasi inexécutable.

Un autre sujet que traite l'auteur est la nouvelle réglementation de l'imposition ,,interzonale'' qui revient à ce que l'héritage d'un *de cujus* dans la zone soviétique et dans Berlin-Est tombe sous l'obligation fiscale *restreinte* (seul ,,l'Inlandsvermögen'' est imposé). Cet ,,Inlandsvermögen'' comprend plus que le ,,Grundvermögen'' qui était seulement imposé auparavant. Mérite encore l'attention, l'exemption de versements d'assurances-vie, si ceux-ci sont destinés au payement du droit de succession. Ce règlement existait déjà depuis quelque temps, mais est actuellement mieux adapté aux exigences de la pratique. Ainsi l'on trouve dans cet ouvrage un grand nombre de sujets traités d'une façon synoptique, lesquels sont d'intérêt pour d'autres pays aussi.

ELLINGER-SCHUG-EHLERS: *Die Veranlagung der Vermögensteuer.* 1953. Verlag Franz VAHLEN G.m.b.H., Berlin und Frankfurt a.M. 276 pages.

L'objet de cet ouvrage est de donner un commentaire de la taxation définitive 1949/51 de l'impôt sur la fortune et la fixation définitive de la valeur unique des articles appartenant au fonds de roulement dans ce rapport.

Aussi le livre traite-t-il les paragraphes y relatifs du ,,Bewertungsgesetz'' et interprète, en outre, les divers paragraphes du ,,Vermögensteuergesetz'' et du ,,Vermögensteuer-Durchführungsverordnung'' du 4 juillet 1952. Il est, à cet effet, divisé en articles. La ,,Hauptveranlagung 1949'' est particulièrement importante, car elle est la base déterminante pour la fixation de la valeur du ,,Lastenausgleich''.

Dr. Walter HUPPERT: *Abschreibungen auf Anlagen in betriebswirtschaftlicher, steuerlicher und volkswirtschaftlicher Sicht.* Schriftenreihe des IFO-Instituts für Wirtschaftsforschung Nr. 15. 1952. München 27, Postschliessfach 11. 63 pages.

La politique d'amortissement sur les immeubles (outillage — machines etc.) des industries est, du point de vue économico-industriel, de grande importance en rapport avec son influence sur le prix de revient et le financement. En fixant le bénéfice imposable, le fisc doit également indiquer les directives à suivre pour l'amortissement prescrit ou toléré.

Le but de cet ouvrage n'est cependant pas d'indiquer une méthode soi-disant infaillible d'amortissement pour les industries et pour le fisc. Ceci serait, d'ailleurs, impossible, car la méthode choisie dépendra de tant de détails particuliers, qu'il ne peut être question d'une seule méthode objective d'amortissement.

Le livre mentionne différents systèmes, avec exemples arithmétiques, et souligne les avantages ou désavantages éventuels, non seulement pour l'industrie, mais aussi pour la communauté.

Leslie W. BOLTON: *Cost accountancy in agriculture,* 1952. Gee and Company (Publishers) Limited 27-28 Basinghall Street. London E.C.2 88 pages.

Ce livre est destiné à la fois à l'expert comptable et au paysan. La plupart des paysans sont classés à présent sous la ,,Schedule D'', pour cela il est indispensable de donner une analyse détaillée de l'actif et du passif pour déterminer le bénéfice imposable. Cet ouvrage vise à servir de guide. Un appendice contient divers exemples pour la compilation des comptes principaux nécessaires, tandis que le livre lui-même donne uniquement un commentaire. Cet ouvrage est, à notre avis, un guide extrèmement pratique.

The Company Prospectus. Gee and Company (Publishers) Ltd. 27-28 Basinghall street. London E.C. 2. 1953.

Cette brochure de 52 pages contient quatre conférences organisées pour la Section de Londres de la ,,Society of Chartered Accountants.'' Les ,,Company Prospectus'' sont approchés successivement du point de vue de la Bourse, du juriste, de l'expert comptable et du placeur institutionnel.

Les divers auteurs sont: F. R. ALTHAUS, Sir Sam H. BROWN, H. A. BENSON et Lewis G. WHYTE.

North American Gasoline tax conference. 1951. Published by Federation of Tax Administrators. Chicago 1952.

La ,,North American Gasoline Tax Conference'' fut tenue du 1er au 30 octobre 1951 à Columbus, Ohio. Les conférences organisées à cette occasion ont été réunies en un volume de 79 pages.

Les orateurs n'ont pas traité uniquement les problèmes fiscaux, mais des problèmes d'économie et techniques ont également fait l'objet d'un certain nombre de conférences. Nous citons ici deux titres: ,,Government contracts'' (a symposium) et ,,Motor fuel tax legislation 1951'', et qui donnent un aperçu des modifications apportées aux taxes sur les combustibles pour moteurs en 1951 par les Etats.

National Tobacco Tax Association 1951. Published by Federation of Tax Administrators. Chicago 1952.

Le recueil des conférences, tenues à la ,,National Tobacco Tax Association'', laquelle eut lieu du 16—19 septembre 1951, est de même nature. Nous citons des sujets traités: ,,The U.S. Supreme Court and State Taxation'', ,,Tax Evasion — New developments'', ,,Legislation regulating trade current developments'', ,,Tax increases and price ceilings''.

L'ouvrage se termine par un aperçu des dispositions de l'impôt sur le tabac dans les divers Etats.

Revenue Administration 1951. Published by Federation of Tax Administrators Chicago 1952.

L'ouvrage ,,Revenue Administration 1951'' contient les conférences, tenues à l'assemblée annuelle de la ,,National Association of Tax Administrators''. Des sujets traités nous citons: ,,Interstate commerce and State taxation in the Supreme Court, 1950 term'', ,,Administration of Truck mileage tax'', ,,Public relations in tax administration''.

Le versement forfaitaire sur les salaires. Commission de la fiscalité. Conseil National du Patronat Français. Janvier 1951, no. 3.

During the time the so-called schedular taxes were still in existence in France, a regulation had been effected in 1948. Under this regulation the employers might deduct from the wages 5 % without recourse (à forfait).

A short time after the schedular taxes disappeared and were subsituted by an income tax which was levied on individuals and which consisted of a proportional and a progressive tax.

As a transitory provision, the 5 % employers' levy was kept, but it was at the charge of the employer. The yield in 1950 amounted to about 140 milliards. In France one is under no illusions as to the "transitory" character of this tax; on the contrary, they are worrying about a possible increase of the rate.

The above mentioned booklet is a guide to this levy. The persons who are liable to this tax are discussed here with a separate consideration of many groups of persons, foreigners too. Further the basis is discussed on which the "versement" is calculated. Some hints on the return have been added to the booklet (70 pages) with the texts of the Act.

Wilhelm BALZER: Bücherei des Steuerrechts, Band 8. *Die Einkommensteuer.* Industrieverlag Carlheinz Gehlsen, vorm. Spaeth und Linde. Berlin 1952.

In summarized form (152 pages) a review is given of this important tax, originally levied by some States, and passed to the Federation in 1920. The Act of October 16th 1934 — prepared by an Act of August 10th 1925 — had great influence up till 1945. After the second war a tendency existed to pass the income tax to the State and a divergence of the legislations developed. A federal Act of August 5th 1949 produced the necessary coordination. By this Act the power of the States has been considerably restricted. The States have to surrender a part — at present 37 % — to the Federation. Of the total tax yield the income tax provided in 1933: 19 %, in 1938: 30 %, in 1948: 37 %, in 1949: 30 %, in 1950: 22 ½ %, in 1951: 24,8 %.

This book has been systemetically arranged. Primiraly the personal tax liability is discussed and after that the real tax liability. The most important part of the book has been devoted to the calculation of the taxable income: profit, the difference between revenues and expenses. Separately are discussed agriculture and other industries etc. Further the assessment regulations, calculation (family allowance, rates etc.) and the provisional payments are considered.

Dr. F. WALL: *Die Privatentnahme.* Institut "Finanzen und Steuern", Bonn am Rhein. (1951).

This booklet (24 pages) was issued in a series published by the Institute "Finanzen und Steuern". It contains a discussion of the withdrawal of capital for private purposes from an economic and fiscal viewpoint. In chapter III about 9 pages are devoted to the fiscal problem in relation to the subject.

Dr. Ernst HEISMANN: *Die betriebliche Altersfürsorge.* (Pensionzusagen und Pensionrückstellungen). Verlag Dr. Otto SCHMIDT K.G. Köln (1953).

In many businesses the employers are entitled to pensions for themselves or, in case of decease, for their widow and children. The employer has different ways to make provision for these claims. This booklet (68 pages) discusses the various problems arising when granting and realising these claims to a pension.

Considered are the ways in which the claims to a pension are effected, the ways to meet them, the system of financing them etc.

In chapter VII some fiscal points are discussed in respect of the granting of pension.

V
WHAT THE CHANCELLOR SAID

In his Budget speech on April 14th, 1953, Mr R. A. BUTLER, Chancellor of the Exchequer, referring to direct taxation, said:

Steel, about which we were anxious a year ago, is now more plentiful, and the prospects are that, except for a few types such as steel plate, there will be enough to meet all requirements, for home and export, in 1953. We also have the productive capacity. Latterly our productive capacity has increased steadily; with continuing investment it will go on increasing and is capable of giving us a much greater increase in output in 1953, provided we take the right course now. We must look beyond the immediate export difficulties and, whatever happens, plan ahead to improve our competitive position. The time and opportunities we now have must be used to re-equip and modernize our factories, to expand capacity in lines which command a ready market abroad, and to develop new lines and new techniques.

This means more investment in productive industry and agriculture. We are making the licensing procedure easier and quicker for the building of new factories or extensions of factories. No manufacturer should now find difficulty or delay in getting a licence for productive work. The need is, however, so great and so urgent that I have come to the conclusion that further help must be given in this Budget.

INITIAL ALLOWANCES

I have in mind now the method first introduced in 1945 by a distinguished predecessor, who was then Sir John Anderson. I propose to reinstate the system of initial allowances for capital expenditure on plant and machinery, on the construction of industrial buildings, and on mining works. These initial allowances will operate for profits tax as well as income-tax. The rate for plant and machinery will be 20 per cent in respect of capital expenditure incurred after today. Besides helping industry this will be available for agricultural machinery and will push forward the drive for more food production at home; 20 per cent was the rate originally granted in 1945 and it seems to me adequate now.

For capital expenditure on the construction of industrial buildings the rate will be 10 per cent — it never went beyond that. In view of the great importance to our national economy of extractive industries and especially of new mining development, and the unique character of some of the expenditure, I propose that the rate of initial allowance for capital expenditure, both at home and oversea, on new mining works — a term that includes such things as pit shafts and oil-wells, but not plant and machinery — shall be at 40 per cent instead of the 10 per cent that was formerly granted. These proposals will cost the Exchequer nothing this year, but for 1954—55 the cost is estimated at £50 million, and thereafter at £84 million in a full year. They should go a long way in assisting industry in the re-equipment, modernization and expansion that is necessary, and will produce an increased demand for investment this year.

The question now is: can we, and should we, stop at this? Will this change alone give our industries sufficient stimulus to get production rising, and rising fast enough to overtake the decline of last year and go on to the new high levels we need? All the evidence suggests that we ought, if we can, to do more. Even with the steps we have taken we are not likely to bring

out the full production of which we are capable. In fact, if we do no more, there is a real danger of a lull, a sort of ebb tide in the economy. We must get out of the slack water, lighten the ship, and give her way. In other words, if we want vision, enterprise, and an expanding future we must, if we can, throw off some of our burdens.

No one would deny that the burden of taxation today is too heavy, both on industry and on individuals, and that it drags down initiative and enterprise. But the question remains, can we afford to do something this year? This is the heart of this Budget. In recent years high taxation has been used as the instrument for warding off inflation. And what a blunt instrument! Even the highest level of taxation that was politically possible — and a far higher level than was desirable — was barely sufficient. It was continually necessary to pile up surpluses to make up the chronic deficiency in private savings — and yet much desirable investment had to be held back.

Now the position is quite different. In my review of this last year, I showed how the restraint of demand, working with the tide of economic forces, and reinforced by our new monetary weapon, transformed the situation. So far from demand pressing too hard upon output, demand was restrained, while productive capacity increased. As the National Income White Paper clearly shows, the nation's savings were sufficient, even with the reduced Budget surplus, to finance all the investment undertaken at home, and, at the same time, to allow the substantial improvement in our balance of payments. The figures in the White Paper on page 6, read with the *Economic Survey*, more than confirm, as some published comment has pointed out, what I have said. This year my economic analysis has shown that the likely level of effective demand will still be less than our productive capacity, so that again we shall not require savings through the Budget of anything like the size of previous years.

The final question is the amount of the surplus required. This cannot be determined by exact calculation. The way we have to take is clear; how far it would be wise to go, when so many of the factors are imponderable, must be a matter of judgment. I have to bear in mind the lull in production and the paramount need for more exports. I have to remember our present export difficulties and I am impressed by the need to use the opportunity we have now to improve our competitive power. I must try to avoid increasing living costs by this Budget. Yet we must not allow inflation to return. Here I can take account of the fact that the Budget will not be operating alone, but in combination with monetary policy. I offer no forecast of the way in which the monetary weapon may be used; for its great virtue is its flexibility. But it appears to me that conditions in 1953, as we now see them, will require broadly a continuation of the monetary measures in operation now.

After weighing all the factors, my judgment is that we should retain an 'above-the-line' surplus of rather more than was realized last year. This is the most careful estimate that I can make, and it approximates to some that have been published. The conclusion I draw from it is that I shall propose no new taxes at all. For the first time since the war — and high time it is — we take a step in a new direction. The reliefs which I shall propose are designed to improve our competitive efficiency, to provide incentives for greater effort, and to encourage private saving.

PURCHASE TAX

I turn first to purchase tax. With the return of more normal conditions the burden of purchase tax at very high rates now presses almost unbearably on trade and on the community as a whole. I have also to think of the buoyancy of the revenue in the longer term and of the stability of the tax. Looking at the tax from these points of view, I have come to the conclusion that, while

there are a few points which require particular treatment, the fact of the matter is that the present rates are too high and the margins between rates too wide. The difficulties are most apparent in the case of goods chargeable at the higher rates, where in some cases the tax has proved heavier than the industries concerned can bear, and a danger of redundancy of labour has shown itself. All this is doing damage to home trade, to skill, craftsmanship and tradition, and is reacting adversely on our all-important export trade.

Last year I was able to introduce some easement in the classes associated with utility schemes and now covered by the D scheme. This year I turn to the rest of the field, and I have decided on an all-round reduction of the rates — in fact, one-quarter off each of the rates in this general field — which will also have the effect of reducing the margins between them. A reduction of the 100 per cent rate to 75 per cent will give some help to the jewellery and silverware trades, where traditional skills must be fostered if they are not to die.

Let me say in passing that the fact that cosmetics happens to be in this group and will come down — if that is the right expression — was not designed as a method of wooing the electorate.

Bringing the $66^2/_3$ per cent rate to 50 per cent will affect the group of articles, including motor-cars, radio and television sets, refrigerators, vacuum cleaners, and washing machines, on which the tax was increased in 1951.

SPECIAL EXEMPTIONS

In present circumstances there is not the same pressure on the resources of the industries concerned, and to keep the tax at the same high level as before is not necessary. The $33^1/_3$ per cent rate comes down to 25 per cent. Many items in daily household use — carpets, linoleum, hardware, cutlery, bicycles, and many others — will be affected. I do not suppose that even this reduction will make purchase tax popular, but it will do much to ease trade and household purchases. Hon. members will be aware that to go further would cause undue strain upon the position of distributors carrying taxed stocks, and would be inconsistent with our acceptance of the recommendations of the committee over which Sir MAURICE HUTTON presided.

There are, however, a few classes of goods where exceptional treatment is necessary. Let me take the committee round the shop window. I propose to exempt from tax batteries for wireless sets. These are required by people living in areas with no mains supply of electricity, especially in the rural areas. The common and trusty umbrella comes down from $66^2/_3$ per cent to 25 per cent. Pianos benefited from relief last autumn, but I believe that nothing short of complete exemption will enable this craft industry to survive and so continue to make its useful contribution to our export trade. Certain fancy goods, as the White Paper shows, will no longer be liable to a specially high rate. Light threewheeled motor-cars come down to 25 per cent, and will be treated the same as motor-cycle combinations. I hope to come to the rescue of electric goods vehicles — the trade is in a difficult condition — by exempting them from the $33^1/_3$ per cent tax on their chassis and so putting them on the same footing as the pedestrian-controlled type.

MOTOR-CYCLES AND TAXI-CABS

For safety's sake I propose to reduce from £1 5*s* to 10*s* the additional motor duty on light motor-cycles up to 250 cc. with side-cars.

Now, taxi-cabs. The position of the London taxi service has recently been examined by a committee under the chairmanship of Lord Runciman. Their valuable report, which was published last week, has been carefully examined by the Government. The committee considered very closely the proposal put forward for relief from petrol duty in favour of the taxi-owners; but for the reasons shown in their report they found themselves unable to

support such a proposal. The Government agree with the committee that there are conclusive objections to such a course, but we accept their recommendations that taxi-cabs of a type approved by the Commissioner of Police in London shall be exempt from purchase tax and that they shall also be freed from all hire-purchase restrictions.

All these purchase tax changes will operate from tomorrow, and as new supplies begin to reach the shops they should lead to a useful reduction in prices. The cost will be £45 million this year and £60 million in a full year.

Before leaving purchase tax I want to refer to the wording of the general resolution relating to amendment of the law with regard to the public revenue. This resolution permits of amendments to the law relating to purchase tax as a whole and also amendments reducing any of the rates of tax generally for all goods to which the rate applies. It does preclude amendments altering the rates of tax on particular items in the purchase tax schedule. I hope this arrangement will commend itself to the committee as sensible and as according with the practice of the last few years in avoiding 'Dutch auction' proceedings.

AMATEUR SPORT

Now for entertainments duty. I am satisfied that last year's new arrangements are on the right lines and should be continued. But I have some proposals in fulfilment of the undertakings I then gave. I have now found a way of helping amateur sport in general. I shall proceed by reference not to the status of individuals but to the purposes of the clubs or other organizations for which they play. On this basis I propose to exempt amateur sport from entertainments duty. The exemption will apply to games, races and other sports provided by a club or similar organization established and conducted for the promotion and furtherance of amateur sport and not conducted or established for profit. It will, of course, be a condition that no remuneration should be paid to anyone actually taking part.

In most sports the amateur definition which I have devised will I think work reasonably well, but it will not do for cricket. In this country cricket occupies a special place among sports not only as forming part of the English tradition but as a common interest helping to bind together the various countries of the Commonwealth. With all this in mind following our discussions last year and as the total receipts of entertainments duty from cricket are so small, I propose to exempt it from the duty altogether.

I propose at the same time to amend the conditions governing the exemption of amateur dramatic and operatic entertainments, so that exemption will no longer be debarred by reason of the payment of an instructor, producer or manager. A simplification is also being made in the rules for calculating duty on season tickets and similar lump-sum payments for admission to a series of football matches or other entertainments.

These concessions of entertainments duty cost very little, about £220,000, and will take effect from April 27th.

Now I leave the playing field and the amateur stage, and I must take the committee through a short series of improvements in our taxation system for which I am providing in the Finance Bill. On the customs side there are only two — a small change in the customs duty on imported mechanical lighter parts, and the renewal of the customs duty of £4 a cwt on hops for a further period of four years.

On the Inland Revenue side, I have again been digging in that mine of useful suggestions, the first report of the Tucker Committee, and have put into the Bill provisions relating to partnerships, to the carrying forward of trading losses for one year for set-off against other income, and to the treatment of payments made by companies towards meeting trading losses of associated companies.

OVERSEA PROFITS

I have also looked at the interim report on the taxation of oversea profits, which Lord RADCLIFFE and his colleagues on the Royal Commission were good enough to produce at my request. I am acting at once on two of their particular recommendations; first on profits which are blocked oversea, and secondly on unilateral relief for double taxation, which will cost £2 ¾ million in 1953-54 and £3 million in a full year.

Next, I am making special provision so that transactions designed to put the capital structure of the iron and steel companies in a suitable state for the marketing of their shares may be carried out without attracting an artificial burden of profits tax.

There are two small loop-holes which I must close. Owing to defective machinery of assessment, residents in the Scilly Isles have enjoyed exemption from tax on income and profits arising there. A clause in the Finance Bill will bring this happy state of affairs to an end. The Bill will also include a provision to nullify a device whereby certain income arising abroad is applied abroad in repayment of loans enjoyed in the United Kingdom and so escapes the normal charge of United Kingdom tax.

I am giving a small stamp duty exemption for documents used by National Savings Groups, and relief from the full rate of conveyance stamp duty in respect of transfers of certain stocks to be issued by local authorities. This should help those local authorities who wish to borrow on the market.

I also propose to give farmers, who feel the heavy weight of the taxation of compensation received for the compulsory slaughter of animals because of foot-and-mouth disease, a fresh opportunity to elect for the so-called herd basis for tax purposes. This will apply to farmers who have suffered the slaughter of a substantial part of a herd in the last year or two.

AGE RELIEF

We can leave the realm of administration and come to some matters of more human interest. Since 1925 there has been a special relief for those who have become 65 or, if they are married men, whose wives have reached this age. The arrangement is that, if the income is no more than £500, a deduction corresponding to that given for earned income (at present two-ninths) is allowed on any investment income that is included. The primary object of this relief was to put the relatively small incomes of those who had saved and invested for old age in the same position as the incomes of those who had earned pensions of like amount. The income limit of £500 has remained unchanged since 1925; I now propose to increase it to £600. I hope that this step, which will cost £1 million in 1953-54 and £2 ½ million in a full year, will bring some relief to certain older, deserving sections of the community.

I also propose an increase to £60 in the allowance for dependent relatives who are incapacitated by old age or infirmity. This allowance has remained unchanged at £50 since 1943—44, although the married, single, and children's allowances were improved last year. At the same time the housekeeper allowance will go from £50 to £60. These proposals will be in line with one of our most cherished traditions; they help those who maintain family unity by caring for the old and keeping a home together for the young. The cost will be £3 ½ million this year and £4 ¼ million in a full year.

RELIEF FOR AUTHORS

It has been said that every Chancellor has a particular favourite — I now come to mine. Authors who spend more than a year on a work, and authors frequently do, are at present entitled to a special spreading arrangement for tax purposes where they sell an interest in the copyright of their work for a lump sum payment. I now propose to extend this relief to the

normal case by allowing the royalties of the first two years after the publication to be spread in the same way as the lump sum. In the case of authors I am extending a concession already made. Others who may wish to spread out their earnings will realize that their case is being considered in broader terms by the Royal Commission.

I also propose to insert a clause in the Finance Bill taking power to accept, in payment of estate duty, chattels normally kept in houses in which her Majesty's Government have an interest; or in houses which have themselves been accepted in payment of death duties and passed on to the National Trust or other bodies. The 'chattels' so described are some of them historic treasures, which the nation cannot afford to lose sight of; like land and houses they will be paid for out of the National Land Fund.

EXCESS PROFITS LEVY

I revert to this year's main theme: the need to give a real boost to production. Let us launch a drive to show the world that our highly concentrated industry and our developing agriculture are taking on a new lease of competition, life and hope. Already I have announced the reintroduction of the initial allowances.

Now for bigger matters. It is clear that we should, in a great industrial society, look ahead for a period longer than one year. We must be in deadly earnest in this struggle for oversea markets. We must go into it as lightly burdened and as nimbly competitive as we can. Last year we balanced our payments. This year we can continue to make way only if we succeed in giving a real fillip to our production. A work of art must have a theme, a Budget must hold out a prospect.

Each time that I have discussed with the leaders of industry, how best to help developing companies and exporters, they have said 'You must relieve the general burden of taxation which falls upon us. Artificial devices are of little value.' Schemes of export subsidies are generally rejected as unfair. I have asked those who speak for industry and commerce whether our banking and financial system provides adequate finance for our exporters. On the whole I believe that it does. If there is a problem here it is rather one of making more widely known the financial facilities that already exist.

I must honestly say after going into this in the spirit in which I opened my speech, with an intense desire to help exports and development, that everyone, including the T.U.C., comes back to the incidence of the excess profits levy on export and development. I explained last year that this levy had to be introduced as a purely temporary measure to deal with the exceptional circumstances of a period of rearmament. I do not propose any changes in the levy as it now exists, and as long as it exists, except to redeem the promises made about minerals and investment-holding companies. When we proposed a tax on excess profits it was on the basis that the rearmament programme was to be at a high rate for a relatively short period, about three years, at the end of which emergency period it would tail off. Now we must expect rearmament to go on at not quite so high a rate, for a long time. This change in the impact of defence diminishes the justification for a continuing excess profits levy. Taking this change into account, and the effect of the levy on exporting and developing business I have reviewed the period for which it must go on.

Now be it noted that we shall get £100 million from this tax in the coming year and rather more than £100 million in the year after, that is, 1954—55. Before the next Budget, and with still a year of yield from the levy, it should be possible to make a full review of the level of taxation and of industrial taxation in particular in the light of the Royal Commission's report. So, after much thought, I have come to the conclusion that the levy should be ended with effect from January 1st, 1954.

I am sure that il will be an encouragement to industry to know that a definite term has been fixed for the operation of this emergency tax. Following the precedent set in 1946 for the ending of the wartime excess profits tax as from the end of that year, the terminating legislation will be included in this year's Finance Bill.

INCOME TAX RATES REDUCED

With initial allowances restored and a term set to E.P.L. British producers will have a chance to plan ahead. But my diagnosis shows that long-term prospects are not enough, an immediate quickener is indicated. I have already referred to the numbing effect of excessive direct taxation. We must banish the hopeless feeling that extra effort is not worth while. I have looked for a method which will relieve corporate industry and which will not forget the vital human element, and I have not lacked advice. The machines may be happier for their allowances, and the calculators for the ultimate demise of E.P.L., but we must look at industry as an organic structure of men and women. So I have examined the classical method — a reduction of the standard rate of income-tax.

I find that more than half the benefit of such a reduction would go to corporate industry, and the rest to individuals in every walk of life, in trade, agriculture or the professions. I therefore propose that the standard rate of income-tax should be reduced by 6*d* — from 9*s* 6*d* to 9*s* in the £. This of itself will cost £64 million in 1953—54 and £73 million in a full year. At current levels of profits and distributions, and that is why I am impressed by its value for industry, the reduction of 6*d* will represent £45 million relief on the undistributed profits of companies — a very potent augmentation of the company reserves available for maintenance, innovation, and development, upon which I trust it will be spent.

I have not forgotten the smaller incomes and with this proposed reduction of 6*d* in the standard rate of income-tax I link proposals to reduce each of the reduced rates by 6*d*. At present the first £100 of taxable income is charged at 3*s* in the £; the next £150 at 5*s* 6*d* and the next £150 at 7*s* 6*d*. These rates, for the same bands of taxable income, will become 2*s* 6*d*, 5*s* and 7*s* respectively. Thus the benefit of the reduction in the standard rate will be carried down, without restriction, to the lowest incomes that are liable to income-tax. The cost of this concession will be £53 million in 1953—54 and £61 million in a full year.

'INCENTIVE BUDGET': FOUR MAIN FORMS OF HELP

I can now sum up my proposals in this incentive Budget. It has been designed to give to our production the extra help which our financial resources permit. This help takes four main forms — the restoration of the initial allowances for plant and machinery, a lessening of the load of purchase tax, a prospect of the future ending of E.P.L., and the reduction of the standard and reduced rates of income-tax. These steps are all designed to encourage industry both as a corporate whole and as a living structure of human beings. Only by increasing our national wealth can we continue in our proud position of leader and banker of the sterling area. Only thus can we regain our economic independence.

Last year we reintroduced the monetary weapon; now on taxation this Budget moves for the first time for many years in a new direction. It does so because the economic circumstances show this to be the right step. The idea of restriction has been so firmly fixed in people's minds it now tends to be regarded as the inevitable line of conduct. But we can now look to a more hopeful way. We can lighten our load and liberate our energies. The fact that we have not been getting the best out of our productive capacity

springs in part from our terrible burden of taxation, which is the highest in the world. Even after this Budget we shall not have let up to a level which can be called even moderate. All reliefs are carefully designed for the prime purpose of giving the incentive for greater production.

FINAL FIGURES

These are the final figures. This year the reduction in purchase tax and other Customs and Excise duties will cost £45 million. The minor easements will cost £7 million. The reduction of income-tax will cost £117 million. This makes a total reduction in taxation this year of £169 million. I have said that the prospective surplus was £278 million. As a result I shall carry forward a surplus above-the-line of about £109 million, some £20 million more than the surplus above-the-line realized last year. This is about the right amount, taking into account the wider economic and financial issues which I have discussed. Next year the cost will be £259 million.

The success of the policy I advocate will depend on the extent to which industry and the public respond to the call. I have confidence in the response of our people. So in this spirit we take a new direction. We step out from the confines of restriction to the almost forgotten but beckoning prospects of freer endeavour and greater reward for effort.

THE BUDGET RESOLUTIONS

The following resolutions were passed by the Ways and Means Committee following the Budget proposals of the Chancellor of the Exchequer:

Income Tax (Charge and Rates for 1953—54)

That:

(*a*) income-tax for the year 1953—54 shall be charged at the standard rate of nine shillings in the pound, and, in the case of an individual whose total income exceeds two thousand pounds, shall be charged in respect of the excess at rates in the pound which respectively exceed the standard rate by the amounts by which the higher rates for the year 1951—52 exceeded the standard rate for that year;

(*b*) Section two hundred and twenty of the Income Tax Act, 1952, as amended, shall be further amended by substituting for the references to thirteen, eight and four-nineteenths references to thirteen, eight and foureighteenths.

Any change in the rates of tax for the year 1953—54 as compared with the previous year shall not affect the amounts of tax deductible or repayable under Section one hundred and fifty-seven (pay as you earn) of the Income Tax Act, 1952, before the eighth day of June, nineteen hundred and fifty-three, but this shall not prevent the resulting over-deductions and under-repayments from being adjusted subsequently by means of diminished deductions or increased repayments under that section, or, if need be, by an assessment.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Income Tax (Sur-tax Rates for 1952—53)

That income-tax for the year 1952-53 shall be charged, in the case of an individual whose total income exceeded two thousands pounds, at the same higher rates in respect of the excess as were charged for the year 1951—52.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

INCOME TAX (PERSONAL RELIEFS)

That Part VIII (Personal Reliefs) of the Income Tax Act, 1952, shall be amended as follows:

(*a*) in subsections (2) and (3) of Section two hundred and eleven (old-age relief) for the references to five hundred pounds (which refer to the income limit for the full relief under subsection (2)) there shall be substituted references to six hundred pounds;

(*b*) in Sections two hundred and fourteen, two hundred and fifteen, two hundred and sixteen and two hundred and eighteen (reliefs for housekeepers, dependent relatives and others) for the references to fifty pounds, except the reference in subsection (4) of Section two hundred and sixteen (where it does not relate to the amount of the relief), there shall be substituted references to sixty pounds, and for the reference in subsection (1) of Section two hundred and sixteen, as amended, to one hundred and thirty-five pounds (which refers to the income limit of the dependent relative) there shall be substituted a reference to one hundred and forty-five pounds.

Provided that the changes effected by this resolution shall not affect the amounts of tax deductible or repayable under Section one hundred and fifty-seven (pay as you earn) of the Income Tax Act, 1952, before the eighth day of June, nineteen hundred and fifty-three, but this shall not prevent the resulting over-deductions and under-repayments from being adjusted subsequently by means of diminished deductions or increased repayments under that section, or, if need be, by an assessment.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

INCOME TAX (PARTNERSHIPS)

That new provision shall be made as to the amount of tax chargeable, and the persons on whom it is to be charged, where there is a change in the persons carrying on a trade, profession or vocation, or in the manner in which partners share partnership profits.

INCOME TAX (ADJUSTMENT OF GENERAL INCOME BY REFERENCE TO BUSINESS LOSS)

That provision shall be made as to the circumstances in which in giving relief in respect of a business loss against tax on general income under Section three hundred and forty-one of the Income Tax Act, 1952, the loss is to be set off primarily against earned, or primarily against unearned, income, and that, where the person sustaining the loss has a wife or husband, the relief shall be given against that person's own income in preference to the wife or husband's or (at the claimant's option) against that person's own income only and not against the wife or husband's.

INCOME TAX (PAYMENTS BETWEEN ASSOCIATED COMPANIES IN RESPECT OF LOSSES)

That payments made by a company to an associated company in respect of losses sustained by it shall be chargeable to income-tax (including tax for a past year of assessment) as a receipt of the payee company, and to the extent they are so chargeable shall be allowed as a deduction for income-tax purposes to the other.

INCOME TAX (EXTENSION OF CAPITAL ALLOWANCES ETC., FOR INDUSTRIAL BUILDINGS AND STRUCTURES)

That it is expedient to authorize all such charges to income-tax as may arise from treating as industrial buildings or structures for the purposes

of Chapter I of Part X of the Income Tax Act, 1952, buildings or structures used in connection with the fishing industry or in connection with husbandry or forestry outside the United Kingdom.

Income Tax (Overseas Profits not remittable to the United Kingdom)

That it is expedient to authorize all such charges to income-tax as may arise from any provision as to the treatment for taxation purposes of overseas profits or income not freely remittable to the United Kingdom (including profits or income chargeable to income-tax for the year 1952—53 or to the profits tax or the excess profits levy for a past chargeable accounting period).

Income Tax (Abolition of Limit on Unilateral Relief for Double Taxation)

That it is expedient to authorize all such charges to income-tax (including charges for past years of assessment) as may arise from the repeal of proviso (*a*) to subsection (2) of Section three hundred and forty-eight of the Income Tax Act, 1952, or of paragraph 2 of Part II of the Seventeenth Schedule to that Act, or from the repeal applying to past profits for purposes of the profits tax or the excess profits levy where it applies to them for the purposes of income-tax.

Income Tax (Postponement of Capital Allowances to secure Double Taxation Relief)

That it is expedient to authorize all such charges to income-tax as may result from any provision enabling a person claiming double taxation relief in respect of income-tax, the profits tax or the excess profits levy to postpone the whole or part of any capital allowances.

Income Tax (Charge on Overseas Income applied in Repayment of Advances)

That income-tax shall be charged on income arising from securities or possessions out of the United Kingdom which is applied out of the United Kingdom directly or indirectly in or towards the satisfaction, or so that the money or property representing it is available for the satisfaction, of a debt for money lent in the United Kingdom or interest thereon, or of a debt for money lent outside the United Kingdom if the money is (whether before or after the income is so applied) received in or brought to the United Kingdom.

Income Tax (Relief for Copyright Royalties etc.)

That it is expedient to authorize all such charges to income-tax (including charges for past years of assessment) as may arise from extending the treatment under Section four hundred and seventy-one of the Income Tax Act, 1952, of certain lump-sum payments in respect of copyright, with or without modifications, to payments of or on account of royalties or sums payable periodically.

Income Tax (Election for Herd Basis on Compulsory Slaughter of Farm Animals)

That it is expedient to authorize all such charges to income-tax as may arise from enabling elections for the herd basis under the Twentieth Schedule to the Income Tax Act, 1952, to be made in relation to herds of any class on the compulsory slaughter of animals belonging to a herd of that class, including elections affecting years of assessment before 1953—54 but not (except as to relief for losses) years before 1951—52.

Income Tax (Allowances for Expenditure on Repair of Buildings)

That the provisions of the Income Tax Acts relating to allowances and charges in respect of capital expenditure shall be amended (with retrospective effect) with respect to expenditure on repairs to buildings and structures, and in particular shall be so amended that relief from income-tax shall not be allowed, or be deemed ever to have been allowable, in respect of the same expenditure both by way of the repairs allowance under Schedule A and by way of the capital allowances in respect of industrial buildings or structures.

Income Tax (Post-war Refunds of Excess Profits Tax)

That Sections forty-three to forty-five of the Finance (No. 2) Act, 1945 (which provide for charging income-tax for the year 1946—47 or 1947—48 on post-war refunds of excess profits tax, and for the deduction of tax at the standard rate for the year 1946—47), shall have effect, and be deemed always to have had effect, notwithstanding any time limit imposed by any other enactment on the assessment or recovery of income tax, and any assessment to income-tax which may be required by reason of the operation of those sections in relation to any payment of or on account of any such post-war refund may be made at any time not later than three years after the end of the year of assessment in which the payment is made.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Profits Tax
Profits Tax (Miscellaneous Charges)

That it is expedient to authorize all such charges to the profits tax (including charges for past chargeable accounting periods) as may result:

(*a*) from amendments of the law relating to the computation of profits or gains or losses for income-tax purposes or to allowances, deductions or charges for income-tax purposes;

(*b*) from the inclusion of the Scilly Isles in an income-tax division;

(*c*) from any provision as to the treatment for taxation purposes of overseas profits or income not freely remittable to the United Kingdom (including profits or income chargeable to income-tax for the year 1952—53 or to the profits tax or the excess profits levy for a past chargeable accounting period);

(*d*) from the repeal of proviso (*a*) to subsection (2) of Section three hundred and forty-eight of the Income Tax Act, 1952, or of paragraph 2 of Part II of the Seventeenth Schedule to that Act, or from the repeal applying to past profits for purposes of the profits tax or the excess profits levy where it applies to them for the purposes of income-tax;

(*e*) from any provision enabling a person claiming double taxation relief in respect of income-tax, the profits tax or the excess profits levy to postpone the whole or part of any capital allowances.

Excess Profits Levy
Excess Profits Levy (Miscellaneous Charges)

That it is expedient to authorize all such charges to the excess profits levy (including charges for past chargeable accounting periods) as may result:

(*a*) from excluding from paragraph 10 of the Ninth Schedule to the Finance Act, 1952 (which enables deductions to be spread over more than one

accounting period), any deduction for expenditure incurred more than twelve months after the end of the period of charge;

(*b*) from amendments of the law relating to the computation of profits or gains or losses for income-tax purposes or to allowances, deductions or charges for income-tax purposes;

(*c*) from any provision as to the treatment for taxation purposes of oversea profits or income not freely remittable to the United Kingdom (including profits or income chargeable to income-tax for the year 1952—53 or to the profits tax or the excess profits levy for a past chargeable accounting period);

(*d*) from the repeal of proviso (*a*) to subsection (2) of Section three hundred and forty-eight of the Income Tax Act, 1952, or of paragraph 2 of Part II of the Seventeenth Schedule to that Act, or from the repeal applying to past profits for purposes of the profits tax or the excess profits levy where it applies to them for the purposes of income-tax;

(*e*) from any provision enabling a person claiming double taxation relief in respect of income-tax, the profits tax or the excess profits levy to postpone the whole or part of any capital allowances.

Excess Profits Levy (Iron and Steel Companies)

That, if under any Act of the present session a body corporate is set up having the function of returning to private ownership the iron and steel undertakings of companies which become its subsidiaries under the Act, then for the purposes of the excess profits levy the standard profits of any such company shall be computed as if the amount or value of such distributions made by it as may be determined under any Act giving effect to this resolution were sums paid by it in cash by way of repayment of its share capital.

(Source: *Taxation* Vol. LI. No. 1332 of April 18th, 1953).

I

REGIME FISCAL COMPARE DES RESERVES DE SOCIETES ET CAPITALISATION DE BENEFICES EN FRANCE ET EN ALGERIE

par

MAITRE ÉMILE BROCHIER

Conseil Juridique et fiscal de Sociétés. Licencié en Droit, Diplomé de l'Ecole de Notariat de Lyon. Diplomé Notaire à Alger. Membre du Comité Directeur de la Compagnie des Experts Professionnels et Judiciaires et des Conseils Techniques de l'Afrique du Nord.

Dans une étude doctrinale qui a paru dans ce Bulletin vol. VII, Number 1, 1953, pages 30 à 38, nous écrivions, in fine ce qui suit:

> „Il est regrettable qu'en l'état actuel de la législation algérienne et par application du principe de l'interprétation littérale des textes fiscaux, il ne soit pas possible d'obtenir pour les Sociétés algériennes des allègements au moins identiques à ceux dont profitent les Sociétés métropolitaines, et il serait à souhaiter que l'Assemblée Algérienne, avec le concours de la Direction Générale des Finances, se penche sur ces problèmes dont une solution libérale rendrait service à l'Economie Algérienne."

Nous sommes heureux aujourd'hui de reconnaître que satisfaction a enfin été obtenue à la suite de nombreuses démarches auprès des pouvoirs publics, de tous les organismes représentant les diverses activités en Algérie.

En effet, le Journal Officiel de l'Algérie du 29 Mai 1953, a publié un arrêté gubernatorial du 22 mai, fixant les modalités d'application et la date d'entrée en vigueur de l'article 57 de la Décision de l'Assemblée Algérienne n° 53032 homologuée par Décret du 21 mai 1953, ayant pour objet d'étendre à l'Algérie, les règles fixées par le Décret du 9 décembre 1948 et la Loi du 31 décembre 1949, concernant, notamment certaines exemptions de l'impôt sur

le revenu des capitaux mobiliers, pour éviter une double taxation et une assimilation au régime fiscal métropolitain, pour la taxation des opérations de capitalisations de bénéfices, d'incorporation de réserves ou de provisions, de fusions de sociétés et de remboursement d'apports ou de primes d'émission.

Ce nouveau texte qui intéresse l'aménagement du régime fiscal des valeurs mobilières en Algérie, est une application partielle de la législation métropolitaine, sous réserve des adaptations justifiées par les différences existant entre les codifications métropolitaines et algériennes; le régime fiscal de l'impôt sur le revenu des personnes physiques (taxe proportionnelle et surtaxe progressive) et de l'impôt sur les sociétés qui a remplacé les anciennes contributions, n'étant pas encore entièrement applicable ici.

Pour harmoniser notre précédent article avec la situation actuelle, nous donnerons aujourd'hui une brève analyse de ces nouvelles dispositions fiscales, suivie d'un tableau comparatif entre les tarifs de la France métropolitaine et ceux de l'Algérie, en cette matière.

Dans son article 1er, l'arrêté du 22 Mai 1953, modifie les paragraphes 1er et 3 de l'article 123 du Code fiscal algérien des Valeurs mobilières, pour éviter une double imposition dans le cas suivant:

„Lorsqu'une société française par actions ou à responsabilité „limitée possède soit des actions nominatives d'une société „française par actions, soit des parts d'intérêts d'une société „française ou à responsabilité limitée, les dividendes attribués „par la première société sont, pour chaque exercice, exemptés „de l'impôt sur le revenu des capitaux mobiliers dans la „mesure du montant net, déduction faite de l'impôt sur le „revenu des capitaux mobiliers, des produits des actions ou „des parts d'intérêt de la seconde société touchés par elle au „cours de l'exercice, à condition:

„1° que les actions ou parts d'intérêt possédées par la „première société représentent au moins 20 p. 100 du capital „de la seconde société;

„2° qu'elles aient été souscrites ou attribuées à l'émission „et soient toujours restées inscrites au nom de la Société ou „qu'elles soient détenues depuis deux années consécutives au „moins, sous la forme nominative.

„Toutefois, aucun pourcentage minimum ne sera exigé . . ."

En cas de fusion, le bénéfice des dispositions qui précèdent, est transporté de plein droit de la société absorbée à la société absorbante ou nouvelle.

Elles s'appliquent également aux Sociétés françaises ayant une participation dans la Société absorbée pour les actions nominatives ou parts d'interêts dans la société absorbante ou nouvelle qu'elles ont reçues sans les avoir souscrites à l'émission, en remplacement des actions ou parts d'intérêts de la Société absorbée, à charge par elles de justifier que ces actions ou parts d'intérêts ont été souscrites ou attribuées à l'émission et sont toujours restées inscrites au nom de la Société absorbée ou que leur acquisition est antérieure de deux ans au moins à la distribution des dividendes et autres produits susceptibles d'être exonérés.

Les Sociétés par actions, les Sociétés à responsabilité limitée, les Sociétés en commandite simple et les Sociétés en nom collectif, de nationalité française, sont autorisées en Algérie jusqu'au 31 mai 1955, à distribuer entre leurs associés actionnaires ou porteurs de parts, les valeurs mobilières existant dans leur portefeuille au 31 décembre 1952 avec tous les droits et éléments qui s'y rapportent, moyennant l'application d'une taxe spéciale de 5 % sur la valeur des titres appréciés à la date de la distribution.

C'est là une disposition analogue à celle prévue dans la Métropole par l'article 3 du Décret n° 52.804 du 30 Juin 1952.

Toutefois, cette taxe n'est pas admise en déduction pour l'assiette des impôts sur le revenu.

Les articles 3 à 8 fixent les modalités de déclaration et d'application de cette taxe spéciale sur les distributions de portefeuille.

Les articles 9 à 11 concernent la même opération pour les Sociétés nationalisées ou partiellement nationalisées ou, encore, pour les Sociétés nationales d'investissement.

Mais ce sont principalement les articles suivants du dit arrété, 12 à 17, dont l'analyse va suivre, qui rentrent dans le cadre de notre Etude. Ils sont, en fait, une mise en concordance de la législation algérienne avec la législation métropolitaine en ce qui concerne, d'une part, l'application de l'impôt sur le revenu des valeurs mobilières (I.R.V.M.) d'une façon générale, et, d'autre part, la nouvelle taxation des capitalisations de bénéfices, incorporations des réserves et provisions de Sociétés.

En premier lieu, l'impôt sur le revenu des valeurs mobilières (I.R.V.M) au taux de 18 %, tel qu'il resulte de l'article 35 du Code algérien des valeurs mobilières, s'appliquant aux dividendes, intérêts, arrérages, bénéfices et produits des sociétés, s'entend désormais, de toutes les sommes ou valeurs attribuées à quelque époque que ce soit aux associés et porteurs de parts, à un autre titre que celui de remboursement de leurs apports ou de primes d'émission.

Toutefois, une répartition n'est réputée présenter le caractère de remboursement d'apport ou de prime d'émission, que si tous les bénéfices et réserves autres que la réserve légale, ont été auparavant répartis.

Ne sont pas considérés comme des apports:

1°) Les bénéfices, réserves ou provisions de toute nature, incorporés au capital;

2°) Les sommes incorporées au capital ou aux réserves (primes de fusion) à l'occasion d'une fusion de sociétés.

En second lieu, les capitalisations des bénéfices ou incorporations directes de bénéfices au capital, sont complètement assimilées aux incorporations de réserves.

Les incorporations de réserves s'étendent aux provisions de toute nature.

Les articles 117, 118, 119, 128 et 128 bis du Code algérien des valeurs mobilières relatifs aux fusions de sociétés, plus values résultant d'attributions gratuites d'actions, parts ou obligations à la suite de fusions et les distributions de réserves, sous forme d'augmentation de capital, sont abrogés purement et simplement.

Il en résulte que, désormais, les capitalisations de bénéfices et les incorporations de réserves et provisions de toute nature, son soumises à un droit d'enregistrement relevant des articles 443 et du nouvel article 445 ter du Code algérien de l'Enregistrement.

En vertu de l'article 443, les actes de formation, de prorogation de sociétés ou d'augmentation de capital qui n'entrainent pas transmission de biens meubles ou immeubles entre les associés sont assujettis au droit de 1 fr p. 100 fr.

L'article 445 ter institue un nouveau droit de 6 % non cumulatif avec le précédent s'appliquant:

1°) aux actes portant augmentation, au moyen de l'incorporation de bénéfices, de réserves ou de provisions de toute nature, du capital des sociétés passibles de l'impôt sur le revenu des valeurs mobilières, établi par l'article 35 du Code fiscal algérien des valeurs mobilières.

2°) aux actes de fusions desdites sociétés.

Ce taux est réduit à 2 p. 100 pour les actes portant incorporation au capital de la réserve spéciale de réévaluation visée à l'article 17 du décret de l'arrêté gubernatorial du 31 mars 1949, sur la revision des bilans.

Toutefois, le droit d'apport en société demeure exigible au taux de 1 p. 100 lorsque les bénéfices, réserves ou provisions incorporés au capital, ont déjà supporté l'impôt sur les bénéfices industriels et commerciaux et l'impôt complémentaire sur l'ensemble du revenu.

Cette dernière disposition aura besoin d'un commentaire et de précisions de la part de l'Administration.

Ces nouvelles mesures ont été concrétisées par un article 104 bis du Code algérien des valeurs mobilières sous le titre „Capitalisation de bénéfices, réserves ou provisions et fusions de sociétés" ainsi conçu:

„Sont exonérés de l'impôt sur le revenu des valeurs mobilières:

1°) les bénéfices, réserves ou provisions de toute nature incorporés au capital;

2°) en cas de fusions de sociétés, les attributions gratuites d'actions ou de parts sociales (parts de capital) de la société absorbante ou nouvelle aux membres de la société absorbée;

3°) les remboursements consécutifs à la liquidation de la société et portant:

a) sur les réserves, provisions ou bénéfices incorporés au capital antérieurement au 31 mai 1953;

b) sur les sommes incorporées au capital ou aux réserves (primes de fusion) à l'occasion d'une fusion antérieure au 31 mai 1953, si, et dans la mesure où elles ont supporté à raison de la fusion, l'impôt sur le revenu des valeurs mobilières."

Comme corrollaire, l'article 154 du Code algérien des impôts directs a été modifié comme suit, dans ses deux derniers alinéas:

„Sont également exonérées de l'impôt complémentaire sur l'ensemble du revenu, dans les cas de distributions de bénéfices, réserves

ou provisions de toute nature, sous la forme d'augmentation de capital ou de fusions de sociétés, l'attribution gratuite d'actions ou de parts-sociales ou les plus values résultant de cette attribution.

„Les distributions provenant ultérieurement de la répartition entre les associés ou actionnaires de bénéfices, réserves ou provisions de toute nature, incorporés au capital ou des sommes incorporées au capital ou aux réserves (primes de fusion) à l'occasion d'une fusion de sociétés, sont comprises dans les bases de l'impôt complémentaire sur l'ensemble du revenu. Toutefois, les distributions effectuées à la suite d'incorporation de bénéfices, réserves ou provisions au capital ou de fusion de sociétés réalisées antérieurement au 31 mai 1953, ne sont comprises dans les bases de l'impôt complémentaire que dans la mesure où elles sont soumises à l'impôt sur le revenu des capitaux mobiliers."

Pour permettre de se rendre compte des modifications qui viennent d'être ainsi apportées à ce régime fiscal des Sociétés, nous avons cru bon de présenter un tableau comparatif des droits perçus par l'Administration de l'Enregistrement dans la Métropole et en Algérie sur les opérations de constitutions de sociétés, d'augmentations de capital par capitalisation de bénéfices ou incorporations de réserves, les fusions partielles et totales et divisions de sociétés:

I.

TARIF DE LA FRANCE METROPOLITAINE

Les droits perçus par l'Administration de l'Enregistrement, sont les suivants:

A. CONSTITUTIONS

a) Apports purs et simples.

Droit d'apport sur la valeur nette des apports mobiliers et immobiliers	1.40 %
Droit de transcription sur la valeur brute des apports immobiliers	2.80 %
Taxe hypothécaire sur la valeur brute des apports immobiliers	0.70 %

b) Apports à titre onéreux Droit de mutation ordinaire, selon la nature des biens et, éventuellement, taxe de première mutation et taxe hypothécaire.	
c) Régimes spéciaux	
Apports purs et simples aux associations en participation d'études et de recherches	Droit fixe de 690 frs
Apports purs et simples aux sociétés de construction visées à l'art. 1er de la Loi du 28 Juin 1938 et à l'art. 80 de la loi n° 53.80 du 7 février 1953	Droit fixe de 1.380 frs
Apports purs et simples de marchés concernant la construction d'immeubles à usage principal d'habitation constituées entre entrepreneurs en vue de l'exécution de ces marchés (Art. 4 du décret du 6 mai 1953)	Droit fixe de 1.380 frs
Apports purs et simples aux sociétés ayant exclusivement pour objet d'exercer dans les départements d'outre mer une activité considérée comme essentielle et constituées par acte enregistré avant le 1er Janvier 1957 (art. 19 du décret du 13 février 1952	0.25 % Exonération du droit de transcription
Apports purs et simples aux sociétés d'habitation à loyer modéré	Gratis
B. PROROGATIONS	
Droit d'apport sur l'actif net social avec exonération du droit de transcription	1.40 %
C. AUGMENTATIONS DE CAPITAL	
a) Par de nouveaux apports sur le montant des apports complémentaires	mêmes droits qu'en cas de constitution
b) Par incorporation de primes d'émission, d'apport ou de fusion ayant donné lieu lors de leur versement ou de leur constatation, au paiement du droit d'apport	Droit fixe de 690 frs

c) Par incorporation au capital d'une société de famille ou au capital d'une société issue d'une fusion, des provisions pour renouvellement des stocks ou des réserves spéciales de réévaluation constituées par l'exploitant individuel ou par les Sociétés fusionnées	Droit fixe de 690 frs
d) par incorporation de bénéfices, de provisions ou de réserves autres que celles visées ci-dessus:	
1°) Sociétés non passibles de l'impôt de distribution	1.40 %
2°) Sociétés passibles de l'impôt de distribution:	
– capitalisation de provisions ou d'indemnités pour renouvellement des stocks détruits par faits de guerre et ayant donné lieu au paiement de la taxe spéciale de 12 %	1.40 %
– capitalisation de bénéfices, réserves ou provisions constituées antérieurement à l'option des sociétés de personnes pour le régime fiscal des sociétés de capitaux ou à leur transformation en sociétés de capitaux et passibles entre les mains des associés en nom, des impôts directs frappant les réalisations de bénéfices	1.40 %
– capitalisation de réserves spéciales de réévaluations ou de réserves assimilées (réserves constituées par les sociétés sinistrées en contrepartie d'indemnités de dommages de guerre, réserves dégagées à la suite du remplacement par l'Etat de navires sinistrés, réserves spéciales des sociétés d'assurances pour fluctuations des changes ou pour cautionnement à l'étranger, réserves des sociétés alsaciennes ou lorraines provenant de la réévaluation des immobilisations au 1er Janvier 1945	2 %
– capitalisations de bénéfices, de provisions ou de réserves autres que celles visées ci-dessus	6 % (faculté du fractionnement sur trois ans.)

D. FUSIONS ET DIVISIONS DE SOCIETES ANONYMES EN COMMANDITE PAR ACTIONS OU A RESPONSABILITE LIMITEE

a) Régime permanent.

1° Apports purs et simples

Droit d'apport sur la fraction de l'actif net des sociétés fusionnées ou divisées correspondant au capital appelé et non remboursé de ces sociétés	1.40 %
Droit d'apport sur la fraction de l'actif net des sociétés fusionnées ou divisées correspondant au boni de fusion	6 % (faculté de fractionnement sur trois ans).
Apports immobiliers (exemption de droit de transcription et de taxe hypothécaire.)	

2° Apports à titre onéreux

Prise en charge par la ou les sociétés absorbantes du passif des sociétés fusionnées ou divisées- (droit fixe de 140 frs et le cas échéant, taxe de première mutation).

Autres apports à titre onéreux (droits de mutation ordinaire selon la nature des biens et, éventuellement, taxe de première mutation.)

b) Avantages supplémentaires applicables aux actes enregistrés avant le 31 décembre 1953.

1° Apports purs et simples:

Droit d'apport sur la fraction de l'actif net des sociétés fusionnées ou divisées correspondant au capital appelé et non remboursé de ces sociétés	0.25 %
Droit d'apport sur la fraction de l'actif net des sociétés fusionnées ou divisées correspondant au boni de fusion	3 %

2° Apports à titre onéreux de toute nature (Report à la mutation subséquente de la taxe de première mutation).

E. REDUCTIONS DE CAPITAL

1° Sans distribution d'actif	Droit fixe de 690 frs
2° Avec distribution d'actif (même régime qu'en cas de partage de sociétés.)	

F. DISSOLUTIONS DE SOCIETE

1° Pure et simple	Droit fixe de 1.380 frs
2° Avec partage de l'actif social:	
a) Droit de partage sur acquets sociaux (apports en numéraire, biens acquis sur la société)	0.70 %
b) Reprise de biens en nature par l'apporteur ...	Droit fixe de 690 frs
c) Reprise de biens en nature par un associé autre que l'apporteur (Droits de mutation ordinaires selon la nature des biens et, eventuellement taxe de première mutation).	

II.

TARIF ALGERIEN

En Algérie, les droits perçus par l'Administration de l'Enregistrement depuis le 31 mai 1953, date de mise en vigueur des nouvelles dispositions, sont les suivants:

A. CONSTITUTIONS

a) Apports purs et simples	
– Droit d'apport sur la valeur nette des apports mobiliers et immobiliers	1 %
– Droit de transcription sur la valeur brute des apports immobiliers	2 %
– Taxe hypothécaire sur la valeur brute des apports immobiliers	0.50 %

b) Apports à titre onéreux

Droit de mutation ordinaire selon la nature des biens (10 % pour les biens immobiliers, mobiliers et fonds de commerce, plus la taxe additionnelle de 6 %, et 6 % pour le matériel non accompagné d'éléments de fonds de commerce) plus le droit de transcription et la taxe hypothécaire, le cas échéant.

c) Régimes spéciaux.

Les décrets des 13 février 1952 et 6 mai 1953 et la Loi du 7 février 1953 n'ayant pas été rendus applicables à l'Algérie il n'y a pas de régime spécial de faveur pour les apports aux Sociétés ou associations visées par ces textes en Algérie.

L'art: 690 du code algérien de l'Enregistrement affranchit, en ce qui concerne leurs statuts ou actes d'augmentation de capital, des droits d'enregistrement exclusivement applicables au montant des actions de travail aux sociétés anonymes à participation ouvrière qui se conforment à la législation en vigueur en cette matière.

En vertu de l'art. 694 du C.A.E. sont exempts de tous droits d'enregistrement, les actes, pièces et écrits de toute nature concernant les coopératives de blé, notamment, les moulins coopératifs, les coopératives agricoles de meunerie, et de meunerie boulangerie, fonctionnant sur le régime de la Loi du 8 janvier 1947.

En vertu de l'article 694 bis, sont exempts de tous droits d'enregistrement, les actes, pièces et écrits de toute nature, concernant les coopératives d'insémination artificielle et les coopératives d'utilisation de matériel agricole fonctionnant sous le régime de la Loi du 8 janvier 1947.

B. PROROGATIONS

Droit d'apport sur l'actif net social avec exonération du droit de transcription	1 %

C. AUGMENTATIONS DE CAPITAL

a) par de nouveaux apports sur le montant des apports complémentaires	même droit qu'en cas de constitution.

b) par incorporation de primes d'émission d'apport ou de fusion ayant donné lieu lors de leur versement ou de leur constatation au paiement du droit d'apport	Droit fixe de 500 frs.
c) par incorporation de réserves ou capitalisation de réserves ou provisions de toute nature autres que la réserve de réévaluation	6 %
d) par incorporaton de la réserve spéciale de réévaluation	2 %
e) par incorporation de provisions pour renouvellement de stock de dommages de guerre	6 %
f) par incorporation de primes d'émission n'ayant pas donné déjà lieu au droit d'apport	1 %
g) distribution de valeurs mobilières de portefeuille (taxe spéciale)	5 %

D. FUSIONS ET DIVISIONS DE SOCIETES ANONYMES EN COMMANDITE PAR ACTIONS OU A RESPONSABILITE LIMITEE

1° Apports purs et simples

Droit d'apport sur la partie de l'actif apporté par le ou les sociétés fusionnées, qui excède le capital appelé et non remboursé de ces sociétés	6 %
Droit d'apport sur la fraction de l'actif net des sociétés fusionnées ou divisées, correspondant au boni de fusion	6 %

(faculté de paiement fractionné des droits sous réserve de garantie).

Apports immobiliers (exemption du droit de transcription et de taxe hypothécaire).

2° Apports à titre onereux

Prise en charge par le ou les sociétés absorbantes du passif des sociétés fusionnées ou divisées	Droit fixe de 500 frs

Autres apports à titre onéreux (droits de mutation ordinaire suivant la nature des biens).

E. REDUCTIONS DE CAPITAL

1° Sans distribution d'actif	Droit fixe de 500 frs
2° Avec distribution d'actif (même régime qu'en cas de partage de sociétés)	0.50 %

F. REPRISE D'APPORTS PURE ET SIMPLE AVEC REDUCTION DE CAPITAL CORRESPONDANTE

(droit fixe)	500 frs

G. DISSOLUTIONS DE SOCIETES

1° Pure et simple	Droit fixe de 1000 frs
2° Avec partage de l'actif social:	
a) droit de partage sur acquêts sociaux (apport en numéraire, biens acquis sur la Société	0.50 %
b) Reprise de biens en nature par un associé autre que l'apporteur (droit de mutation ordinaire suivant la nature des biens).	
c) Reprise de biens en nature par l'apporteur	Droit fixe de 500 frs

Il faut, aujourd'hui, objectivement reconnaître que le contribuable algérien commence à bénéficier des avantages et exonérations ayant fait l'objet de textes d'aménagement fiscal dans la Métropole, tant en matière d'impôts ou taxes d'enregistrement, que d'impôts directs.

Les nouvelles dispositions ont pris effet du 31 Mai 1953.

Elles ont eu pour but principal d'alléger les charges de l'économie et pour objectif de favoriser le développement de l'épargne.

Elles rendent applicables à l'Algérie, dans le cadre de la législation fiscale propre à ce territoire, les mesures réalisées en France par les articles 1, 3, 4, 6 - 7, 8 et 11 du décret n° 52.804 du 30 Juin 1952 en application de l'article 45 de la loi n° 52.401 du 14 avril 1952, ainsi que celles de l'article 208, n° 1, du Code général des Impôts.

Les mesures dont il s'agit tendent à:

1°) Unifier, en les assouplissant (art. 1er du décret du 30 Juin 1952) les conditions permettant d'éviter la double taxation des revenus des capitaux mobiliers quand ces revenus échoient à une société et proviennent d'une participation dans une autre société (Code fiscal algérien des valeurs mobilières, art. 123).

2°) Instituer un régime fiscal de faveur comportant la perception sur les distributions faites par les sociétés entre leurs associés des titres existant dans leur portefeuille, d'une seule taxe de 5 % aux lieu et place des droits et impôts normalement exigibles (articles 3 et 6 du décret du 30 Juin 1952);

3°) ouvrir un nouveau délai aux sociétés dont l'actif a été partiellement nationalisé pour répartir en franchise d'impôts, entre leurs actionnaires et porteurs de parts, tout ou partie des obligations indemnitaires qu'elles ont reçues (article 4 du décret du 30 Juin 1952).

4°) Alléger le régime fiscal des apports de portefeuille de valeurs mobilières par les sociétés algériennes à des Sociétés d'investissement et à favoriser l'extension en Algérie de l'activité de ces dernières entreprises par l'octroi des avantages fiscaux dont elles bénéficient déjà dans la Métropole (art. 6 du décret du 30 Juin 1952 et art. 208 1° du code général des impôts).

5°) Faire bénéficier les distributions de réserves et de bénéfices réalisées par les sociétés sous forme d'augmentation de capital ainsi que les fusions et divisions de sociétés et les apports partiels d'actif du régime dont ces opérations profitent dans la Métropole, tant du point de vue des droits d'enregistrement que des impôts sur les revenus (articles 7, 8 et 11 du décret du 30 Juin 1952 et Code général des impôts).

FISCALITE LIBANAISE

par

A. TAYARA
Directeur des Services Financiers, Beyrouth.

Le Liban, dont la population dépasse légèrement un million d'habitants, s'est trouvé au lendemain de son indépendance (1943) obligé de faire face à toutes les dépenses que nécessitent sa situation nouvelle d'Etat Souverain moyennant un budget dépassant légèrement 20 millions de livres libanaises, soit 2 millions de livres sterling seulement, constitué en majeure partie par des recettes d'impôts indirects.

Les seuls impôts directs et taxes assimilées en vigueur jusqu'à cette date étaient:

I – L'impôt foncier bâti
II – L'impôt sur les terres
III – L'impôt du Temettu
IV – L'impôt sur les animaux
V – L'impôt sur les créances hypothécaires
VI – La taxe sur les appareils radiophoniques
VII – La taxe sur les automobiles privées
VIII – La taxe forestière

I – L'impôt foncier bâti s'applique au revenu des constructions de toute nature, qu'elles soient ou non occupées par leurs propriétaires, à titre onéreux ou gratuit, y compris le sol sur lequel elles sont construites dans la limite maximum de 1000 m².

La base de cet impôt est le montant désigné au contrat de bail obligatoirement enregistré aux services municipaux. Les immeubles occupés par leurs propriétaires sont imposés sur la base de la valeur locative estimée par des commissions spéciales.

La taxe de l'impôt est fixé à 1/12 du revenu ainsi déterminé.

L'impôt est en principe à la charge des propriétaires ou usufrui-

tiers, mais il n'en reste pas moins qu'à défaut, les possesseurs et occupants en sont solidairement responsables.

II – L'impôt sur les terres, pendant naturel de l'impôt foncier bâti, s'appliquait, à l'exception des propriétés bâties soumises à la loi spéciale, à toutes les catégories des terres.

L'impôt est proportionnel pour les terres rentrant dans le cadre du District de la Ville de Beyrouth, s'établit en fonction de la superficie et varie suivant les quartiers entre 10 et 200 piastres par are; tandis que pour le restant du territoire, l'impôt est de répartition, fixé globalement pour chaque ville ou village et supportée par les propriétaires fonciers, chacun suivant l'importance de la valeur de ses terres.

III – L'impôt du Temettu, équivalent de l'ancien impôt français des patentes, était un impôt sur les revenus professionnels établi d'après les signes extérieurs et perçu sous trois formes:

a) un droit proportionnel fixé à raison de la valeur locative.
b) un droit variable, fonction du nombre de personnes servant à l'exercice de la profession.
c) un droit fixe visant les personnes physiques ou morales non atteintes par les deux droits précités.

IV – L'impôt sur les animaux était une sorte de dîme sur le produit vivant de la terre, perçu en nature à raison d'une tête sur dix; ce procédé a été ensuite remplacé par un droit fixe, puis aboli après l'indépendance.

V – L'impôt sur les créances hypothécaires fixé originairement à 5 %, a été abrogé ensuite par la loi du 4 décembre 1944 portant institution d'un impôt sur le revenu.

VI – La taxe sur les appareils radiophoniques entraîne pour le détenteur d'un appareil radiophonique l'obligation de payer une somme variable suivant la puissance de l'appareil mesurée en lampes.

VII – Les taxes sur les automobiles privées comprennent:

– Une taxe d'immatriculation payée annuellement à raison de la puissance du moteur en chevaux-vapeur fiscaux,

– Une taxe unique pour l'autorisation de circuler,

– Un droit unique de permis de conduire.

VIII – La taxe forestière, établie pour l'organisation et le renforcement des facteurs de surveillance des forêts, est perçue par l'apposition de timbres fiscaux sur les demandes de coupe ou sur les permis de colportage.

Parmi les impôts indirects et taxes assimilées on pouvait compter:

– Le monopole du sel
– Le monopole des tabacs et tombacs
– L'impôt du timbre
– Les droits sur les spiritueux
– La taxe sur le ciment
– La taxe sur les matières inflammables
– Les droits d'enregistrement
– Les droits judiciaires
– Ainsi qu'un bon nombre d'impôts et de taxes de moindre importance.

Ce n'est qu'à partir de 1943 que le Liban a pu mettre en exécution une partie de son plan fiscal moderne s'adaptant aux nouvelles conditions de sa vie économique et politique.

L'impôt foncier bâti a été refondu dans le sens indiqué plus haut; l'impôt du Temettu, celui des animaux ainsi que celui des terres ont été abolis et trois nouveaux impôts ont été créés:

I – Un impôt sur le revenu des professions industrielles commerciales et non commerciales
II – Un impôt sur le revenu agricole
III – Un droit de mutation à titre gratuit

Le Liban n'a pas encore institué l'impôt général sur le revenu qui lui permettra de corriger certaines injustices et de donner à son système fiscal un caractère plus personnel.

I – *L'impôt sur le Revenu*

La loi du 4 décembre 1944 qui a institué l'impôt sur le revenu contient 3 impôts cédulaires:

a) un impôt sur les bénéfices des professions industrielles, commerciales et non commerciales
b) un impôt sur le revenu du travail
c) un impôt sur le revenu des valeurs mobilières

a) Sur le plan international, la loi libanaise de l'impôt sur le revenu

ne contient aucune dérogation aux principes fondamentaux régissant la matière. D'autant plus que son législateur, s'étant inspiré des théories les plus modernes, a réussi à la rendre facilement adaptable aux conditions de vie économiques et sociales du pays.

Ainsi, un grand nombre de problèmes, objet de multiples jurisprudences, soulevant jusqu'à ce jour, dans certains pays les plus vastes contreverses sont tranchés nettement dans la loi libanaise, surtout en ce qui concerne les revenus provenant soit de la cession de l'actif immobilisé, soit de la spéculation ou bien encore en ce qui concerne la territorialité: bénéfices réalisés à l'étranger ou réalisés par des personnes résidant à l'étranger.

Les articles 2 & 3 de la loi libanaise caractérisent l'impôt sur les bénéfices des professions industrielles commerciales et non commerciales. L'impôt s'applique, dit l'article 2, aux bénéfices des professions et exploitations commerciales, industrielles et artisanales, ainsi qu'aux bénéfices des professions libérales et de toutes occupations lucratives qui ne sont pas déjà soumises, par ailleurs, à un impôt spécial sur le revenu, et ce sans autres exceptions que celles limitativement désignées par la loi.

D'autre part l'article 3 précise que l'impôt est dû à raison des bénéfices réalisés au Liban par toute personne physique ou morale installée sur le territoire libanais ou établie à l'étranger.

Il résulte de ces deux textes:

- que l'impôt s'applique aux bénéfices,
- que les bénéfices proviennent de l'exercice d'une profession quelconque ou même d'une simple occupation lucrative,
- que ces bénéfices soient réalisés au Liban.

Nombreux sont les auteurs qui, influencés par les textes étrangers, se sont efforcés de démontrer que la plusvalue résultant de la cession de l'actif immobilisé, et que le revenu des spéculations devraient échapper à l'imposition; les arguments qu'ils soutenaient étaient tous tirés de la théorie du Revenu: l'existence d'une source, la susceptibilité de renouvellement . . .

Si vraie que soit cette vieille théorie des sources, elle semble disparaître progressivement de la littérature fiscale internationale moderne. Elle ne trouve actuellement sa pleine et franche application qu'en Angleterre.

Au Liban, la thèse de l'administration prévaut, et sans qu'on ait besoin d'un texte spécial, l'article 2 de la loi précise catégoriquement, comme il a été noté plus haut, que „l'impôt s'applique aux *bénéfices*"; l'article 7 définit le *bénéfice* net comme constitué par l'*ensemble des résultats* provenant des *opérations de toute nature* sous déduction de toutes charges etc.". Le Profit réalisé par la cession d'un actif immobilisé, faisant partie aussi bien des opérations du commerçant que de ses bénéfices, rentre donc obligatoirement dans les bases de l'assiette. Seule la plus-value, constatée par l'accroissement du capital *privé* du contribuable, échappe, actuellement en l'absence d'un impôt sur les capitaux, à l'impôt sur le revenu et à tout autre impôt.

Il en est de même pour les bénéfices résultant de la spéculation; l'impôt libanais sur le revenu frappe indistinctement les bénéfices des professions commerciales, industrielles, artisanales, libérales et ceux résultant de *toutes occupations lucratives*, si elles ne sont pas déjà soumises par ailleurs, à un impôt spécial sur le revenu.

Pour ce qui est de la superposition locale, la loi dispose que les revenus de valeurs mobilières ainsi que ceux des immeubles ruraux, figurant à l'actif de l'entreprise, et soumis aux impôts cédulaires spéciaux, peuvent être déduits du bénéfice net.

Quant à la double-imposition internationale, le législateur a résolu d'une façon très nette la question en stipulant que l'impôt ne frappe que les bénéfices réalisés au Liban, abstraction faite du lieu de résidence du bénéficiaire.

Lorsqu'il s'agit de transactions internationales, la détermination du lieu où sont réalisés les bénéfices ne pose aucune question; l'Administration, se conformant purement et simplement aux principes généraux du droit commun, considère que les bénéfices se réalisent à l'endroit où se forme et se conclut le contrat de vente.

Les difficultés qu'éprouvent ordinairement les compagnies internationales de navigation aériennes et maritimes et les entreprises de transports terrestres à déclarer les bénéfices réalisés dans chaque pays à part sont aplanies dans la loi libanaise, dans ce sens, qu'il y a été stipulé que pour lesdites sociétés, à défaut de système comptable rigoureusement parfait, ces bénéfices seront calculés et répartis au prorata du chiffre d'affaires. Aucune exemption fiscale n'a été accordée jusqu'à ce jour, mais l'intention du législateur

tend vers l'élaboration d'une loi accordant certaines exemptions sous réserve de réciprocité.

La loi définit cependant deux procédés d'imposition, le premier vise les contribuables installés sur le territoire libanais, le second vise ceux résidants à l'étranger. La différence essentielle entre ces deux procédés consiste en ce que le taux du premier est progressif atteignant 42% pour la tranche du revenu dépassant un demi million de livres libanaises tandis que celui du second est constant, fixé arbitrairement à 7.50%.

b) Il n'y a aucun intérêt à discuter sur le plan international l'impôt sur le revenu du travail. La territorialité est l'un de ses principes les plus caractéristiques et les plus stricts.

c) Quant à l'impôt sur le revenu des valeurs mobilières, il y a lieu de noter les considérations suivantes; la loi exempte les dividendes distribués par les sociétés de capitaux libanaises de l'impôt sur les valeurs mobilières, si ces dividendes sont prélevés sur les bénéfices atteints, la même année, par l'impôt sur le revenu des professions commerciales ou industrielles. Mais elle n'accorde aucune exemption aux sociétés dont le siège social se trouve à l'étranger.

On est vite amené à croire que les sociétés Nationales jouissent d'un privilège spécial, lorsque en vérité, cette exempton est une conséquence de l'application rationelle du principe de la non superposition.

Les différents aspects de ce problème se résument ainsi:

Sociétés Libanaises

1er groupe-ayant tous leurs sièges au Liban
2ème groupe-ayant des succursales à l'étranger

Sociétés Etrangères

3ème groupe-ayant des succursales au Liban.

Dans le premier cas les bénéfices de la société sont soumis à l'impôt sur le revenu des professions et le dividende distribué est exempté dans les conditions notées plus haut. Ceci en vertu du principe de la non superposition locale.

Dans le second cas, les bénéfices réalisés au Liban seulement sont soumis à l'impôt sur le revenu des professions, mais le dividende

distribué ne profite de l'exemption que dans les même conditions et dans la limite des bénéfices frappés par l'impôt libanais, le reste est soumis à l'impôt sur les capitaux mobiliers.

Dans le troisième cas, les bénéfices réalisés par les succursales installées au Liban sont soumis à l'impôt sur le revenu des professions, tandis qu'aucune exemption n'est accordée au dividende en résultant, ce dernier n'étant atteint par l'impôt libanais des capitaux mobiliers que lorsqu'il est payé au Liban ou payé à l'étranger à une personne installée au Liban.

II – *L'impôt sur le revenu agricole*

L'impôt sur le revenu de l'exploitation agricole qui a remplacé l'impôt sur les terres, s'applique, soit sur le revenu moyen estimé forfaitairement, soit sur le revenu réel; les propriétaires dont le revenu moyen évalué dépasse annuellement 25.000 livres libanaises sont obligatoirement soumis au régime du revenu réel résultant de leurs régistres. Le régime forfaitaire repose sur le principe de l'estimation quinquennale faite par des commissions techniques en base de barèmes spéciaux classant les terrains en terrains irrigués et non irrigués, en terrains en friche ou plantés d'arbres; mais une réévaluation reste possible chaque année si la moyenne du revenu net subit une majoration ou une atténuation dépassant les 20 %.

Le taux de cet impôt est progressif atteignant 35 % pour les tranches du revenu dépassant 200.000 livres libanaises. Pour les terrains non exploités, il est fixé à 0.25 livre par are; pour ceux destinés à la construction, il est fixé à 2 % de la valeur vénale conformément au classement désigné par la loi.

III – *Le droit de mutation à titre gratuit*

Le droit de mutation établit en 1951 atteint les biens meubles ou immeubles transmis par voie de succession de legs, de donation, de wakf [1]) ou par toute autre voie gratuite.

En matière successorale, ce droit est applicable:

a) à tous les biens meubles ou immeubles situés au Liban et

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[1]) Le Wakf est une constitution musulmane consistant dans l'immobilisation, pour toujours ou pour un certain temps, d'un bien pour qu'en soient distribués les revenus à des personnes ou dans des buts déterminés.

transmis par un libanais ou par un étranger quel que soit le domicile du decujus.

b) à tous les biens meubles situés à l'étranger et transmis par un libanais domicilié au Liban, à moins qu'il ne soit prouvé que des impôts ou droits similaires au droit de mutation exigibles par la loi libanaise aient été déjà perçus à l'étranger sur ces mêmes biens.

Les biens assujettis au droit de mutation comprennent, sauf quelques exemptions expressément définies par la loi, tous ceux composant le patrimoine successoral.

Le taux du droit est progressif jusqu'aux tranches inférieures à 400.000 livres atteignant 48 % où il se transforme en proportionnalité. La progressivité est fonction de trois éléments: Le montant de l'héritage, le degré de parenté, le nombre des héritiers; l'impôt ne s'opérant pas sur le bloc mais sur chaque part nette d'héritier.

Le régime fiscal des donations est solidaire de celui des successions, le droit est perçu sur la valeur nette après déduction des charges éventuelles. Tandis que dans les Wakfs les bénéficiaires sont assujettis au droit selon la valeur du bénéfice estimé comme l'usufruit.

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GOODWILL ET VALEURS IMMATÉRIELLES

par

P. J. A. ADRIANI,

Professeur retraité de droit fiscal à l'université d'Amsterdam.

Les valeurs immatérielles en général et le goodwill en particulier occasionnent beaucoup de difficultés à l'application du droit fiscal dans les divers pays. Je relève quelques difficultés ci-après, nullement dans l'intention de donner un aperçu intégral, mais uniquement pour les mentionner et les classer.

Valeurs immatérielles.

D'abord les valeurs immatérielles. Je ne pense pas, dans cet ordre d'idées, aux droits sur certaines personnes, ni aux engagements du droit civil, mais aux valeurs reconnues dans la vie sociale, pas spécialement aux droits d'auteur, aux octrois, etc. mais plus particulièrement à la clientèle comme celle du laitier dans son quartier, celle du médecin constituée par ses malades, et peut-être aussi au goodwill.

Je me heurte ici tout de suite à une divergence. Pour certaines de ces valeurs un règlement légal a été établi dans la plupart des pays. Ainsi les droits d'auteur, les octrois etc. ont été reconnus comme choses juridiques; on les groupe alors sous la rubrique des droits absolus (valables à l'égard de tous). Le goodwill peut être mis en rapport avec le „fonds de commerce" réglé également dans certains pays. Le droit fiscal peut user de cette création du droit civil et faire rentrer aussi cette „annexe" dans la notion du droit fiscal: *fortune*. Mais subsistent encore les difficultés au sujet des valeurs pour lesquelles aucun règlement légal n'a été établi et dont je cite comme exemples le quartier du laitier et les malades du médecin.

Goodwill.

Le mot „goodwill" désigne un certain nombre de phénomènes sociaux, différant essentiellement les uns des autres.

Dans une entreprise le goodwill — dit-on souvent — comprend la plus-value, attribuée à une entreprise *comme complexe* en plus de la valeur des éléments de l'actif et des dettes.

De cette façon on ne résout cependant pas la question, si l'entreprise n'a pas de possessions, ou si celles-ci sont tout à fait secondaires. Que l'on pense au quartier du laitier et aux malades du médecin. S'agit-il encore, en cas de cession, de *livraison* d'une chose dans des cas pareils? Le contrat ne consiste-t il pas plutôt à s'engager à agir (c'est-à-dire recommander le nouveau titulaire à la clientèle), ou ne pas agir (c'est-à-dire ne pas céder à un autre et s'abstenir de faire fonctionner une exploitation)?

Si l'on voit le problème de cette façon, le goodwill se présente sous deux aspects: ou bien il est question d'évaluation, non pas d'évaluation de marchandises mais d'un complexe, ou bien il y a une série d'engagements ou — troisième possibilité encore — il y a une combinaison des deux.

Si l'on veut voir ici une question d'évaluation, l'évaluation du complexe, le développement en Allemagne est intéressant. Là on a travaillé avec l'évaluation du complexe, le „Gesamtbewertung" mais après une modification de loi le Reichs Finanz Hof constata en 1930, que l'on avait rompu avec le système. C'est alors que la jurisprudence introduisit la notion „Teilwert", que l'on retrouvé à présent dans le § 12 du Reichs Bewertungsgesetz et dans le § 6 no. 1 al. 3 de l'Einkommensteuergesetz. L'idée est que chaque objet faisant partie du complexe emprunte sa valeur à la fonction qu'il remplit dans le complexe, c'est-à-dire que la valeur du complexe est attribuée aux parties composantes.

Dans les pays où l'on ignore la notion „Teilwert" et où l'on ne peut se contenter de travailler avec la valeur d'un complexe en entier, on est bien forcé de considérer le goodwill comme une chose séparée. C'est aussi là que l'on rencontre le raisonnement d'après lequel la pratique de la vie a pris le dessus sur les dispositions du droit civil devenues trop limitées, et que les valeurs qui ont pris ainsi naissance doivent être reconnues comme éléments de fortune, tant au point de vue du droit civil que du droit fiscal.

L'évolution dans la jurisprudence et la doctrine.

Je demande d'abord l'attention pour les valeurs immatérielles

où les marchandises n'ont que peu ou point d'importance. Je cite comme exemple le quartier du laitier. Ici l'on rencontre une différence profonde dans la conception. Que l'on compare la jurisprudence suisse la plus récente avec la jurisprudence hollandaise plus ancienne.

„Der Kundschaftswert sei im Milchhandelsgewerbe im Gegensatz zu andern Gewerben ohne monopolartige Sicherung, ein Vermögensrecht, das als Bestandteil des steuerbaren Vermögens zu betrachten sei." C'est ainsi que la „Oberrekurskommission" formula le 29 août 1951 la décision déjà notifiée antérieurement, à savoir le 23 novembre 1950. Il s'agit ici — ceci fut constaté expressément — d'un *droit patrimonial,* et pas seulement d'une *valeur patrimoniale.* Ce droit devait être déclaré pour l'impôt sur la fortune. Le contribuable se plaignit de ce que ceci ne s'était jamais passé avant, qu'une discrimination en résultait et que la décision agissait avec effet rétroactif. La „Oberrekurskommission" rejeta ces objections; la loi aurait toujours dû être appliquée de cette façon et on a tenu compte généralement de la décision du 23 novembre 1950. Voir „Schweizerisches Zentralblatt für Staats- und Gemeindeverwaltung" 53e année p. 136. Cf. les arrêts de la Cour de Cassation néerlandaise du 22 juin 1937 et du 5 avril 1933, dans lesquels fut comparée au droit civil la question de savoir, si les valeurs, reconnues du point de vue social, entrent en ligne de compte pour l'impôt sur la fortune comme éléments de fortune.

On rencontre souvent de pareilles décisions en matière des droits de succession.

On voit donc la différence profonde entre les conceptions suisse et néerlandaise. C'est une divergence qui ne regarde pas seulement le droit fiscal mais aussi le droit civil. Le Droit en général et le droit fiscal en particulier doivent-ils s'arrêter à des formules de droit civil, même si celles-ci datent d'une période où les relations, dont il est question à présent, n'existaient pas encore ou n'avaient en tout cas pas encore retenues l'attention? De ce qui suivra ci-après au sujet du goodwill dans les entreprises ressortira qu'aussi dans la jurisprudence néerlandaise récente on peut trouver d'autres notions.

Le Ministre des Finances a proposé en 1948, dans le projet d'une nouvelle loi relative aux droits de succession, d'assujettir aux droits

de succession les valeurs patrimoniales, qui ne sont pas des „choses" pour le droit civil. Ce projet doit encore toujours venir en discussion.

On trouve la même controverse quand il s'agit de l'imposition d'un acte juridique concernant les valeurs immatérielles. Aux Pays-Bas, on est partisan de la conception du droit civil, par exemple de ne pas lever de droit de donation en cas de don d'une chose qui ne l'est vraiment pas selon le droit civil.

La question devient particulièrement importante quand des valeurs immatérielles sont apportées dans une société. Aux Pays-Bas on n'en tient pas compte pour la perception du droit d'enregistrement (art. 46 et suiv. de la loi d'Enregistrement). Par contre, je cite une décision allemande récente du „Bundesfinanzhof" du 26 mars 1952. Voir l'article du Bundsfinanzrichter BORUTTAU dans la „Deutsche Verkehrsteuer-Rundschau" XXXVII page 67. Il s'agit d'un cas où il y avait apport dans une G.m.b.H. (S.à.r.l) d'une raison sociale, clientèle, organisation de vente, c'est-à-dire de valeurs immatérielles sans éléments corporels de fortune. Etait-on, de ce chef, redevable de „Gesellschaftsteuer"? Le „Finanzamt" était d'un avis affirmatif et le „Bundesgericht" se déclara d'accord avec ce point de vue. Depuis de longues années la jurisprudence allemande était d'avis que dans le cas d'apport intégral d'une entreprise, les valeurs immatérielles aussi devaient être portées en compte.

L'importance de la décision prise à présent est que les valeurs immatérielles peuvent être considérées comme apportées, même indépendamment d'une entreprise et donc sans celle-ci. On voit donc qu'en Allemagne toutes ces valeurs immatérielles sont traitées à côté du „Teilwert", comme s'il s'agissait de choses indépendantes.

Goodwill conisidéré comme plus-value de l'ensemble.

La plupart des lois fiscales qui traitent la fortune et ses éléments, contiennent des instructions d'évaluation pour différentes espèces d'éléments de fortune tels que: biens immeubles, créances, titres, droits sur les rentes viagères, etc. Par les prescriptions d'évaluation on est forcé de décomposer le fonds de roulement comme ensemble, et d'évaluer non le tout mais les parties. L'évaluation de l'ensemble n'a pas lieu dans ce cas.

Pourtant l'on ne peut négliger le fait qu'un objet à évaluer fait partie d'un ensemble, puisque la valeur d'un bien se modifie selon la fonction qu'il remplit dans la vie sociale. Une machine a une autre valeur, tant qu'elle remplit encore sa fonction productive, que quand elle a fini de servir, et qu'elle arrive sur le marché d'occasions.

La valeur de l'ensemble peut donc, — ne fût-ce que souvent en partie — être imputée aux éléments de l'ensemble. Le „Teilwert" allemand sus-mentionné peut rendre ici de bons services. Mais le problème persiste pour autant qu'une imputation n'est pas possible ou quand un ensemble fait défaut. On est alors libre de considérer le goodwill comme une „chose" non-juridique et pour cette raison de le négliger, ou bien de le reconnaître comme valeur sociale.

Il faut remarquer que les prescriptions fiscales n'empêchent pas, quelquefois, de prendre la valeur de l'ensemble pour point de départ, notamment quand il s'agit de l'évaluation d'actions dans une société anonyme de famille. C'est un sujet qui n'entre pas dans le cadre de cet article.

Goodwill vu comme valeur séparée.

Je veux d'abord traiter le problème en général. Alors se pose la question de savoir si l'on peut négliger le goodwill et de pareilles valeurs immatérielles en cas de partage d'une communauté matrimoniale ou d'un héritage. Ceci froisse le sens de la justice. Car l'égalité entre les ayants droit serait complètement rompue si cette valeur immatérielle laquelle, d'habitude, est précisément de la plus haute importance financière pour l'avenir, reviendrait à l'un des participants sans aucun dédommagement. Déjà par arrêt du 27 novembre 1935 la Cour de Cassation française ordonna que la différence de valeur devait être compensée. Et dans un arrêt récent de la Cour de Cassation des Pays-Bas du 9 mars 1951, le même point de vue fut adopté. Dans les deux cas il s'agissait du partage d'une communauté matrimoniale, le cas français concernait une pharmacie, celui aux Pays-Bas traitait d'une Maison de Modes pour Dames (après divorce). On ne pouvait se borner à incorporer uniquement les biens et les droits appartenant à la Maison dans la séparation des biens.

Peut-on voir dans cette jurisprudence le début d'un développe-

ment qui aboutira à la reconnaissance, du point de vue fiscal, du goodwill comme élément de la fortune, aussi dans les pays, où ceci n'est pas encore le cas? C'est ce que nous devons attendre. À un seul point de vue ceci semble arriver généralement à présent, à savoir en rapport avec l'amortissement. Je dis „semble", car ce n'est pas ici tellement le goodwill dévaluant qui rend l'amortissement possible, mais plutôt la perte graduelle de la somme payée pour le goodwill. Donc: pas d'amortissement pour cause de dévaluation de goodwill non-payé, par exemple celui formé de propre chef.

Par conséquent, les conditions pour amortir sont:
1) il faut avoir payé pour le goodwill.
2) le goodwill doit avoir perdu de sa valeur.

Une jurisprudence néerlandaise constante, datant déjà de la loi précédente (de 1914) sur l'impôt sur le revenu, compte aussi parmi les „choses" pouvant être amorties, le goodwill pour lequel on a payé. On trouve dans la jurisprudence belge des décisions de la même teneur, je cite entre autres l'arrêt de la Cour de Bruxelles du 17 avril 1940.

La condition citée sous 2) a causé des difficultés, tant en Belgique qu'en Hollande, quand la valeur du goodwill n'a pas diminué sous le nouvel entrepreneur, mais a, au contraire, peut-être augmenté. Ceci est dû alors à la façon dont l'entreprise est gérée par le nouvel entrepreneur. On peut amortir quand même dans le cas où l'on peut supposer que la valeur du goodwill repris a effectivement diminué, mais que la nouvel entrepreneur a fait naître un nouveau goodwill. Il est aussi possible que l'„ancien" goodwill garde sa valeur; dans ce cas il ne peut être question d'amortissement. Ce n'est pas la seule conséquence! Ceci appert d'un arrêt récent de la Cour de Cassation néerlandaise du 9 avril 1951. Il s'agissait d'un dentiste qui avait repris une clientèle en 1923 pour fl. 9000 et l'avait cédée en 1946, quand il renonça à sa pratique, pour fl. 11.000. Le fisc stipula que le goodwill acheté il y a plus de 20 ans était devenu sans valeur dans le courant des années; le dentiste avait eu tort de négliger d'amortir et c'est pourquoi le montant total de fl. 11.000 fut déclaré imposable. En justice, ce raisonnement ne fut pas accepté, puisque la pratique, en 1923 et en 1946, avait à peu près la même étendue, avec environ les mêmes clients, il

n'était donc nullement question de dévaluation. Le prix de cession ne fut conséquemment imposé que pour un montant de fl. 2000 et la Cour de Cassation se déclara d'accord avec cette décision de la Cour d'Appel.

Ceci nous mène à la question de savoir si le goodwill, réalisé au transfert d'une entreprise, peut être imposé. L'évolution en France est intéressante de ce point de vue. Il y a de longues années le Conseil d'Etat avait décidé que l'augmentation en valeur de fonds de commerce ne pouvait être imposé en cas d'aliénation de l'affaire, car il s'agissait ici de bénéfice en *capital* et pas de revenu. Depuis, on fit une distinction entre le cas d'augmentation de la valeur réalisée *pendant* le cours de l'entreprise, cas dans lequel elle fut imposée comme bénéfice d'exploitation et le cas qu'elle fut réalisée à l'aliénation de l'affaire. Alors le „bénéfice" ne fut pas imposé. La nouvelle législation de 1934 mit fin à cette situation en stipulant qu'il faut entendre par bénéfice net aussi „les cessions d'éléments quelconques de l'actif, soit en cours, soit en fin d'exploitation". La plus-value *réalisée* fut imposée, seule la plus-value *constatée* ne le fut pas. Cette histoire perce encore dans un arrêt du 15 mars 1950: „est imposée la différence entre le prix de cession et la valeur cotée au dernier bilan. Pour cela il ne faut pas examiner si la plus-value s'est formée avant ou après le 1er janvier 1946. Cette plus-value est imposée, même si le remboursement pour le fonds de commerce est inférieur à la plus-value au 1er janvier 1935".

La jurisprudence belge a le même point de vue que l'ancienne française. On peut le retrouver aussi dans les règlements officiels. Voir la circulaire du Ministre des Finances du 15 mai 1952, disant que les bénéfices de cession d'entreprises industrielles, commerciales ou agricoles sont imposables *dans le cours de l'exploitation*, mais en cas de fin seulement, dans la mesure où ils sont des bénéfices d'exploitation, réalisées dans le cours de l'exploitation même, mais qu'ils sont restés libres alors. Voir entre autres Cour de Cassation 22 novembre 1951.

La loi néerlandaise ne connait pas cette antithèse et prescrit que les bénéfices réalisés lors du transfert, ou à la liquidation d'une entreprise, sont frappés de l'impôt sur les revenus. Le bénéfice ainsi réalisé sur les stocks est imposé normalement, le reste est frappé d'un taux proportionnel, ne dépassant pas 40%.

Le problème des valeurs immatérielles dans le droit fiscal n'est pas encore épuisé. Quelques problèmes généraux seulement ont été traités, sans tenir compte des nombreux détails. En outre, les exemples ont été empruntés à la jurisprudence de quelques pays seulement. Si cet article donne envie à certains lecteurs d'entrer plus avant dans cette matière, ou s'ils désirent mettre en cause d'autres pays encore, la direction du Bulletin s'en réjouira et se fera un plaisir de leur réserver l'espace nécessaire dans le Bulletin. Ce sera en même temps une occasion de donner de plus amples informations au sujet de l'évolution du problème du goodwill aux Pays-Bas. Ces derniers mois, ce problème a suscité une jurisprudence détaillée et donnant lieu, à son tour, à plus d'un commentaire. Mais je me réserve de les traiter une autre fois.

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II

MISCELLANEOUS – FAITS DIVERS

Increase of taxes in South-Africa.

On July 22nd the budget 1953/1954 has been introduced into Parliament. Although the 1952/53 budget surplus amounts to £ 14.8 million (the expected surplus was £ 1.9 million) some increases of taxes were proposed.

These increases are considered necessary for capital expenditure. The enormous expansion of secundary industries in the Union, which the growth of basic-industries did not keep step with, caused a certain lack of balance. To attain a sound economic condition the capital expenditure has to be increased according to the Minister of Finance, Mr. Havenga.

The increase will go chiefly to railways and production of petrol out of coal. The yield of the proposed taxes is estimated at £ 11.4 million. The total revenue then amounts to £ 241.7 million.

Proposed is an increase of the tax on tires, petrol and cars manufactured or assembled in the Union and a similar increase of the import duty. The transfer-duty will be increased from 3 to 4 %.

Finally a savings-levy will be introduced. All persons assessable to taxes are subjects to this levy, gold mines excepted. The savings-certificates are made payable after 5 years and bear a yearly interest of 4 %, which for simplification of the administration will be paid after the expiration of the abovementioned period.

Double taxation convention between the United Kingdom and Greece.

On June 25, 1953 a convention has been concluded between the government of the United Kingdom of Great Britain and Northern Ireland and the Greek Government for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The convention has not yet been ratified by the Government of the United Kingdom.

Belgique.

D'après une circulaire en date du 8 Juillet 1953 le prix d'acquisition d'oeuvres d'art incorporées dans les bâtiments industriels et commerciaux, peut être amorti en une ou plusieurs fois en exemption d'impôt jusqu'à concurrence de 2 % du prix d'acquisition ou de revient de la partie professionnelle du bâtiment industriel ou commercial dans lequel elles sont incorporées.

Si le prix d'acquisition de l'oeuvre d'art excède la quotité susdite, le surplus sera soumis au même régime d'amortissement que l'immeuble, c'est-à-dire que ce surplus pourra être amorti à condition que l'immeuble soit considéré comme élément amortissable, et ce aux mêmes taux que l'immeuble.

Source: Bulletin des Contributions Directes no. 294.

Double taxation conventions between Australia and the United States of America.

On May 14, 1953 three Conventions have been signed by Australia and the United States of America for the avoidance of double taxation with respect to taxes on income, taxes on gifts and taxes on the estates of deceased persons. If the convention with respect to taxis on income is ratified before the end

of 1953, it would apply in Australia for the year of income beginning 1st July 1953 and in the United States of America from 1st January 1953.

Professional congress of the West German „Steuerberater".

This years professional congress of the West German „Steuerberater" will be held in Colon from 19–21 October.

The lectures and reports will deal with *„Das neue Steuerrecht in seiner praktischen Anwendung".*

The program:

Einige Bemerkungen zur derzeitigen finanz- und steurpolitischen Lage.
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Bilanzberichtigungen und Bilanzänderungen mit Wirkung auf den Lastenausgleich und die Ertragsteueren.
Neue Erkenntnisse und Entwicklungslinien im Gesellschaftsrecht.
Aktuelle Fragen zur Wirtschafts- und Steuerrecht der Familienunternehmen.
Betriebsausgaben nach neuem Recht.
Körperschaften und „Kleine Steuerreform".
Die Problematik der Abschreibungen.
Erbschaftssteuerfragen.
Die Billigkeitsmassnahmen des § 131 AO nach neuem Recht.
Gegenwartsfragen des Einkommensteuerrechts.

France - Tax reform.

In our previous number (see Bulletin VII, 2, p. 106) a tax reform in France was announced. The two main points, mentioned there, were the reform of the "taxes sur le chiffre d'affaires" and that of the direct taxes. As a result of the government crisis not much has come of the original plans, at least as concerns the date of their taking effect. The Government *Laniel* however has partially taken in hand again the plans with the following result. The legislative assembly has to consider the project "taxe sur la valeur ajoutée" before November 30, 1953. In case no decision is taken by the Assembly, the Government is authorised to proclaim the law by means of decrees.

The remaining three titles of the project became law on the 25th of July (Journal Officiel 26 juillet, loi du 25 juillet portant aménagements fiscaux). These three titles contain the following:

Regulation of the "taxes parafiscales". By the Act an end is put to the unsettled state of these levies which are charged in favour of certain public bodies. The most important of the new provisions is that a taxe parafiscale can only be created by virtue of an Act. Every year a list of the "taxes parafiscales" is to be added to the "Loi des Finances".

The second title contains rules to prevent tax evasion. Especially for foreign manufacturers and traders, provisions have been drawn up.

The third title finally concerns some less important modifications of the "Code General des Impôts".

Alteration of the conception "value" for the perception of import duties in the Benelux-countries.

On December 15, 1950 a convention was signed in Brussels concerning the value of commodities for the purpose of the levying of import duties. With respect to the countries of Western Europe (including Belgium, the Netherlands and Luxemburg) this convention came into force on July 28, 1953. The Convention contains provisions concerning the conception "value" which deviate in some ways from that existing in the Benelux-countries.

Therefore, the present legal provisions of said countries must be amended in this regard. The underlying principle of the valuation remains the "normal price". The difference concerns mainly the costs which are to be included in this "normal price".

According to the existing definition of value these are the costs made until the place where the goods are cleared inwards. According to the new definition only those costs are taken into account which are made until the first seaport or frontier town of the Benelux territory has been reached.

The costs of freight and insurance, made on the transport of the goods within the Benelux territory from the first seaport or frontier town — or, as regards transport by air, from the frontier, — are not taken into account.

The new definition allows the value of goods, which are delivered at the result of a "purchase and sale, being effected under free competition between two undependent parties", to be declared on basis of the purchase price provided that certain conditions are fulfilled. The purchase price has to contain all elements and costs, which are normally included in the price.

Wholesale-value in the English Purchase Tax.

The Purchase Tax is levied on 35 classes or groups of goods. At the moment the rates are 25, 33 $^1/_3$, 50, 66$^2/_3$ and 100 %, dependent on the class of articles. The basis of the levying is the wholesale value.

In case of many kinds of clothing, textiles and furniture a certain fixed amount may be deducted from the wholesale value (D-scheme) in order to arrive at the taxable value.

The tax is then assessed by the standard of the remaining value.

The Purchase Tax is meant as a pure, single levy, by which the principle obtains, that also the amount, which must be paid for taxes, does not change, independent of the phase in which the good is affected by the tax.

In that way ultimately the same tax-amount rests on each good of the same kind. The rate is always taken on the wholesale-value. Consequently the starting point is not the real price. The taxable delivery is that of a licenced manufacturer or wholesale-dealer to a non-licenced business or consumer.

The assessment of the wholesale-value is of great interest. Normally it is called "the open market value".

The "open market value" can easily be assessed for goods with a fixed wholesale-price. It is equal to that price. Also with proprietary articles the stipulation does not give much trouble. In case the retail-price is fixed, it is only to deduct the generally known margin of profit for the retailers from this price, in order to know the wholesale-value.

By not price-maintained goods the assessment of the wholesale value will give rise to great difficulties.

In 1952 a commission was appointed, charged with the investigation of this matter. In May 1953 their report was ready (1) They gave the following recommendations:

1) The value of goods for the purpose of purchase tax should be based on the open market price (exclusive of tax) on a purchase by a retailer from a manufacturer or from a wholesale merchant, as the case may be, in the circumstances specified in the Eighth schedule to the principal Act; and that in arriving at the value, effect should be given to the following points:

a.) the actual price should not be increased by the interposition of an imaginary wholesale merchant.

b.) the actual price should not be increased by reference to wholesaling costs unless these are actually incurred or borne by the purchaser.

c.) if, and in so far as, the actual price is reduced by reason of the largeness of the quantity of goods purchased, such reduction should be disregarded.

d.) extra delivery charges borne by the purchaser for small orders or for special delivery should be disregarded.

e.) if the actual price is increased (apart from the item referred to in (d) because of the quantity purchased is very small, or for some special reason, the Department should consider whether the price paid in any given case is in excess of the open market value and on that account ought to be reduced.

f.) if, in the case of a purchase by a large retailer the actual price is reduced by reason of buying advantage which such retailer enjoys (other than those referred to in (b) and (c)) such reduction should be disregarded.

2. The same principles should be applied in cases in which the tax is charged otherwise than on a sale to a retailer.

(1) Report of the Purchase Tax (valuation) committee. Presented by the Chancellor of the Exchequer to Parliament, By Command of Her Majesty, May 1953.

Seventh International Congress on Accounting

The Netherlands' Invitation Accepted.

The seventh International Congress on Accounting is to be held in Holland in 1957. Following the Sixth International Congress which took place in London last year, several countries proffered hospitality for the next Congress and the accountancy bodies throughout the world have now indicated a clear preference for the acceptance of the invitation of the Netherlands.

The secretary of the Sixth International Congress has accordingly written to the Nederlands Instituut van Accountants accepting the invitation and asking them to commence making the necessary arrangements. The name and address of the Secretary of the Nederlands Instituut are:

Mr. H. C. Treffers, Secretaris, Nederlands Instituut van Accountants, Herengracht 491, Amsterdam C. Nederland.

(The Accountant, Vol. XCCIX, No. 4101, p. 116.)

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IV

REVIEWS — COMPTES RENDUS

J. G. Rose: *Company Control.* 1952 (40 pages).
J. H. Burton: *Mechanizing the legal Office,* 1951. (39 pages).
J. H. Burton: *Preparations for professional examination.* 1952. (91 pages). — Gee & Co., London E.C. 2.

Voici trois ouvrages importants du même éditeur d'autres excellentes publications, dont nous citons ,,Cost Control in the boot and shoe industry'' par Russell Clark.

Beaucoup d'ouvrages ont déjà vu le jour, traitant le sujet ,,company control'', mais nous estimons que celui-ci est un des rares ouvrages se limitant à la tâche du directeur-général et son exécution.

C'est un ouvrage pratique contenant des avis précieux à l'usage des personnes dirigeantes dans l'industrie. Il indique les informations dont il a besoin et la façon de les obtenir.

,,*Mechanizing the legal Office.*'' Le nom de J. H. Burton est garant que le sujet est traité par un auteur connaissant la matière à fond. Cet opuscule indique les méthodes pour moderniser les études de notaires, d'avocats etc. afin de les rendre plus efficientes et de réduire au minimum les possibilités de fraude de la part du personnel.

,,*Preparations for professional examination*'' enfin est un livre excellent, tant au profit du professeur que de l'étudiant. Il contient de nombreux avis et avertissements, qui pourront être de grande utilité au licencié, aussi bien avant qu'après l'examen professionnel.

Dr. Alphonse Sinniger: *Die Besteuerung der Stiftungen in der Schweiz.* — Juris Verlag, Zürich, 1951.

It is an interesting subject that the author has chosen for his thesis. The more so as the legal form of the Foundation is being employed more and more for attaining all kinds of purposes.

In former days it was most for the purposes of charity or the practising of science, for which the ,,Foundation form'' was adopted, nowadays the Foundation also has its being in quite different fields of enterprise.

Consequently, many fiscal problems are coming to the fore, specially in the domain of income- and property-tax, gift-duties and death-duties. Outside of Switzerland it is important to distinguish these problems; even for the non-Swiss this is of greater importance than to know how the Swiss fiscal law is applied.

The problems which have risen there, everybody can pose in connection with the application of his own law.

In the preface the author explains how the individualism of the 19th century showed a certain aversion to property in the ,,dead hand''; in this connection the Church Foundations stood apart. In our times a revival of the legal form of the Foundation is to be found and an extension of the purposes for furthering prosperity, family-interests and other private interests. This appears from the figures: in 1918, 299 Foundations were founded in Switzerland, in 1944: 4916, in 1945: 5587. This growth could not but affect the levying of taxes. The author gives a survey of the periods from before 1848, of 1848-1918 and after 1918.

Already in the preface the notion "general utility" has béen raised. Some subjective and objective elements are mentioned, among which the altruistic purpose. When we read the study of this writer the desire is born for a comparative study on this subject. Presumably all kinds of social, ethical and religious differences would come to the fore. But this was far beyond the purpose of the author.

The first part of the work is devoted to general subjects as: generality and uniformity, interpretation, the tax fraud, etc. and the fiscal position of the Foundation in general.

The second part treats the Foundations in income- and property-tax, the Foundation in itself, in which connection many forms of foundations are discussed: the beginning and the end of the tax liability, the fiscal domicile. Notable is the discussion about the abuse of the Foundation form for purposes of tax fraud. Fortune and income of the Foundation give rise to many problems.

The third part is devoted to the Death Duties and Gift Duties, in which many problems crept up again under a somewhat different light.

Steuerberater Jahrbuch 1952. — Verlag Dr. Otto Schmidt K.G., Köln. Herausgegeben im Auftrag des Fachinstituts der Steuerberater von Prof. Dr. Armin Spitaler, Köln.

It appears from the preface of Prof. Spitaler, that the above-mentioned is the fourth Yearbook.

He points to the mosaical character, as contributions of divergent nature have been included. It is noticeable, how wide the field is, in which the tax-advisors are working. The yearbooks are closely connected with the professional congresses held. In this case, the matter dealt with during the fourth congress of October 1952 is mostly the matter treated in this book of 356 pag.

It is not possible to give a survey of the contents in a nutshell.

It is necessary to confine ourselves to some notices only. And in that case the last and the first article of this bundle draw the attention most. This book is closed with a consideration from the hand of prof. Spitaler concerning "Treu und Glauben im Steuerrecht." Interesting are the remarks concerning "Treu und Glauben" in general, about "Treu", which must control personal actions and the "Glaube", the faith that the counterpart should have in said actions.

The writer points to the imperative of "Treu und Glauben", which may not be seen as a "freies Ermessen" of judges or tax-administration, and to its limitation etc.

Some remarks are made about what "public right" means, whereupon the writer goes further into the taxation laws. Attention is especially given to the acting of the tax administration.

The article of Dr. Kühne too, about the "Vermögensabgaben" has a general character. The fundamental ideas of the capital-levy and those based on capital-comparison are discussed as is the application of the levying as "Soforthilfeabgabe", "Lastenausgleich", etc. etc. of recent years.

The "Lastenausgleich" also takes an important place with the other collaborators. The connection with the private law (Prof. Meilicke) and with the balance-sheet (Prof. Schüter) are treated. Many other subjects are treated too: Creditprofits (Dr. Menschel), family-enterprises (Dr. Böttcher), alienation- profits (Dr. Gronenborn), questions about incometax (Dr. Oermann), alterations in the balance-sheet (Dr. Bukenzer), the auditing of the books (Dr. Vollmar), revision of the assessment (Thoma), evaluation of participations (Dr. van der Velde), will of an entrepreneur (Dr. Kapp), criminal law procedure (Dr. Terstegen). All these titles are only mentioned globally in order to show that the tax-problem has been approached from many sides.

FRANÇOIS PETIT: *La réforme fiscale.* — Loi du 8 mars 1951. Commentaire législatif et doctrinal. Edition l'Avenir, Bruxelles 1951.

The "Lois coordonnées relatives aux impôts sur les revenus et à la contribution nationale de crise" (the Belgian income tax acts) have been amended by an act of March 8 th 1951. This act has brought about some important changes in the existing income tax law.

The amendments may be classed under the following headings: simplification, mitigation of the fiscal burden, the furthering of equality between the taxpayers and tightening of the measures against fiscal evasion.

With reference to the explanatory memorandum of the minister and to the report of the commission of the Chamber of Representatives and of the Senate the author discussed clearly and elaborately this far reaching Act.

Le Bilan fiscal en Afrique Noire, published by Société Fiduciaire Juridique et Fiscale, Paris, 1952.

L'Afrique Noire consists of the territories of A.O.F., A.E.F., Togo and Cameroun. This publication gives the rules for the statement of the fiscal profit- and loss accounts and balance-sheets, necessary for the declaration of the B.I.C. (l'impôt sur les bénéfices industriels et commerciaux).

JEAN MICHEL: *Tarif fiscal.* 16th edition, 1 July 1951. Publishers: ANSA, 32, Avenue Marceau, Paris 8e.

This practical booklet, announcing all rates of the most important taxes in France, is indispensable. The number of different rates in France is numerous and for practice and scientific work a booklet as above mentioned saves a lot of time. We are looking forward to a new edition of this excellent booklet.

JEAN ROGER and JEAN CLAUDE KAUFMAN: *Les taxes sur le chiffre d'affaires.* — 4th edition published by "Société des Editions Francis Lefebvre", 15, rue Viété, Paris, 17th, 1952. 85 pag.

This booklet gives a review of the French sales taxes (taxe à la production, taxe sur les prestations de service, taxe sur les transactions and taxe locale). It is up-to-date as far as Jan. 20th 1952.

Mode de calcul des impôts directs, des taxes sur le chiffre d'affaires et des principaux droits d'enregistrement en 1952, published by Francis Lefebvre, 15, rue Viété, Paris 17th, 1952.

The numerous alterations of the French fiscal law make a booklet as mentioned above indispensable. The book has been published in the series of "Bulletin de Documentation pratique des impôts directs et du droit d'enregistrement", which are to be published monthly. The date of this Bulletin is January 15th 1952 and it is up-to-date to said date.

CH. PERRET: *Kommentar zur eidgenössischen Wehrsteuer* 1951–1954. — Polygraphischer Verlag A.G., Zürich 1951, 292 pag.

In this book the complete text, as it is to be in force till 1954, with explanations of the Swiss federal income- and property tax, the Wehrsteuer, is to be found.

The book consists of 2 parts and has an excellent index. The first part of the book deals with the 158 articles of the Wehrsteuer. The second part with the decisions of the Finanz- and Zolldepartment.

MOSES ABRAMOVITZ: *Inventories and Business Cycles.* — published by the National Bureau of Economic Research, U.S.A. New York, 1952.

A lot of studies have been made about possible causes of business cycles, and a lot of suggestions have been made. We think of the purely monetary theory of Mr. Hantry, the over- and underconsumption theories (Spiethof, Röpke etc.), the explanation of the business cycle by means of the multiplier and acceleration principle (Harrod, Keynes), the thoughts of Schumpeter regarding the "new combinations" (Neue Kombinationen) and their influence on business cycles. The influence of inventories on business cycles, however, has long been neglected, but statistical records show, how inventories have moved during business cycles and what influence they have had on business activity. This needs an explanation and Prof. ABRAMOVITZ, who is very interested in these things, has succeeded in explaining the facts shown in the above mentioned statistical records.

The book is divided into 3 parts. The first reviews the literature of the subject and describes the statistical materials and methods to be employed. Part two is a study of cycles in the volume of inventories held by business. Part three investigates the connection between the pace of inventory accumulation and liquidation and the state of business.

This study is the fourth volume in the series of studies in Business cycles in which the National Bureau of Economic Research makes known the results of its investigation of the causes of prosperity and depression.

GANSER - GEORGI: *Die Investitionshilfe der Gewerblichen Wirtschaft,* Band 2 der Schriftenreihe der Steuerabteilung des Bundesverbandes der Deutschen Industrie. — Verlag Rudolff Miller, Köln-Braunsfeld, 1952.

Publication of the text and some explanations of the "Gesetz über die Investitionshilfe der Gewerblichen Wirtschaft" of January 7th 1952, brought up to date till the second "Durchführungsverordnung".

MARCEL LE BRIS & RENE LOTTE: *Professions et taxes sur le chiffre d'affaires.* Les aide mémoires d'impôts et sociétés, 5, rue Lamartine, Paris, 1951.

A great simplification was attained when in 1937 the minister of finance M. Joseph Caillaux had succeeded to replace the intricate "taxe sur le chiffre d'affaires" by the "taxe unique", levied at the moment that the products reach the consumers. This pleasant state of affairs did not continue indefinitely, for new taxes appeared in the same domain and the rates became strongly differentiated. So the situation got very obscure. Now the "taxe à la production", "taxe sur les transactions, taxe locale, taxes parafiscales" have to be reckoned with. To get to know a special case, it is not enough to consult the code, but also necessary to pay attention to other texts of acts, decrees, resolutions etc.

The sales tax appears to have a tendency to become more and more intricate; this phenomenon is also to be observed in other countries. Business life has no time to bother about all these complications. But after all it is necessary to be posted up. So it is a happy circumstance that there are people in the world who possess, besides a big technical knowledge, also an inexhaustible patience. The writers of the above mentioned booklet possess both qualities and the great mental gifts to render this complicated matter in simple language. The booklet has been so designed that on the left hand side of the page the professions and products are given with the necessary differentiations, and the tax which must be paid, on the right hand side are stated the general and special rules.

An enclosure is referred to mentioning the rates for the nine periods between 1 January 1949 and 10 January 1951.

MAURICE ANSPACH: *La Surtaxe*. — Ets. Emile Bruylant, Bruxelles, 1952.
LOUIS BAILLON & LOUIS GROGNARD: *La surtaxe sur les bénéfices exceptionnels*. — Maison Ferdinand Larcier S.A. Bruxelles, 1952.

An act of July 24th 1952 established the "surtaxe sur la partie exceptionnelle de certains revenus de l'année 1951" (surtax on the exceptional part of certain profits of the year 1951). This tax is somewhat comparable to the British Excess Profits Levy of 1952.

The surtax is levied on the yields of commerce, industry and farming, sofar as they exceed a certain amount. The rate amounts to 25 %.

This tax has been severely criticized in Belgium, because it was considered as a political concession unwarranted by economic motives.

Also the Act as such is criticized because it is not quite clear on certain points and will undoubtedly give rise to a difference of opinion between the tax department and the taxpayers.

Therefore we owe thanks to the authors of these commentaries for their clear expositions of this Act. Although there is a possibility that the jurisprudence will give a different interpretation on certain points, these commentaries give an explanation of the many difficulties arising from the application of this Act.

The commentary of Maurice ANSPACH discusses the Act clause by clause, after a short introduction which gives a summary of other extraordinary Acts, such as the war Acts of 1940 and 1945. At the end an alphabetical index has been inserted.

"La surtaxe sur les bénéfices exceptionnels" by Louis BAILLON and Louis GROGNARD is divided in 11 chapters. The text of the Act of July 24th 1952 precedes and is followed by a general discussion (i.a. a discussion of the extraordinary taxes of 1919, 1920, 1932, 1934, 1940 and 1945).

In the following chapters the authors give an analytical commentary of the Act.

W. BUSCHMANN: *Die Lohnsteuer nach der Währungs- und Steuerreform* 2nd Edition. — Verlag Girardet, Essen, 1948.

This brochure gives a condensed review of the German Lohnsteuer as it was in the middle of 1948 — closely reasoned — but surveyable, provided with schedules.

Einkommen Steuergesetz. — Verlag W. Girardet. Essen, 1948.

This pocketbook gives us a complete compilation of texts, rules of conduct, and decrees of enforcement of the German Einkommensteuergesetz 1939, as it was in October 1948.

Erläuterungen zu den Steuerreformgesetzen und der D. M. Ueberleitungsbilanz — Verlag W. Girardet, Essen, 1948.

This booklet can roughly be divided into 2 parts:

1) The fiscal and juridical consequences of the German currency reform in June 1948.

2) The readjustment of taxation, carried through at the same time. As well as the "Umstellungsgesetz" (currency reform law) as the "Steuerreformgesetz" (law readjustment taxation) have been printed in full text in the booklet.

RICHARD GOODE: *The Corporation Income Tax*. — John Wiley and Sons Inc. New York, 1951.

In this book the author discusses the corporation income tax and its proper place in the revenue system. Many important questions come up for dis-

cussion. Not only a consideration of the nature of the modern corporation and the suitability of the corporation as a taxable subject but also the problems annex to the consequences of such taxation. Can the corporation income tax for instance be shifted? In the second chapter of the book the author points to the legal nature of the corporation.

The legal nature is the same for private and public corporations. The economic nature of those two types however shows many differences. It can be said that the stockholders in a private corporation really carry on their own business because of their position of power and control. "The public corporation, however, is not merely a form of business organization that has certain legal implications for creditors, but a social and economic institution of the greatest importance." The author regards the difference between those two types of corporations as a ground of justification for the corporation income tax. In taxing a private corporation it is more reasonable that this corporation should be taxed as a partnership. The profits of the corporation are deemed to be income of the shareholders, who should be taxed correspondingly. The public company is a real legal entity; its economic aspects are on a different level.

In this connection the author discusses the question whether the corporation income tax can be amortized. Further the question of tax-shifting comes up for discussion. Is the corporation income tax a cost factor? This problem is discussed with reference to the distinction long-term and short-term effects. There is hardly any question of shifting concerning the short term. In the long-term the corporation income tax has the same effect as other taxes. It is beyond question that this form of taxation will have its effect on the economic life, particularly concerning the problem of investment. A large part of the book has been devoted to these economic aspects: chapter 4 "Effects of the Corporation Income Tax on prices and Wage Rates"; chapter 5 "The Corporation Income Tax and the Distribution of Income and Wealth"; chapter 6 "Impact of the Corporation Income Tax on savings and consumption"; chapter 7 "Effect of the Corporation Income Tax on Investment"; chapter 8 "Effects of the Corporation Income Tax on National Income and Employment".

The last three chapters of the book discuss the measure of taxable profits, the problem of the integration of corporate and individual income taxes and the place of the corporation income tax in the Revenue system.

Gustav SCHMIDT: *Besteuerung und Selbstfinanzierung* (Diss.) published by Otto SCHAEFLI, Buch- und Kunstdruckerei A.G. Interlaken, Switzerland 1952.

After having elucidated the commercial aspect of internal financing and its consequences upon the community in the first part of this dissertation, follows in the second part the influence which the levying of taxes has upon the internal financing. The starting point is the Swiss federal and cantonal taxes.

In the series of publications of the "Finanzwissenschaftliches Forschungsinstitut" we received two important booklets, viz.:
1) "Die Körperschaftsteuer als Kostenfaktor" by J. BRUCK, 1950, and
2) "West Europäische Finanzwirtschaft 1952".
both with a preface by Prof. Dr. G. SCHMÖLDERS in the University of Cologne.
The contents of the last mentioned book consist of: "Finanzwissenschaftliche Aspekte einer engeren europäischen Zusammenhang" by Dr. S. HOUBEN.
"Schritte auf dem Wege zu einer Europäischen Zollunion" by G. LÖNNECKE.
"Institutionelle Ansätze zu einer finanzwirtschaftlichen Integration" by W. HANDKE.

Die Montanunion in ihrem Einfluss auf die Haushalts- und Finanzpolitik der beteiligten Länder" by H. G. EMMENDÖRFER and "Erfahrungen und Lehren aus dem Benelux-Zusammenschluss" by G. GIFGEN.

The whole has been excellently finished. A summary would be too much here, but we can refer every one who want a complete study of these subjects to peruse this book.

Dr. jur. and Dr. rer. pol. Richard KERSCHAGL: *Abriss der Finanzwissenschaft.* Wien, Manzsche Verlags- und Universitätsbuchhandlung. 1950.

This book (190 pages) has been partly based on an earlier work of 1935 "Finanzwissenschaft. Abrisz der Steuerlehre." Considerable portions of the theoretical part about state and taxation are completely new. New, too, is the chapter in which a review is given of the tax system in a number of countries. The book intends to give real "Finanzwissenschaft", in which the theory of taxation forms the core.

The principal classification is after a preamble:

1. State and taxation.
2. General theory of taxation.
3. Special theory of taxation.
4. Other revenue of the state.
5. Tax systems in a number of important countries.

In the first chapter many subjects of general importance are found, such as the influence of different conceptions regarding state upon taxation (Mercantilism, Physiocrats, Liberal State, National Socialism etc.). The centralized state vis-à-vis the federal state. Further the purpose of levying of taxes, fiscal or social-political. Great attention was devoted to the budget too.

In the second chapter the tax theories occur, the demands made on taxation, the shifting, etc.

The third chapter deals with the taxes on income, property, legacy, revenue taxes, interest, ground- and sales taxes and the consumption taxes. Among other revenues of the state are arranged: customs, retributions, monopoles and income of the industry; loans are discussed separately.

The fifth chapter gives a review of the tax systems of Austria, Switzerland, U.S.A., England, France, Italy and the U.S.S.R.

Laurence H. SELTZER: *The nature and tax treatment of capital gains and losses,* 1951. National Bureau of Economic Research Inc. New York 23 N.Y. 1819 Broadway.

L'auteur traite en détail le problème de l'impôt sur les „capital gains" aux Etats Unis d'Amérique aussi bien que dans beaucoup d'autres pays. Le livre de 354 pages est très important parce qu'il donne une idée précise du problème en l'exposant surtout du point de vue économique. Quelle est la différence entre „capital gains" et revenus normaux? L'impôt sur les „capital gains" à quel point est-il juste? C'est surtout à ces questions que l'auteur donne une réponse très claire.

A. Keith SANGSTER L.L.B., A.F.I.A., A.C.I.S. *Commercial goodwill.* Federal Institute of Accountants, Arthur Capper MOORE. Research Lecture 1951, Adelaide.

Le „goodwill", c'est un sujet qui intéresse le juriste civil ou fiscal aussi bien que l'économiste et l'expert comptable. Dans beaucoup de pays le problème est actuel et bientôt le Bulletin en donnera un résumé.

L'institut des experts comptables en Australie a fait un travail excellant

en publiant ce petit livre (48 pages) de l'auteur compétent qui n'a pas essayé de défendre une nouvelle théorie sur le goodwill, mais donne une description du développement des idées sur le sujet. On y trouve alors quantité de données pour des recherches scientifiques ultérieures.

L'auteur commence par donner un aperçu de la jurisprudence en Angleterre et aux Etats Unis, puis des conceptions de plusieurs auteurs et ensuite il traite les problèmes fiscaux, surtout ceux qui concernent l'impôt sur le revenu. Il prend parti pour la conception que le goodwill diminue peu à peu et finit par disparaître enfin tandisqu'il est remplacé casu quo par un goodwill nouvellement formé. Son analyse de l'influence de l'impôt sur le revenu sur le goodwill en général et sur la valeur d'actions en particulier a donné lieu à des diagrammes intéressants concernant la pression de l'impôt sur le revenu exercée sur les sociétés et les actionnaires. Il traite encore beaucoup d'influences extérieures sur le goodwill. Sa conclusion est un raisonnement très fouillé sur lequel on reviendra dans l'article annoncé ci-dessus.

Roger LEFEBVRE, Jacques PEBAY: *L'amnistie fiscale* (Loi de finances du 14 Avril 1952, article 46) 1952. Société des éditions Francis Lefèbvre Paris.

Ce livre de 109 pages traite en détail les cas auxquels cette amnistie est applicable et qui diffère des autres amnisties fiscales surtout en ce qui concerne son champ d'application. Les auteurs discernent clairement les deux formes d'amnistie données par la loi, à savoir: l'amnistie totale et l'amnistie conditionnelle, différence qui doit être attribuée entre autres au fait que le contribuable a souscrit une déclaration incomplète ou qu'il n'en a souscrit aucune. Les auteurs signalent aussi l'intérêt de revenir à la legalité à cause des sanctions draconiennes contre ceux qui ne profitent pas de l'amnistie.

Dans le livre on trouve aussi le texte de l'arrêté ministériel dans lequel se trouve la longue liste des impôts auxquels cette amnistie est applicable.

DR. HEINRICH BIRCH — BRUNO NEUMANN — DR. V. STEINSDORFF: *Die Bankbilanz — Ein Handbuch für Banken und Sparkassen,* 1951 (304 pp.). *Die Bankbilanz — Bilanzierungs- und Prüfungsvorschriften für Banken und Sparkassen,* 1951 (132 pp). Ed. Betriebswirtschaftlicher Verlag Dr. Th Gabler. Wiesbaden.

Le premier manuel contient un excellent aperçu des divers objets du bilan d'une banque ou d'une caisse d'épargne. Les auteurs ont fait une étude approfondie du problème de l'évaluation. Le second ouvrage contient toutes les lois existantes, les arrêtés etc. visant tant bien l'établissement du bilan que le contrôle de celui-ci.

ARTHUR GILMOUR: Income tax handbook 1951-52, 1951 (501 pp.) Ed. Richard de Boo Ltd. 137 Wellington str. W. Toronto.

The object of this book is to examine the practical application of some of the more important provisions of the Income Tax Act 1948 and its related regulations from the point of view of the professional accountant and business man.

The book does not pretend to interprete the law, or to discuss it in any exhaustive fashion.

The Canadion Income Tax is very difficult and not surveyable, so this manual is a welcome guide.

It examines in a succinct way the stipulations concerning the Income Tax, which Tax is applicable for companies too in Canada.

Finally an article is incorporated concerning all regulations, statutes and orders up to August 31st 1951.

JOHN SOMERSET CHIPMAN: *The theory of inter-sectoral money flows and income formations*. 1951 (154 pp). Ed. The Johns Hopkins University studies in historical and political science (Serie LXVII no. 2.) Baltimore.

Un ouvrage d'économétrie, donnant un recueil avec quelques apports des diverses publications de l'auteur (entre autres sa thèse). C'est, en général, une élaboration des conceptions du célèbre économiste John M. Keynes, ainsi qu'il les publia dans son livre ,,A general theory of employment, interest and money'', paru en 1936, au sujet du ,,multiplier process'', et les additions de la main du professeur Machlup spécialement en vue du ,,foreign trade multiplier''. L'auteur appuye particulièrement sur les notions ,,bi-sector'' et ,,multisector multiplier''.

L. ELLINGER & A. ILLIG: *Das Bewertungsgesetz*. Bücherei des Steuerrechts. Band 3. Industrie-Verlag Carlheinz Gehlsen vorm. Spaeth und Linde. Siegburg Rhld.

L'auteur donne un aperçu de cette vaste matière dans un espace limité (106 pages) surtout pour la pratique.

La Reichsbewertungsgesetz est, avec l'Abgabenordnung et la Steueranpassungsgesetz une des lois constitutionnelles fiscales, de vigueur pour le droit fiscal entier, pour autant que des déviations n'ont été posées dans des lois spéciales. La loi date de 1925, fut modifée en 1931 et 1934 et complétée dans plusieurs détails par des arrêtés d'exécution.

Autrefois, on a eu la plus grande peine à l'introduire et à l'adopter, car il fallait pour cela rompre avec d'anciennes traditions fort divergentes, non seulement en ce qui concerne les différents impôts mais aussi les Etats pris à part.

Le livre est un exposé systématique. L'auteur traite tout d'abord les prescriptions générales relatives à l'évaluation, introduisant beaucoup de notions telles que la ,,Gesamtbewertung'', le ,,Gemeiner Wert'', le ,,Teilwert'' etc.; il examine ensuite le problème concernant l'influence de certaines relations juridiques, telles que conditions, droit de disposition limité, etc. Il s'occupe plus spécialement de l'évaluation d'actions et de titres.

La plus grande partie est occupée par les règlements spéciaux d'évaluation. Sont traités successivement entre autres la soi-disant ,,Einheitsbewertung'', les terres à l'usage de l'agriculture ou la sylviculture, d'autres biens immeubles et d'une façon très détaillée le fonds social.

Un registre détaillé facilite la consultation de l'ouvrage.

ERYMO CARNEIRO: *Dicionario do imposto de renda*. Grafica Editora Aurora Ltda. Rio de Janeiro, 1951.

Cet ouvrage de 150 pages contient le texte de loi de l',,imposto de renda'' brésilien, c'est-à-dire l'impôt sur le revenu tant des personnes physiques que morales. Les textes reproduits sont ceux de la loi du 25 novembre 1947 et du décret du 22 décembre 1947. L'index alphabétique au début de cet opuscule pratique facilite la consultation des dispositions de loi recherchées.

JULIUS TURNER: *Party and Constituency Pressures on Congress*. The John Hopkins Press. Baltimore 1951.

L'ouvrage de 190 pages contient une enquête faite par l'auteur sur l'influence exercée sur les membres du Congrès aux Etats Unis par les partis et les électeurs. L'auteur a pris pour point de départ les quatre sessions de 1921, 1930/1931, 1937 et 1941, c'est-à-dire des années de grande et de petite majorité des républicains, respectivement des démocrates.

Partant des votes par tête qui seuls pouvaient lui servir de matière, l'auteur tire certaines conclusions.

Dans plusieurs domaines il établit une comparaison avec l'Angleterre et la France. Il est frappé par exemple par la discipline beaucoup plus sévère des partis en Angleterre et en France qu'aux Etats-Unis. Il compare aussi dans cet ordre d'idées d'abord les agissements des membres des partis républicain et démocrate, et ensuite ceux des membres qui viennent des villes et de la province.

Bien que ne touchant pas immédiatement le problème fiscal, la lecture de ce livre est fort recommendable, spécialement en rapport avec l'influence que les électeurs peuvent exercer sur les membres du parlement en ce qui concerne la législation fiscale.

UNITED NATIONS — *Governmental Policies concerning unemployment, inflation and balance of payments* 1951-1952. New York, 1952.

La publication précitée des Nations Unies contient une analyse de la réponse à un nombre de questions posées par les Gouvernements de divers pays au sujet de la politique de pleine emploi et les bilans de payement.

Depuis 1949 un examen annuel a été institué relatif à ces sujets et ayant pour but de recueillir des données pour un aperçu périodique de la mesure, dans laquelle les gouvernements ont suivi les recommendations de l'O.N.U. au sujet de la politique de plein emploi nationale et internationale. Les questions, soumises aux Gouvernements ont été divisées en deux groupes, notamment ,,domestic policies'' et ,,policies relating to the balance of payments''. On a reçu en tout les réponses de 25 Gouvernements.

UNITED NATIONS — *Instability in Export Markets of Underdeveloped countries*. New York, 1952.

Dans cette étude on donne une considération au sujet des fluctuations des prix dans les pays soi-disant sous-développés, et relatives à l'exportation des principaux produits commerciaux pendant 50 ans.

Vu le fait que les exportations sont assujetties à de plus grandes fluctuations que les importations, l'exportation dans ces territoires joue un rôle important dans la fixation du revenu national, des économies et de la formation du capital, ainsi que de la stabilité monétaire et de l'évolution du développement économique. Cette étude prouve que l'instabilité est d'une telle envergure qu'elle entrave, sur une grande échelle, les investissements qui sont indispensables pour le développement de ces territoires.

UNITED NATIONS — *Economic Survey of Europe since the war*. A reappraisal of problems and prospects. Geneva, 1953.

Cet aperçu est le sixième d'une série de rapports, compilés annuellement par le Secrétariat de la ,,Economic Commission for Europe''.

Depuis le premier rapport, paru en 1948, l'accent avait toujours été mis sur le développement pendant l'année précédente. Dans le rapport susmentionné, au contraire, on a déplacé l'accent et l'on essaye de profiter des expériences acquises pendant la période d'après-guerre en analysant son importance pour l'avenir.

DR. W. BAIER AND H. FAHNRICH: *Technik der Steuerlichen Betriebsprüfung*. Buchreihe Finanz und Steuern nr. 17/18. Fachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co G.m.b.H. Stuttgart. 322 pag. 1951.

The object of this book is twofold. It is meant to be a textbook for governmental chartered accountants, but at the same time to bring before the public the comprehensive and difficult task of the chartered accountants.

It has not been the plan to indicate the lines the accountant has to follow in the case of fraud discovered by him with the enterpreneurs, the plan is

purely the technical work of the auditor. In fact the book links up with two works formerly published in the series, viz. "Gewerbliche Büchführung, Kostenrechnung und Steuer" (Band 2) and "Steuerliche Betriebsprüfung, Wareneingangsbuch und Wahrenausgangverordnung" (Band 5).

In this book we accompany the government's accountant to the businesses and sit down beside him when he performs his auditing task.

In the first chapter we are in a small business. The checking up is easier than in the medium-sized and big business, to which the second chapter conducts us. The problems with the small business are easier to survey for an outsider. Tax frauds usual only take place by hiding some parts of income and possibly by incorrect declaration of the trade expenses. Big businesses with many strange workmen will use other means if attempts are made to evade taxation.

The auditing done by the accountant will consequently be directed in a different way in the big- and medium-sized business than in the small business.

Chapter III deals with the auditing of the books of the agricultural and forestry trades. The following chapter has been devoted to special cases with which the accountant has to deal in his capacity of auditor, such as special manners of keeping books, special items on the balance-sheets etc.

The last chapter deals with a problem which is very acute for German governmental accountants, viz. the checking of the D.M. Eröffnungsbilanz, the balance-sheet which had to be drawn up on 21.6.48, the date of the currency reform in Germany, to which revaluation of the assets and liabilities expressed in R.M. was required into D.M.

ROY BORNEMAN AND PERCY F. HUGHES: *The Excess Profits Levy*. London, Taxation Publishing Company Ltd. 1952.

Part V of the Finance Act 1952 deals with the imposition of the new Excess Profits Levy, which operates from 1st January, 1952. The Excess Profits Levy 1952 is based on Proftis Tax principles although certain features are similar to those appearing in the old Excess Profits Tax Legislation. A very important alteration is that Escess Profits Tax is levied in addition to the Profits Tax and Income Tax and not instead of the Profits Tax. Numerous amendments were made to the original Finance Bill 1952 and the new tax, as it is now, is very complicated in its practical application. In this book more extensive treatment is accorded to the Law of Excess Profits Levy, while nearly one hundred and fifty examples give a clear insight into the practical application of the law.

ALBERT G. HART, *Defence without inflation*. The Twentieth Century Fund, New York, 1951.

During periods of war or intensive armament the economic policy is dominated by one all-important object, to wit winning the war or building up a defence. Domestic economy does not receive sufficient attention — not only in view of future periods of peace but also in view of the most efficient way of conducting the war and building up the defence. Purely military needs may throw the domestic economy out of joint and even threaten the military aims themselves — not to mention making a return to more normal conditions far more difficult than need be. The Twentieth Century Fund aimed therefore at examining elaborately the problems connected with this and drawing the attention to the way how domestic economy might be stabilized.

ALBERT G. HART AND E. CARRY BROWN: *Financing Defence*. This is a second volume in this series. This work is a continuation of "Defence without

inflation'' but it goes more in detail. Among other things the volume concentrates on budget measures to finance the defence programme and yet to avoid inflation, the various ways in which federal revenues can be increased without damaging the American economy.

ANDRE CHOURAQUI: *La condition juridique de l'Israélite marocain.* Publié par l'Alliance Israélite Universelle, 1950.

In the preface to this book the President of the ''Alliance Israélite Universelle'' René Cassin tells something about the work of this organization, which was founded in 1860, about the destruction of this work during World War II and about starting anew afterwards. In the introductory part the author gives an outline of the legal condition of the Israelites in Morocco. They live between the Mussulman population and the French without legally being on an equality with the other inhabitants. The book has been dedicated to the illustration of this drama. Many problems are considered: population, legal condition, nationality, the Israelite in public life, judicial authority etc. Fiscal problems are not treated separately but they are approached more than once.

The capitation tax is extremely high for the Israelites, they have to pay an additional defence contribution and ''friendship contributions''. These taxes stop for those going over to the Islam. There is not a great chance for the Israelites to be appointed to a fiscal office. The appointment is not made after an examination but ''sur titres''. The municipalities too impose taxes but not much is given on this subject.

DR. W. HARTZ, JOSEF OVER: *A.B.C. Führer durch die Lohnsteuer.* 3. neubearbeitete Auflage., Schäffer und Co. Stuttgart, 1952.

This extensive book (approx. 400 pages) deals with the tax on wages as in force at this moment in Germany. The special point of the book, as the title already says, is that the different problems which may occur, are treated in alphabetical order. So when the right index-word is found which, with the many references, is quickly done, everything concerning the problem is found grouped together. With this system the book has become very practical in spite of its extensiveness. In the addendum the decrees in question accompanied by ministerial indications are found.

Regularly supplements are issued so that one is kept abreast of the most recent changes and alterations. While writing this we have just received the ninth supplement which contains the changes until April 1953.

La Revue Fiduciaire Marocaine 1951. Guides no. 9 et 11, Casablanca.

No. 9. ANDRE THRIOREAU — *Le tarif fiscal marocain.*

In this number of the periodical (106 pages) a short description of each tax, now in force in Morocco, the tariffs and a report of the Acts and Decrees concerning the taxes are given.

No. 11. *La taxe urbaine et la taxe d'habitation.*

This number gives the law-texts of these two taxes in Morocco: of the ''taxe urbaine'', a tax on built up immovable property and of the taxe d'habitation, a tax levied from the tenants of houses.

M. LUYCKX: *Les Impôts et Droits de Timbre Belges.* M. Luyckx, 23 Meir, Anvers (1952).

Cet opuscule extrêment pratique donne un bref et clair aperçu des impôts perçus en Belgique. Les taux des divers impôts sont indiqués. Une bonne table de matières alphabétique permet de trouver facilement le sujet désiré.

Quiconque désire s'orienter au sujet de la réglementation d'un impôt quelconque en Belgique ou savoir si un impôt est perçu dans un certain cas, trouvera la réponse dans ce livret.

DR. FRANZ OSWALD: *Steuereinsparungen durch Sonderausgaben.* Kessler Verlag, Mannheim (1952).

Dans ce petit livre destiné à la pratique, l'auteur traite les diverses possibilités que la Loi tolère d'économiser sur l'impôt sur le revenu. Après une courte introduction, signalant les modifications que la ,,Steueränderungsgesetz'' a apportées dans la législation existante, précisément sur ce point, l'auteur traite les ,,Sonderausgaben'' qui peuvent suggérir des déductions.

UNITED NATIONS: *Statistiques européennes du bois* 1913-1950. European Timber Statistics 1913-1950. U.N. Genêve 1953, nr. 1953 II E. 5.

Ce livre à feuillets mobiles de l'U.N.O. donne un sommaire des statistiques dressées entre les années 1913-1950 dans le domaine du bois. Les années de guerre 1914-1919 et 1939-1945 n'ont pas été incorporées, faute de données dignes de foi.

OSWALD & CONRAD: *Gesetz über den Lastenausgleich, mit Erläuterungen.* Band 5 in Reihe A — Bundesgesetze (Schwartz-Kommentare), Verlag Otto Schwartz & Co., Göttingen 1952. 568 pp.

La ,,Lastenausgleichgesetz'' du 14 août 1952 est traitée et commentée par article. Ce livre ne s'occupe pas seulement de la ,,Vermögensabgabe'' mais aussi de la ,,Hypothekengewinnabgabe'' et de la ,,Kreditgewinnabgabe'', et en outre des ,,Ausgleichsleistungen''. Le livre ne s'occupe d'onc pas uniquement de l'aspect de la remise.

L'ouvrage n'a pas la prétention d'être un commentaire. Les définitions sont basées principalement sur une expérience de trois ans en matière de ,,Soforthilfe'' de la part de l'auteur en sa qualité de ,,Vizepräsident des Bundesausgleichsamtes.''

UNITED NATIONS: *United States Income Taxation of Private United States Investment in Latin America.* January 1953. U.N.O. New York.

Dans le développement économique des pays sous-développés les fortune privées étrangères peuvent jouer un rôle important. L'importance des placements étrangers ainsi que la direction qu'ils suivent sont déterminées partout par les facteurs fiscaux.

L'étude susmentionnée examine l'influence que les systèmes fiscaux des pays exportateurs de capitaux exercent sur la décision des placeurs de faire des placements à l'étranger. Une analyse spéciale est consacrée aux stipulations du système fiscal aux Etats-Unis, apportant une modification aux obligations fiscales des contribuables qui font des placements à l'étranger, et plus particulièrement dans l'Amérique du Sud.

DR. RUDOLF BINDER: *Die Steuern in den Vereinigten Staaten von Amerika* 1939-1952, mit 65 Uebersichten und 8 Schaubildern. Institut für die Weltwirtschaft an der Universität Kiel. Janvier 1952.

Ce livre veut initier tous les intéressés au système fiscal américain difficilement accessible par suite du fait que les Etats-Unis sont un Etat Fédéral. L'introduction soumet à un examen consciencieux les impôts directs et indirects perçus par le Gouvernement Fédéral, les Etats chacun à part et les Communes. En outre, il traite les relations financières entre la Confédération et ses parties composantes.

La seconde partie illustre les sujets traités par des aperçus et des statisti-

ques. Ainsi, elle contient des aperçus de chaque impôt fédéral, qui permettent de voir sans aucune difficulté les caractéristiques prédominantes de tous les impôts et indiquant clairement les modifications apportées pendant la période de 1939-1952. Vu leur grand nombre, les impôts perçus par les Etats et les Communes ont été limités à quelques-uns dans les aperçus. Trois Etats, à savoir: New-York, la Californie et Illinois ont été traités d'une façon détaillée. Pour les autres Etats, l'auteur s'est contenté d'un aperçu succinct. Quant au traitement des systèmes fiscaux des villes, il s'est limité à celles de 300.000 habitants ou plus. Enfin, plusieurs sujets ont encore été traités séparément, tels que l'imposition des étrangers, de certaines sociétés et des bénéfices de capitaux, l'Excess Profits Tax et les modifications apportées dans le droit fiscal américain au Revenue Code de 1950 et 1951.

LOW TARIFF CLUBB: Secrétariat-Général, Council of Europe. Strassbourg, 1952.

Ce livre de 118 pages donne un aperçu des tentatives effectuées et des démarches faites par le Conseil de l'Europe, afin d'arriver à l'abolition des droits d'importation et d'exportation comme moyen d'arriver à l'Unification de l'Europe.

Le rapport et le mémorandum de la Commission des Questions Economiques, sous la présidence du docteur Reyzand, occupent une grande partie du livre. A la fin on trouve les 8 points des membres du Conseil Consultatif relatifs à ce problème. Le livre donne un aperçu clair des divers problèmes et des difficultés que suscitent les efforts pour arriver à l'intégration de l'Europe. Il traite entre autres aussi les implications politiques et s'occupe encore des méthodes que la commission a jugées les meilleures pour atteindre le but qu 'elle se proposait.

UNITED NATIONS: *European Timber Trends and Prospects*. Genève 1953.

Cette étude est le résultat du travail et de l'expérience du "Timber Committee of the Economic Commission for Europa." Le but original de cette commission était d'aider l'Europe à résoudre le problème du déficit notable de bois, qui entravait le recouvrement. Dés qu'une amélioration se fit sentir dans les situations, le problème se posa de savoir si une collaboration internationale était nécessaire pour atteindre et maintenir l'équilibre entre l'offre et la demande, ou si un tel équilibre pouvait être réalisé sans cette collaboration. Cette étude fut entreprise en premier lieu pour trouver une réponse à cette question. Bientôt il est apparu qu'il y avait un déficit notable de bois et de papier en Europe, et qu'il fallait tenir compte d'un manque pareil dans l'avenir. Car l'industrie exige de plus en plus de bois, tandis que la production de bois reste la même. Il ne faut pas s'attendre à une augmentation sensible d'importations des contrées d'outre-mer. Tout ceci fait prévoir de grosses difficultés vers 1960, à moins qu'on puisse apporter, à bref échéance un changement dans la politique de la production, entraînant une sensible amélioration dans la situation du bois, aussi dans l'avenir.

Cette étude se termine par un grand nombre de recommandations. .

MOTOHAZU KIMURA: *Conditions for direct taxation*. Hitotsubashi University. Kunitachi, Tokio, April 1952.

Dans cet écrit, tirage à part d'une revue, publiée par cette Université, l'auteur traite quelques problèmes généraux en rapport avec les impôts directs. Après avoir expliqué quelques conceptions au sujet de la différence impôts directs — impôts indirects (il cite entre autres la conception technojuridique, qui prend pour critère la perception selon les rôles et celle de l'économie, qui prend pour mesure la répercussion), l'auteur arrive au thème propre se son opuscule, à savoir les conditions pour les impôts directs. Il

'approfondit ici le problème relatif à la capacité de supporter les charges et s'occupe aussi de la progression. L'auteur remémore également les conceptions de divers auteurs connus dans le domaine de l'économie et de la science fiscale. Il en résulte petit traité bien documenté.

A la fin de cet opuscule; traitant de problèmes généraux, l'auteur consacre encore quelques pages au dévelopement récent du système fiscal au Japon, réservant, bien entendu, une place importante au travail de la ,,Shoup-Mission''.

Dans la dernière partie le lecteur trouvera, entre autres, illustrés de divers tableaux, les revenus des impôts directs et indirects, ainsi que diverses données au sujet de l'impôt sur les revenus.

BINDER-WETTER: *Die Währungsreform*. Band I/1, I/2 et II/1. Fachverlag für Wirtschafts- und Steuerrecht. Schäffer & Co., Stuttgart 1948/1949.

L'assainissement monétaire dans la République Fédérale de l'Allemagne Occidentale du 21 juin 1948 a suscité de grosses difficultés et l'étude de ce problème est très épineuse.

L'édition de Schäffer & Co ,,Die Währungsreform'' est divisée en trois parties: les deux premières, Tome I (1 et 2) contiennent les textes de lois touchant cette matière, tandis que la troisième (Tome II (1), paru en 1949, donne un commentaire des lois nos. 61 et 62.

Le Tome I/1 reproduit le texte de la loi no. 61 (Währungsgesetz), no. 62 (Emissionsgesetz), no. 63 (Umstellungsgesetz) et la loi no. 64, importante du point de vue fiscal (Steuerreformgesetz) avec les ,,Durchführungsverordnungen''. Le Tome I/2, la loi no. 65 (Festkonto Gesetz), no. 60 (Errichtung der Bank deutscher Länder) et quelques décrets complémentaires.

M. P. VAN SIKKELERUS: *Inleiding tot het Nederlands Belastingrecht*. Gorinchem, J. Noorduyn en Zoon N.V., 1953.

La Hollande connaît une édition ,,De Belastingwetgeving'' (La Législation Fiscale) comprenant de brefs commentaires sur presque toutes les lois fiscales. Un volume séparé est consacré à chaque loi, de sorte que l'édition a atteint une ampleur respectable. Cette édition ne désire pas donner des études approfondies, mais une orientation générale et être un guide pratique pour certains examens, pour lesquels il faut quelques connaisances du droit fiscal.

Jusqu'à ce jour, une introduction générale manquait. Celle-ci vient de paraître de la main d'un ancien inspecteur des impôts, expert fiscal à présent. Tout d'abord trois chapitres sont brièvement consacrés (142 pages) à la théorie des impôts (ressources financières publiques — la perception des impôts — leurs aspects économiques). La majeure partie du livre s'occupe du ,,Droit Fiscal'': 1. Général (nature, but, notion juridique de l'impôt, autonomie), 2. Le Droit Objectif, 3. Les Relations Juridiques, entre autres obligations fiscales, etc. etc.

En feuilletant le livre on s'aperçoit qu'il initie le lecteur à beaucoup de problèmes, qui sont indiqués brièvement, avec de temps à autre des renvois à des ouvrages et à la jurisprudence.

REG. RAT DR v. WALLIS UND DR SELLIER: *Reichsbewertungsgesetz und Vermögensteuer*. Fachbücher für die Wirtschaft. Betriefswirtschaftlicher Verlag. Dr Th. Gabler, Wiesbaden.

Un opuscule de 46 pages, purement pratique. Il donne un aperçu systématique des règlements d'évaluation généraux applicables en Allemagne. On trouve des définitions succinctes, entre autres de la ,,Wirtschaftliche Einheit'' (Unité Economique), des règlements d'évaluation généraux et particuliers et de la ,,Gesamtvermögen''.

Le traitement de la loi sur l'impôt sur le capital est encore plus bref.

PROF. DR. M. J. H. SMEETS: *Bevorderen hoge belastingen de bedrijvigheid?* Rede uitgesproken bij de 25e herdenking van de Dies Natalis der Katholieke Economische Hogeschool te Tilburg. L. J. Veen's Uitgevers Mij. N.V., Amsterdam, 1952. 31 p.

Le problème du niveau des impôts reste actuel. Cette question déroutait déjà les esprits dans la période de 1920 à 1940, quand les taux se faisaient déjà sentir lourdement. A présent, ce problème est devenu cuisant.

Les taux actuels sont-ils trop élevés, spécialement dans l'Europe occidentale et aux Etats-Unis? Le professeur Smeets se demande en premier lieu dans son allocution si les impôts élevés favorisent l'activité. Il conclut que ceci *peut* être le cas en effet, mais uniquement si l'imposition frappe les fonds accumulés. Pour cette conclusion il s'appuie sur les théories de Keynes au sujet des opérations multiples. Thésauriser freine l'activité. Ces accumulations ne se rencontrent pas seulement dans les ménages individuels, mais aussi dans l'Administration, par exemple dans le cas de recettes d'impôts élevées, qui ne sont pas encore utilisées pour le but auquel elles étaient destinées (dépenses pour la défense).

Les impôts élevés contribuent à diminuer l'esprit d'entreprise, à faire renoncer au travail supplémentaire et à freiner l'économie. Ceci peut enrayer à son tour l'activité. En outre, ce processus favorise les dépenses inexcusables pour la prospérité publique et le gaspillage du côté de l'entrepreneur.

L'auteur se demande s'il ne serait pas possible de faire circuler les fonds accumulés d'une autre façon, par exemple en encourageant l'économie sous la forme de placements et de versements permanents dans des instituts désignés à cet effet, en appliquant un tarif réduit à cette économie. Malgré tous les inconvénients que le professeur Smeets reconnaît parfaitement, il conseille de se montrer large envers les économies individuelles et d'éviter de nouvelles majorations d'impôts.

GABRIEL DE USERA: *Regimen fiscal de los beneficios de empresos y participes.* Aguilar S.A. de Ediciones. Madrid, 1950.

Dans ce livre sont discutés d'une façon détaillée les impôts perçus sur les bénéfices d'entreprises, ainsi que les impôts auxquels sont assujettis ceux qui participent au capital. L'auteur traite entre autres la conception fiscale du capital, la notion ,,bénéfices'', les frais d'exploitation, etc.

Les problèmes généraux du droit fiscal sont traités dans une introduction circonstanciée (168 pages), tels que la question de savoir à qui revient le droit de lever les impôts, les droits relatifs en conséquence de cette imposition, la naissance de ces droits relatifs, leur fin etc.

MATEO KAUFMANN: *Codigo fiscal de la provincia de Buenos Aires.* Comentado y concordado. La Plata Buenos Aires. Rep. Argentina (1949).

À côté des taxes fédérales l'Argentine connaît aussi les impôts perçus par les provinces. Les impôts provinciaux suivants existent dans la province de Buenos Aires: l'Impuesto immobiliaria, l'Impuesto a las actividades lucrativas (un impôt proportionnel sur les revenus du commerce, de l'industrie et des professions libérales,) l'impuesto a la transmision gratuita de bienes (droits de succession et de donation), l'impuesto a los automotores, l'impuesto a los espectaculos publicos, l'impuesto de sellos (droit de timbres), taxas retributivas de servicios (un genre de droits d'enregistrement et de greffe), taxas retributivas y contribución de majoras por servicios y obras sanitarias (impôt qui frappe les propriétaires d'habitation avant qu'elles soient raccordées à la conduite d'eau et pourvues d'égouts).

En 1947, une commission fut nommée par le Ministre des Finances avec la mission de codifier la législation fiscale de la Province de Buenos Aires. En 1948 le Code fut publié. Dans le premier livre du Code les problèmes

généraux sont résolus dans 84 articles, tels que l'obligation fiscale, l'interprétation, le domicile, etc.

Dans le second livre on traite apart les impôts individuels. Le commentaire de M. Kaufmann examine ce code d'une façon très détaillée, et par article. Après une introduction générale, l'auteur donne un aperçu historique succinct de l'essai de codification des lois fiscales dans d'autres pays et de la réalisation du code en question. Un index et un registre alphabétique étendus facilitent les recherches.

FRANS BEERTS (Belgique), A. ZADEL ET A. DEKKER (Pays-Bas), ROGER THEIS ET VICTOR MONSEL (Luxembourg), *De Gemeentelijke Financiën in de Beneluxlanden,* België, Nederland, Luxemburg. Vergelijkende studie. Bruxelles 1952. Imprimerie E. Guyot s.a.

Les tentatives pour arriver à une meilleure coordination dans le domaine de l'économie pour les pays Benelux ne peuvent se borner à des règlements applicables pour le Royaume entier. Les organes moins importants de même méritent l'attention. Aussi nous applaudissons qu'un examen comparatif ait été institué au sujet des finances communales.

L'initiative a été prise du côté belge. Le Ministre Belge de l'Intérieur, L. Moyersven, témoigne de sa grande estime pour ce travail dans une introduction. Il observe d'une façon générale que l'étude comparative du droit et de la situation effective d'un certain problème est un des meilleurs moyens d' introduire des améliorations dans le régime de la propre nation.

Dans une introduction générale, les auteurs relèvent les modifications radicales survenues après la seconde guerre mondiale dans la structure et l'organisation des pays en question et les réformes dans le domaine des finances communales et provinciales. Un examen était souhaitable, mais point pour aspirer à une structure financière et fiscale uniforme. Pour celà les différences sont trop profondes et trop enracinées.

Les communications au sujet des trois pays ont environ la même structure. On trouve des informations au sujet du droit communal en général et des finances en particulier. Un aperçu historique ne manque pas non plus. Celui du Luxembourg est le plus simple. En outre sont traités le budget, les dépenses et les revenus et finalement les impôts municipaux D'autres revenus sont traités aussi, entre autres les exploitations municipales Le côté administratif a également eu toute l'attention des auteurs.

En ce qui concerne les impôts, on trouve dans les trois pays les centimes additionnels sur les contributions de l'Etat et un „Fonds Municipal". Dans les contributions municipales proprement dites il y a une grande diversité. Le Luxembourg connaît toujours la règlementation allemande. On trouve ici matière à une étude du droit comparatif. Le livre (326 pages) ne va pas aussi loin, il se borne à une description.

† EMILE GENIN ET ALFRED GENIN: *Commentaire du Code des droits d'enregistrement.* (Edition néerlandaise: Commentaar op het Wetboek der Registratie, Hypotheek en Griffierechten). 2me édition, 1951.

La première édition de cet excellent ouvrage parut en 1940 et fut annoncée à la page 275 du Vol. I de notre Bulletin.

Depuis, Emile Genin, ancien Inspecteur-Général de l'Administration de l'Enregistrement et des Domines et ancien conservateur des hypothèques, est décédé à Bruxelles. Le second adaptateur, notaire à Tournai, a pris sur lui le soin de publier la seconde édition (1025 pages).

L'importance de cet ouvrage dépasse celui d'un commentaire sur la loi de l'enregistrement belge. Non seulement en ce qui concerne la première partie consacrée à une „Introduction à l'étude des impôts concernant la circulation juridique des choses", mais aussi parce que l'on y rencontre

fréquemment des sujets dont l'importance dépasse celle de la loi de l'enregistrement belge et qui susciteront même l'intérêt bien au delà des frontières belges.

Dans la première partie on trouve des considérations au sujet des déterminations de notions, histoire, et concernant les principes généraux relatifs aux impôts: dispositions constitutionnelles, caractère des lois fiscales (ordre public, relation avec le droit civil, territorialité, interprétation, le fisc comme tiers).

La seconde partie suit le Code de près: les articles sont annotés, chaque partie est précédée d'un bref aperçu. Les notes sont classées systématiquement, de sorte que l'aperçu est très clair. En outre, un registre alphabétique détaillé permet de trouver facilement les lois et les commentaires. Le livre est mis à jour jusqu'au 1er juillet 1951.

L'Imposition des Sociétés Etrangères. Société fiduciaire, juridique et fiscale, 51, rue de la Chaussé d'Antin. Paris IV, 1952. 104 pp.

Pendant les dernières dix années, le nombre d'entreprises étrangères en France a beaucoup augmenté, et, parallèlement, le désir de connaître les lois fiscales d'importance pour elles. En outre, certaines entreprises envisagent de choisir la France comme domicile pour leurs filiales. Pour ces deux catégories cet opuscule est très intéressant et presque indispensable pour se former une idée des conséquences fiscales pour l'établissement. Le livre est divisé en quatre parties:

1) Impôts de droit commun dus à raison des établissements exploités en France.
2) Régime fiscal des valeurs mobilières étrangères.
3) Impôts personnels dus en France par les dirigeants de sociétés étrangères.
4) Conventions internationales pour éviter les doubles impositions.

F. BRANDWOOD: *Builders Costs Control Bonusing and Accounts*. 147 pages, 1952.

La façon de calculer le prix de revient a connu ces dernières vingt années un progrès considérable. Le compte de profits et pertes peut être dressé d'une façon détaillée à présent dans beaucoup de cas et permettre à l'entrepreneur de prendre connaissance des postes constituant les bénéfices et les pertes de l'entreprise, de sorte qu'une réorganisation pour les postes à deficit peut être étudiée pour favoriser l'efficiency.

L'auteur de ce livre explique et commente un système complet de contrôle des frais, basé sur les prix de revient, qu 'il a appliqué avec succès dans la Building and Civil Engineering Industry et qu'il croit devoir recommander aux directions d'entreprises similaires.

STATISTICAL YEARBOOK, Annuaire Statistique. 1952. U.N.O. (New York) 1952.

Cette quatrième année de l'Annuaire des Statistiques des Nations Unies donne à nouveau des données statistiques sur toutes sortes de sujets jusqu'à 1952 compris, d'environ 250 contrées du monde. Ces sujets ne font pas tous partie du domaine de l'économie et des finances, mais sont aussi de nature sociale, pédagogique et culturelle.

Afin de faciliter les comparaisons, on a pris autant que possible la même base comme point de départ pour la compilation des données sur les divers pays. Le texte a été publié en français et en anglais.

J. B. J. PEETERS, C. VAN SOEST EN A. MEERING: *Leidraad in de Belastingstudie*, Deel I. S. Gouda Quint, D. Brouwer en Zoon Uitgevers in het Huis de Crabbe, Arnhem 1953 (2e herz. dr.).

Les modifications, apportées dans la législation fiscale depuis 1949 ont nécessité les changements dans la seconde édition de ce guide, lequel a été compilé au profit des candidats pour la Staatspractijk Diploma voor Handel en Industrie ainsi que pour les examens de conseiller-fiscal. Les dispositions de lois d'intérêt pour ces deux groupes sont expliquées et commentées; les dispositions mêmes ne sont pas incorporées dans la première partie, mais sont reproduites séparément dans le second tome.

Après une brève introduction suit successivement un aperçu de l'impôt sur les revenus, l'impôt sur les salaires, l'impôt sur les rémunérations des administrateurs-délégués etc. des soc. an., l'impôt compensatoire (impôt sur les salaires payé par les patrons), l'impôt sur les dividendes, l'impôt sur le capital, l'impôt sur les sociétés, la Loi sur la Recapitalisation 1951, l'impôt commercial, la contribution personnelle, la taxe sur le chiffre d'affaires, le droit de donation et de succession et d'enregistrement, tandis que le dernier chapitre traite divers sujets brièvement. Le but de ce livre implique qu'il ne peut y être question d'une étude approfondie.

La concision et la clarté sont ses caractéristiques principales, de sorte que beaucoup d'autres personnes encore pourront le consulter avec succès.

The booklet "*Aftrekposten inkomsten- en vermogensbelasting*" by B. SCHIPPERS and J. L. VAN HEDEL (L. J. Veen, Publishers, Amsterdam, 1952) gives in a systematical way a survey of the different possibilities to apply deduction-items in the income and property tax.

Side by side with the review of the deduction-items some pages are devoted to the influence of the civil state and the family-relations upon the tax-levying, while at the end a survey is given of the height and increase of the marginal percentage in the income tax. In its small compass and by its ease of handling it will not only be very useful for laymen but also for those persons who are more competent in the sphere of taxation.

The "Statistical Office of the United Nations Department of Economic Affairs" has issued for the fourth time a report in the series "*Sample surveys of current interest.*" The aim of these reports is to keep those who are interested in the application of the modern "sampling techniques" succinctly posted on the experiences obtained in this field by statisticians and by organizations in the sphere of the statistics. The records of the fourth report have been provided by 18 countries. (Statistical Papers, Series C. No 5.).

In accordance with the desire of the Statistical Commission that the Secretary of the United Nations should issue regularly and with as little delay as possible the latest available records about the national income in as great a number of countries as possible, it has been decided to issue these statistical records twice a year in the Statistical Papers, Series H. The first number in this series has been issued now under the title of „*Statistics of National Income and Expenditure*" (Statistical Papers, Series H. No 1).

World Economic Report 1950—1951.

The "Division of Economic Stability and Development in the United Nations Department of Economic Affairs" has again issued a series, which aims at giving a summary review about the economic constellation in the world. This report gives a broad outline of the economic development in the different countries as well as the development in international trade and the transfer of international payments, during 1950 and 1951.

As supplements of the "World Economic Report 1950—1951" three smaller reports have been issued, under the titles: "*Recent changes in production*", „*Summary of Recent Economic Developments in the Middle East*" and "*Summary of Recent Economic Developments in Africa*", which give a detailed analysis of these questions.

Taxation and Business Concentration
published by The Tax Institute, Princeton,
New Jersey U.S.A. 1952.

This new publication of the Tax Institute has become a very readable book. Many well-known American scientists and practical men have contributed to the creation of this study.

This book is divided into 6 parts and fully based on the North American legislation in its development.

Part 6 gives, from the hand of prof. Alfred G. Buehler, a survey of "the theory of business taxation", although it would perhaps be better to speak of "theories" instead of "theory", owing to the lack of unanimity on this point in the works written on this subject. The "simple" prescription prof. Buehler gives us is ,,if we are going to tax business we should also know why we tax it, how to tax it and how much to tax it."

It is necessary to relate the taxes imposed upon business to their economic effects, both upon those who pay them and the community.

DR. HEINRICH STRATHUS: *Die Finanzierung der Verteidigungsausgaben in der Bundesrepublik Deutschland.*
Institut "Finanzen Steuern", Bonn am Rhein.

In the Assembly of the Atlantic Council in 1950 in New York agreement was reached on giving Germany the opportunity to collaborate in the defence of Western Europe and to contribute its part to the building up of it. The subsequent negotiations about the plan-Pleven, the decisions of the North Atlantic Council and the revision of the German occupation ordinance have caused a great change in the character of the occupation expenses of Western Germany. These costs, to be provided by the German Bond Republic, became by this decision a part of the defence contribution of Western Europe. The amount of the net-contribution is now fixed provisionally and the question how taxes can be produced and what repercussions will be the consequence of it is of growing importance. This book tries i.a. to give an answer to these questions.

RICHARD ZONDERVAN: *Les impôts sur les revenus d'origine étrangère ou attribués à des étrangers.*
Ets. Pauwels fils, Bruxelles 1951.

Not many books appear, which treat the international taxation law, or at least treat a part of it as an integral part. Owing to the development of the taxation law — a development, which goes in the same direction nearly all over the world and which makes the taxations ever more radical — it is at the moment more than ever of the utmost importance to investigate the problems, which arise from the international taxation law. Just like the international private-law the international taxation law — as far as it is not regulated in treaties — is a part of the national law, although, notwithstanding the difference in the national taxation-systems, there exists some resemblance in the problems and in the way in which they are regulated in the legislation.

The above mentioned book gives a review of the regulations in the Belgian legislation, which give an adjustment with regard to international fiscal questions. Of course this book is of interest for anybody, who wants to have an answer to a concrete practical question, but it is just as important for those who wish to ascertain how the international questions are treated in the national Belgian legislation.

The book consists of three parts: Principes Généraux; Régime concret de l'extranéité and Régime de l'exterritorialité.

A clearly arranged table of contents and an elaborate alphabetical index are appended.

V

ACTION ON TAX TREATMENT OF FOREIGN INCOME AT SESSION OF UNITED NATIONS FISCAL COMMISSION, APRIL 27 TO MAY 8, 1953

By
MITCHELL B. CARROLL

The issue of whether business income should be taxed only at the permanent establishment where it is earned was thoroughly discussed at the meeting of the United Nations Fiscal Commission April 27 to May 8, 1953. On the second day of the meeting, Dr. Dan Throop Smith, Assistant to the Secretary, United States Treasury Department, broached the subject in a statement on United States tax policy in regard to foreign income, and said that the United Nations document entitled "United States Income Taxation of Private United States Investment in Latin America" did not purport to represent any official policy of the Government of the United States.

Dr. Smith also stated that the present Treasury re-examination of the tax treatment of business income earned in foreign countries has not yet progressed to a point where specific recommendations can be made to the Congress, with the consequence that he could give no indication to the Fiscal Commission concerning the possibility of any fundamental changes in these portions of the United States tax laws. According to that speaker, the present attitude of the United States was described in general terms by the Under-Secretary of the Treasury, Marion B. Folsom, in an address on April 16, 1953, in which he acknowledged that the present manner of taxing income from abroad may not be adequate and added:

> "Modifications of the existing law must be made with care, however, to prevent the creation of loopholes through which domestic income is in some way converted into tax-exempt foreign income."

Dr. Smith declared that although the foreign tax credit may not be "perfect by any ideal standard, it may nonetheless be the most

satisfactory procedure." Furthermore, the inducement which the United States law offers other countries to adopt income taxation is regarded by tax officials in the present administration as an undesirable rather than a favorable incidental result. He felt that as a matter of principle each country should be in a position to develop its tax system on the basis of its own political and economic objectives and standards.

After acknowledging that excessive reliance on income taxation may unduly impede economic development, especially in countries whose economies are not yet highly developed, Dr. Smith concluded that:

> "In spite of its somewhat undesirable incidental consequence, the tax-credit provision of the Internal Revenue Code of the United States is an effective device to minimize international double taxation of income, expecially when used in conjunction with tax treaties to help define income and establish rules for its allocation. For this reason, the tax-credit should not be hastily rejected or superseded by any other procedure."

Dr. Smith observed that the United States taxation need not nullify tax inducements which other countries offer to United States firms to carry on activities within their borders as they may organize a foreign subsidiary corporation, the income from which will not be taxed by the United States until it is brought into this country. He also alluded to the special tax provisions applied to western hemisphere trade corporations and to the proposal that these special provisions might be applied more extensively and that the definitions covering the situs of income be modified.

Treasury Views on Exemption of Foreign Income

As regards the proposal to exempt foreign income, he said that this raises very difficult administrative problems in the determination of foreign income and stressed that a capital-exporting country with a highly developed income tax system may regard lower aggregate taxes imposed on corporate income from abroad as inequitable and discriminatory against domestic investment.

As regards the proposal to exempt income from foreign investments as an inducement to such investment, he declared that:

> "An examination of the attitude of corporate and individual investors in the United States towards investment abroad suggests that the great hopes associated with possible tax exemption may be largely illusory."

> In the United States, investment in almost all other areas of the world is regarded as being subject to very great risks — risk of expropriation, risk of currency depreciation and restrictions, risk of various restrictive laws relating to business operations (and perhaps a discriminatory application thereof), and other risks related to manifestation of political uncertainty . . . Until the risk factors are appraised differently than they are now, even full tax exemption would not be likely to stimulate huge outflows of corporate investment capital."

Dr. Smith observed that tax exemption might be costly to a capital-exporting country, adding that for one recent year it appears that the net receipts from U.S. taxation of income from abroad, after allowance for credits for taxes paid, may have been as low as $150,000,000 but said that dividend figures for a later year indicated that this amount may be untypically low. He said that:

> "These calculations are based on income currently received from abroad and make no allowances for net increases on retained earnings of foreign subsidiaries."

He stressed that the major objective of the present Administration is to regain control of the budgetary situation and that any immediate action involving a loss of revenue must be undertaken only to relieve serious hardships.

In closing, Dr. Smith said that:

> "It is important to recognize that the principal barriers to capital export do not arise from tax factors. Financial and political risks now constitute the principal barriers to the export of capital from the United States."

Reaction of Other Members of Commission

The statement of Dr. Smith provoked adverse comments on the part of various other members of the Commission. Disregarding the customary unfounded criticisms of the delegates of the U.S.S.R. and of Czechoslovakia, it may be said that the delegate of Pakistan stated that he thought that Dr. Smith's views were out of line with the declarations of President Eisenhower in regard to giving help to under-developed countries through the Point IV Program and otherwise. Likewise, disappointment was expressed by delegates of Chile and Cuba.

Cuban Resolution to Tax Income Only Where Produced

Dr. José Perez Cubillas, a technical adviser in the Cuban Ministry of Finance, proposed a resolution which reflects many of the arguments advanced in behalf of the Tax Committee in favor of the

principle of exempting income earned by permanent establishments abroad, which reads as follows:

"The Economic and Social Council,
Recognizing:

(a) The great importance of finding means to stimulate the flow of private investment from the highly developed to the under-developed countries, in order to accelerate the economic development of the latter,

(b) That the present flow of capital exported to the under-developed countries is insufficient for their development needs,

(c) That low taxation relatively to the rates in force in the more developed countries is one of the attractions which the underdeveloped countries can offer to foreign capital as an incentive to investment, provided that the highly developed countries accept the principle of non-taxation of the income from national capital earned in under-developed countries,

(d) That this incentive becomes ineffective — although international double taxation is avoided — if the capital exporting countries apply to the income from investments in under-developed countries any further taxation beyond that already paid in the latter,

(e) That income should be taxed solely in that under-developed country in which the capital is invested,

1. *Declares* that income from foreign investments in under-developed countries should be taxed only in those countries and should be exempted from taxation in all other countries,
2. *Recommends* the adoption of this principle as one of the most effective means of increasing the flow of private capital to the under-developed countries,
3. *Recommends* also that the necessary unilateral legislative action be taken to transform this principle rapidly into a practical reality,
4. *Recommends* likewise that the highly developed countries should, when concluding bilateral tax agreements with under-developed countries stipulate that income earned by their residents from investments in the other country should be taxed only in the country in which the income was produced."

Resolution of Special Sub-Committee

The Cuban resolution was referred to a "working group" or sub-committee, composed of the delegates of Sweden (Chairman), Belgium, Chile, China, Cuba, India, Pakistan, the Union of South Africa, the United Kingdom, the United States, and Canada, the last mentioned serving as reporter of the sub-committee as well as of the Commission. At the meeting of the working group consideration was given to resolution of the Economic and Social Council (Resolution 416D (XIV)) which called on the Fiscal Commission to:

"give further consideration to the problems of taxation in relation to foreign investment . . . (and) to examine further the proposal that,

through bilateral agreements or unilateral measures, income from foreign investments in under-developed countries should be taxed only in these countries, with such income being exempted from taxes by countries other than those in which the foreign investments are made."

The Cuban delegate urged eloquently adoption of his resolution but was opposed primarily by representatives of the United States and of the United Kingdom, Canada and even the Union of South Africa, although the latter country predicates its income tax-law on the principle of territoriality. Finally, a resolution was drafted which is regarded as a compromise.

In view of the general interest in this resolution, it is quoted verbatim below:

"Fiscal Incentives to Increase the International Flow of Private Capital for the Economic Development of Under-developed Countries.

The Economic and Social Council,

Recognizing,

(a) The great importance of finding means to stimulate the flow of private investment from the highly developed to the under-developed countries, in order to accelerate the economic development of the latter,

(b) That the present flow of capital exported to the under-developed countries is insufficient for their development needs,

(c) That relatively lower taxation in force in the underdeveloped countries is one of the attractions which such countries can offer to foreign capital as an incentive to investment,

(d) That this incentive becomes less effective — although international double taxation is avoided — if the capital-exporting countries apply to the income from investments in under-developed countries any further taxation beyond that already paid in the latter,

(e) That favourable tax treatment is one of the many factors affecting the flow of foreign capital,

Reaffirms:

That the country in which income arises has as a general principle an undoubted right to tax that income,

Recommends:

That the highly developed countries acting unilaterally or when concluding tax agreements should give sympathetic consideration to the feasibility of taxing such income only or primarily in the country in which the income was produced."

Final Action of Fiscal Commission

When the Commission convened on Wednesday, May 6, to consider these resolutions, the Cuban delegate insisted on his resolution being considered first, and after a lengthy debate on procedure, it was put to a vote, with the following results:

In favor (Cuba, Chile, Colombia and Pakistan)	– 4 votes
Opposed	– 7 votes
Abstention	– 4 votes

The resolution of the working group was then read and discussed, and received strong opposition only from the U.S.S.R. and Czechoslovakia. The results of the voting were as follows:

In favor	– 13
Opposed	– 0
Abstentions (U.S.S.R. and Czechoslovakia)	– 2

In the course of the discussions the Cuban delegate insisted that eventually his resolution should be adopted by capital-exporting countries in order to avoid decline in business and unemployment, both in under-developed as well as the developed countries.

Treasury Views Reiterated by Dr. Smith

Dr. Smith responded by saying that the United States was sympathetic to measures to encourage the movement of capital to under-developed countries and that its laws and treaties have gone a long way to providing incentives. He mentioned that the United States does not tax income of foreign subsidiaries until remitted, that it allows a credit for foreign taxes, and that it provides a lower rate of tax for western hemisphere trade corporations than that applied in the case of domestic corporations.

The Treasury was giving consideration to a proposal to extend the treatment allowed corporations operating in the Western Hemisphere to those operating in other parts of the world. The

Treasury was also considering a proposal to liberalize the foreign tax credit, and a measure to defer tax on the income of a foreign branch until brought into the United States, and also the application of low rates to foreign income. However, the study was not far enough advanced to make recommendations to Congress but, in any event, the recommendations would have to be consistent with sound fiscal policy.

He reiterated that the tax factors were important but not decisive, and that many risks, real or imaginary, constitute barriers to the flow of capital, and that capital-importing countries should reduce these risks.

Dr. Smith insisted that the United States does not intend to impose its system on the rest of the world; that each country should develop its tax system in its own way; that tax-credit should not induce other countries to adopt any particular system.

Dr. Smith said that he shared the concern of Cuba for countries desiring an inflow of capital but that there was also the problem in capital-importing countries of not having capital diverted into speculative uses; and that such countries cannot expect the international flow of capital to provide all the capital needed.

Problems of administration, of drafting, and of preventing abuse were also cited by Dr. Smith. He recalled that the United States had since a number of years granted an exemption in respect to the income of United States citizens who were bona fide residents of foreign countries and that this provision was amended, in order to encourage technicians to go abroad, by granting an exemption for the earned income of U.S. citizens who were in a foreign country or countries for 17 out of 18 months. He stated that this provision had been subject to abuse by persons with high salaries who went abroad and, after completing their work spent the rest of the period in a foreign country or countries without being subject to tax anywhere. The Treasury had asked Congress to take corrective action to prevent gross abuse and had learned a lesson.

Statements in support of the resolution of the working group were made by the delegate of Chile who said that Chile was anxious to receive foreign capital; Belgium, France and the United Kingdom.

May 19, 1953

EXCESS PROFITS LEVY

The Excess Profits Levy (Mineral Producers) Regulations, 1953

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by Section 55 of the Finance Act, 1952, hereby make the following Regulations with respect to the making of applications to the Board of Referees under subsection (2) of the said Section 55.

Citation

1. These Regulations may be cited as the Excess Profits Levy (Mineral Producers) Regulations, 1953, and shall come into operation on the ninth day of February, 1953.

Interpretation

2.—(1) The Interpretation Act, 1889, shall apply to these Regulations as it applies to an Act of Parliament.

(2) In these Regulations—
"The Board" means the Board of Referees;
"The Commissioners" means the Commissioners of Inland Revenue;
"The Registrar" means the Registrar of the Board of Referees.

Applications

3. Applications to the Board for an increase in the percentages of four per cent., eight per cent., ten per cent., twelve per cent. and fourteen per cent, referred to in the provisions of the Finance Act, 1952, relating to the standard profits for a full year shall be made in accordance with Form 1 set out in the Schedule hereto annexed and may be made by Applicants applying collectively or as an association of traders or by a representative authorised by them to make an application on their behalf or by a body corporate applying on its own behalf or by a representative authorised by it to make an application on its behalf.

The application shall be delivered to the Commissioners and shall be accompanied by a statement setting out the facts and specifying the grounds relied on in support of the application, verified by a statutory declaration in the form set out on Form 2 in the Schedule hereto annexed. Together with the application and statement, six copies of each of them shall be delivered to the Commissioners.

4. As soon as may be after the receipt by the Commissioners of the documents mentioned in paragraph 3 hereof the Commissioners shall deliver the application, statement and declaration to the Registrar, together with five copies of the application and statement and six copies of any observations they may desire to append thereto. At the same time they shall deliver to the Applicant a copy of such observations (if any).

Proceedings after Application

5. In case no matter of fact shall be in dispute, the Board shall appoint a date and place for the hearing.

6. In case any matter of fact shall be in dispute. the Chairman of the Board shall, either upon an interlocutory appointment or by notice in writing to be given by the Registrar, give directions as to proof of facts and procedure, and fix a time by which copies of documents and proofs of evidence intended to be used at the hearing must be in the hands of the Registrar.

7. Not less than five days' notice shall be given of an interlocutory appointment before the Chairman of the Board, and not less than fourteen days of an appointment for a hearing before the Board.

8. Attendance before the Board may be made by duly appointed representatives of Applicants, of whose names notice in writing must be given to the Registrar not less than two days before the time fixed for the hearing.

Upon any appointment before the Board the Commissioners may appear by any representative appointed by them, and, subject to the directions of the Board, may be heard upon the questions arising for determination.

9. No adjournment of an appointment by the Board shall be made except by order of the Board.

10. Unless otherwise directed by the Chairman, a shorthand note shall be taken at every interlocutory hearing, and a copy of the transcript thereof shall be sent by the Registrar to the Applicant and to the Commissioners. A shorthand note shall be taken of evidence given at all hearings by the Board, unless otherwise directed by the Chairman.

Save as aforesaid, no shorthand note shall be taken or transcript made, nor the same printed, without the order of the Chairman evidenced by a note under the hand of the Registrar. Where such order is obtained at the instance of an Applicant, the cost of any transcript and print shall be borne by such Applicant under arrangement to be made with the official shorthand writer. Copies thereof must be sent by the Applicant obtaining such order both to the Registrar and to the Commissioners.

11. Copies of documents intended to be used on an application, and draft proofs of any witnesses whom it is intended to call, shall be exchanged by the Applicant and the Commissioners at least fourteen days before the date fixed for the delivery of documents to the Registrar; and final proofs shall be exchanged, and six copies thereof, and of all documents intended to be used at the hearing, sent to the Registrar by the party intending to use the same on or before such date. This shall not preclude any witness from supplementing his proof at the hearing in cross-examination or reexamination.

12. Copies of any direction of the Board shall be sent by the Registrar to the Applicant, and to the Commissioners or their Solicitor.

General

13. Any statement delivered pursuant to these Regulations shall set forth the material facts concisely in numbered paragraphs, and shall be typed or printed. A statement which shall be found to depart substantially from this provision shall be deemed not to have been duly delivered. So far as is possible, all documents supplied for the use of the Board shall be typed or printed.

14. Copies of Forms 1 and 2 shall be supplied on request by the Secretary of the Commissioners.

15. Delivery of notices and documents shall be made to the Board by letter addressed to the Registrar of the Board of Referees at Room 552, Royal Courts of Justice, London, W.C.2; to the Commissioners, by letter addressed to the Secretary of Inland Revenue, Somerset House. London. W.C.2; to an Applicant, by letter addressed to him at his address.

16. In exceptional circumstances compliance with any of these Regulations may be waived in any particular instance by order of the Board or of the Chairman.

By Order of Commissioners of Inland Revenue.

J. H. Evans,
Secretary.

3rd February, 1953.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations prescribe the procedure to be followed in connection with applications to the Board of Referees under section 55 (2) of the Finance Act, 1952, for an increase in the various percentages referred to in the provisions of the Finance Act, 1952, relating to the standard profits for a full year for the purposes of the Excess Profits Levy.

Applications can be made on behalf of bodies corporate whose trade or business consists wholly or partly of the working of a source of mineral deposits of a wasting nature (not being coal or metal mines, oil wells or asbestos deposits, which are dealt with in Section 55 (1)). The Board of Referees may direct that the percentages shall be increased to such an extent, not exceeding 6 per cent., as they think necessary having regard to the extent that, by reason of the wasting nature of the source, the benefit of capital expenditure incurred in the trade or business concerned may be exhausted at a greater rate than in the case of other classes of trades or businesses.

The percentages which may fall to be increased are as follows:—

(*a*) 4 per cent. on increases or decreases of the average borrowed money in the Excess Profits Levy chargeable accounting period compared with that applicable to the standard years;

(*b*) 8 per cent. of (i) average paid-up share capital in one of the two standard years, if the body corporate elects to substitute that amount for its profits for that year in the computation of its standard profits, (ii) assets less liabilities at the end of 1946 or 1951, if the body corporate selects a standard computed on that basis;

(*c*) 10 per cent. of paid-up share capital at the end of 1946 or 1951, if the body corporate selects a standard computed on that basis;

(*d*) 12 per cent. of (i) increases or decreases in paid-up share capital and (ii) undistributed profits or over-distributions of profits so far as they fall to be taken into account for the relevant chargeable accounting period.

Where, in the Excess Profits Levy chargeable accounting period, the directors of the body corporate have a controlling interest therein, the percentages of 8, 10 and 12 per cent. are to be increased by not more than 2 per cent.

DEDUCTION OF TAX FROM DIVIDENDS.

The Board of Inland Revenue has issued a circular to bankers, paying agents, coupon dealers and other persons, which deals with the reduction in the standard rate of income-tax and the treatment of dividends and interest. The contents of the circular are:

'Income-tax is deductible by reference to the rate of 9s in the £ in respect of all payments of dividends, interest, annuities, ground-rents, rents payable under leases granted for a term exceeding fifty years, mineral rents and royalties, copyright royalties to persons not resident in the United Kingdom, patent royalties, etc., made on or after April 6th, 1953, with the exception of:

(*a*) payments, made out of taxed sources, which became due before April 6th, 1953, from which income-tax is deductible by reference to the rate in force at the time when the amount payable became due; and

(*b*) payments, made out of taxed sources, of rents payable under leases granted for a term exceeding fifty years, feu duties, bond interest, etc., due for the period ending on May 15th, 1953, in respect of lands and heritages in Scotland chargeable to tax under Schedule A from which tax is deductible at the rate in force at the commencement of that period.

'Deductions of income-tax made during a limited period after April 5th, 1953, by reference to the standard rate in force for the year 1952—53, viz. 9s 6*d* in the £, are, however, deemed to be legal deductions, subject to such subsequent adjustments as are necessary to give effect to the reduction in the standard rate. In the case of preference dividends (see definition in paragraph 4 below) paid out of the profits or gains of bodies corporate in the United Kingdom and interest on securities of bodies corporate in the United Kingdom paid out of profits or gains brought into charge to tax, the period extends from April 6th to the end of one

month after the date of the passing of the Resolution (Section 492 of the Income Tax Act, 1952): in the case of other payments it extends from April 6th to that date.'

Preference Dividends and Interest on Securities

'Under this head fall:

(i) payments of interest on any of the securities of the body corporate, from which tax is deductible under Section 169 of the Income Tax Act, 1952; and

(ii) preference dividends as defined in Section 185 of that Act, that is:

(*a*) a dividend payable on a preferred share or preferred stock at a fixed gross rate per cent; or

(*b*) where a dividend is payable on a preferred share or preferred stock partly at a fixed gross rate per cent and partly at a variable rate, such part of that dividend as is payable at a fixed gross rate per cent.

Section 492 of the Income Tax Act, 1952, provides that the necessary adjustment in these cases may be effected by an appropriate reduction of the amount of tax deducted from the next payment of like nature made on the security or share in question after the passing of the Finance Act for the year; the amount over-deducted cannot, however, be retained for more than one year from the passing of the Act.

'Section 492 of the Income Tax Act, 1952, also provides that, where an over-deduction is made good by such a reduction, the amount made good shall enure to the benefit of the person entitled to the payment on the occasion of which the overdeduction is made good; and, in any other case, shall enure to the benefit of the person entitled to the security or share in question at the date when the amount is made good; irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security or share, at the date when the original deduction was made.

Thus, if a payment of interest or fixed rate preference dividend became due on April 10th, 1953, amounting to, say, £10, and tax of £4 15*s* was deducted (i.e. tax at the standard rate of 9*s* 6*d*

in the £ in force for 1952-53) the amount of the over-deduction is 5*s*. If a similar payment of equal gross amount falls due, say, on October 10th, 1953, the appropriate deduction at the new standard rate will be £4 10*s*, but this deduction may be reduced to £4 5*s* so as to make good the previous overdeduction. Where the two gross payments are equal in amount, the adjustment may be more simply effected by deducting tax on the second occasion at a rate of 8*s* 6*d* in the £.'

Ordinary Dividends

'In relation to ordinary dividends, that is, all dividends other than "preference dividends", as defined in the Act, Section 493 of the Income Tax Act, 1952, provides that:

> "where, on payment of a dividend (not being a preference dividend), income-tax has, under Section one hundred and eighty-four of this Act, been deducted therefrom by reference to a standard rate of tax greater or less than the standard rate for the year in which the dividend became due, the net amount received shall, for all income-tax purposes be deemed to represent income of such an amount as would, after deduction of tax by reference to the standard rate last-mentioned, be equal to the net amount received, and for the said purposes there shall, in respect of that income, be deemed to have been paid by deduction tax of such an amount as is equal to the amount of tax on that income computed by reference to the standard rate last mentioned."

'Thus, if tax was deducted at the 1952-53 standard rate of 9*s* 6*d* in the £ from an ordinary dividend of £50 payable on, say, April 10th, 1953, the net amount received will have been £26 5*s*. The shareholder will be deemed, for the purposes of income-tax (and sur-tax), to have received income amounting to £47 14*s* 7*d* and to have suffered tax by deduction, amounting to £21 9*s* 7*d* [£47 14*s* 7*d* less £21 9*s* 7*d* (tax at 9*s* in the £), leaving £26 5*s* the net amount actually received]. If the shareholder should be entitled to claim complete relief from income-tax, he would be able to obtain repayment of £21 9*s* 7*d* (the tax which he is deemed to have suffered upon income amounting to £47 14*s* 7*d*). Similarly, if he should be liable to sur-tax, the amount to be included in his statement of total income would be £47 14*s* 7*d*. The effect for tax purposes is precisely the same as if the company had declared, without reference to any particular rate of tax, a dividend of £26 5*s* "free of tax".'

Dividends and Interest from Public Funds and Foreign Dividends

'Under this head fall:

(i) dividends and interest from the public funds payable on or after April 6th, 1953;

(ii) dividends and interest from any public revenue other than that of the United Kingdom or from any body of persons not resident in the United Kingdom, entrusted to an agent in the United Kingdom for payment in the United Kingdom on or after April 6th, 1953; also the like dividends or interest which, although not entrusted to such an agent for payment, are realized, on or after that date, through bankers, coupon dealers, or other persons in the United Kingdom.

On payment to the Revenue of the full amount of income-tax deducted by a banker, paying agent or other duly authorized person by reference to the rate of 9*s* 6*d* in the £, the Board of Inland Revenue will be prepared, on application by the recipient of the dividends, interest, etc., either to arrange for the excess tax to be allowed by adjustment against some subsequent assessment upon the recipient, or to include the excess tax in the next refund of tax made to the recipient, or to make a separate repayment of the excess tax.

'It will be of assistance if bankers and agents will advise any inquirer to apply to H.M. Inspector of Taxes for the District in which he carries on his business or employment, or, if he has no business or employment, the District in which he resides. [1])

'Applicants for repayment will be required to furnish evidence that they have suffered deduction of the amounts claimed. Where bankers or paying agents issue, with dividend warrants, counterfoils showing the name of the stockholder or shareholder, the gross amount of the dividend, and the income-tax deducted therefrom on payment, no further evidence will normally be required.

'In other cases, the *original* certificate on Form R. 189 by the paying agent or on Form R. 189A by the applicant's bankers, or other document issued in lieu of one of these forms certifying the

[1]) Residents outside the United Kingdom should apply to the Chief Inspector of Taxes (Claims Branch), Seafield House, Waterloo Road, Seaforth Liverpool, 21.

deduction of tax, should be produced. The issue of duplicate vouchers should be avoided wherever possible, and, if issued in any case, they should be clearly marked "Duplicate".'

Miscellaneous

'Under this head fall all cases other than those referred to above.

'The general position is that the person making the payments will be liable, under the Provisional Collection of Taxes Act, 1913, to repay or make good to the payee the amount of any excessive deduction of tax. In many cases it will no doubt be found convenient to all concerned for any overdeduction to be adjusted at the time of the next payment of a similar nature to the payee.'

Double Taxation Relief

'In the case of both preference and ordinary dividends, where a "net United Kingdom rate" has been computed for a dividend from which tax has been deducted at the rate of 9*s* 6*d* in the £ instead of the correct standard rate of 9*s* in the £, dividend counterfoils for the next following dividend should contain a reference to the earlier over-statement of the net United Kingdom rate. The net United Kingdom rate on the next following dividend referred to should be determined in the normal way, viz. by subtracting the rate of double taxation relief from the standard rate for the year (as finally determined).'

If further information is desired in particular cases, application should be made to the Inland Revenue.

(Source: *Taxation* Vol. LI. No. 1333 of April 25th, 1953).

NEW ZEALAND

REPORT OF THE TAXATION COMMITTEE

The Government decided in 1951 to make inquiries about the tax-system. For this purpose a committee was instituted comprising representatives of several groups of economic life and experts.

From the report issued in 1952 we quote some passages, which follow hereunder:

Growth of Taxation:

Since the last general survey of the tax system was made by a Royal Commission in 1924 there has been a very substantial growth in the amount of taxation levied in New Zealand. From 1925—26 to 1949—50 total taxation multiplied more than eight times from £17 millions to £136 millions. If the comparison is taken to the latest period, 1950—51, taxes have multiplied over nine times to £158 millions. Although incomes have also risen in the same period, taxation has risen twice as fast, being 14 per cent of the estimated national income in 1925—26 and over 28 per cent of the national income of 1949—50 (national income figures are not available for 1950—51, nor are many other statistics, and most comparisons throughout this survey show the situation only to 1949—50). The population has risen 36 per cent in this period, yet taxation per head has risen from £12 to £72 in 1949—50, and to £82 in 1950—51.

Principles of Taxation.

Adherence to sound principles of taxation is all the more important at the present time when large expenditures on war and social welfare programmes have called for high levels of taxation.

There is no doubt that a system of taxation that is wrong in principle can greatly weaken a country's economy, while unfairness in taxation can undermine the morale of citizens. Over many years in New Zealand the tendency has been to rank productivity of a tax and ease of collection more highly than sound principle.

The following are major principles that should govern the raising of taxation based on incomes:

(a) Taxes must be broadly based over the whole community. The income statistics for individuals show that the great bulk of income accrues to the lower-income groups, and that if all the higher incomes were taken in tax the added revenue yield would be relatively insignificant. The revenue cannot be obtained just by "soaking the rich" or by "hitting" companies harder. There is a limit to what can be paid in taxes without loss of incentive, fostering of waste and extravagance, and mounting pressure to pass on the tax in higher prices.

(b) Taxes should be fair as between the members of the community. Taxpayers must feel they are being treated equitably if they are to be willing to meet their share of Government expenditure.

(c) Taxes should be levied with due regard to the encouragement of primary and secondary production, which are basic to the economy as a whole.

(d) Taxes must be capable of being collected. The higher the tax rate the greater the incentive to avoidance and evasion. The more broadly taxes are spread the more completely can they be collected because they do not fall so heavily at any one point.

(e) Taxes should not be levied at rates or by methods that impair or prevent adequate savings for capital requirements of the community.

To these conceptions of the requirements of modern tax should be added the paramount necessity for ensuring the effective distinction between capital (a source of production) and income (the result of production).

In a young and steadily growing community like New Zealand present savings are the future capital resources for sustained development. At the present time we are relying overmuch on the capital structure built up by previous generations. Unless we add adequately to capital resources to increase production the standard of living cannot be increased or even maintained.

Purpose of taxation.

The primary purpose of taxation is to raise revenue for the needs of Government in administering and developing the country. A second objective may be the protection of industries or control of spending. Taxes levied with this objective seek to regulate the flow of some particular class of goods or services. A third objective which has been increasingly prominent in recent years is redistribution of incomes. An extension of the last-mentioned objective is the use that may be made of taxation to provide revenues for promoting employment. Overshadowing all these considerations is the need of Government to tax to meet its defence obligations. During recent times this objective has been a paramount one. It is apparent that the purposes for which taxation is levied in New Zealand have been widely extended over the past twenty-five years. In 1925—26 taxation was levied mainly to meet the administrative expenses of Government, but by 1950—51 these expenses had assumed small proportions in relation to redistributive expenditure.

Types of taxation.

Taxes are generally classified as being either "direct" or "indirect".

Broadly speaking, taxes fall under three categories:

(a) On earnings and profits — income tax and social security charge;

(b) On assets — land tax, death duties &c.

(c) On spending — customs and excise duties, sales tax, totalizator and amusement taxes.

Those on earnings and assets are fundamentally "direct" and under normal conditions the incidence of the tax will fall where it is levied. Those in the third category are fundamentally "indirect", and generally the incidence falls on the ultimate consumer.

Taxing of Capital.

Government has found it impracticable, other than through death duties, directly to levy any substantial taxes on capital for a number of reasons. It is not possible to levy an equal, just, and proportionate tax on all citizens in terms of the capital they command. Capital takes a great variety of forms and shapes. Very little of it is in money form in which taxation must be paid. Capital mostly comprises material assets such as land, homes, buildings, machinery, transport vehicles, ships, etc. Fundamentally these material assets must be valued in relation to their yearly production or use. It is right and proper accordingly that an annual tax should be levied only in terms of the profit or income from such production or use. Any tax

that would deplete capital as a productive source must be at the expense of future production.

Avoidance and evasion of taxation.

Where taxpayers have confidence in the equity of the taxation system they will be more inclined to pay their taxes with good grace and honesty. If the State's expenditure is wasteful and unnecessary, taxpayers will resent meeting their full tax obligations.

In a time of national danger there is no doubt that the majority of taxpayers will accept high rates in a spirit of patriotism, but when high taxation is continued, without a sense of national crisis, widespread and strong resistance is inevitable.

Resistance to taxation takes a great variety of forms, from legal avoidance through varying degrees of wastefulness, lack of effort, and inefficiency, to deliberate evasion.

Legal Avoidance.

Legal avoidance takes many forms and is encouraged by high taxation. Tax laws are complex and in some directions inequitable. Human affairs are, of course, most complex, and the law cannot provide for all eventualities. Because of legal distinctions, taxes may fall on one person more heavily than on another with the same amount of income. As the taxing authority insists on payment according to the law, the taxpayer cannot be condemned for following the form of the law to avoid liability for taxation. Tax avoidance does not occur only with larger taxpayers. The spirit of avoidance is evident in those who will not work longer, or try harder, because too much goes in taxes. In a similar spirit, many of those who claim benefits from social security funds make legally permissible adjustments in their affairs to qualify them, or to increase their benefits.

Waste and Inefficiency.

A high rate of tax at any time, whether in war or peace, leads to wasteful practices, the cost of which can be charged to expense accounts. Taxpayers, both individuals and companies, argue that if the Government is taking 15s. 4d. in the pound in the case of individuals and 11s. 6d. for a company, there is not much point in questioning too closely the need or value of some expenses, as "the Government pays most."

The Oxford University Institute of Statistics stated in "The Economics of Full Employment":

> High direct taxation generally puts a premium on every kind of tax evasion — legal or illegal. But it is necessary to realize that no system can be considered satisfactory which puts too high a reward on breaking the law. Legal tax evasion is even more important. A high income tax, imposed for the purpose of redistribution, is subject to the law of diminishing returns in more senses than one. It leads to a situation in which every item of expenditure that can be booked over "expense account" is automatically subsidized by the State at the rate of the standard tax . . . The more "progressive" the scales of taxation, the smaller, at the same time, is the reward obtained by business men for extra effort and risktaking. In a free society the "limits of taxation" deserve the closest study.

Illegal Evasion.

A serious form tax resistance takes is illegal evasion. The extent of this evasion cannot be accurately measured, but there can be no doubt that it is very widespread in the community at present. Additional tax collected as a result of the activities of Inspectors last year mounted to nearly

£1,000.000. Those wo do not evade have to carry a heavier burden. It is a matter of equity to the great majority of citizens who pay their full taxes that the Government shall exercise the greatest effort to trace effectively and deal properly with the evaders.

This alone, however, is not the whole answer to the problem. It must be emphasized that taxation must be based on sound principles and its weight must be reasonable. Failing this, the psychological reaction of the taxpayer is bound to be unfavourable and widespread avoidance and evasion will persist.

Erosion of Capital.

All physical assets lose their value through use and age, some more rapidly than others. This process of wear, tear, and obsolescence has been recognized for taxing purposes as a cost of production and is covered by depreciation allowances.

A new factor arises when inflation exists. Owing to the higher costs of replacement, normal allowances for depreciation in making provision on the basis of original cost only are inadequate to cover the replacement cost of the asset at the end of its life. It is not uncommon for the costs of replacement to be even several times the original cost. In the end the capital fund of the taxpayer in relation to the assets becomes inadequate for its replacement. It is this loss of effective capital that is described by the term "capital erosion".

It is represented that if no allowance is made for capital erosion in computing taxable income the result must be that tax is payable on an income greater than is actually earned by the taxpayer. A commonly expressed view is that taxable income, which in any case is expressed in inflated money, should only be the balance after setting aside an adequate proportion to replace the asset in such inflated money.

The problem is not peculiar to New Zealand, but is world-wide. Some far-reaching measures have been taken in European countries in an endeavour to overcome the difficulty. The problem is more acute with fixed assets than with stock, but it arises in both cases through the higher level of replacement costs under inflationary conditions. Suppose, for example, a taxpayer — company or individual — purchased buildings or plant in 1939. Since that date the taxpayer has depreciated them at the full rates allowed by the Commissioner of Taxes. In 1951, however, to replace those buildings or plant would cost perhaps several times the original cost. The taxpayer, therefore, finds himself in the position that he is providing only part of the depreciation needed to cover those assets on current costs. Over the same period it is possible that the taxpayer through the high taxation ruling has been unable to accumulate undistributed profits, after paying tax, sufficient to cover the depreciation short provided. The taxpayer, therefore, finds himself in the position of having spent his income and at the same time eaten into his capital resources as well.

Early recognition of the problem was given by the Government in 1945, when the system of special depreciation allowances on fixed assets was introduced. These allowances, amounting to 30 per cent of original cost of fixed assets purchased after 1945, are in addition to the normal depreciation allowances made by the Commissioner of Taxes. They are certainly a valuable concession to the taxpayer to help meet this problem. The original special depreciation allowances were introduced in 1945 for a period of five years. Since the expiry of the five-year period they have been continued from year to year, but there is no guarantee to taxpayers that they will be continued for the future.

One of the most generally advocated means of meeting the problem is through revaluing fixed assets on the basis of current costs, and claiming

depreciation accordingly. Such schemes of "revalorization" have been adopted in some Continental countries and were reviewed by the recent Millard Tucker Committee on Taxation in England. That Committee recommended against "revalorization", and considered that the only practicable method of meeting the problem in England was by a system of flexible initial depreciation allowances similar in principle to our special depreciation allowances. With the Tucker Committee's comments and recommendations on the subject this Committee is in general agreement. The Committee does not consider it is practicable to introduce any scheme of "revalorization" in New Zealand.

It is questionable whether many businesses in New Zealand could earn profits sufficient to cover an appropriation of large sums to depreciation provisions, and at the same time maintain dividends and pay tax at current rates. In many cases — particularly with new businesses — it has been found impracticable to claim the full special depreciation allowances now available. It is, therefore, difficult to see how it would be generally practicable for all business to claim depreciation on a "revalorization" basis. Any scheme that would enable some taxpayers to claim allowances that would not be practicable for other taxpayers would obviously be inequitable. The task of "revalorization" itself and the clerical work involved in maintaining the records necessary to substantiate depreciation claims would be enormous. The difficulty in administration from the Commissioner's point of view would be a further serious obstacle. As concerning stock-in-trade, the problem with steadily rising commodity prices is that a trader or manufacturer sells stock, but can only replace at higher prices. Present taxation practice does not allow him to reduce his stock valuations to guard against falling prices; so maintenance of his capital is dependent on his continuing to recoup in selling prices the increasing costs of his stocks. When values do recede, he faces losses on stocks which it may not be possible to recoup partially from subsequent taxation if a period of sustained trading at a loss or on low profit level ensues. It is through payment of taxation on a profit assessed without taking account of such potential stock losses that capital erosion is claimed to be taking place.

First and foremost the problem appears to be one that can only satisfactorily be dealt with by anti-inflationary measures to which a reduction in the general level of taxation can make its contribution. There is no doubt that on present taxation levels, taxpayers are denied the opportunity of saving to the extent necessary to maintain their capital equipment, let alone take care of expansion in the future. Any reduction in the general level of taxation must therefore assist taxpayers to combat this problem.

As specific remedies to meet the depreciation problem with fixed assets, there appear to be three courses that could be followed:

(a) The continuation as a permanent deduction of the 30 per cent special depreciation allowance on new plant.
(b) The revision of depreciation allowances so as to enable fixed assets to be written off at an accelerated rate.
(c) The allowance as a deduction of any depreciation written off by a taxpayer up to 100 per cent of the cost of the asset.

Whatever is done a taxpayer cannot claim more than 100 per cent depreciation, and it is felt that the continuation of the special depreciation allowance for buildings and the revision of depreciation rates for other assets is probably the most satisfactory way of meeting the problem. The question of specific depreciation allowances is reviewed in detail hereunder.

Set-off of Losses.

Where a taxpayer conducting a business, or deriving assessable income from any other source, incurs a loss in any year, he is entitled to have such loss carried forward for taxation purposes. The loss is then available for

set off against assessable income derived during the three following years, so far as it extends.

The right of set off is, however, lost in respect of any balance of the loss not extinguished within the period of three years.

Further, in those cases where an income producing enterprise is terminated, or where a taxpayer dies, and a loss is made in that year, the right to carry forward the loss is of no benefit because there is no subsequent income.

A business is usually conducted as a continuing operation, and, while annual accounting periods are necessary for many reasons, true results often cannot be determined until reviewed over periods of more than one year.

It is reasonable to propose that taxes collected by the State should in the ultimate be limited to taxes on the aggregate net profits or income, taken as a whole, over the life of a business or a taxpayer.

The Committee therefore recommends that, for taxation purposes, losses, other than capital losses should be carried forward without time limit; and that a loss incurred in a year in which an enterprise is terminated, or a taxpayer dies, should be carried back, with the reopening of assessments over a reasonable period of years.

Depreciation.

Depreciation allowances are made to bring to charge each year a suitable amount representing usage, wear-and-tear, or obsolescence of assets used in the production of income. During the war and since, the cost of replacement of assets — buildings, machinery, and equipment — has greatly advanced. There has as a result been wide discussion in accountancy and commercial bodies throughout the Englishspeaking world, indicating that normal allowances for depreciation do not represent an adequate charge against current production for costs of replacement of producing assets.

Normal depreciation allowances are limited to the original cost of the asset. To the extent that the allowance does not provide adequate funds to replace the producing asset, capital is lost. This inadequacy has been given the term "capital erosion". The subject is more fully discussed, and the opinion of the Committee is expressed, on page 201.

Under the present law rates of depreciation allowable are at the discretion of the Commissioner of Taxes. He has, over the years, considered representations made with regard to different classes of assets, and a schedule of allowance rates applicable to various assets has been established. The Commissioner has in the past, and can, alter rates according to the merits of any circumstance placed before him. At the end of the war additional provision was made for a special depreciation allowance of 30 per cent, applicable to assets acquired by taxpayers after 1st April 1945 and before a certain specific date. This date has been extended from time to time and as the law now stands, applies to assets "acquired, erected, installed, or extended", not later than the 31st March, 1952. This special allowance of 30 per cent is spread over a five-yearly period in the order of 10 per cent, 8 per cent, 6 per cent, 4 per cent, and 2 per cent, but the Commissioner may agree to a varation.

In the 1950 Act an alternative provision was made in respect of plant, machinery and equipment, and buildings for accommodation of employees acquired or erected for the purpose of any farming or agricultural business. This initial depreciation allowance of 30 per cent can be written off in one year, and is in respect of assets acquired or erected before 31st March 1953.

Both the foregoing allowances apply as additional provisions to the rate normally allowed. The allowances accelerate the process of writing down, although in no circumstances can more than 100 per cent be written off. The conditions that gave rise to the special depreciation allowances still exist.

Some more permanent basis of depreciation allowances than the dual system at present in force is called for. Adequate capital assets, particularly plant, machinery, and equipment, are essential for the increase of production in all spheres of the national economy. It is apparent that countries that are furthest advanced in mechanization achieve the highest production levels. In such countries a liberal view is taken in regard to depreciation, so that productive equipment can be discarded quickly in favour of more up-to-date and effective productive units.

Plant, Machinery, etc.

The Committee considers that the present arrangement of extending the special depreciation allowances year by year does not provide either the certainty required or the time necessary for planning, acquisition, and installing of machinery and equipment.

The situation would appear to be best met by the widening of depreciation allowances, on a more permanent basis, and the leaving of a greater measure of discretion to individual taxpayers.

The committee therefore recommends that in place of the present special and initial depreciation allowances and schedule of rates laid down by the Commissioner in respect of plant, machinery, equipment, and fittings taxpayers shall be entitled at their discretion to allowances for depreciation at rates up to a maximum of 30 *per cent per annum on the diminishing value of such assets.* Such a provision would greatly simplify the situation for taxpayers and the department alike. Taxpayers, having regard to all factors and the ultimate limitations of the allowance, would fix appropriate rates to meet their needs.

The use of the diminishing value has been the practice adopted by the Commissioner for many years in respect of plant, machinery and equipment, and seems to be well justified. It gives a better spread of depreciation over the life of the asset in that, on one hand, the allowance is greater in the years when the asset is new and requires limited expenditure for maintenance, and, on the other hand, the allowance is less when the asset is old and requires increased expenditure on maintenance.

The present limitations should continue to apply — namely, (a) that no more than 100 per cent can be written off, and (b) if the asset is sold, the difference between the written down amount and the sale price, up to the original cost, must be brought back and charged as income.

Buildings.

Owing to the very high cost of building there appears to be need for the continuance of the special and initial depreciation allowances now provided in respect of buildings, and alterations and extensions thereto. Planning of building, and eventual completion, involve long periods, and more certainty with regard to the availability of the allowances is desirable. If the present time limits were removed, limits could be introduced again if a change in economic conditions warranted.

The Committee recommends the continuance of special and initial depreciation allowances without time limit, in respect of new buildings, and alterations and extensions thereto. The Committee recommends, further, that on such basis the standard rates and existing practice of the Department in regard to depreciation of buildings shall continue.

Reserves for Bad debts.

The Committee has considered submissions that taxpayers creating reserves in their accounts for bad debts should be permitted to deduct such reserves from assessable income for taxation purposes.

Bad debts actually written off in the accounts are allowed as a deduction from assessable income.

If a debt is sufficiently doubtful to warrant a specific reserve being made it can usually be written off as a bad debt in whole or part. Any amounts recovered from the debtor would correspondingly be credited to assessable income in the year of recovery.

The Committee recommends that no deduction be allowed from assessable income for amounts set aside as reserves for bad debts.

Valuation of Trading Stock.

The present law requires a taxpayer to value his trading stock on hand at the end of an income year either on the basis of its cost price, its market selling value, or the price at which it can be replaced. A taxpayer has the option of choosing one of those three alternative methods.

These statutory provisions are interpreted reasonably by the Department and where the valuation of trading stock is in accord with prudent commercial practice it is normally accepted.

It would appear, however, that many taxpayers and their advisers are interpreting the provisions in their narrowest sense, and the Committee considers that the present wording of the law is not sufficiently explanatory to give effect to what is virtually present commercial and Departmental practice.

The Committee therefore recommends that clause 121 (4) *of the consolidated Bill (section* 16 (4) *of the Land and Income Tax Amendment Act,* 1939) *be amended by the addition of a proviso somewhat as follows:—*

"Provided, however, that in arriving at the value of the trading stock, the taxpayer shall be entitled bona fide to make due allowance for all factors which might reasonably be expected to reduce the value of such stock."

Such an amendment would go most of the way towards removing the objections advanced by taxpayers.

Full consideration has also been given to a proposal that taxpayers should be allowed to create tax-free reserves in the valuation of trading stock. Whilst recognizing the desirability of encouraging savings by companies and other taxpayers, the Committee is of the opinion that any right to create tax-free reserves could not be justified.

Averaging of Incomes.

For the great majority of taxpayers, incomes arise from a steady and regular source. For some taxpayers however, income is irregular and fluctuating. The committee is of opinion that incomes which arise from regular annual operations should be taxed in their year in accordance with the graduated scale for income tax. Mainly because of the difficulties involved, the Committee does not recommend any general application of averaging of incomes.

To meet the situation arising out of an abnormal item of assessable income coming to hand in one year, the principle of spreading has been already recognized in the legislation in a number of directions. Instances are:

(a) Goodwill payments to owners for leases;
(b) Realizations of livestock on the death or retirement of a farmer;
(c) Realizations of tree plantations (a crop arising over a long period);
(d) Realizations of patent rights.

The committee has in the previous paragraph suggested a further addition to this list.

There are items of an irregular nature which are income for taxation purposes, such as some sales of literary copyrights and certain distributions from companies.

Representations have also been made to the Committee in respect of certain crops; particularly potatoes and wheat, when grown in rotation. Farmers are usually faced with risks of wide fluctuation in yield, and some

farmers who have suitable cropping land have been unwilling to incur the risks, particularly as more steady farm income is available. It is represented that, if there is provision that the income from such crops can be treated on an average basis over a period of years, the crops would prove much more attractive to farmers concerned.

The Committee accordingly recommends:

(a) *In the case of abnormal items of income which come to charge in one year but have arisen over more than one year, on the application of the taxpayer, the Commissioner shall have power, at his discretion, to spread the income over more than one year for taxation purposes.*

(b) *That in cases where farming crops are subject to wide fluctuations in yield due to the special nature of their production, provision be made to enable the Commissioner of Taxes, on the application of the producers' association representing such growers, to apply a system for averaging income from such crops over a period of years.*

In the latter case the averaging procedure should apply only where the conditions of its application have first been arranged and settled between the Commissioner and the producers' association concerned. It would probably be desirable that the Department of Agriculture shall be associated with the framing of conditions having regard to minimum acreage and other appropriate factors which may require to be taken into account.

Company and Shareholder Taxation:

The present system of company taxation has the following features:

(a) The company is taxed as a separate entity on its annual net profit. Present company income tax rates commence at 2s: 10 ½d: in the pound (including 15 per cent surtax) and reach a maximum rate of approximately 10s. in the pound, applicable to all incomes over £7.950. In addition the company pays the social security charge of 1s. 6d. in the pound: In companies with incomes over £7:950 the shareholders who comprise the company and who collectively pay the 10s. rate are thus assessed for tax at the rate equivalent to the effective rate payable by an individual taxpayer with a taxable income of £5.550.

(b) The legislation purports to exempt dividends from further taxation on the basis that the company has paid tax on the income from which the dividend is declared. This exemption applies to shareholders whose income is solely from dividends, whether that income is £10.000 or £100. In the former case such a shareholder would escape taxation as the company's tax rate is lower than would be applicable to individuals with a taxable income of £10.000. In the latter case the shareholder pays through the company at a substantially higher rate than is applicable to an individuals' taxable income of £100, and he has no right of rebate. Despite the purport of the legislation to tax the company and not the shareholder additional tax is incurred:
  (i) By shareholders who have other income, under the "A and B" system;
  (ii) By shareholders with a "proprietary" interest, under proprietary taxation.

(c) For shareholders who have other income, dividends although defined as "non-assessable," are used for fixing the rate of tax payable. With a company on the maximum rate, even though the income from which the dividend arises has been taxed at the effective rate applicable to an individual income of £5.550; nevertheless, if the shareholder is in receipt of salary or other income the dividend is added to such income to increase such shareholder's rate of tax: It is thus a system of dual

taxation. This method of assessment is known as the "A and B" system, and is discussed in detail below.

(d) The legislation contains a further device called "proprietory taxation", applicable to shareholders in a certain class of company. This is applied if by such means the tax levied on the shareholder can be increased over and above the yield produced by the "A and B" system. The "proprietary" system applies mainly to shareholders in companies with taxable incomes under the maximum scale of company taxation. The term "proprietary" is used in the sense that the shareholders affected have a substantial, if not controlling, interest in the company. Two conditions apply — the company must be within the control of not more than four persons and the share-holder affected must have at least a 20 per cent interest in the income. The 20 per cent is an arbitrary figure, adopted as a measure to determine the "proprietary" shareholders. In practice the Department calculates assessments for these shareholders under both "A and B" and "proprietary" systems and issues whichever assessment is larger. For those holding less than the 20 per cent interest, tax liability is left to be determined by the "A and B" system only. "Proprietary" taxation, in effect, treats the proprietary shareholder as a member of a partnership in respect of the tax-paid income of the company. Of the total of 14.000 companies paying income tax in New Zealand, approximately 9.000 are "proprietary" companies, the majority of which pay tax at less than maximum rates. The additional yield of income-tax under the proprietary provisions is estimated at £600.000, a small amount in relation to the total of company taxation. To summarize, we have a taxing system which treats dividends in three ways:

(i) Where a shareholder has no other income — no tax liability on his dividends:

(ii) Where a shareholder has other income — tax liability in respect of his dividends under the "A and B" system.

(iii) Where a shareholder has a "proprietary" interest in a company — the dividend is ignored and the shareholder is treated as a notional partner. This applies only if it will increase the tax yield.

Method of Company and Shareholder Assessment.

On the general method of assessment of tax on the company and its shareholders, *the Committee found itself equally divided in opinion*. As a result, this subject is discussed in separate recommendations.

However, in respect of the subjects which immediately follow the Committee makes a majority report as under:

"A + B" Method in Relation to "Non-assessable" Income.

As mentioned previously, dividends are defined under present legislation as "non-assessable" income in the shareholders' hands. From 1931 to 1941 inclusive "non-assessable" income (mainly dividends) was included in a taxpayer's assessment for the purpose of arriving at an average rate of tax applicable to the total of the "non-assessable" and assessable incomes (less exemptions). Income tax was levied on the taxable balance of assessable income at the average rate so determined.

In 1942, however, an amendment to the law introduced the present system, commonly referred to as the "A + B" method of assessment. Under this system tax is first computed on the total of "non-assessable" and assessable income (less exemptions) as if it were all taxable income. A deduction is then allowed of the tax applicable to an income equivalent to the "non-assessable" income only, this being at lower rates.

The reason given for the introduction of the system was that it simplified

the work of assessment in the Department. Until last year assessments were certainly complicated by the inclusion of "unearned income", and the system was, on this account, then known as the "A + B + C" system. The effect, however, was not only to simplify the assessment work, *but to increase greatly the amount of taxation levied.*

The following examples will illustrate the manner in which the taxation is increased. Assume a taxpayer is earning a salary of £1,200 and receiving dividends totalling £500. To simplify the example, only a personal exemption of £200 and the rebate of £10 will be taken into account. The results are as follows:

	£	s.	d.
(a) Income tax on salary alone — namely, on taxable balance of £1,000, is	198	8	9
(b) Income tax on salary and "non-assessable" dividend on basis of average rate system (as used 1931—1941)	234	7	6
(c) Income tax on salary and "non-assessable" dividend on basis of "A + B" system (now operating)	270	6	3

The difference between (a) and (c) is £71 17s. 6d.

This means that such a taxpayer is required to pay this additional tax in respect of his dividend, although the income from which it is derived is taxed in the hands of the company. In arriving at this extra levy of £71 17s. 6d., he is taxed on £1,500 at the higher scale rate applicable to that income (£366) and is given a sett-oft for the dividend at the lower-scale rate applicable on taxable income of £500 only (£86) — difference is £280, less rebate of £10; net tax is £270.

Whatever complications were involved in assessments are now substantially removed by the cancellation last year of the special assessment method for "unearned income". It is equally simple to assess now on the method followed during 1931—1941, using the dividend to ascertain the average rate applicable.

On the example quoted above, this average rate method increases the taxpayer's levy by £35 18s. 9d. compared with the tax liability on salary only.

It is still a substantial addition, attributable solely to the dividend.

Based on income for the year 1950—51, the additional yield from the application of the "A + B" method is estimated at £2,700,000. This is approximately £1,300,000 more than would have been obtained under an "average rate" system.

The committee is of opinion that the "A and B" method of assessment is inequitable in its application and should as a matter of justice in taxation be abandoned. *It accordingly recommends that, if dividends continue to be classed as "non-assessable" income in shareholders' hands, the "A and B" system be abolished and dividends should included in assessments only for the purpose of ariving at an average rate of tax in line with the procedure observed from* 1931 *to* 1941.

The Committee recommends that the present requirement of control by not more than four persons be repealed and the definition of a proprietary shareholder be altered to mean one who is beneficially entitled to more than 25 per cent of the company's income.

"Non-Resident traders".

The Committee was asked to examine those provisions in the law, which, broadly speaking, impose liability for taxation on overseas traders doing business in New Zealand through a New Zealand agent. The agent in New Zealand is required to pay tax on behalf of the overseas firm, upon profits arising from such business. Liability on non-resident traders acting through agents was imposed with the object of putting them on comparable terms

with non-resident traders with permanent establishments in this country. It is intended to ensure that no taxation advantage accrues from conducting business in New Zealand on an agency basis, instead of through a branch.

It accords with the principle that all persons should pay income tax in New Zealand on income arising in New Zealand.

The Committee considers that the provisions are reasonable, and do not warrant amendment. Where desirable, relief can be covered by reciprocal Agreements between Governments.

Double Taxation.

A problem of double taxation arises when a resident of one country derives income from another country, and both countries levy tax on such income. This problem of double taxation has become more acute over the last decade with high taxation rates prevailing in most countries throughout the world.

Under present conditions the imposition of double taxation is a major influence retarding trade and investment between countries. It bears excessively on some persons residents in New Zealand with incomes from abroad. It discourages investment in New Zealand by persons overseas.

New Zealand has in recent years completed reciprocal agreements with the United Kingdom and Canada for the avoidance of double taxation on income. A similar agreement has been negotiated with the United States of America, but it does not operate until the formal act of ratification is complete.

Negotiations for an agreement have been conducted over a period with our nearest neighbour, Australia, but it has not been possible to negotiate a satisfactory agreement, mainly because of the differences in the structure of company taxation and social security taxation in the two countries.

The general principle followed in these agreements is that certain incomes which are personally earned — namely, salaries, pensions, annuities and literary royalties — are taxable on a "residence" basis. The country where the person resides levies the income tax. Trading profits, interest, rents, and dividends are assessed on an "origin" basis. The country where the income originates levies the tax. There are varying exceptions and refinements in the several agreements.

The Committee recommends that the provisions of clause 158 *of the consolidated Bill (section* 89 *of the Land and Income Tax Act,* 1923) *granting exemption from income tax in respect of income derived from and chargeable with income tax in another British dominion, be extended to countries outside the British dominions. If extension along these lines cannot be granted, it is at least reasonable, and the Committee recommends, that provision be made that credit be allowed for the tax imposed in the country of origin against any New Zealand taxation.*

Departmental Publicity.

As a general rule the Commissioner of Taxes does not publicize administratives rulings or decisions when a practice of long standing, and affecting the assessments of a class of taxpayers, is changed or mofidied. Publicity is normally confined to statements released to the newspapers on points of policy arising out of new tax legislation.

A changé in practice on the part of the Department often has widespread repercussions, and there would appear to be a general need for suitable publicity to be given in this respect.

The Committee accordingly recommends that where the Commissioner makes a decision or ruling of general importance to taxpayers it should be reasonably publicized.

ROYAL COMMISSION ON THE TAXATION OF PROFITS AND INCOME

FIRST REPORT[1])

INTRODUCTION

1. At a preliminary meeting we agreed that all organisations or persons desirous of making representations on the subject of our inquiry should be required to submit a written statement of their evidence. For the guidance of intending witnesses a list was published of the main questions on which evidence was invited. In this we divided the problems arising for our consideration into two heads, (a) the general structure of the present system of taxing profits and income, its effect on the national economy, and any suggestions for alternative methods of raising revenue by taxes on profits and income; (b) particular matters arising in connection with income tax, surtax and the profits tax.

2. In response to this invitation we have received upwards of 300 memoranda from individuals and representative bodies. Though this is only an interim Report we do not wish to let the occasion pass without placing on record our acknowledgment of the valuable help afforded to us in our inquiry by all those who have undertaken the work of preparing these memoranda, many of which contained a comprehensive and detailed argument of their case. We have also been much assisted by the Board of Inland Revenue who have supplied us with a series of memoranda describing and analysing particular problems arising for decision.

3. In order to review the material thus made available for our consideration we have, up to the date of this Report, held numerous meetings both in committee and in full session. We have also held 17 public hearings at which individuals and representatives of organisations gave oral evidence, mainly on matters coming under head (a) of our inquiry. The Minutes of Evidence of those public sessions have been published[2]). In connection with the present Report we also arranged for some of our number to hold informal discussions with various persons who we thought would be able to assist us by their comments upon some of the technical matters involved. These were matters which scarcely seemed to lend themselves to examination by way of formal question and answer at a public hearing.

4. In December, 1951, Sir Lionel Cohen (as he then was) resigned from the Commission. In April, 1952, Lord Radcliffe was appointed Chairman in his place.

5. We have already recorded the alteration effected in March, 1952, to that part of our terms of reference which deals with the framing of recommendations. During the course of our proceedings we have on two occasions

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[1]) This Report was originally published by H.M. Stationery Office, London as Command Paper 8761, and is reproduced by permission of the Controller of Her Britannic Majesty's Stationery Office.

[2]) Minutes of Evidence taken before the Royal Commission on the Taxation of Profits and Income: First to Seventeenth Days (H.M.S.O.)

secured a ruling from the Chancellor of the Exchequer on the interpretation of that part of our terms of reference which defines the scope of our inquiry. The first ruling was on the subject of capital gains. Its effect has been stated in answer to a Question in the House of Commons on the 6th February, 1951 [1]):—

> MR. ALBU asked the Chancellor of the Exchequer whether he will enlarge the terms of reference of the Royal Commission on Taxation of Incomes to include consideration of taxes on capital gains.
>
> MR. GAITSKELL: The Royal Commission have been informed, in reply to an inquiry received from them, that their present terms of reference entitle them to consider the question of charging to Income Tax or Profits Tax any profit ranking as a capital profit under the existing law which might reasonably be brought within the scope of those taxes.

The second ruling concerned the type of expenditure tax which has been advocated by the late Professor Irving Fisher, the American economist, namely, a graduated tax under which the measure of a person's liability is determined, not by his yearly income as such, but by the amount of his personal expenditure which he meets out of his resources of all kinds, including capital as well as income. In October, 1952, the Chancellor of the Exchequer informed us of his view, stating that—

> "with the level of indirect taxation which we have now reached, and the extent to which the expenditure of those whose expenditure is not confined to necessaries includes a large element of payment of tax, it seems to me that it would be impossible to carry through the examination or a scheme of taxation on expenditure without also examining on fairly fundamental lines the scope and purposes of indirect taxation".

Such a tax therefore appeared to him to fall outside our terms of reference.

6. It was not originally our intention to present an interim Report covering a part only of our subject. Our terms of reference (as amended by Your Majesty's Royal Warrant of 4th March, 1952) specifically require us to indicate an order of priority in which any recommendations which would on balance entail a substantial loss of revenue should be taken into consideration. In August, 1952, however, we received a letter from the Chancellor of the Exchequer indicating that he and others of Your Majesty's Ministers were much concerned with a difficulty caused by the present basis of taxation of United Kingdom concerns that carry on trading activities in overseas territories. The proposal had been made that where colonies give special reliefs from tax to new and developing concerns similar relief should be given from United Kingdom taxation if the concern was a United Kingdom company. The Chancellor indicated that he regarded the matter as one of importance and urgency, and asked whether it might prove possible for us to deal with it in an interim Report in advance of the other branches of our inquiry. He also suggested that we might find it necessary to review at the same time the general basis of assessment of United Kingdom concerns carrying on trading operations overseas. To this we replied that we would do our best to meet his request for an interim Report on the problem he mentioned. We pointed out, however, that if we were led to formulate any proposal involving a considerable loss of revenue we should be unable to discuss the order of priority to be attributed to that proposal as compared with other recommendations we might eventually make on the many other topics still awaiting our consideration at the time of our interim Report.

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[2]) Parliamentary Debates, House of Commons, Vol. 483, cols. 1529-30.

7. Consistently with what was envisaged in the Chancellor's letter we have thought it right to examine all the evidence submitted to us under Question 4 (*a*) of the list of questions addressed to intending witnesses, viz. :—

"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?"

In the outcome, we are able to make certain specific recommendations. But as will later appear there are other and wider aspects of the taxation of overseas profits which we have felt obliged to reserve for fuller consideration at a later stage when it will be possible for us to set any further recommendations alongside our proposals with regard to the taxation of business profits generally.

PRESENT BASIS OF UNITED KINGDOM TAXATION

8. The United Kingdom tax system asserts two distinct claims as the basis of tax jurisdiction[1]):

(1) It taxes income arising in the United Kingdom no matter to whom it belongs.

(2) It taxes residents in the United Kingdom no matter where their income arises.

The basis of this twofold claim was reviewed by our predecessors, the Royal Commission on the Income Tax; and in their report of 1920 they indicated that they regarded it as valid[2]).

9. It will be convenient to set out two paragraphs from our predecessors' Report which state the grounds upon which they dealt with this subject.

"32. We are fully aware of the very important national and commercial interests involved in the suggestions that have been made to us on this subject. On the plea that British-controlled concerns trading in a foreign country should be put on the same level as their foreign competitors, it has been suggested, for example, that such a far-reaching alteration should be made as to restrict their liability to the profits earned in this country, plus the amounts remitted here out of profits earned abroad. While we should be very reluctant to recommend the continuance of any provison that would in any way prejudice the conduct and extent of our foreign trade, we cannot recommend that a burden should be lifted from any particular class of taxpayers unless we are satisfied that the effect of that relief, considered in conjunction with the heavier burden consequently to be placed on all the remaining taxpayers, will result in a fairer distribution of the total burden to be borne.

33. In view of the present demand for capital to develop home industries, should we be justified in recommending differential taxation which will become more and more favourable to the British resident as he employs more and more of his capital abroad? Presumably capital is attracted to foreign countries owing to the higher rate of profit it can earn abroad. If we acknowledge, as we do, the principle of 'ability to pay', could we say that two traders residing here with equal incomes, one derived from foreign trading (after deducting all foreign taxes) and the other from

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[1]) Income Tax Act, 1952, paragraph 1 of Schedule D, in s. 122.

[2]) Report of the Royal Commission on the Income Tax, 1920 (Cmd. 615), paragraphs 30-9, 81.

trading within the United Kingdom, should pay very unequal amounts of tax? We feel we cannot answer these questions in the affirmative. Moreover, we should be reluctant, in our present national circumstances, to suggest any measure that could possibly be interpreted as a suggestion that a bonus should be given on the export of capital."

10. But we have received numerous representations criticising the present basis of United Kingdom tax on a United Kingdom resident in respect of income which takes the form of business profits earned overseas. We have therefore given fresh consideration to the imposition of United Kingdom tax on this kind of business profit.

11. The main ground upon which income from an overseas source is held chargeable to United Kingdom tax is that its owner is "resident" in the United Kingdom in the sense in which that word must be understood for the purpose of income tax. So far as an individual is concerned the conception of residence is a natural one: the Income Tax Acts lay down some express provisions for determining whether or not he is resident in a particular year[1]), and a code of practice has been built up based on those provisons and on the deductions drawn from various legal decisions. The partnership firm is likewise the subject of express provision[2]). If the management and control of the business which it carries on is situate abroad, the business is to be treated as one carried on by persons resident outside the United Kingdom. But in the case of a corporation the tax treatment of its profits and income has had to be worked out in the absence of any statutory definition of its "residence"—which is, indeed, an artificial conception to apply to a legal entity so materially different from a natural person. The prevailing test of a corporation's residence rests upon a series of decisions in the Law Courts, which found it possible to treat a corporation by analogy with an individual and held accordingly that a corporation resides where "it keeps house" or "does its real business". The locality in which its "central management and control" are exercised is regarded by the Courts as constituting the place of its residence. Assuming that it is always possible to identify a single country in which the central management and control of a corporation are exercised, this rule seems to work satisfactorily and there is no effective criticism of it. We cannot suggest any better general test for establishing a definition of a corporation's residence. Since the phrase "a United Kingdom corporation" is itself ambiguous, we think it well to mention the following points:—

(1) A corporation can be registered in the United Kingdom and carry out here the administrative duties that result from United Kingdom registration, e.g., filing of balance sheets and accounts, without being resident here.
(2) Conversely, a foreign corporation whose board of directors meet in the United Kingdom and exercise central control at such meetings would be resident here, even if all its trading operations were abroad.
(3) A subsidiary, even the wholly owned subsidiary, of a corporation resident here is not itself resident here provided that its board of directors make their own decisions at meetings overseas as to management and control. This independence on the part of the local board may be more ostensible than real in some cases.
(4) The universal utility of the accepted test depends on the assumpton that there is some one country in which central management and control are located. But control of major matters may be divided between local boards in different countries so that there is no "central" control, or it

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[1]) Income Tax Act, 1952, ss. 368, 375.
[2]) Income Tax Act, 1952, s. 147.

may be peripatetic because board meetings are held alternately in different countries. In such cases the existing rule may have to be supplemented by a new principle or a statutory provision. The recent decision of the Court of Appeal in the case of *Union Corporation, Ltd. v. Commissioners of Inland Revenue*[1]) shows that there is still something to be explored in this field.

12. For tax purposes the significance of the corporation's "central management and control" is not confined to settling whether or not it is resident in the United Kingdom. For the question then arises whether any part of its trade is carried on here. The legal view seems to be well established that the activity of management and control is an integral part of the trade. From this it follows that the trade of a resident corporation cannot be regarded as carried on wholly outside the United Kingdom. Thus the ordinary trading operations of a corporation which is resident in this country may all take place abroad, as in the case of a company which owns a rubber plantation and sells its product in a market outside the United Kingdom. Again, a large and important sector of a resident corporation's profit-earning activities may take place abroad, as when it assembles at an overseas branch components produced here and sells the finished article locally. Yet in either case the same facts which establish that the corporation is resident in the United Kingdom serve also to establish that its trading profits are the profits of a trade which is carried on in part in the United Kingdom. The formal consequence of this is that the profits are chargeable under Case I, and not Case V, of Schedule D; and this entails a charge of which the measure is the full profits of the whole business.

13. Since the legal position is as we have described it, it is difficult to attribute an exact meaning to the phrase "overseas profits". Colloquially speaking, it denotes profits earned outside this country. We ourselves propose to use it as a synonym for a credit balance on overseas trading, and in this connection we distinguish such profits from "overseas income", as to which phrase see paragraph 16 below. But even so, the expression does not lend itself readily to precise definition for two reasons:—

(1) Such profits may accrue in the first place to the non-resident subsidiary of a parent company which is itself resident in the United Kingdom. Later they or part of them may come into the hands of the parent company as dividends paid by the subsidiary. The terms overseas profits is sometimes applied to one and sometimes to the other. On the other hand the profits may be merely branch profits of a company which, though resident in the United Kingdom, engages in overseas trading transactions.

(2) In the later case, it may be difficult to isolate overseas profits from home profits. When, for instance, a company manufactures goods in this country and sells them through a branch overseas (which may well put the goods through some finishing process before marketing them) the whole profit accrues to a single concern. How is it to be apportioned between home and overseas?

14. The last difficulty is not insuperable. Double taxation agreements between the United Kingdom and other countries have already introduced into the tax system a practicable basis of apportionment. These agreements draw the line of divison according to the test whether a trader resident in one country but trading in another maintains in that other country a branch or agency which is on a sufficiently organised footing to be recognised as a "permanent establishment". If he does, the branch or agency is treated as

[1]) (1952) 1 All E.R. 646; L. (P.T.) 9.

if it were a concern separate from the home establishment and accounts are kept between them as if they were two independent traders dealing at arm's length[1]). The profits of the branch, ascertained on this basis, are overseas profits.

15. The history of the United Kingdom tax charge upon overseas profits and the development of the doctrine of central control and management have been fully described elsewhere, for example, in Appendix 7 (*k*) to the Minutes of Evidence published in connection with the inquiry conducted by our predecessors[2]); and it appears to us unnecessary to describe them in detail here. It is sufficient to record that the United Kingom claim to tax the world income of its residents has been asserted from the very first imposition of an income tax in this country and that the whole profits of a trade or profession actively exercised by a resident from a base in this country have from the beginning been charged without any distinction dependent upon the question whether they were partly earned overseas. However, in view of the many representations that we have received to the effect that what is called the "remittance basis" ought to be adopted as the measure of assessment of overseas profits, we think it desirable to say something about the history of this "remittance basis" as applied to the assessment of overseas income.

16. By "overseas income" we mean income arising from a source wholly outside the United Kingdom, e.g., rents from foreign land, interest on a loan raised by an overseas government, dividends from a non-resident company. Up to 1914 overseas income was taxed on the remittance basis—that is to say, the measure of the income for the purpose of assessment was only so much of it as was in effect brought over to this country. So far as it was unremitted there was no charge to tax[3]). The scope of the remittance basis was as follows:—

(1) It applied to overseas income from property and investments of all kinds.
(2) It applied to income derived by a United Kingdom resident from a trade or profession so long as the source or activity that produced it was wholly abroad—e.g., a sleeping partner's income from a foreign trading partnership or the earnings of an English doctor who practised only in the South of France. Such income was thus treated differently from the profits derived from overseas trading controlled by a United Kingdom resident from a base in this country, which (as we noted above) is and always has been chargeable according to the full measure of the whole profit.
(3) It applied to income from an office, employment or pension if the source itself was an overseas source—e.g. (to take the strongest case) employment overseas under a contract of employment made abroad with a foreign employer.

17. In 1914, the bulk of overseas income from investments and securities of all kinds was brought on to the same basis as the overseas profits of the United Kingdom based trader. The measure of the assessment was the amount of income that arose at the source whether remitted or not[4]). The categories of income described in heads (2) and (3) of the preceding paragraph

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[1]) See, for example, Articles II (1) (*l*) and III (3) of the Convention with the United States of America, as set out in the Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1946—S.R. & O. 1946 (No. 1327) I, p. 885.
[2]) Royal Commission on the Income Tax: Appendices and Index to the Minutes of Evidence (H.M.S.O. 1920), p. 73.
[3]) Income Tax Act, 1842, Cases IV and V of Schedule D, in s. 100.
[4]) Finance Act, 1914, s. 5.

were not affected: In 1940, the law was further amended so as to bring on to the "arising" basis a few minor categories of income analogous to income derived from investments, which has escaped the net of the 1914 legislation (notably, income on bank deposits overseas and income arising to beneficiaries under certain foreign trusts)[1]).

18. In the result (subject to what follows in the succeeding paragraph) the only categories of overseas income of a resident which remain chargeable on the remittance basis are those derived from the "foreign possessions" now described in paragraphs (*b*) and (*c*) of Section 132 (2), Income Tax Act, 1952, namely:—

> "income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership"

and

> "income which arises from any office, employment or pension".

Those are the categories mentioned in heads (2) and (3) of paragraph 16 above. Their special treatment depends on their source being a foreign (overseas) source. The tests which determine whether a source is or is not foreign for this purpose are very complicated and the legal position is not entirely clear.

19. For the sake of completeness we must mention that certain categories of residents whose circumstances involved a relationship with other countries as well as the United Kingdom were permitted to retain the advantage of the remittance bases when the general change to the arising basis took place[2]). The remittance basis remains applicable to the overseas income of —

(1) a British subject (or citizen of the Irish Republic) who, although resident in the United Kingdom, is not ordinarily resident here, and

(2) a person who, although resident in the United Kingdom, is not domiciled here.

We do not think that the benefit retained by those special classes of United Kingdom residents has any bearing on the problem of finding a right basis of assessment for overseas profits generally.

20. In brief, the history of the remittance basis is this. It is a familiar and well-established conception in respect of the assessment of overseas income. It has only been applied to the assessment of overseas profits in those special cases where no part of the activity that produces them takes place in this country: though much the same practical result as that produced by applying the remittance basis emerges in the taxation of the profits of an overseas-controlled subsidiary of a United Kingdom trader, since those profits are not taxed, whereas dividends paid out of them are. During the last 40 years, however, the remittance basis has been progressively withdrawn from the main categories of overseas income. Presumably the change was due to the belief that a given amount of overseas income was equivalent to the same amount of home income and that the remittance basis accordingly gave a preference to the owner of overseas income over the owner of home income.

CRITICISMS OF THE PRESENT UNITED KINGDOM TAX SYSTEM

21. We have received a considerable volume of criticism in various memoranda, levelled at the present basis of assessing overseas profits. Their

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[1]) Finance Act, 1940, s. 19.

[2]) Finance Act, 1914, proviso to s. 5: see now Income Tax Act, 1952, s. 132 (2) (*a*).

burden is that it hinders the progress if it does not threaten the existence of United Kingdom enterprises overseas and impedes the development of primary producing countries, to the detriment of our whole economy. In particular, it is said that our system subjects United Kingdom concerns to a grave handicap when they are in competition with concerns not resident in the United Kingdom: that it makes heavy and recurring inroads upon funds which would otherwise be used for necessary consolidation and expansion and at the same time accentuates the difficulty of obtaining new capital to be ventured in what must often be a hazardous enterprise.

22. We have recited these criticisms without intending ourselves to express at this stage any views as to the economic effects of the present system. But it is necessary at the outset to see whether this line of complaint amounts to anything more than a mere complaint of the high United Kingdom rate of taxation of business profits either in itself or in comparison with the rates imposed by other countries upon the profits of their concerns that operate in overseas markets. (These countries may be the actual country of operation. if a competing concern is resident there, or any other country in which it is resident, if that country follows the United Kingdom practice of taxing its residents on their overseas profits.) A mere complaint that the United Kingdom rate is disastrously high is a different thing from a complaint that there is something amiss in our tax system in so far as it affects overseas profits.

23. Our first step therefore was to seek the aid of the Board of Inland Revenue in making some survey of the taxation laws of other countries whose economic circumstances made it probable that they would be concerned with the problem of taxing profits earned outside their own territory. The result of our enquiry has been to satisfy us that the present United Kingdom system has almost no counterpart in other countries. For one reason or another (and we are conscious that the reasons may be various) profits earned abroad appear to receive a preferential treatment for purposes of tax, even in countries which still subscribe to the general principle of taxing the world income of their residents. Of the countries covered by the survey there is none except Western Germany which uniformly taxes the external profits of its residents by the same measure as it applies to profits arising within its own territory. The methods of giving a differential in favour of external profits vary and the details of the variations are not important for our present purpose. There may be a simple exemption of such profits from taxability, as in Australia, South Africa or Switzerland, subject or not to the condition that they bear tax in the country where they are made. There may be exemption of corporate profits, if external, as in Canada, or of dividends drawn from a foreign subsidiary or trade investment, as in the Netherlands. There may be a percentage deduction in the assessment of certain external profits, as in the U.S.A. "Western Hemisphere" profits are reduced by a deduction of 27 per cent. There may be a reduced rate of tax for external profits, as in Belgium, where the rate is one-fifth of the home rate. Finally, Sweden, while retaining the same principle as the United Kingdom, favours the making of double taxation agreements in a form which has the effect of wholly exempting the external trading profits of corporatons resident in Sweden from Swedish taxation.

24. It does appear therefore that a corporation which is resident in the United Kingdom but trades overseas is subjected to a different basis of taxation on its overseas profits from that which affects the profits of its probable competitors. Consequently it is not just a question of comparing one country's rate of taxaton with another.

25. It seems to be generally accepted that the United Kingdom practice

of taxing a resident trader on the whole of his profits wherever made was adopted at a time when income or profits taxes were not a regular feature of the revenue systems of other countries. Consequently the problems raised by double taxation—the claims of two distinct taxing jurisdictions to tax the same piece of property, income or profit—are, comparatively speaking, of recent growth. Under present conditions there are very few countries in the world that do not impose some form of income or profits tax on profits made within their own territories. Therefore if both the claim of the local jurisdiction to tax profits because they are made there and the claim of the jurisdiction of the maker's residence to tax them because he is resident there are to be regarded as valid claims the high rates of taxation which rule in the contemporary world would have the result of going far to eliminate the profit altogether, so far as the maker was concerned.

26. We think that international usage has now settled that not only has the country in which profits arise a valid right to tax those profits, no matter to whom they belong, but that it has the prior right to exact the tax as against the country in which the owner resides. Consistenly with this view the United Kingdom has entered into numerous double taxation agreements with other countries in recent years, which have for their purpose the harmonisation of conflicting tax claims of this sort. We have already referred in paragraph 14 to the line of distinction drawn by such agreements for the segregation of overseas profits from home profits. Generally speaking, the effect of these agreements, so far as trading profits are concerned, is to allow income or profits tax which the trader has paid in the country where his profits are made as a credit against the United Kingdom tax on the same profit[1]). The converse arrangement would prevail in the case of a foreign trader who has paid United Kingdom income or profits tax on profits made here. On the other hand these agreements make a special exception for the profits of concerns engaged in shipping and air transport. These are taxed exclusively by the country in which the head office of the concern is situate.

27. There has been a further inroad upon the general theory of the United Kingdom taxation of overseas profits by the introduction in 1950 of what is called unilateral relief. This is a statutory provision[2]) and applies to the profits of a United Kingdom resident made in a country with which the United Kingdom has no subsisting double taxation agreement. By virtue of the provision income or profits tax paid by the trader in respect of those profits is allowed as a credit against the United Kingdom tax upon them to the limit of three-quarters of that tax in the case of profits made in a country forming part of the British Commonwealth and one-half in the case of profits made elsewhere.

28. The effect of double taxation agreements and (within limits) of unilateral relief is, therefore, that the actual yield to the United Kingdom Exchequer from taxing such profits depends on a factor which is beyond our control— namely, the rate of tax currently ruling in the country where the profits are made. For example, under a double taxation agreement, if the overseas rate is higher than the United Kingdom rate, the United Kingdom tax yields nothing: if it is equal to the United Kingdom rate, the United Kingdom tax yields nothing: if it is lower than the United Kingdom rate, the United Kingdom tax yields whatever may be the balance between the two rates of tax. The United Kingdom trader himself will always be obliged to pay whichever is the higher of the two rates. Put in another way, the lower the rate of tax exacted by the jurisdiction where the profits are

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[1]) Income Tax Act, 1952, s. 347 (2) and 16th Schedule.
[2]) Finance Act, 1950, s. 36: now Income Tax Act, 1952, s. 348.

made, the more tax is likely to accrue for the benefit of the United Kingdom Exchequer; the higher the rate of tax exacted locally, the less there will be for the United Kingdom.

29. A further anomaly arises from the distinction that now rules between the profits of an overseas subsidiary of a company based in the United Kingdom and the profits of an overseas branch of a company similarly based. Whereas the profits of the former, if its central management and control are situate overseas, are not subjected to tax, the profits of the latter are. Yet in substance they may stand in much the same relationship to the head office of the concern.

30. Such, then, is the general problem and it is one to which we propose to devote further study. We have only set it out in outline at this stage and we have not tried to draw attention to some of the considerations that tell for or against the continuance of the present system. There are, however, two particular difficulties arising out of the general problem upon which we have received representations from several organisations. They arise respectively from impediments to the remittance home of overseas profits and from the effect of United Kingdom taxation in conjunction with double taxation relief in frustrating the grant of special tax concessions by an overseas country.

31. As to the first of these, the United Kingdom tax system proceeds on the basis that overseas profits (which may represent a sterling balance or a balance expressed in foreign currency) are the equivalent of a sterling profit balance at home. The equivalence is expressed by converting the foreign balance at the rate of exchange ruling at the accounting date or the average rate ruling during the accounting period. This is the method that would be used by accountants to express the profits of the concern for the purposes of its own annual accounts, so long as the convertibility of that currency into sterling is not in question. But difficulty begins when it is found that in some countries all or some part of these profits may be incapable of being remitted to the United Kingdom, at any rate during the year in question. This "block" would normally arise through some form of exchange restriction, and the question has been raised whether it can be right to claim a tax payment of cash here in respect of profits which are incapable of being realised in sterling.

32. We have been invited to follow this line of argument even further and apply it to the circumstances of banks and insurance companies doing business overseas which sometimes find that the terms of legislaton in the country in which they are operating require them to retain locally some prescribed part of the funds at their disposal. As a result such a concern is not necessarily free to take out of the country the whole of the profit that it has made during the year of operation in the country.

33. The second particular difficulty is that the United Kingdom's present system of taxing overseas profits may involve this country (and the concerns which it taxes) in a position of embarrassment towards other governments by frustrating the tax policies of those governments with regard to their own territories. For instance, a government may deliberately keep its business taxation at a low level in order to attract capital for development: but as regards any concerns operating there whose profits are subject to taxation here this policy only results in providing a larger balance of the total tax for the United Kingdom Exchequer. The area that is seeking to attract capital gets no advantage from forgoing the higher tax. Or the government of another area may provide special tax concessions for "pioneer industries" or industries it desires to encourage, e.g., a tax holiday for the opening years or very liberal allowance for amortisation or depreciation. Again the more it reduces its tax claims the larger is the balance left for the United Kingdom

Exchequer. The area itself gets no benefit from its forbearance, and the concern which operates from the United Kingdom becomes the less attractive a concessionaire. Can it be right (it is asked) for this country to persist in a policy which has these results, the more so as the difficulty relates particularly to the development of colonial territories which Your Majesty's Government has undertaken to further?

THE REMITTANCE BASIS

34. Faced, then, with a considerable volume of representations in favour of some lightening of the United Kingdom tax burden on overseas profits on the grounds which we have just outlined, we have given careful consideration to the proposal advanced by many of the critics that the remittance basis ought to be substituted for the present basis of taxation. We express no view as to whether this would in any event represent a correct principle of taxation applied to this subject. We have not, however, been able to see how this basis could be satisfactorily applied as an measure for assessing trading profits, and are driven to the conclusion that the advocates of this change are pursuing a mistaken analogy with the remittance basis as applied to an individual's income.

35. An individual's income from an income-producing source (an estate, an investment, an office) can be thought of as represented by an identifiable piece of property (rent, dividend, salary). If so, the only problem in applying the remittance basis is to ascertain how much of that property has been received in the United Kingdom as cash or credit or in kind. This may sometimes involve difficulties in tracing the receipt to its source, especially if there has been, as there may have been, conversion of the income or its source into some other form of property. But the conception remains an intelligible one.

36. In the case of the trader, on the other hand, there is no identifiable piece of property that represents his income: his profit is simply the credit balance shown by his account. There is therefore no natural relation between the moneys remitted to the United Kingdom in any year and the profit balance of that or the previous year. Moreover, it is obvious that the trader, unlike the individual who is a recipient of income, will in the normal course be remitting money and goods to and fro for the purposes of his business. He may be bringing goods in to sell in United Kingdom produce markets: or he may be bringing money in to purchase supplies or capital equipment, to pay current expenses, or for long or short term investment here. None of this is necessarily a remittance of profits. Some of it could be, particularly in the case of a business which is retaining profits for expansion: but the sum of remittances may well be far in excess of any profit balance for the year. Hence advocates of the remittance basis who seek to reduce it to practical terms postulate both—

(*a*) a fairly complicated system of accounts as between branch and head office, designed to ensure that any particular remittance is capable of being identified according either to its character or to its purpose; and

(*b*) the exclusion in effect of any remittances that are not intended to be kept in a form that would leave them available for distribution among proprietors and so for withdrawal from the business.

'The second requirement, the purpose of which we fully appreciate, has both a theoretical and a practical importance. First, unless some such exclusion was made from computable remittances, the remittance basis would hardly be worth a trader's attention. Secondly, it would afford a strong incentive to the trader to keep as much of his funds as possible from entering the

United Kingdom even for such purposes as the purchase of goods or equipment here and to sell his goods outside the United Kingdom markets. Such a result must be harmful to our economy.

37. Once requirements of this kind are introduced, however, the analogy with the remittance basis as applied to overseas income breaks down. In that case, once the origin is identified, the purpose to which a remittance is applied is immaterial. In this case, assuming that the origin of the remittance can be said to be identifiable, the governing consideration is nevertheless to be the purpose to which it is intended to be applied.

38. On that account alone we think that the suggested remittance basis lacks justification. We must also add that we foresee great practical objections to its adoption.

(1) The complicated system of accounts which has been postulated would not have finally served its purpose when a given remittance made in a particular year had been identified as falling outside the scope of the charge to tax. A fund remitted for one purpose might ultimately prove surplus to requirements and might in a later year be diverted to another purpose to which liability ought to attach. Machinery might therefore have to be instituted to secure that the amount of tax originally charged could be reviewed so as to bring it into accord with the ultimate disposal of the sums remitted.

(2) Even in the comparatively simple case of overseas income, it is often a difficult question of law to say whether a particular transaction or series of transactions does or does not amount to a remittance. The reports of legal decisions in Tax Cases show how fine the line of distinction sometimes turns out to be. With the great variety of commercial transactions that may be involved in the carrying on of trading enterprises overseas, the scope for disagreement and litigation between the taxpayer and the Inland Revenue would be enormously increased by the adoption of a form of remittance basis for assessing overseas profits.

(3) Further, the remittance basis for overseas income has led to special arrangements whereby the substance of a remittance is obtained and spent in this country without a remittance actually taking place. For instance, money is borrowed from a bank in the United Kingdom and the debt is later transferred to a branch abroad, and paid off there out of income arising and retained there. This is legal, but none the less it is a form of avoiding taxation by a special device. We are left in no doubt that a remittance basis applicable to overseas profits would offer a big scope for ingenious financial manipulation.

39. For these reasons we would be unable to recommend the adoption of a remittance basis for the assessment of overseas profits.

PARTICULAR MEASURES

40. Although we could not support the proposals made to us for a remittance basis we have, in our examination of the arguments used to support those proposals, come to the conclusion that there are three particular measures which should be adopted. They represent lesser adjustments that ought to be made to meet particular difficulties encountered by some concerns engaged in overseas trading. To these we now turn.

41. The first concerns the restriction upon the unilateral relief granted on account of overseas tax on trading profits. As we have said, whereas a trader who comes within the benefit of a double taxation agreement gets full tax credit in the United Kingdom for the comparable overseas taxes, a trader who pays such taxes in a country with which the United Kingdom has no such

agreement has to rely for any tax credit here on the statutory provisions for unilateral relief[1]). Under them he gets tax credit but only to the extent of half the United Kingdom tax in the case of foreign countries and of three-quarters in the case of Commonwealth countries. India and Pakistan are the only major Commonwealth territories with which there are no agreements: a good number of foreign countries is not covered, but that does not mean, as we understand, that other agreements may not be negotiated.

42. When the topic has been brought to debate in the House of Commons this qualification of unilateral relief has been explained as retaining for the United Kingdom some revenue to sacrifice as an inducement to another country to enter into a double taxation agreement with this country[2]). The idea is that since the other country will on its part be sacrificing some revenue by entering into the agreement, the United Kingdom position is the stronger if it has not already given up all its claim by granting full unilateral relief. It is not possible for us to ascertain by evidence the practical utility of such a negotiating counter. But the reason for thus limiting unilateral relief has been publicly announced: Ministers have made public that this country is prepared to meet the cost of full relief (put at £m5) if further double taxation agreements can be made: the form of double taxation agreement which this country favours and has already made with a number of other countries must by now be quite well known. Having regard to this, we do not think that such negotiating advantage as can still remain outweighs the unfairness to the trader in "unilateral" countries who is denied the benefit of a relief which the United Kingdom is in principle quite ready to concede, and we are of opinion that the time has now come when the limitation ought to be removed. We recommend accordingly that the relevant legislation should be amended so as to permit unilateral relief to be granted without the present restriction as to the amount of United Kingdom tax against which credit may be given.

43. The second particular measure which we suggest is concerned with the unremittable profits to which we alluded in paragraph 31 above. The root of the trouble lies in the fact that not all currencies are at all times freely convertible. The restrictions that arise vary from country to country, and it is possible to speak of them only in general terms. For our purpose they involve some bar upon the conversion of the local currency into sterling. Restriction may be imposed by prohibiting transfer except through or with the permission of a central bank or exchange control authority, and then rendering the sterling unavailable or available only in limited quantities or for limited puposes. Or it may be imposed by fixing a "registered" or "authorised" capital for the concern and permitting transfer of profits only to the extent of a fixed percentage of that capital: any further sum has to be, and may not be, sanctioned as a special repatriation of capital. Such restrictions are, no doubt, intended to be temporary: but they may last for years or may be reimposed from time to time. In recent years they have been in the main one of the burdens of the trader in Latin America, but they have also appeared in other parts of the world. In fact they seem to be becoming part of the settled procedure of some countries for regulating their external trade relations.

44. Hitherto Inland Revenue practice has been to ignore this factor in the assessment of overseas trading profits. The currency has been converted for the purpose of assessment at the ruling rate of exchange for the year

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[1]) Income Tax Act, 1952, s. 348.

[2]) See, for instance, Parliamentary Debates, House of Commons, 28 June 1951, Vol. 489, cols 1721-4.

in which the profit is made (allowing for any loss or profit on exchange on current assets) and assessment is made on that basis. Immediate collection of the full tax debt has not been insisted upon in all cases. The departmental practice was described to us as depending upon "all the circumstances of the case". What this means is that the Board of Inland Revenue have taken into consideration what sterling funds are available to the trader to meet the tax claim and how serious it would be for the future of his business to have to use these funds to meet it in respect of his frozen profit abroad. These sterling funds would be drawn from various sources—balances of earlier years accumulated in the United Kingdom, United Kingdom profits themselves or remittances from operations in areas not subject to similar restrictions. The Board of Inland Revenue have always taken the view that it was within their powers of administration and management to defer collection in a proper case, but since 1950 they have had express statutory authority, if they considered that there was a case for deferment, to waive interest on the tax in arrear[1]).

45. The Board represented to us that they considered the present system to be on the whole the best way of holding a fair balance between the individual trader, on the one hand, and the general body of taxpayers on the other. In particular they made three points:—

(1) It is very difficult for anyone in this country to satisfy himself that it has been impossible to remit money from another country. It is not simply a question of reading the terms of decrees: often much depends on personal effort and personal influence and, if a trader stands to gain by not being able to remit, it will be very hard indeed to establish against him that remittance was in fact a possibility.
(2) A trader who has sufficient sterling available ought to be required to pay his debts. If the Revenue was not to be allowed to impose liability by the act of assessment, the trader would be left free to use his available funds to pay other creditors or even to pay dividends.
(3) The Board had been conscientious in the exercise of their power of deferment and had been ready to investigate and, if necessary, to meet any case of hardship.

46. These are arguments of weight, but they do not appear to us to dispose of the matter, for they beg the question whether it is right that there should be a claim for tax constituting a sterling debt in respect of income which is *ex hypothesi* incapable of being realised in sterling. On the whole we think that there ought not to be such a claim; and, taking that view, we regarded (2) above as misconceived, for it assumes that the Exchequer is entitled to be a creditor like other creditors. As to (1), it is a genuine difficulty: but it is one of the consequences of exacting tax in respect of matters outside the taxing jurisdiction. Even so, it comes down to nothing worse than a question of fact, and it certainly is not the only question of fact that may have to be ascertained in the United Kingdom with regard to matters taking place entirely abroad. It is the same question as the Board already have to inquire into and satisfy themselves about in exercising their statutory power to waive interest on outstanding tax: neither their own arguments nor the form of the statute suggests that such a question is incapable of being answerd. As to (3), we made some inquiry into the matter. There have not been a great many cases and they have all been dealt with at headquarters. Everything points to their having been dealt with carefully and responsibly. But, all the same, the Board's discretion is very wide, and it is hardly to be expected that their conception of the circumstances that justify relief should coincide with that of the trader who is put in the position of appealing to their indulgence. It

[1]) Finance Act, 1950. s. 41: now Income Tax Act, 1952, s. 497.

seems to us the kind of discretionary power with which the Board ought not in fairness to be invested, for it means that their officials are made the final arbiters of a question so debatable as that whether a concern is or is not justified in claiming to retain some particular sum of money for the maintenance or support of its business.

47. Accordingly we have formed the conclusion that a change is called for. One suggestion which we examined was that if the foreign currency were tendered by the taxpayer in satisfaction of United Kingdom tax, so far as claimed in respect of blocked profits, the Inland Revenue should be bound to accept this in discharge of the tax debt. But we do not recommend this. We are satisfied that it would be wrong to expect the Exchange Equalisation Account to take over foreign balances of this sort, for they have nothing to do with the purposes for which it is operated. What would happen would be that the Inland Revenue itself would become a holder of considerable frozen foreign balances for indefinite periods of years, while the receipt of them in discharge of the tax debt would be ostensibly a payment to the current revenue of the Exchequer. No practicable scheme suggests itself for the local utilisation of these balances, either by Your Majesty's Government for its general purposes or by other United Kingdom residents who might need the foreign currency.

48. The scheme which we have come to favour is that a taxpayer should be given the option of deducting from his profits as assessed to United Kingdom tax such part of them as he can show to be unremittable by virtue of local legislation or executive action which bears directly on the possibility of remittance. This part would, however, be kept in suspense until circumstances changed so as to allow of its remittance. Any part that did then become remittable would be written back to the year in which the profit arose and the original assessment revised accordingly. Such a scheme would require certain provisions for the protection of the Revenue. It should be given the right to have a report from the taxpayer for each year of suspense, recording any change of circumstances and stating the reasons why unremittability was still claimed. There should be provision for terminating the suspense if any part of the balance, while remaining unremittable, was utilised for purposes outside those of the trading concern, e.g., was made available to a visiting director for his personal account. There should be provision for determining in what priority profits in suspense and current profits were to be treated as ranking for remittability in succeeding years and as to the setting off of subsequent losses against profits in suspense. Lastly, there should be a provision allowing for appeal to the Special Commissioners on the question whether profits are or remain unremittable.

49. We think it possible, from certain information given to us by the Board, that they themselves might come to favour a treatment of the subject rather on these lines, even without the interposition of further statutory power. But, whether that is so or not, we think that it is the better course that the taxpayer's rights in the matter should have statutory recognition as part of the tax code.

50. We do not advocate the extension of any special measure of this sort to the problems of banking or insurance concerns that find themselves compelled by local legislative provisions to keep a part of their funds in the country in which they operate. It may well be that in practice compulsory additions to these funds may have to be financed out of local profits, failing other sources. But we see in this no real analogy with the case of exchange restriction. The restrictions which these concerns come under arise, not from any exchange emergency, but from the basic conditions imposed upon their business by the country in which they operate and we do not think

that any special measures of tax relief are called for to allow for the existence of these restrictions.

51. We have already referred briefly (in paragraph 33 above) to the problem with which the third particular measure that we propose is concerned, viz., the frustration of overseas tax concessions. We now return to the problem in greater detail.

52. One effect of the existing system of granting double taxation relief by crediting the overseas tax against the United Kingdom tax on the same income is that (except so far as there are limits imposed on unilateral relief) the level of overseas taxation does not affect the United Kingdom concern one way or the other until it exceeds the home rate. A United Kingdom concern which operates abroad can thus obtain no benefit from any relief granted by the overseas country. This fact has created a troublesome problem in relation, particularly, to colonial development.

53. Certain colonies have introduced reliefs for new industrial undertakings, known generally as "Pioneer Industries Concessions". New industries the development of which is regarded by the colonial governments concerned as of particular importance to the economy are allowed various privileges, e.g., complete exemption from income taxes for an initial period of five years, or initial allowances or other forms of accelerated amortisation allowances by which (for instance) approved capital expenditure can be written off in equal instalments over five of the first eight years. Measures of this kind are to be found both in the West Indies and in West Africa. If a concern qualifying for this relief is resident in the United Kingdom, the relief is valueless to it because it still bears the full United Kingdom tax. Paradoxically, the benefit of the relief would redound to the United Kingdom Exchequer, which would have that much less double taxation relief to give. The United Kingdom concern can take advantage of the relief only by forming a locally controlled subsidiary, and even then the benefit of the concession may be lost if the profits are distributed to the parent as dividends which are taxed by the United Kingdom. The converse is, of course, also true: viz., that if the overseas country increases its rate of tax or takes away tax consessions the United Kingdom concern is unaffected and the burden falls on the United Kingdom Exchequer. It may therefore be said that to this extent high United Kingdom taxation encourages overseas countries to impose heavy taxes on United Kingdom concerns.

54. When colonies have enacted legislation of this sort and have then discovered that, as applied to United Kingdom concerns, its object is defeated by the effect of United Kingdom taxation, we understand that there has been considerable local feeling and that protests have been made in this country, either by the colonial governments or by the United Kingdom concerns or by both of them. One result has been that no impediment is placed in the way of United Kingdom companies who wish to establish local subsidiaries in parts of the Commonwealth for the purpose of starting new industries and may for this purpose require Treasury consent under Section 468 of the Income Tax Act, 1952. But the formation of a local subsidiary, locally controlled, is not always a feasible or always a desirable project as regards every territory, and this relaxation cannot therefore offer any complete solution of the difficulty.

55. Plainly, no solution is easy to reconcile with the present system of United Kingdom taxation of overseas profits. The result of double taxation relief has been to combine this country's claim with the claim of the territory in which the profits are made: but only at the cost of surrendering to that territory so much of the United Kingdom claim as is covered by the local tax. It is one thing, however, to surrender the United Kingdom claim so far

as it can be compared with another claim which is actually made and assessed. What is involved in the present case, what it is said that the United Kingdom ought to be ready to concede, is the surrender of its claim to the extent of the local claim that has not been made and assessed because of the special relief that was granted to the taxpayer. This is not relief from double taxation. It is something which, if conceded, stands apart as a relief without exact analogy.

56. Such a relief involves giving a real preference to a United Kingdom taxpayer who gets the advantage of it against other United Kingdom taxpayers who do not. For in his case he pays no tax anywhere, to the extent of the relief: whereas under double taxation relief he pays the full amount equivalent to the higher rate of tax in one country or other. Nor is it the United Kingdom Government that decides what industries are to qualify for special relief or under what conditions. That decision must necessarily be made by the government of the territory concerned. Theoretically, its reliefs may be given to further economic or social purposes which run counter to the purposes of the United Kingdom Government itself.

57. Nevertheless, when all this has been said, we do not think that the present situation ought to remain unaltered. There are certain facts which seem to us to outweigh any other considerations. One is that the territories with regard to which this problem arises are primarily, though they are not necessarily, colonies forming part of the British Commonwealth. The need to further the economic development of those territories is not only accepted but has been accepted as peculiarly the responsibility of Your Majesty's Governments here and elsewhere. It seems impossible to support a feature of the tax system of the United Kingdom that seems plainly to impede such development. Secondly, whether such expedients as "Pioneer Industries Concessions" are wise in themselves or wisely employed from a general economic point of view, we think that we must take it that they are now being resorted to and will be resorted to in the future. In the West Indian colonies, for example, poverty, over-population and under-employment make for a pressure upon governments to encourage industrial development and to attract capital for the purpose which it would be unreasonable to expect them to resist. Thirdly, a failure by the United Kingdom in these circumstances to adjust its tax system so as to allow United Kingdom concerns to get the effective advantage of these concessions would lead not only to discrimination against these concerns in favour of other concerns differently placed but would cause general damage to the United Kingdom in its external relations within and without the Commonwealth far more serious than any loss of revenue that would arise from such an adjustment.

58. We have come to the conclusion therefore that some remedial action is called for. The question is how to achieve an adjustment. We do not recommend any general statutory provision such as that providing for unilateral relief. It would be very difficult to frame satisfactorily, and there may be a need to guard against the possibility of other countries adopting artificial devices to take advantage of it. It seems better that the United Kingdom Government should be authorised by statute to enter into special agreements with other countries for the purpose of making fully effective their "Pioneer Industries Concessions". By such an agreement the Government would undertake to give credit to its taxpayer against its tax claim on overseas profits for such an amount of tax as the other country should certify to have been spared to the taxpaper in the year concerned by the direct operation of such concessions. These concessions take different forms and there should be a list of specified headings, e.g. tax holiday, accelerated depreciation allowances, which the United Kingdom Government would

control and would be empowered to add to, amend or reduce at its discretion. By this means it would maintain some hold over the kind of concession that it was furthering, but subject to this, the amount forgone by virtue of any such provision would have to be certified by the local government and its certificate accepted. Even the offer of such agreements would, we think, save the United Kingdom Government from an embarrassing position vis-à-vis other governments, particularly those of the under-developed colonial territories.

59. We regard it as urgent that the agreements we recommend should be entered into without delay. Even such a measure as this, however, would do nothing to meet the dissatisfaction of a territory which has deliberately kept down its general rate of tax on industrial and commercial profits in order to stimulate the development of such activities. In such a case there is no category of special concession to found upon and it is obviously out of the question to invite estimates of how much higher the local rate of tax would have been but for the implementation of the general policy. We have no recommendation to offer upon this point. In a sense it is true that, in so far as United Kingdom based concerns are operating there, the low level of local tax merely provides a larger balance for the United Kingdom Exchequer. But that complication is inherent in the United Kingdom claim to tax overseas profits on the ground of their owner's residence, supplemented by the scheme of double taxation relief.

60. A difficult question remains: how far special taxation reliefs of this kind, if given to the trading concern, should be passed on to the individual investor when profits come to be distributed. In principle we think that they should not be. The relief is directed to the assistance of the trade, not of the individual. The difficulty is that the purpose of the relief may be thwarted if the individual who is asked to find the money is not to get the benefit conceded to the venture. We have decided that the right course is to make no recommendation on this further question until we have been able to review the whole question of taxing corporate profits and their distribution to individuals.

CONCLUSION

61. The foregoing concludes the list of matters on which it appears practicable for us to put forward a definite view at this stage of our deliberations. The cost to the Exchequer of the three reforms which we have recommended would not, as we judge it, be of major importance, though it is right to say that the recommendations made in paragraphs 48 and 58, being addressed to situations resulting from the action of an overseas government, do not lend themselves to precise estimating.

62. But supposing that all three reforms were adopted, the question would still remain whether the present system of taxing overseas profits is right or wrong. We do not, at this stage, propose to express any general view on that question. This is not because we under-estimate the importance to this country of international trade and the opening up of under-developed territories. For any period of years that we can foresee we think that the country is bound to regard overseas trade and investment as part of its essential economy; and in consequence there must always be a need to ensure that the burden of taxation on those activities in the world's markets does not damage the overseas interests of the United Kingdom. In our final Report we shall discuss the relevance of the present system and weight of taxation to the welfare of those interests. But it seems clear to us that any major departure from the existing scheme would involve farreaching measures constituting for the first time in the history of our tax code an absolute diffe-

rentiation between home profits and overseas profits and the incidence of taxation upon them. Even if we were to come to recommend such a differentiation it could scarcely be put into operation at short notice. We have therefore felt it right to reserve the question of any more radical proposal until we have covered in our inquiry the other important questions that must arise in any survey of the levying of tax under modern conditions on income and profits generally.

63. We summarise our immediate recommendations as follows:—

(i) The present restriction on unilateral relief for double taxation should be removed (paragraph 42).

(ii) Subject to certain safeguards for the Revenue, a trader should have the option of excluding from assessment such part of his overseas profits as is shown to be unremittable under local currency regulations: the part of the profits so excluded to be brought back into assessment when remittance becomes a possibility (paragraph 48).

(iii) There should be power (which should be exercised as soon as possible) to make agreements with other countries providing for the grant of credit by the United Kingdom against United Kingdom tax on overseas profits for such an amount of overseas tax as the other country certifies to have been spared to the taxpayer by virtue of specified tax concessions under the laws of that country (paragraph 58).

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INDIA

PART B OF THE BUDGET SPEECH FOR 1953-1954

Taxation Enquiry Commission

Before passing on to the budget proposals I have an important announcement to make. For some years there has been a persistant demand both in the Legislature and outside, for a systematic enquiry into taxation and as far back as 1946, the then Government of India decided that such an enquiry should be conducted. But this decision could not be implemented owing to the impending constitutional changes, and since independence this had been further held up by more urgent pre-occupations. But as has been indicated more than once on the floor of this House the idea had not been dropped. Government have now decided to set up a small compact Commission, with specialised knowledge, to conduct a comprehensive enquiry into taxation and I am glad to announce that Dr Johen Matthai has accepted our invitation to be the Chairman of the Commission. The other Members will be Shri V. L. Mehta, till recently a Member of the Finance Commission, Dr. V. K. R. V. Rao of the Delhi School of Economics, Shri K. R. K. Menon, Secretary, Finance Ministry, Shri B. Venkatappiah, a former Finance Secretary of the Bombay Government and Dr. B. K. Madan, Economic Adviser of the Reserve Bank. A senior officer from the Finance Ministry will be the Secretary of the Commission. The terms of reference of the Commission will be very comprehensive and will cover taxation in all its aspects, Central, State and local. It is Government's intention to associate with the Commission two foreign experts on taxation and public finance so as to make available to the Commission such expert advice as they may require from foreign experience. The Commission will also be free to coopt additional Members for short periods when considering specific problems. I expect the Commission will start functioning from next April and complete their work in about two years. I am sure that the labours of the Commission would assist in laying the foundations of a taxation system best fitted for the development of the economy of the country on a firm and sound basis.

Budget Proposals.

The relatively small amount of the revenue deficit in the coming year has made my task, so far as it concerns the raising of additional revenue, somewhat easier than usual and I propose to confine myself largely to, what I may call, readjustments in taxation rather than to exploring avenues for additional taxation.

Reliefs in Taxation.

I shall first deal with reliefs in taxation. My first proposal is to reduce the export duty on jute sacking. While the prices of hessian have recently been looking up, the position in regard to sacking has been causing Government some concern. I propose a reduction in the export duty on sacking from Rs. 175 per ton to Rs. 80 per ton. Immediate effect is being given to this by a notification under the Sea Customs Act. I hope that this reduction will assist the industry in retaining its exports in the world markets. The loss in revenue is estimated at Rs. 3.5 crores.

My second proposal is to raise the exemption limit for personal income-tax. The existing limit of Rs. 3.600 for individuals and Rs. 7.200 for Hindu undivided families will be raised to Rs. 4.200 for individuals and Rs. 8.400 for Hindu undivided families. This increase is made not merely as a measure of relief in taxation but also for securing some relief to the income-tax administration. I have felt for some time that far too much of the time of the Income-tax Department is being taken up by the relatively smaller assessments and, if the number of such assessments could be reduced, the department would be able to give greater attention to the cases of the bigger assessees and improve the revenue from income-tax. The change proposed will have the effect of taking away a little over 70.000 assessments out of a total of nearly 8 lakhs. The loss in revenue is estimated at Rs. 82 lakhs, of which the Central share will be Rs. 40 lakhs. I feel that in the long run this loss to the exchequer would be more than offset by the improvement of income-tax collections.

The two changes mentioned above will raise the deficit of Rs. 1.05 crores to Rs. 4.95 crores and I propose to cover this by certain readjustments in import duties and postal rates.

Changes in Import Duties.

The changes in import duties, which cover a number of items, mainly relate to semiluxury items. The duty on toilet requisites, certain categories of textiles, crockery and glass and earthenware tiles will be raised and a limited quota allowed for import. While, this will bring in some additional revenue, the prices, including the duty, will be high enough to act as a deterrent to any undue expansion of consumption. The duty on certain other items like motor cars imported in an assembled condition is being raised while duties are being imposed on the costlier type of horses and precious stones and pearls. These duties will bring in some revenue without any material increase in expenditure of foreign exchange.

The duty on betel nut is also proposed to be increased by about two annas a pound. This will assist the indigenous grower in securing a more remunerative market for his crop.

As part of the changes in the import tariff I also propose to reduce the duties on penicillin, anti-biotics and sulpha drugs, milk foods for infants and invalids, certain types of patent foods, scientific instruments and appliances, prints, engravings and pictures and works of art. These changes, which I am sure the House will welcome, are unlikely materially to affect the revenue.

The net result of the changes in the import duties mentioned above will be an additional revenue of Rs. 3.5 crores which will just off set the loss in export duties from the reduction in duty on sacking.

Changes in Union Excise Duties.

Certain readjustmens are also being made in the excise duty on cloth. Before May 1952 the rates of duty on fine and super-fine cloth were 5 per cent. and 20 per cent. *ad valorem* respectively. The heavy fall in the price of cloth of these categories last year made the assessment of the duty on the Textile Commissioner's ceiling prices onerous and it was decided to prescribe certain specific duties per yard as maximum duties, the duty being levied at these rates or at the *ad valorem* rates, whichever was less. The rates of specific duties were fixed at a level which, it was believed at the time, would eleminate *ad valorem* assessments in most cases. The subsequent further fall in prices belied this expectation and led to the preponderance of *ad valorem* assessments, giving rise to administrative difficulties and continual friction between the mills and the assessing staff on the question of the adequacy of the declared prices. In order to overcome these difficulties it has been

decided to do away with *ad valorem* assessments altogether and to prescribe absolute specific duties. Super-fine cloth will be charged a duty of 3 annas 3 pies a yard and fine cloth a duty of 1 anna 3 pies a yard, and the necessary provision is being included in the Finance Bill. This will not mean any increase or reduction in revenue but will make the task of assessment and collection easier.

Change in Postal Rates

In recent years the Post and telegraphs Department has been implementing a programme of expansion of postal facilities in the rural areas and during the last five years more than 16.000 Post Offices have been opened in villages with a population of 2.000 and over. Many of these Post Offices are not expected to be remunerative for some time. This, together with the adoption of the Pay Commission's recommendations and the other measures taken for the improvement of the service conditions, especially of the lower categories of staff, has resulted in a loss in the working of the Postal services since 1948-49. In the four years ended March 1952 the net loss of the Postal branch amounted to Rs. 3.61 crores. The loss in the current year is estimated at 2.23 crores while for next year it will be a little over Rs. 2.68 crores. A review has, therefore, been carried out of the existing scale of postal rates with reference to the cost of the service under each head and the charge levied in other countries. As a result of this review, it has been decided to increase the scale of fees for parcels, packets, registration and insurance. The existing rate of 6 annas for every 40 tolas for parcel will be raised to 8 annas. The postage on book pattern and sample packets will be raised from 9 pies for the first five tolas and three pies for every additional 2 ½ tolas to 1 anna and 6 pies respectively. The registration fee will be raised from 4 ½ annas per article to 6 annas per article while the fee for insurance will be raised from 4 annas to 6 annas for the first Rs. 100 and from 2 annas to 3 annas for every additional Rs. 100. These increases in rates are estimated to yield an additional revenue of Rs. 1.90 crores.

Net Effect of Proposals.

I shall now summarise the effect of various changes mentioned above. The reduction in the export duty on sacking and the raising of the exemption limit for personal income-tax will involve a loss in revenue of Rs. 3.90 crores, which will raise the deficit from Rs. 1.05 crores to Rs. 4.95 crores. The changes in import duties will bring in Rs. 3.50 crores and the increases in Postal rates Rs. 1.90 crores. This will leave a nominal surplus of Rs. 45 lakhs on revenue account.

Certain Changes in Income-tax Law.

Before I conclude I should like to mention a few changes relating to income-tax which are being included in the Finance Bill for the coming year. The House will remember that in the budget for 1948-49 provision was made for exempting from income tax payments made to approved charities upto a maximum of Rs. 2½ lakhs or 10 per cent. of the income, whichever is less, to stimulate private assistance to charitable purposes. Experience has shown that this arrangement is not sufficiently flexible, particularly in regard to the charities to be benefited. We have now decided that the requirement in regard to the approval of the charity or the charitable institutions by the Central Government should be waived and the benefit given to any fund or charitable institution registered or under a trust or run by the Central or State Governments or a local authority. I trust that this modification will lead to a freer flow of assistance to deserving institutions. Simultaneously, we propose to reduce the limits from Rs. 2 ½ lakhs to Rs. 1 lakh and from

10 per cent. of the income to 5 per cent. Necessary amendments are being made to Section 15B of the Income-tax Act.

Some difficulty has been experienced by companies which invest their surplus funds in another company as the investing company has to pay corporation tax on its dividends from the investment. In order to encourage such investment it is proposed to exempt such dividends from corporation tax. This concession will be given to dividends of new undertakings engaged in certain selected industries.

At present a foreign company operating through a wholly Indian subsidiary has often to pay a slightly larger tax than a foreign company working through its branches in India. This operates to the disadvantage of the Indian subsidiaries and provision is being made so that this disparity could be gradually reduced.

Certain other changes are also proposed in the Income-tax law. I need draw the attention of the House only to two somewhat important changes. The first is the provision designed to check the practice of buying up speculation losses. The Income-tax Investigation Commission recommended that the law should be amended so as to allow speculation losses to be set off only against speculation gains. This amendment was included in the Income-tax (Amendment) Bill, 1951, which lapsed. It is now proposed to make this amendment. The second is the provision empowering Government to negotiate agreements with foreign Governments, if necessary, for relief from or avoidance of double taxation. This removes a lacune in the law as at present Government have power to negotiate such arrangements only with certain countries.

Conclusion

The budget for the coming year has been framed against the background of the Five Year Plan and I am sure the House would like to know to what extent progress would have been made by the end of the budget year in reaching the measure of development envisaged by the Plan. The expenditure proposed in the Plan covers the budgets of not only the Centre but also of the States, and, although we are in the second year of the Plan, it is difficult to make a precise estimate of the progress achieved. As I mentioned earlier, on a rough estimate, the total expenditure by the Centre and the States together in the first two years of the Plan is expected to be of the order of Rs. 600 crores. This would be roughly equally divided between the Centre and the States. In the coming year the provision in the Central budget for developmental expenditure is of the order of Rs. 225 crores, exclusive of Central assistance for financing the State Plans. If the level of developmental expenditure reached by the States in 1952-53 is maintained in the coming year, the total expenditure, taking the Centre and the States together, for the three years ending March 1954 would have reached about Rs. 1.000 crores. Since the total expenditure envisaged by the Plan is Rs. 2.069 crores this would leave a balance of Rs. 1.000 crores or so for the last two years of the Plan. When it is remembered that the level of expenditure in the earlier years of the Plan is bound to be somewhat lower, as expenditure on individual schemes takes some time to gather momentum, I think that it could be fairly said that the progress in implementing the Plan has not fallen short of the target to be reached in the first two years. I hope it will be possible, in the very near future, to make a complete survey of the progress made the first two years of the Plan, in consultation with State Governments, so that the public may know the precise extent to which the Plan has been implemented. I know that there is keen demand for this information, but it has to be remembered that the final outturn for the current year will take some time to become available and that it may be somewhat misleading at this stage to attempt an appreciation based on the revised estimates for this year.

The fulfilment of a programme of planned economic development depends not merely on the laying down of policies and making the finance available but on efficient administration and public co-operation. The Five-Year Plan which, in the nature of things, is bound to be the first of many more Plans, lays down the policy for the next three years in each major field of development. To carry through this policy and programme with the maximum amount of public co-operation is the main task before both the Centre and the State Governments. At the Centre, I believe, I can justly claim that we have done our part in implementing the Plan. I am sure the State Governments are also animated by the same purpose although I fear that some of them have not shown the necessary determination, matching their keenness, in raising the resources expected from them after full consultation. But it is also true that some of them have had to carry the strain of meeting substantial additional expenditure on account of scarcity. I hope that in the remaining years of the Plan the State Governments will find it possible to concentrate all their attention and energy on augmenting their recources, so that the completion of the development proposed by the Plan is not delayed. The transtition from a regulatory to a welfare state is never easy. It requires as much of inspired, informed and understanding leadership as a interest of the common good on the part of the community. The fostering of such leadership will be the supreme test of political wisdom and statesmanship. It will be for the Governments in the country, assisted by the Planning Commission, to furnish precise and definite guidance in regard to the direction and content of the public co-operation expected, and once such guidance if forthcoming, it will be for the people of the country to give of their best without stint, so that the Plan goes forward to the prosperity and greater glory of our motherland.

(Source: Taxation (India), March 1953 p. 34).

VI

DICTIONARY OF FISCAL LAW

Introduction.

In the four first volumes of the Bulletin a beginning has been made with the compiling of a dictionary of expressions, which occur in taxation law. About 300 expressions were embodied in French, English, German, and Dutch.

In part V of the Bulletin page 134, it was stated, that the results of this effort were not considered satisfactory, neither by the editors. The principal cause is that the translation is hardly ever quite correct. Most of the expressions have in almost every legal system a significance of their own, which is connected with that legal system. It is not only the language which plays a part here, but also the function which a certain expression fulfils in the legal system. Therefore it was thought necessary to add to the dictionary an encyclopaedic part. At the same time it was intended to extend it to the Italian and Spanish languages.

In spite of the discussions with a number of experts during the congresses at Zürich and at Brussels the cooperation was so slight, that the editors could not take the publication in hand.

Though the remarks of all collaborators have not yet been received, at this moment, the first series of expressions is being incorporated.

The Editors trust that from this

DICTIONNAIRE DE DROIT FISCAL

Introduction.

Dans les quatre premières années du Bulletin nous avons commencé la composition d'un dictionnaire d'expressions dans le domaine de la fiscalité. Nous avons publié 300 de ces expressions environ, en français, en anglais, en allemand et en néerlandais.

L'année suivante, nous avons informé nos lecteurs, dans le Bulletin (Vol. V, page 134), que la rédaction du Bulletin ne trouvait pas satisfaisants les resultats de cette tentative. En général, la cause en doit être que les traductions des mots ne se couvrent presque jamais exactement. La plupart des expressions ont, dans presque chaque système juridique, un sens propre en rapport avec le système juridique en question: Ce n'est pas seulement la langue qui joue un rôle ici, mais surtout la fonction que remplit dans un système juridique une expression déterminée. C'est pourquoi on a jugé nécessaire d'ajouter au dictionnaire proprement dit une partie encyclopédique. En même temps on a envisagé l'extension du travail par des expressions en langues italienne et espagnolle.

Malgré les conversations qui ont eu lieu, à l'occasion des derniers congrès, de Zürich et de Bruxelles, avec plusieurs experts fiscaux, la collaboration n'a pas été, jusqu' à présent, assez générale pour que la publication pût être entreprise.

Bien que nous n'ayons pas encore reçu toutes les remarques des différents collaborateurs, nous vous présentons ci-après la première série

number of the Bulletin each following number will contain a continuation.

A *dictionary* must remain the starting-point, with consequently the putting side by side of corresponding expressions. In so far the original method can be followed, which means: each expression is arranged alphabetically per language and numbered. Next the expressions are put according to their number, also per language, in order to facilitate the looking up.

As in this way "translations" arise which are not quite exact, a method has been sought to give in an encyclopaedic note an explanation of each term.

By following this method a dictionary with encyclopaedic character will result and, at the same time, an encyclopaedia of comparative fiscal law will be obtained. This will be a very extensive work, but I think that this publication may be of great importance to the development of the science of taxation, as an opportunity is afforded to go more deeply into many problems.

Arrangement of the dictionary.

In order to become a usable work, the dictionary must be a dictionary in the proper sense of the word; an encyclopaedia and a work in which the material has been incorporated systematically. In order to attain this purpose it must, in my opinion, contain four sections, viz.:

1. An alphabetical list of the terms, per language. Each term gets a number, that is the same for each language.
2. A list, in which per language the terms are incorporated, arranged according to number. In this way the looking up of corresponding terms in another language is facilitated, and it is not necessary to start from one single language.

d'expressions avec de brefs commentaires. La rédaction a l'intention de faire suivre cette première série par d'autres, dans chaque numéro du Bulletin.

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 partie encyclopédique.

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 très grande importance pour le développement des sciences fiscales, parce qu'il crée la possibilité d'approfondir un grand nombre de questions.

Système du dictionnaire.

Pour être un ouvrage pratique, il faut que le dictionnaire soit un dictionnaire au sens propre du mot; une encyclopédie et un ouvrage dans lequel la matière est incorporée systématiquement. Afin de satisfaire à ces exigences il doit contenir, à mon avis, quatre sections, à savoir:

1. Une liste alphabétique des termes par langue. Chaque terme est numéroté; le numéro est le même pour toutes les langues.
2. Une liste contenant les termes par succession de numéro. Ainsi on facilite la recherche de termes correspondants dans une autre langue, et il ne faut donc pas partir d'une seule langue.

3. In the same numbering the explanation is incorporated forming in this way the encyclopaedic part.

4. As it is not very well possible in this way to put all expressions, belonging to one same subject, systematically together, it is necessary to include a register in the fourth section, where the relative numbers are stated per subject.

   This fourth section will only be incorporated in a possible definite issue.

Such a work can only succeed with the collaboration of those who by study and knowledge are highly qualified to compile this complicated matter, I consider myself fortunate that the following gentlemen promised their cooperation:

Germany	Prof. Dr. O. BÜHLER; Prof. Dr. G. SCHMÖLDERS; Prof. Dr. A. SPITALER.	Allemagne
Argentine	Prof. Dr. D. JARACH.	Argentine
Belgium	Dr. E. KRINGS; N. DUPUIS.	Belgique
Spain	—	Espagne
U.S.A.	Dr. R. F. MANNING.	Etats Unis d'Amérique
France	Prof. M. CHRÉTIEN.	France
Great Britain	—	Grande Bretagne
Italy	Prof. Dr. B. GRIZIOTTI.	Italie
Switzerland	Prof. P. FOLLIET.	Suisse

I may conclude this statement with an urgent appeal also to our readers to keep us posted to the remarks and criticism of which this publication gives rise.

The increasing and ever intensifying international traffic is causing a constantly growing contact with the taxation law of other countries. That is why it is necessary to understand that foreign law, and this is greatly impeded by the language.

A mere translation is not sufficient, it must be known what is the function of a certain expression in the system of taxation-law of the country concerned.

3. Les commentaires sont incorporés dans la même succession de numéros, formant ainsi la partie encyclopédique.

4. Comme il est pratiquement impossible de mettre systématiquement ensemble tous les termes se rapportant au même sujet, il est indispensable d'annexer à la quatrième section un registre, où figurent les numéros correspondants par sujet.
   Cette quatrième section ne paraitra qu'à l'édition définitive éventuelle.

Un tel travail ne peut réussir qu' avec la collaboration d'un certain nombre de personnalités qui, par leurs études et leurs connaissances sont au plus haut degré qualifié pour travailler cette matière compliquée. Nous sommes heureux de pouvoir vous informer, que nous avons obtenu la précieuse collaboration des personnalités suivantes:

Nous ne voulons pas terminer cet exposé sans faire un appèl pressant à nos lecteurs eux aussi, et les prier de nos faire connaître leurs remarques et leurs critiques que cette publication leur suggérera.

La circonstance que les relations internationales deviennent de jour en jour intensives a pour conséquence que l'on est mis de plus en plus en contact avec le droit fiscal d'autres pays. Pour cela il est indispendable de comprendre ce droit étranger, ce qui ne va pas sans difficultés à cause de la langue.

On ne peut pas résoudre les problémes par de simples traductions; il faut savoir quelle est la fonction d'une expression déterminée dans le système fiscal du pays en question.

Not only for practice and science is this necessary but also for the wording and translation of the treaties.

To achieve proper results in this respect the cooperation of many people is necessary, not only of the above-mentioned collaborators, but also of you, who are reading this statement, because you come into contact in the practice of daily life with all sorts of problems which may be important for this dictionary.

Cela est nécessaire, non seulement pour la pratique et la science fiscale, mais aussi pour la rédaction et la traduction de conventions internationales en matière fiscale.

Afin d'aboutir à de bons résultats à cet égard, nous avons besoin de la collaboration de tous, pas seulement des collaborateurs susmentionnés, mais aussi de vous-même, qui lisez cet exposé. Car c'est vous qui, dans la pratique de la vie quotidienne touchez nombre de problèmes qui peuvent être intéressants dans le cadre de ce dictionnaire.

P. J. A. Adriani.

SECTION I

ENGLISH

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Poll Tax 9
Special assessment (U.S.A.) 5
Special Tax (U.S.A.) 5
Tallage 10, 11
Tax 1, 2, 3
Tenths 12

FRANÇAIS

ORDRE ALPHABETIQUE

Aide 7
Capitation 9
Centième Dernier 12
Contribution 1, 2, 3
Droit 3
Droit de contrôle 15
Droit d'insinuation 17
Impost 13
Impôt 1, 2, 3
Impôt ayant une affectation spéciale 4
Lods et Ventes 16
Patente 14
Prélèvement 1, 2, 3
Redevance 6
Rétribution 5, 6
Subside 7
Taille 10
Taille Réelle 11
Taxe 1, 2, 3, 6
Vingtièmes 12

DEUTSCH

ALPHABETISCHE ORDNUNG

Abgabe 1, 2, 3
Bede 7
Beitrag 5
Gebühr 6
Hundertste Pfennig 12
Kausalabgabe 6
Lehnsabgaben 16

ITALIANO

ORDINE ALFABETICO

Capitazione 9
Corrispettivo 6
Diritto d'insinuazione 17
Diritto d'enunciazione 17
Imposta 1, 2, 3
Imposta di patento 14
Imposta di scopo 4

DEUTSCH

Lehnsgelder 16
Personalsteuer 9
Schätzung 8
Schosz 8
Steuer 1, 2, 3
Vorzugslast 5
Zehnte Pfennig 12
Zwecksteuer 4

ESPAÑOL

Orden alfabético

Capitaciòn 9
Contribuciòn 1, 2, 3, 5
Contribuciòn de mejoras ... 5
Derecho 1, 2, 3
Impuesto 1, 2, 3
Impuesto con afectaciòn especial 4
Patente 14
Tasa 6
Tasa Retributiva 6
Tributo 1, 2, 3

ITALIANO

Imposta Speciale 5
Leva 1, 2, 3
Prezzo pubblico 6
Taglia 10
Taglia reale 11
Tassa 1, 2, 3, 6
Tassa di patento 14
Tributo 1, 2, 3
Tributo sul landemio 16

NEDERLANDS

Alphabetische volgorde

Bede 7
Belasting 1, 2, 3
Bestemmingsheffing 4
Bijdrage 5
Heffing 1, 2, 3
Honderdste Penning 12
Grondbelasting 11
Hoofdgeld 9
Impost 13
Klein Zegel 18
Patent 14
Recht 1, 2, 3
Retributie 6
Schatting 8
Tiende Penning 12
TwintigstePenning 12
Veertigste Penning 12
Verponding 11

SECTION II

ENGLISH

NUMERICAL ORDER

*) 1 Contribution
Levy
*) 2 Tax
*) 3 Duty
4 —
*) 5 Special assessment
(U.S.A.)
Special Tax (U.S.A.)
*) 6 Fee
*) 7 Aid
8 —
*) 9 Poll Tax
Capitation tax
*) 10 Tallage
*) 11 Tallage
*) 12 Fifteenths
Tenths
*) 13 Impost
*) 14 Licence Tax
15 —
*) 16 Fine
*) 17 Documentary Taxès
*) 18 Documentary Taxes

FRANÇAIS

ORDRE NUMÉROTIQUE

*) 1 Contribution
Prélèvement
Taxe
*) 2 Impôt
Taxe
*) 3 Droit
Taxe
*) 4 Impôt ayant une affectation spéciale
*) 5 Rétribution
*) 6 Redevance
Rétribution
Taxe
*) 7 Aide
Subside
8 —
*) 9 Capitation
*) 10 Taille
*) 11 Taille Réelle
*) 12 Les Vingtièmes
Centième Denier
*) 13. Impost
*) 14 Patente
*) 15 Droit de contrôle
*) 16 Lods et ventes
*) 17 Droit d'insinuation
18 —

DEUTSCH

NUMERISCHE ORDNUNG

*) 1 Abgabe
*) 2 Steuer

ITALIANO

ORDINE NUMERICO

*) 1 Tributo
Leva

*) See commentary in Section III — Voir commentaire dans Section III.

DEUTSCH

*) 3 Steuer
*) 4 Zwecksteuer
*) 5 Vorzugslast
Beitrag
*) 6 Gebühr
Kausalabgabe
*) 7 Bede
*) 8 Schätzung
Schosz
*) 9 Personal-Steuer
10 —
11 —
*) 12 Zehnte Pfennig
Hundertste Pfennig
13 —
14 —
15
*) 16 Lehnsgelder
Lehnsabgaben
17 —
18 —

ITALIANO

*) 2 Imposta
*) 3 Imposta
Tassa
*) 4 Imposta di scopo
*) 5 Imposta Speciale
*) 6 Tassa
Corrispettivo
Prezzo Pubblico
7 —
8 —
*) 9 Capitazione
*) 10 Taglia
*) 11. Taglia Reale
12 —
13 —
*) 14 Tassa (imposta) di
patento
15 —
*) 16 Tributo sul landemio
*) 17 Diritto d'insinuazione,
Diritto d'enunciazione
18 —

ESPAÑOL

ORDEN NUMÉRICO

*) 1 Tributo
Contribuciòn
*) 2 Impuesto
*) 3 Derecho
*) 4 Impuesto con afectaciòn
especial
*) 5 Contribuciòn de mejoras
Contribuciòn
*) 6 Tasa Retributiva
Tasa

NEDERLANDS

NUMMER-VOLGORDE

*) 1 Hefting
*) 2 Belasting
*) 3 Recht
*) 4 Bestemmingsheffing
*) 5 Bijdrage
*) 6 Retributie
*) 7 Bede
*) 8 Schatting
*) 9 Hoofdgeld
10 —

*) See commentary in Section III — Voir commentaire dans Section III.

ESPAÑOL		NEDERLANDS	
7.	—	*) 11	Verponding, grondbelasting
8	—	*) 12	Tiende- twintigste- veertigste- honderdste penning
*) 9	Capitaciòn	*) 13	Impost
10	—	*) 14	Patent
11	—	15	—
12	—	16	—
13	—	17	—
*) 14	Patente	*) 18	Klein Zegel
15	—		
16	—		
17	—		
18	—		

*) See commentary in Section III — Voir commentaire dans Section III.

SECTION III

ENCYCLOPAEDIC PART — PARTIE ENCYCLOPEDIQUE

E = English. F = Français. D = Deutsch. I = Italiano. Es = Español. N = Nederlands.

1. *E. Contribution – Levy.*
   F. Contribution – Prélèvement.
   D. Abgabe.
   I Tributo – Leva.
   Es. Tributo – Contribuciòn.
   N. Heffing.

LEGISLATION.

A generic term comprising all methods by which the Public Authorities transfer compulsory capital to themselves; it does not occur in the legislation of hardly any country.

Abgabe. In Germany this word occurs in the „Abgabenordnung", but no description is given; beyond this the term is not employed. It intends to comprise "Zoll", "Steuer" "Beitrag" and "Gebühr" (cf nrs. 3, 5, 6). The receipts of the government according to civil law e.g. from renting or leasing as well as from fines and penalties, which are not intended to influence the apportioning of the burden of the community, are not "Abgaben".

Tributo occurs in the legislaton of Argentina as a generic term.
Contribuciòn occurs in the constitution of Argentina, but there it has a more historical meaning without being of importance for the present jurisprudence and legislation.

LEGISLATION.

On ne trouve dans les législations fiscales de presqu'aucun pays une expression générale qui couvre entièrement l'ensemble des méthodes selon lesquelles l'Autorité transfère par contrainte des richesses à soi-même.

L'Allemagne connaît un tel mot et c'est: *Abgabe*. On le trouve dans la „Abgabenordnung", mais on n'en donne pas de définition. On n'en tient pas non plus compte dans la pratique. Il désire être une expression comprenant „Steuer", „Zoll", „Beitrag" et „Gebühr". (cf. nos. 3, 5, 6). Les revenus de droit privé encaissés par l'administration, p. ex. ceux provenant de loyers ou de baux, de même que peines pécuniaires et amendes qui n'ont pas pour but une distribution des dépenses publiques, ne tombent pas sous les „Abgaben".

On trouve le mot *Tributo* dans la législation argentine comme notion générale, tandis que la Constitution de l'Argentine renferme le mot *contribuciòn*, dont l'importance en est cependant plus considérable du point de vue historique qu'en ce qui concerne le droit actuel.

LITERATURE.

In the literature attempts are made to create a generic term including all the expressions described under nos. 2-6, but the efforts have met such little response, that no practical importance can be attached to them. Cf. further nos 1, 2, 3..

DOCTRINE.

Les auteurs ont bien essayé de former une notion générale comprenant les expressions mentionnées sous 2-6, mais ces efforts ont trouvé si peu d'écho qu'on ne peut y attribuer aucune signification vraiment pratique. Voir aussi sous 1, 2, 3 ci-après.

1.	*E.*	*Contribution* – *Levy*	2.	*Tax*	3. *Duty*
	F.	*Contribution* – *Prélèvement* - [*Taxe*		*Impôt - Taxe*	*Droit - Taxe*
	D	*Abgabe*		*Steuer*	*Steuer*
	I	*Tributo* – *Leva*		*Imposta*	*Imposta, Tassa*
	Es.	*Tributo* – *Contribución*		*Impuesto*	*Derecho*
	N.	*Heffing.*		*Belasting*	*Recht*

LEGISLATION.

The undermentioned expressions are mostly interchanged. As a rule the use of one of these words is not attended with any consequences, except as regards the word "taxe", see under 6. In most cases the historical origin of the tax in question can be traced:

LEGISLATION.

Dans les législations, les expressions en question sont souvent employées l'une pour l'autre, et en général l'emploi de l'une ou de l'autre de ces expressions n'entraine guère de conséquences, sauf en ce qui concerne le mot „taxe", voir sous 6.

Dans beaucoup d'entre elles on peut retrouver l'origine historique de l'impôt dont il s'agit:

HISTORY

Contribution, Contribuciòn, Steuer:
In these words the idea of voluntary payment, of aid to the Public Authorities can be recognised.

Duty, Gravamen, Belasting:
These words imply the idea of the obligation to pay.

Impôt, Impost:
These words give the idea of a compulsory payment.

Droit, Tributo, Recht, Derecho:
These words originate from payment and services due according to the feudal law.

Taxe, Tax, Schatting:
Here the idea of apportionment among the taxpayers can be recognised.

HISTOIRE

Contribution, Contribuciòn, Steuer:
Contribution volontaire, aide à l'Autorité.

Duty, Gravamen, Belasting:
Obligation.

Impôt, Impost:
Coercition.

Droit, Tributo, Derecho, Recht:
Prestation trouvant son origine dans le droit féodal.

Taxe, Tax, Schatting:
Répartition.

PRESENT LEGISLATION: *Examples.*

Contribution:
France, Contribution foncière.
Steuer:
Germany. Einkommensteuer.

LEGISLATION ACTUELLE: *Exemples.*

Contribution:
France, Contribution foncière.
Steuer:
Allemagne. Einkommensteuer.

Duty:
England. Estate Duty.
Impôt:
France. Impôt sur le revenu des personnes physiques.
Taxe:
France, taxe sur les chiens.
Droit:
France. Droit de succession.
Tax:
England. Income Tax.
Heffing:
Netherlands. Vereveningsheffing (a sort of tax on wages).

LITERATURE.

Nor is a fixed meaning given in the literature to the different expressions. When below some definitions are given, this does not mean that they are accepted generally by the authors.

Tax (England): A compulsory payment made for the support of government.
(U.S.A.): the word is currently preferred for describing all such compulsory payments.

Levy is also sometimes used as the all-inclusive word, but tax is much preferred.

Duty (England): Sometimes used in the same sense as "tax" in the United States. For example, the official reports of Britain sometimes group all taxes (e.g. income taxes, death duties, stamp duties, profits tax, excess profits tax, special contribution) under the heading ,,Inland Revenue Duties''. Although "duty" has this occasional all-inclusive use in Britain, it is more customary in that country to confine its use to death duties, customs duties, and taxes on the consumption of commodities.
In the U.S.A.: duty has a more restrictive meaning, almost exclusively as part of the expression customs duties, meaning tariff.

Duty:
Angleterre. Estate-Duty.
Impôt:
France. Impôt sur le revenu des personnes physiques.
Taxe:
France, taxe sur les chiens.
Droit:
France. Droit de succession.
Tax:
Angleterre. Income-Tax.
Heffing:
Pays-Bas. Vereveningsheffing (une sorte d'impôt sur les salaires).

DOCTRINE.

Les auteurs ne donnent pas non plus un sens déterminé aux différentes expressions. Le fait que ci-après on donne quelques définitions ne veut pas dire qu'il existe une communis opinio en ce qui concerne ces définitions.

Tax (Angleterre): paiement coercitif pour aide au Gouvernement.
(Etats-Unis): ce mot s'applique couramment de préférence à tous les paiements coercitifs analogues.

Levy. Ce mot est employé souvent aussi comme expression générale, mais on donne la préférence au mot ,,tax''.

Duty (Angleterre): parfois ce mot a le même sens que ,,tax'' aux Etats Unis. Par exemple: les rapports officiels anglais groupent souvent tous les impôts (à savoir: impôts sur le revenu, droits de succession, droits de timbre, ,,profits tax'', ,,excess profits tax'', ,,land tax'', contribution spéciale) sous la dénomination: Inland Revenue Duties. Bien qu'en Angleterre ,,duty'' soit pris dans un sens général, l'usage dans ce pays est d'en limiter l'application aux ,,death duties'' ,,customs duties'' et aux taxes de consommation.

Aux Etats-Unis le mot ,,duty'' a généralement un sens plus restreint; on l'emploie presque exclusivement dans l'expression ,,customs duties''.

Impuesto. Argentina. This word is used in the modern literature and legislation, and the idea of a charge on the capital of the tax-payer is comprised in it.

Contribuciòn. Argentina. The word has a historic constitutional meaning, indicating the principle brought out by the American and French revolutions and adopted by all constitutions that have followed these examples of popular consent.

Derecho. Argentina. This word has a feudal origin. It is used especially in the domain of customs.

Impôt (France), also called *contribution, droit, taxe,* is an amount of money due by the taxpayer to the Exchequer by virtue of a legal provision and not by virtue of a contract. When it is a definite revenue, it is neither a pecuniary sanction nor the counter-value of a service rendered.
The word "taxe" also occurs in the expression "taxes parafiscales" which embody all elements of "normal" taxes. They are, however, levied in favour of corporate organizations of public law. So they resemble the contributions mentioned under 4 and 5. It is often difficult, if not impossible, to know whether or not one has to do with a real "tax".

Heffing. Netherlands. When the Public Authorities by application of general rules and by means of compulsory measures transfer private fortunes to themselves.

Belasting. Netherlands. "Belasting" is the levy by which the Public Authorities procure by means of juridical compulsion the means to defray the public expenses without giving consideration.

4. E.
   F. *Impôt ayant une affectation spéciale*
   D. *Zwecksteuer.*
   I. *Imposta de Scopo.*
   Es. *Impuesto con afectaciòn especial.*
   N. *Bestemmingsheffing.*

Impuesto. En Argentine, ce mot est employé par les auteurs et dans la législation moderne: il renferme l'idée de: charge qui pèse sur la richesse du contribuable.

Contribuciòn. (Argentine). Quant à ce mot il a une signification historique constitutionnelle indiquant le principe, affirmé par les révolutions américaine et française, et accueillie par toutes les constitutions qui ont suivi leurs exemples, à savoir: celui du consentement populaire.

Derecho (Argentine). Ce mot a une origine féodale; on l'emploie souvent dans le domaine des douanes.

Impôt (France), encore appelé *contribution, droit* ou *taxe,* est une prestation monétaire que doit le contribuable au fisc en vertu de la loi et non d'un contract, prestation qui, si elle est une recette définitive, n'est ni une sanction pécuniaire ni la contrepartie d'un service rendu.
On trouve le mot "taxe" aussi dans l'expression „taxes parafiscales" présentant tous les caractères des impôts sous cette réserve qu'elles sont perçues au profit d'organismes corporatifs. Elles ressemblent donc aux contributions mentionnées sous 4 et 5. Il est souvent difficile sinon impossible de préciser si l'on se trouve ou non en présence d'un véritable impôt.

Heffing (Pays-Bas). On se sert de ce mot lorsque l'Autorité Publique d'après des normes générales et par contrainte, transfère des richesses privées à soi-même.

Belasting (Pays-Bas). Ce mot indique le „heffing" par lequel l'Autorité Publique se procure les moyens en recourant à la coercition juridique pour couvrir les dépenses publiques, et cela sans contrepartie.

LEGISLATION.

As far as is known this expression is not used in the legislation of the various countries.

LITERATURE.

In the literature great uncertainty exists about the meaning of the above-mentioned words, even among authors of the same country. Probably this is attributable to the fact that the purpose of a certain tax can be sought in different places. The purpose which is served by a tax can be non-fiscal; it is also possible that the word means a tax the revenue of which is to finance a certain activity of the Public Authorities (e.g. the construction of roads).

Zwecksteuer. (Germany).

Attempts have been made to express the above mentioned difference in the use of the words "Wirkungszwecksteuern" und "Verwendungszwecksteuern" or "Zwecksteuern anderer Art" and "Finanzzwecksteuern".

The U.S.A. and England have no fiscal-technical expression. When the revenue from a tax is dedicated to financing a particular governmental activity, the term "earmarking the revenue for a particular purpose" is employed. In that case the following expressions are used:

— In Italy: *Imposta di scopo;*
— In Argentine: *Impuesto con afectaciòn especial.*
— In the Netherlands: Bestemmingsheffing.

In the French tax legislation the expression *impôt ayant une affection spéciale* is rarely employed. See also under 1, 2, 3.

5. *E. Special Assessment (U.S.A.), Special tax (U.S.A.).*
F. Retribution.
D. Vorzugslast - Beitrag.
I. Imposta speciale.
Es. Contribuciòn de mejoras. Contribuciòn.
N. Bijdrage.

LEGISLATION.

Cette expression ne semble être employée dans la législation d'aucun pays.

DOCTRINE

Parmi les auteurs il existe une grande incertitude en ce qui concerne la signification des mots ici reproduits, aussi parmi les auteurs d'un même pays. Probablement il faut attribuer cette incertitude au fait que l'on cherche le *but* d'un impôt déterminé dans différentes directions. On peut penser à un but extrafiscal que l'on poursuit au moyen d'un certain impôt; on peut penser aussi à un impôt dont le produit est destiné au financement d'une partie spéciale des dépenses publiques (p. ex. la construction de routes).

Zwecksteuer (Allemagne). On a essayé d'exprimer dans la terminologie la différence entre les deux conceptions susmentionnées en parlant de „Wirkungszwecksteuern" et de „Verwendungszwecksteuern", ou bien de „Zwecksteuern anderer Art" et de „Finanzzwecksteuern".

Aux Etats-Unis et en Grande Bretagne il n'existe pas d'expression technique; on parle de *„earmarking the revenue for a particular purpose"* (= destiner le produit à un but particulier) si le produit d'un impôt sert au financement d'une partie spéciale des dépenses publiques. Dans ce cas on parle, en général, de:

— *Imposta di scopo* en Italie;
— *Impuestos con afectaciòn* en Argentine;
— *Bestemmingsheffing* aux Pays-Bas.

Pour la France, voir aussi sous 1, 2, 3.

L'expression *impôt ayant une affectation spéciale* n'est pas habituelle dans la législation.

LEGISLATION.

Sometimes these words are used in legislation, but they have no definite meaning.

Beitrag. (Germany): Sometimes this expression is used to indicate a tax levied for a special purpose: "Wehrbeitrag". As a rule "Beiträge" do not fall under the concept of "Steuer".

Vorzugslast is another expression for Beitrag.

LITERATURE.

Neither do these expressions have a definite meaning in the literature. Mostly these words are used to indicate levies which serve the purpose of covering wholly or partly the expenses of a public service or a public work by those people who are benefited by the work or the service.

In this meaning occur:

Imposta speciale	– Italy
Imposta di miglioria	– Italy
Special Assessment	– U.S.A.
Special Tax	– U.S.A.
Beitrag	– Germany
Bijdrage	– Netherlands
Vorzugslast	– Switzerland and Germany

For France, see also under 1, 2, 3.

6. *E. Fee.*
   F. Redevance – Rétribution - Taxe.
   D. Gebühr – Kausalabgabe
   I. Tassa corrispettivo – Prezzo pubblico.
   Es. Tasa retributiva – Tasa.
   N. Retributie.

LEGISLATION.

On trouve ces expressions de temps en temps dans les législations fiscales, mais elles n'ont pas de signification déterminée.

Beitrag (Allemagne): Souvent on emploie cette expression pour indiquer un impôt perçu dans un but déterminé p. ex. „Wehrbeitrag". En général, les „Beiträge" ne tombent pas sous la notion „Steuer".

Vorzugslast constitue un synonime pour *Beitrag*.

DOCTRINE.

Pas de signification déterminée. Souvent on emploie ces expressions pour des prélèvements qui ont pour but de faire couvrir, en tout ou en partie, les frais d'un service public ou d'un travail exécuté par l'Autorité, par ceux qui ont un intérêt à ce service ou à ce travail.

Dans ce sens:

Imposta speciale	– Italie
Imposta di miglioria	– Italie
Special assessment	– U.S.A.
Special Taxes	– U.S.A.
Beitrag	– Allemagne
Bijdrage	– Pays-Bas
Vorzugslast	– Suisse et Allemagne

Pour la France, voir aussi sous 1, 2, 3.

LEGISLATION.

In the legislation of some countries these words are used.

Gebühr (Germany): The "Reichsabgabenordnung" speaks of "Gebühren für besondere Inanspruchnahme der Verwaltung". I.a. "Rechtsmittelgebühren", "Schreibgebühren", "Telegraphengebühren" is spoken of.

"Pauschgebühren" are levied for

LEGISLATION.

On trouve ces mots dans la législation de quelques pays.

Gebühr (Allemagne): La „(Reichs)-abgabenordnung" parle de „Gebühren für besondere Inanspruchnahme der Verwaltung"; on parle entre autres de „Rechtsmittelgebühren", de „Schreibgebühren", de „Telegraphengebühren" etc.

Pauschgebühren (Allemagne) sont

a number of connected services. "Einzelgebühren" for one service. In the case of "Rahmengebühren" the amount of the fee can be freely fixed for each case within certain limits. The amounts of "Gradationsgebühren". are stepped up according to the of value of the service.

dus quand il s'agit d'un certain nombre de services connexes.

Einzelgebühren sont dus pour un seul service. On parle de *Rahmengebühren* quand il est possible de fixer le montant du Gebühr, dans des cas individuels, et dans certaines limites, à discrétion.

Gradationsgebühren sont fixés d'après la valeur du service.

LITERATURE.

The word has no definite meaning in the literature. As a rule these levies are distinguished from taxes but in some countries they are classified as taxes; then it is difficult to distinguish them from the expressions of no. 5. By the term is often understood the compensation for a public service that was asked, voluntarily or under compulsion; the difference between it and the expression of no. 5 is that in the case of no. 5 the group must pay, that is to say also those who make not or only little use of the service, whereas here each separate service is paid for.

DOCTRINE.

Il n'existe pas d'usage courant vraiment déterminé. En général on met le prélèvement en question à côté des impôts, mais dans certains pays on les considère comme appartenant aux impôts proprement dits. Dans ce cas il est difficile de faire une distinction entre ces expressions et celles mentionnées sous le no. 5 ci-dessus.

Par les prélèvements mentionnés ici on entend souvent les rémunérations pour un service public qu'on a demandé volontairement ou obligatoirement; la différence avec les expressions du no. 5 est que dans ce dernier cas c'est le groupe qui doit payer, donc aussi ceux qui ne profitent pas ou presque pas du service, tandis qu'ici on paye pour chaque service individuel.

Kausalabgabe. (Switzerland): compensation for a separate public service.

Kausalabgabe (Suisse): la rémunération pour un service public individuel.

Gemengsteuer. (Switzerland): when the amount to be paid exceeds the value of the public service.

Gemengsteuer (Suisse): On en parr le si le montant à payer est supérieu- à la valeur du service rendu.

Gebühr (Switzerland): Payment in the matter of measures of the government irrespective of whether they are requested by the payor or whether he benefits therefrom.

Gebühr (Suisse): payement à l'occasion de mesures publiques, qu' elles soient ou non demandées par le débiteur ou qu'elles soient ou non à son avantage.

(Germany): Compensation for public service.

(Allemagne): rémunération pour un service public.

Fee (U.S.A.):

Fees generally fall into one of two categories, either a charge made for a particular service rendered to the fee-payer by the government or a charge imposed to meet the cost of regulation by the government. It is

Fee. (Etats-Unis):

En général, on distingue deux catégories de „fees", indiquant ou bien le payement pour un service individuel rendu par le gouvernement au redevable, ou bien une charge imposée pour couvrir les frais de règle-

sometimes difficult to draw the line between taxes and fees, as when (for example) a fee is charged for a license and the charge is so high that it brings in a net revenue. It is often true in such cases that the fee is far in excess of the cost of the service and there is often absent any positive service rendered.

Taxe (France) can be employed to indicate a revenue, distinct from the real tax (for example: taxe de balayage), and this word is then distinct in so far that it means the price for a service rendered by a public body to a private person. The distinction made is the work of the constant and concordant jurisprudence of the "Cour de Cassation" and the "Conseil d'Etat".

Tassa (Italy): Payment for public services.

Tasa, tasa retributiva (Argentine): same meaning as in Italy.

Retributie (Netherlands): same meaning.

7. *E. Aid (auxilium).*
   F. Aide – Subside
   D. Bede –
   I.
   Es.
   N. Bede.

mentation par le Gouvernement: Il est souvent difficile d'établir une distinction précise entre impôts et „fees", par ex. quand il s'agit d'un cas ou il faut payer un „fee" pour une licence tandis que la charge est tellement élevée que le Gouvernement en tire un produit net. Il est vrai souvent dans de tels cas que le „fee" est de beaucoup supérieur au coût du service, tandis que souvent il n'est même pas question d'un service positif rendu.

Taxe (France) peut être employée pour indiquer une recette distincte de l'impôt (par exemple: taxe de balayage), et ce mot se différencie alors de l'impôt en ce qu'elle est le prix d'un service fourni par une collectivité publique à une personne privée. Cette distinction est l'oeuvre d'une jurisprudence constante et concordante de la Cour de Cassation et du Conseil d'Etat.

Tassa (Italie): rémunération pour un service public.

Tasa, tasa retributiva (Argentine): même signification qu'en Italie.

Retributie (Pays-Bas): même signification.

HISTORICAL CONCEPTION.

France and other countries: when his own resources were inadequate the sovereign requested his subjects to furnish him with the necessary means. Under the monarchy (before 1789) this word designated certain taxes which were, in general, indirect taxes. If the latter asked for a supplement the word "subside" was used.

NOTION HISTORIQUE.

En France et d'autres pays: lorsque les propres moyens du souverain ne suffiçaient pas, il priait ses sujets de lui accorder les fonds nécessaires. Sous la monarchie (avant 1789) le mot a désigné certains impôts qui étaient en général des impôts indirects. Quand après il demandait un supplément, on parlait de „subside".

Aid (England): This word has had the same meanings and has undergone the same evolution as in France. It also designated an ancient levy by the King of England on his tenants. The levies were made on three occasions: (1) when the king's eldest son was made a knight, (2) when the king's eldest daughter was married, and (3) to ransom the king in case of his capture.

Aid (Grande Bretagne): Ce mot a eu les mêmes significations et subi la même évolution qu'en France; il a désigné aussi un prélèvement antique perçu par le Roi sur ses sujets. Ce prélèvement avait lieu à trois occasions: (1) lorsque le fils aîné du Roi était armé chevalier, (2) lorsque la fille aînée du Roi se mariait et (3) pour la rançon du Roi en cas de capture.

8. *E.*
F.
D. Schätzung – Schosz.
I.
Es.
N. Schatting.

HISTORICAL CONCEPTION.

In the "Republic of the United Netherlands" (16th and 17th centuries) a general expression for taxes.

Germany: expression used in the middle age for taxes on possessions and property.

NOTION HISTORIQUE.

Dans la République des Sept Provinces Réunies on trouve cette expression comme formule générale pour impôts.

Allemagne: expression médiévale pour impôts sur la propriété et la fortune.

9. *E. Poll Tax – Capitation Tax.*
F. Capitation.
D. Personalsteuer.
I. Capitazione.
Es. Capitaciòn.
N. Hoofdgeld.

HISTORICAL CONCEPTION.

Distinguished from real taxes, levied on objects (slaves, land) from early times "poll taxes" have been levied on certain persons in order to make them contribute to the expenses of the Government. They have existed in different forms. First there was a system according to which a certain amount was apportioned among the taxpayers. A second form was to levy the tax at a fixed rate. A third method was to set up various social classes. Most often a fixed amount per head was levied.

NOTION HISTORIQUE.

Depuis longtemps on a pu distinguer des impôts réels (frappant des objets tels que, par exemple, les fonds de terre, les esclaves, etc.), les capitations auxquelles étaient assujetties les personnes pour les faire contribuer d'après certaines normes aux dépenses publiques. Les capitations pouvaient se présenter sous trois formes: impôts de répartition, impôts de quotité et impôts frappant les différentes classes sociales comme telles. Souvent c'était une somme fixe par tête.

MODERN CONCEPTION.

U.S.A.: In some cases, payment of the tax has been a prerequisite for voting in elections and this has the

NOTION ACTUELLE.

Dans la plupart des états (ou de leurs autorités locales) aux Etats-Unis on trouve des „poll taxes".

effect of reducing the vote by the negro population as individuals were unable or unwilling to pay the tax. In its early forms in the United States, payment of the tax was the alternative to performing certain work on roads, boarding the local school teacher, etc. The alternative to road work, etc., though it still exists in the statutes, is rarely if ever availed of.

Dans certains cas le paiement de ces taxes était nécessaire pour avoir le droit de voter aux élections, et la conséquence en était que les votes de la population nègre étaient réduites, étant donné que les individuels ne voulaient pas, ou ne pouvaient pas payer ces taxes. Dans sa plus ancienne forme aux Etats-Unis le paiement de ces taxes était l'alternative de l'accomplissement de certains travaux aux routes, au logement de l'institeur local, etc. On ne fait que rarement ou jamais usage de cette alternative, bien qu'elle existe encore dans les lois.

10. *E.* *Tallage.*
F. *Taille.*
D.
I. *Taglia.*
Es.
N.

HISTORICAL CONCEPTION.

France. There can be distinguished the "taille personnelle", levied on the income of the citizens, and the "taille réelle", a tax on land-property. The "taille" was a tax of which the amount to be collected was fixed first. This amount then was apportioned among the tax-payers (see 9).

NOTION HISTORIQUE.

Impôt d'ancien régime en France. On distingue (voir 9) la taille personnelle, impôt sur le revenu des roturiers et la taille réelle, impôt foncier. La taille était un impôt de répartition.

11. *E.* *Tallage.*
F. *Taille Réelle.*
D.
I. *Taglia reale.*
Es.
N. *Verponding, Grondbelasting.*

HISTORICAL CONCEPTION.

France. Tax levied on land property and houses.

NOTION HISTORIQUE.

France: Impôt frappant les terres et les maisons.

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10. 11.

HISTORICAL CONCEPTION.

Great Britain. Tallage was a tax imposed by the king and lords on the towns and their demesne tenants. Sometimes the amount of the levy by the king on the towns was deter-

10.11.

NOTION HISTORIQUE.

Tallage (Grande Bretagne) était l'impôt perçu par les rois et les lords sur les Villes et sur leurs métayers. Parfois le montant de l'impôt perçu par le roi sur les villes était déter-

mined through bargaining and a lump sum was fixed, which the towns paid and then in turn collected from the citizens in various ways. After the passage of a statute in 1340, tallage came to an end because of the belief that all direct taxes required the consent of Parliament.

MODERN CONCEPTION.

Italy. The word is also used in the meaning of an arbitrary, unlawful tax, which is not collectible.

12. *E. Fifteenths, Tenths.*
F. Les Vingtièmes. Centième Denier.
D. Zehnte Pfennig. Hundertste Pfennig.
I.
Es.
N. Tiende;, Twintigste;, Veertigste;, Honderste Penning

miné par des négociations, et dans ce cas, on fixait des sommes forfaitaires que les villes versaient et se faisaient ensuite rembourser par leurs citoyens de différentes manières. Le ,,tallage'' pris fin après l'adoption d'une loi en 1340, à cause du fait que l'on croyait que tous les impôts directs devaient être approuvés par le Parlement.

NOTION ACTUELLE.

Italie. Le terme est aussi employé dans le sens d'impôt arbitraire, illicite, pas dû.

HISTORICAL CONCEPTION.

Taxes of different sorts, indicated by the fraction they were of the property assessed (1/10, 1/20, 1/40 1/100, etc.).

In France before the Revolution.
Les Vingtièmes (1/20): Tax on certain revenues e.g. from immovable property, from claims on private persons and from trade and business.

Centième denier (1/100): Taxes on the transfer of immovable property.

Fifteenths (1/15) *and Tenths* (1/10) (Great Britain).

The tenths were levied on the inhabitants of cities, boroughs, and ancient demesnes, while a fifteenth was levied elsewhere. Until 1334, a separate assessment was made for each levy, but after the careful assessment of that year, a fifteenth and a tenth became a technical expression meaning that each district was to contribute the amount fixed by the assessment of 1334. Although some adjustments were subsequently made, it was not until a century and a half later that

NOTION HISTORIQUE.

Impôts de caractère différent et indiqués par une certaine fraction de la quantité imposable: 1/10, 1/20, 1/40, 1/100, etc.

En France sous l'ancien régime.
Les Vingtiemes (1/20): Impôt sur certaines catégories de revenus, par exemple revenus provenant des immeubles, des offices et emplois, des créances sur particuliers, du commerce et de l'industrie.

Centieme denier (1/100):
Droit sur le transfert d'immeubles.

Grande Bretagne: le ,,*tenth*'' (dixième) était imposé aux domiciliés des villes, bourgs, et domaines, tandis qu'un quinzième était imposé ailleurs. Jusqu'en 1334, on établissait un montant séparé pour chaque impôt, mais après l'établissement de cette année, 1/15 et 1/10 devenaient des expressions techniques, dont la signification était, que chaque département devait contribuer pour le montant fixé par l'établissement de 1334.

Bien que l'on ait apporté quelques ajustements, on ne fit un nouvel établissement qu'un siècle et demi

a new assessment was made. Fifteenths and tenths were last levied in 1626.

Republic of the United Netherlands. (16th and 17th centuries).

Veertigste penning (1/40):
Tax on the sale of immovable property and ships of a certain tonnage.

Twintigste penning (1/20):
A death duty to be paid by lineal ascendants and persons of collateral consanguinity.

Tiende penning (1/10):
A sort of turnover-tax with which the Duke of Alva threatened Holland in 1568. It was never introduced.

Honderdste penning (1/100):
Tax on property.

Germany "Der Zehnte" (1/10). A levy upon land, to be paid by serfs in the Middle Ages till modern times to the sovereign or the Church, respectively; originally payment was made in kind, later in money.

"Der Hundertste Pfennig" or "Gemeine Pfennig" (1/100) was a mediaeval original form of a General State tax as the alternative to the war levies in kind, which were often imposed, but could not be effectuated.

13. *E.* *Impost.*
F. *Impost.*
D.
I.
Es.
N. *Impost.*

plus tard. Les quinzièmes et dixièmes furent perçus pour la dernière fois en 1626.

République des Sept Provinces Réunies des Pays-Bas (16e et 17e siècles).

Veertigste penning (1/40):
Droit sur la vente d'immeubles et de navires d'un certain tonnage.

Twintigste penning (1/20):
Droit de succession en ligne collatérale et en ligne directe ascendante.

Tiende penning (1/10):
Espèce d'impôt sur le chiffre d'affaires, duquel en 1568, le Duc d'Alva menaçait la Hollande. Il n'a jamais été introduit.

Honderdste penning (1/100):
Impôt sur la fortune.

Allemagne: Le Dixième („Zehnte") était un impôt sur les terrains qui devait être payé, au Moyen Age, jusqu'au temps moderne au souverain ou à l'Eglise par leurs serfs, et cela originalement en nature, plus tard en espèces.

Le Centième Denier („Hundertste Pfennig" ou „Gemeine Pfennig") fut la forme originale du Moyen Age d'un impôt général, perçu comme alternative des butins de guerre en nature, qui souvent était imposé mais ne pouvait pas toujours être poursuivi.

HISTORICAL CONCEPTION.

General expression for taxes. In some countries, i.e. England and Holland especially on consumption.

14. *E.* *Licence taxes.*
F. *Patentes.*
D.
I. *Tassa (imposta) di patento.*
Es. *Patente.*
N. *Patent.*

NOTION HISTORIQUE.

Indication générale pour impôts. Dans certains pays, entre autres en Grande Bretagne, et dans la République des Sept Provinces Réunies des Pays-Bas, plus particulièrement impôts sur les consommations.

HISTORICAL CONCEPTION.

Mostly a tax on occupations and trades. Sometimes on consumption. England:

License taxes are roughly the equivalent of the French "patente". Sometimes the tax is more in the nature of a fee because it frequently is intended to cover only the expense of government supervision of a particular trade, profession or business. At other times, it is designed as a revenue raising measure.

France: the ,,contribution des patentes", introduced in 1791, still exists but only as a local tax. It is levied upon each person practising any profession except those employed in an agricultural profession or those in salaried positions.

15. *E.*
F. *Droit de contrôle.*
D.
I.
Es.
N.

NOTION HISTORIQUE.

Dans la plupart des cas: impôt sur les offices et les emplois; quelquefois aussi sur les consommations.

Grande Bretagne: ,,License taxes" sont approximativement l'équivalent des ,,patentes" en France. Souvent la taxe a plus le caractère d'un ,,fee" parce que souvent elle est destinée à couvrir seulement les frais de la supervision gouvernementale d'un commerce particulier, ou d'une profession ou exploitation. Dans d'autres temps on l'a employée comme mesure pour en tirer des revenus.

France: la contribution des patentes, instituée en 1791, ne subsiste que comme impôt local. Elle est perçue sur toute personne exerçant une profession quelconque à l'exception des prof. agricoles et des prof. salariées.

HISTORICAL CONCEPTION.

France: A transfer tax before the Revolution (cf. centième denier no. 12).

16. *E.* *Fine.*
F. *Lods et Ventes.*
D. *Lehnsgelder. Lehnsabgaben.*
I. *Tributo sul landemio.*
Es.
N.

NOTION HISTORIQUE.

France: Un droit d'enregistrement. Voir aussi: centième denier (no. 12).

HISTORICAL CONCEPTION.

France: Feudal taxes on the transfer of immovable property. They preceded the centième denier (cf. 12).

England: The English "fine" is probably the equivalent of "Lods et Ventes." It was a payment made to a feudal lord on the alienation of land. To-day a fine is a monetary penalty imposed for violation of law.

NOTION HISTORIQUE.

France: Droit féodal sur le transfert d'immeubles. Précurseur du centième denier.

Grande Bretagne: Le ,,fine" anglais est probablement l'équivalent de ,,Lods et Ventes". C'était un paiement fait à un lord féodal à l'occasion de l'aliénation d'une terre. Aujourd'hui un ,,fine" est une amende pécuniaire imposée pour la violation d'une loi.

17. *E.* *Documentary Taxes.*
F. *Droit d'insinuation.*
D.
I. *Diritto d'insinuazione – Diritto d'enunciazione.*
Es.
N. -

HISTORICAL CONCEPTION.

France: Tax on the publication of legal instruments and deeds.

18. *E.* *Documentary Taxes.*
F.
D.
I.
Es.
N. *Klein Zegel.*

NOTION HISTORIQUE.

Droits français, dus à l'occasion de la publication d'actes.

HISTORICAL CONCEPTION:

Formerly in Holland a tax on legal instruments and deeds, sometimes tax on consumptions.

17. 18. England:

Documentary taxes is a phrase sometimes used to describe taxes of the type mentioned here. These taxes sometimes fall within the category commonly called "stamp taxes" although that phrase encompasses a much broader scope.

NOTION HISTORIQUE.

Dans la République des Pays-Bas (16e et 17e siècles) impôt sur des actes; quelquefois impôt sur des consommations.

17. 18. Grande Bretagne:

On parle parfois de *documentary taxes* pour indiquer des taxes du type mentionné ici. Ces taxes tombent souvent sous la catégorie que l'on désigne généralement comme „droits de timbre" bien que cette expression comprenne un domaine beaucoup plus vaste.

I

LEGISLATIVE MEASURES TO FIGHT TAX FRAUD IN NORWAY

by

KRISTIAN STANGEBY, OSLO

I.

The problems of tax evasion have been under constant discussion for a long time. In a modern society the public authorities take a considerable share of private incomes in direct and indirect taxes, thus reducing the amounts at the disposal of the individuals for their private consumption. Therefore, it goes without saying that a distribution of the taxes, which is generally accepted as reasonable must be a question of the greatest importance. A fair distribution of taxes, however, is not obtained simply by voting tax laws and by working out rules for assessments, tax payments etc. There is also need for a control system, in order to insure that some people do not evade parts of their duties as taxpayers.

Although the situation in Norway as far as tax evasion is concerned would probably turn out to be fairly satisfactory in an international comparison, there is no doubt that the state and municipal revenue would increase by considerable amounts if the tax system were 100 per cent proof. Statistical data to give more information as to the exact size of the tax evasion is lacking, however — in total as well as for different groups of taxpayers. It seems rather plausible that the decisive factor in this connection is the *possibility* that exists to evade taxes without being caught by the controlling authorities. To indicate that the "tax moral" is better within some groups of the population than in other groups does not appear to be justified.

The duty to pay direct taxes in Norway is connected with the income and wealth of the persons and corporations taxed. (Deductions are allowed for expenditures necessary to earn the income, for pension and life insurance premiums etc.) Attempts to evade direct taxes are usually made by giving wrong or incomplete information about the figures that define the net income and wealth: incomes from extra jobs, from certain sales etc. are not reported, deductions are claimed for expenditures that in fact refer to private consumption, the value of tangible and intangible property is underestimated, etc.

Unusual juridical ways of avoiding taxes have been tried with varying results. New cases are brought up every year. One field where attempts of this type are rather frequent, is in connection with selling of real property. With some exceptions such capital gains are taxed as ordinary income in Norway. Since the tax rates are highly progressive, a considerable part of any taxable gain will therefore have to be paid in taxes unless a splitting of the income over a longer period of years is obtained. — In general it should be taken into account that many of the transactions in order to avoid taxes are kept within the frames of the existing legislation, thus being accepted as legal by the tax authorities. Such transactions may, however, very often be contrary to the attempts made by the administrative and political authorities, aiming at a reasonable distribution of taxes, and may frequently be characterized as unfair by the public opinion.

The official attitude is unanimously against tax fraud and tax evasion.

Demands for efficient measures to combat irregularities in this field are common. A well known Norwegian professor of Law (professor Andenæs) has pointed at the disproportion between the punishment of tax fraud and e.g. embezzlement. This comparison, however, is hardly representative for the general attitude of Norwegian law scholars.

II

Step by step a sharpening of the control system and of other measures to prevent tax fraud has taken place. The punishment for purposely giving wrong information in order to influence the assessment of income and/or wealth has been increased, so that the maximum is now 2 years in jail the first time, and 3 years in case of recurrence. Mistakes made by clear negligence are subject to fines. A kind of punishment is also introduced through the rule saying that a taxpayer who has to file compulsory return to the tax authorities, but who neglects this duty, looses his right to ask for corrections of the assessment made by the assessment board. The same is the case if a person refuses to give information asked for by the tax authorities, if he withholds his accounts etc. In gross cases fines may also be used.

Persons who in their business *purposely* give misleading information to tax authorities are punished by fines and/or jail for a period up to 3 years. In cases of clear *negligence* the punishment consists of fines. If a taxable corporation, estate etc. or a taxable person who comes under the rules of compulsory accounting does not file a return declaring income and property at the end of the year, and the income during the preceding year was at least kr. 3,000 (alternatively kr. 1,500), the assessment income and property from that year should usually be increased by at least 20 per cent, when calculating the new taxes. In case of recurrence further increase of the assessment shall taken place.

Also the rules about later corrections of underassessments constitute a system of higher taxation as a form of punishment for tax fraud. Persons or corporations having paid too little in taxes by giving wrong information to the taxation authorities or if having made attempts to evade taxes by such means, first get their ordinary assessments corrected. In addition the taxation board may increase the taxes calculated on that part of income and/or property which the taxpayers have not reported by a percentage not exceeding 50 per cent in case the mistake is done by clear negligence and not exceeding 100 per cent if it is done purposely. In case of small incomes and fortunes the additional tax is calculated by increasing the ordinary assessments with amounts necessary to give the results indicated above. It is, however, stated clearly on the list of taxpayers that additional assessment has been made. According to Norwegian tax laws, the protocols containing the assessment of income and wealth of all taxpayers and the taxes calculated by the assessment board are made accessible to the public each year (usually in the month of August). The names of people having been subject to additional assessment, are thus published through these protocols. The right for the tax authorities to carry through additional assessment goes 10 years back. Special procedures were adopted to deal with the great number of cases, which were discovered under the general registration of wealth in Norway after the war (September 1945).

III

The penal rules mentioned above are of considerable importance, but not less in importance, no doubt, in getting correct assessments are the various controlling measures which are provided for in the tax laws. The

returns filed by the taxpayers, the account summaries ("regnskapsutdrag") and the production and sales report ("næringsoppgave") are the basis of the control work. The returns include a number of questions for the checking of the other statements given by the taxpayers. The tax authorities also collect information from other sources as regards the age, profession etc. of the taxpayers and of the number of persons in the family. (The tax register is always based on the general population register.) If the figures given in tax returns are insufficient or do not correspond with other information that is reported to the tax assessment office, the authorities have the right to ask the taxpayers for full explanation. And if the explanations thus given do not seem to be satisfactory, assessments may be made on the basis of what the assessment board finds to be a fair estimate.

Controlling of tax returns and account summaries is also done through inspections of factories, inventories etc. and by special auditing of books and accounts. Such inspections are made constantly, but it goes without saying that only a limited number of the taxpayers can be covered each year. The taxpayers have a legal duty to assist the special auditors in these cases. Material obtained through the controlling of accounts in corporations and unincorporated businesses serve as a basis for further estimates regarding profits and business conditions in various industries. Comparisons have, however, so far been difficult because of differences in bookkeeping systems and bookkeeping practises of different firms. Laws have now been introduced which give the authorities the right to issue specific directives as far as standardization of accounting practises are concerned. At the same time the requirement to have bookkeeping in detail for tax purposes has been extended to a number of new groups of taxpayers. If the total turnover or the total wages paid exceed certain minimum amounts the tax authorities may also order the firm to engage a certified auditor. The same may be required of smaller firms which have been subject to additional assessment. These new laws provide an opportunity for making the control of tax returns and of accounting practises in business more efficient than before, thus improving the standard of the assessments.

IV

Additional controls consist of information which the tax authorities may ask or are required by law to collect from other sources than from the taxpayer and his accounts. For purposes of maintaining the current tax register, houseowners are required to give correct information regarding the number of people living in their house and persons to whom they are renting land. All taxpayers who are managing business activities for others, are required to give this information. Of far reaching importance is the regulation that employers shall without special request from the tax authorities, give specifications of all amounts paid out in wages, salaries, pensions etc.; and of commissions, bonuses and a number of other payments if the persons or corporations claim a deduction of the amounts when calculating their own taxes. This requirement to report and specify such payments includes individual sums down to kr. 100 ($ 14) a year. This regulation has increased considerably the reporting of such payments, and has contributed to the greater efficiency of the tax system.

Very important also is the regulation that all persons and corporations producing, selling and buying goods for their business have, on request, to supply detailed information to the tax authorities about a number of different business transactions with other specified persons or corporations. The duty to submit information according to this regulation also applies to organisations in production, trade and transportation etc. When the tax authorities get the accounts of both buyers and sellers, the possibilities

of cross-checking constitute an important measure of control.

Persons and institutions administering money on behalf of others shall, on request, give information about the amounts concerned and about interest etc. paid to depositors named by the tax authorities, and shall also allow further investigations for tax control purposes. Investigations may also be made through individuals or corporations lending money and through stockbrokers etc. The Central Government Tax Board (Riksskattestyret) has also the right to ask information about unnamed taxpayers. The most important example of this is the Board's instructions to the banks each year to report all deposits etc. belonging to persons with family names beginning with specific letter, e.g. names beginning with the letters A and P, or D and F. etc.

Insurance companies, pension funds and institutions are required to report each year all their payments of compensations, pensions etc. and at the same time specify all payments of premiums made when the individual sum exceeds a certain minimum. The tax authorities may also demand further details of premiums paid by named persons.

Among other regulations of same importance in the Norwegian tax laws for checking declarations made by taxpayers, is for all taxpayers on request to inform the tax office about income received from other individuals, corporations etc. on amounts outstanding. All joint stock companies are required each year to report number of stocks owned by each stockholder and dividends paid out to him. Finally the owners of bonds must give their names, when presenting coupons for interest, or bonds for redemption. A provision rarely used is the regulation that persons may make complaints to the tax board about supposed underassessment of other taxpayers. In such cases the reasons for such an assumption must be given.

It will appear from what has hitherto been said that comparisons of reports and information from different sources constitute an important part of the work connected with the assessments. Direct comparisons of declarations and accounts submitted by different taxpayers may also be made. In fact this is one of the main reasons why the tax laws require in the yearly returns to specify all creditors and debtors of 1,000 kroner or more. It is necessary to give this information in order to get deduction of interest and capital for tax purposes. This regulation does not cover banks and insurance companies, which are subject to special provisions as indicated above. Corporations, estates, state and municipal institutions etc. and farmers doing compulsory accounting (with about 50 acres of cultivated land or more), give such information if so requested by the Central Government Tax Board.

So far we have dealt exclusively with control measures through information from private persons, corporations etc. Public institutions and Civil servants can also be required to supply information to the tax authorities. The tax office may request all available information of value in the control of tax returns from other public institutions. Probate Court judges, will executors etc. are required to submit current information to tax authorities. Shares of inheritance exceeding kr. 1,000 of wealth or an income of minimum kr. 50 is to be reported. Every estate with a net worth exceeding kr. 5,000 is subject to similar reporting. If required by the tax authorities, the Probate Court or the will executor also have to submit information on the income and wealth of the deceased in the years before the death occured in case it seems probable that the assessments have been too low.

The tax authorities of the various municipalities are integrating their work, which to some extent is of a compulsory character (prescribed in the law). In particular, this deals with taxpayers who are taxable in more than one district, and with information about taxpayers in other municipalities, which may be found by the assessment authorities when going

through returns etc. Cooperation also exists between offices, dealing with different taxes. It is, e.g., common practice to send a copy of the reports made in connection with inspections of the retail sales tax collections to the assessment office. The police, however, are not required to report to the tax authorities about economic irregularities which are discovered during investigations etc.

In spite of all measures mentioned above to control tax returns etc., there is no doubt that tax fraud is still a considerable problem in Norway. The individual taxpayer may often think that the possibility of being checked by a tax auditor is so small that it may pay to run the risk. It is further difficult for the tax authorities to prove fraud in case of agreements between buyer and seller not to report sales that have taken place, commissions that have been paid without appearing in the books etc. A completely foolproof system of control is not possible, but improvements certainly may still be made in this field.

V

The possibility to evade taxes is apparently greater for persons or corporations with business dealings abroad. In such cases the tax authorities are unable to do the same checking of information as would otherwise be possible. It is likely that currency control (with export and import regulations etc.) may have reduced the possibilities of hiding income in foreign currency from the knowledge of the tax authorities. On the other hand, if people have been successful keeping money away from the currency control it is unlikely that such incomes would be reported for taxation. Cooperation between the tax authorities and the currency control offices is being developed and this can be of additional help in assessment work.

As regards international cooperation in tax cases, it should be noted that Norway has made mutual agreements with Sweden and with the United States of America. The Norwegian government is also authorized to make similar agreements with other countries.

The agreement between Norway and Sweden is of a very wide scope. It provides for some information being exchanged automatically. Under this agreement the Swedish authorities give information about dividends paid to Norwegians and — to a more limited extent — about interest from bonds, bank deposits and interest, wages and salaries, pensions, life insurance payments etc. received or held by people living in Norway.

According to the convention between Norway and the United States both parties have agreed to give, on request, such information as may be available to the authorities of the country or which they may collect according to the existing legislation, in order to assist the tax authorities of the other country.

VI

In order to insure the payment of assessed taxes, the tax collectors are authorized, if necessary, to withhold taxes from wages etc. earned by the taxpayer, and may also distrain a taxpayer's property. Employers, cashiers etc. are personally responsible for withholding taxes from wages when requested to do so, and may be fined if they do not follow such instructions.

The municipal income and wealth taxes on bank deposits and interest on these deposits, are collected directly from the banks, which in their turn subtract the corresponding amounts from the interest credited to the individual depositor.

This paper has mainly dealt with the assessment and collection of direct

taxes on income and wealth to the state and to municipalities. Much of what has been said does, however, — with some adjustments — also cover the general retail sales tax of 10 per cent, which is the largest single revenue figure in the Norwegian state budget. The methods adopted by the taxpayers to evade the sales tax are often the same as in the case of direct taxes, and so are the control measures enacted by the tax authorities (e.g. special auditing, reporting of business transactions with banks and other taxpayers, etc.). As mentioned above, there is also close cooperation between the different tax authorities.

Many reasons have been given to explain why tax fraud is of the present order of magnitude. The main reason is apparently that the tax rates are so high that the possible gains seem too tempting to people, who try to mislead the tax authorities. High and progressive tax rates are also said to cause a less economical attitude among many business people than would otherwise have been the case. This may lead to lower tax revenues for the state and the municipalities, although no tax fraud appears in the usual meaning of the word.

A certain aversion to taxes has always existed. This fact alone — or combined with other motives, e.g. that a taxpayer disagrees with the policy pursued by the central or local government — may be a sufficient reason for tax evasion. It is also stated that some taxpayers may wish to conceal their true income or wealth position from being known by their family or business connections, or to hide possible violations of other laws, concerned with e.g. price control or import regulations, etc. Also the distribution of the taxes between different groups of the population and between different municipalities is subject to a rather common dissatisfaction, although it is often based more on feelings than on real arguments. — In general the Norwegian tax authorities are known as impartial and honest when dealing with individual taxpayers. Cases of corruption, etc. are not common. It is, however, a feeling among the urban population that income and wealth in rural districts tend in general to be somewhat underassessed.

The tax legislation has been under continuous revision since the war and considerable inprovements have been made as regards the efficiency and reliability of the assessments. The control measures provided for in the tax laws have not, however, so far been used fully. A further development of the control system combined with other reforms of the taxation procedures (e.g. the introduction on the "pay as you earn" principle, which was voted by Parliament last year, and is expected to be put into operation within a year or two) may mean new and important steps forward.

LE MUSEÉ FISCAL NEERLANDAIS [1])

par

Prof. Dr. J. VAN DER POEL

Directeur du musée, directeur de l'Académie Fiscale de l'Etat.

Dans cet article je me permets de demander attention pour une matière dont le Bulletin, jusqu'ici, ne s'est jamais occupé, mais qui est, selon moi d'une importance suffisante pour trouver place dans ses annales. Le Bureau Internationial de Documentation Fiscale a aussi pour but de stimuler l'étude de la science fiscale! Le Musée Neerlandais origine dans une petite collection privée, commencée dès mon entrée en fonction et exposée dans l'Académie des Impôts, afin de stimuler les étudiants et de leur procurer un esprit de corps et du goût pour le service. La collection s'agrandissait: je réussis à instituer une Fondation („Stichting Nederlands Belastingmuseum") (1938) pour m'assurer des collaborateurs, tant sur le terrain des matériaux que sur le terrain financier. Un développement considérable suivit; le musée prenait toujours plus d'extension. Hélas les 10-14 Mai 1940, dates du désastre de Rotterdam, mirent fin à mes expectations. Le musée fut complètement détruit par l'incendie. Seuls quelques débris en restaient. Après avoir réglé quantité de choses qui étaient plus pressantes, je recommencais mes efforts pour la reconstruction de la collection et je m'y occupais pendant toute la guerre, ainsi que je pouvais la réouvrir en mai 1945, dans un appartement temporaire, trop petit, trop simple, à peine suffisant pour exposer les objets et certainement pas pour recevoir de nombreux visiteurs en même temps. Le deuxième congrès de fiscalité à La Haye (1947) l'a prouvé! En mai 1949 enfin, je réussis, grâce à l'aide du Ministère des Finances à la Haye, à nous réserver un édifice, digne de la collection, mais qui est de nouveau à ce moment trop petit pour tout ce qu'il contient.

Si je ne me trompe pas, le musée fiscal néerlandais est le seul de ce genre dans le monde entier. Avant la guerre il y avait bien un musée ou école pour la *douane* à Berlin et il y en a un autre

[1]) Article rédigé en français par l'auteur.

au Danemark, à Londres, au Canada et aux Etats-Unis, mais un autre musée des *impôts* n'existe pas autant que je sache.

Il va de soi que ce musée-ci est en premier lieu un musée national. Cependant il existe des liens spécialement avec la Belgique, la France et l'Angleterre. Je suis sûr, que la fondation de musées de ce genre dans d'autres pays contribuerait à démontrer les relations qui existent entre les impôts des différents pays et leurs aspects général. La plupart des impôts ont suivi un développement commun; chaque pays a emprunté à un moment donné un ou plusieurs de ses impôts ou droits à ses voisins. Quelques-uns de ces impôts ou droits — peut-être la plupart dans ce temps-ci! — sont même internationaux. Lire l'histoire c'est lire dans l'avenir et cela peut servir à mieux connaître le système de son propre pays et celui des autres.

L'histoire — comme toujours — peut ainsi aider à s'orienter et à comprendre quantité de choses que jusqu'ici étaient obscures. Avec la sagesse que seule l'expérience peut donner, un tel musée pourra même corriger vos idées et par là le système fiscal, de votre pays, ou en général.

But du Musée.

Fondé surtout pour intéresser les étudiants à la matière fiscale, il est devenu un des moyens les plus effectifs.

L'étude fiscale a peu d'attraits pour les débutants: l'élément poétique, pittoresque, manque, quelles difficultés à surmonter, à débrouiller, à retenir et à comprendre! Le musée peut venir en aide dans tout ceci; la matière rend l'étude moins aride, elle ajoute des exemples illustrés à la théorie: les portraits, les instruments, les objets historiques, les vieux placards, les caricatures, les gravures, les dessins, les peintures, les médaillons.

Le musée attire l'attention du public sur le fisc, qu'en général il n'aime guère. Il peut y apprendre ce que le fisc est en réalité. Dès qu'il a été possible de l'ouvrir pour le public, les journaux et les autres périodiques contiennent souvent des articles, donnant un compte rendu d'une visite au musée et de l'explication donnée pendant cette visite. Il contribue au respect et aux sentiments de sympathie dus au fisc et à ses serviteurs. Seul un musée comme celui-ci qui s'occupe seulement de la matière fiscale est capable d'en donner une idée plus ou moins complète; il va de soi cependant

qu'il est nécessaire que le collectionneur connaisse la matière à fond, car un certain système est indispensable. Il ne faut pas que le musée devienne un amas hétéroclite de curiosités, mais une collection systématique. D'autres musées ne contiennent que par hasard et jamais rangés systématiquement, quelques objets ayant rapport à la fiscalité. Les objets doivent être groupés, puis chaque groupe doit être complété graduellement. Dans les premières années le souhait seulement est mère de la conception, mais graduellement, à la fin, on réussit à étudier chaque groupe à travers les siècles en montrant p.ex. le développement d'un impôt, provenant peut-être de régales, de vieilles rétributions, changeant souvent de caractère, surtout après une guerre ou une révolution, tout comme la société de cette époque-là.

On ne saurait imaginer un moyen plus propre à démontrer l'évolution économique et financière d'un pays, qu'un musée des impôts.

Non seulement il offre un tableau des siècles passés et les transformations successives, il ouvre les yeux du spectateur à ce que celui-ci ignore de la matière en question. Le musée doit prendre à tâche de remplir les lacunes qu'on a constatées, afin qu'on ait un aperçu toujours plus complet.

Celui qui écrit une étude sur les impôts peut trouver ici des matériaux historiques pour illustrer son oeuvre. Le musée contient de nombreux manuscrits et dossiers qui formeront plus tard, j'espère lors qu'ils seront complets, une ressource précieuse pour ceux qui préparent une thèse sur le droit fiscal.

Le but de ce musée est donc triple:

a. illustrer le fisc et les impôts,
b. fournir des renseignements sur cette matière,
e. stimuler et intéresser les étudiants et le public.

Contenu du musée.

Tout ce qui peut contribuer à atteindre ce triple but doit trouver une place dans la collection. Un musée est destiné à braver les siècles et à augmenter sa collection chaque année. La base doit donc être aussi large que possible. La rétribution d'aujourd'hui est peut-être l'impôt de demain. Ce qui n'est pas un impôt proprement dit l'a peut-être été autrefois (monnayage, étalonnage). La monnaie obsidionale a certainement un caractère financier. La

garantie des oeuvres en or et en argent est dans plusieurs pays, comme jusqu'à ici dans le nôtre, non seulement une rétribution, mais aussi un impôt.

Puis: tout ce qui concerne soit les impôts, soit les serviteurs du fisc doit être présent dans toutes les formes possibles: écrit, imprimé, dessiné, peint, sous forme de placards et de pamphlets, de bulletins des contributions — vous y trouverez des chefs-d'oeuvre des siècles passés —, médailles et médaillons, uniformes, habits de cérémonie, insignes distinctifs.

Le Musée des Impôts est le lieu par excellence où l'on peut réunir tout ce qui est important sur ce terrain.

Cet enseignement a beaucoup d'aspects. Ce ne sont pas toutes ou même pour la plupart des objets de grande valeur, quoique par exemple la collection de timbres fiscaux, créee par l'assistance généreuse de quelques maécénas de Rotterdam et la donation superbe de M. PRESTON PEARCE à Plymouth et après cela augmentée et corrigée, soit une des plus belles qui existe. Mais il faut tenir compte en le rendant visite que plus vaut dans un tel musée procurer un moyen d'enseignement, qu'une collection d'art.

La fraude forme un domaine aussi intéressant que la levée régulière. Une bibliothèque composée autant que possible de livres historiques sert de guide à mainte recherche. La collection de timbres fiscaux n'est pas moins intéressante qu'une collection de timbres-poste. Elle m'a beaucoup aidée à écrire un livre non pas encore édité sur le timbre fiscal qui aurait été plus incomplet, plus imparfait qu'il doit rester toujours, si je n'avais pas été en état de la consulter à maintes reprises. Le timbre fiscal commence sa marche triomphale en 1624, devançant ainsi de plus de deux siècles son frère cadet, le timbre-poste. La collection mondiale dans le musée contient bien plus de 200.000 exemplaires.

Si possible les collections doivent être placées dans leur entourage historique, chaque impôt - si possible - doit montrer son développement au moyen de graphiques, de portraits, de dessins, de documents et d'instruments etc.

Je n'ai pas réussi complètement à atteindre ce but, puisque ça demanderait plus de locaux que je n'ai disponibles.

Voici un aperçu de la façon dont le musée a été arrangé; il est

vrai, pas encore raisonnablement complète, mais susceptible de perfectionnement:

1. Moyen-âge: domaines et régales. Curiosités de ces temps.
2. 17e siècle.
3. 18e siècle.
4. Le temps de la Révolution Française.
5. Première moitié de la 19e siècle.
6. Deuxième moitié.
7. Période des Guerres mondiales. (1914-1945).

En outre une collection sur:

8. La garantie des oeuvres en argent et en or; poids et mesures; étalonnage.
9. La Douane et la fraude.
10. Les accises.
11. La Loterie.
12. Le timbre fiscal.
13. La taxe sur les cartes à jouer.
14. Le fonctionnaire fiscal à travers les siècles.
15. Coins, monnayage, monnaie obsidionale, médailles.
16. Benelux.

Le musée contient en tout, hors des corridors, 17 chambres (grandes et petites) mais tellement surchargées déjà, que mieux vaudrait en avoir le double.

Je répète: quelques-unes de ces collections sont encore en état primitif, mais cela améliore chaque année et c'est curieux que tout à coup une toute petite collection à laquelle on donne assez d'attention, peut s'étendre en peu de temps à quelque chose qui vaut à être étudiée.

Le but de cette communication-ci n'est pas seulement de vous inviter lors que, par hasard, vous rendriez visite à Rotterdam, mais aussi pour animer mes lecteurs de fonder eux-mêmes un musée dans leur pays. On verra que c'est une occupation qui coûte beaucoup de temps et d'intéresse — sans doute — mais qui pourrait vous donner chaque fois de nouvelles satisfactions et — désir égoiste — j'espère aussi, que quelque'un se trouvera disposé de m'aider à complèter mes collections, s'il possède ou trouve quelque chose, qui pourrait y servir. Cette possibilité existe sans doute.

En ce moment par exemple, je m'occupe d'accomplir la branche cartes à jouer. Je suis sûr, que quantités de nos lecteurs possèdent des cartes à jouer hors usage, soit des tarocs, des portraits français ou autres; il y en a des milliers de toute sorte et la première taxe ou droit en France date déjà de 1581. Je ne suis pas joueur, mais après avoir commencé à m'intéresser pour les *timbres* apposés sur les cartes, et les couverts timbrés, les cartes elles-mêmes ne me donnent plus de repos.

Mon intérêt est, naturellement, le plus grand pour les bandes de contrôle et les jeux pourvus d'un estampe fiscal, mais même ceux non pourvus de ces emblèmes assistent à indiquer le temps d'édition et le pays d'origine. Ils valent aussi bien à être collectionnés. J'ignorais, qu'il y avait une littérature là-dessus aussi importante: le chef d'oeuvre de l'Allemagne p.ex. contient 1300p. et 100 p. de littérature hors texte).

Un directeur de musée est un mendiant de profession. Je le suis aussi. Je vous demande humblement de m'envoyer tout ce que vous pourriez m'envoyer dans ce domaine et encore dans des autres.

L'adresse est: Nederlands Belastingmuseum, Parklaan 16, Rotterdam.

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II

LA LEGISLATION FISCALE FRANCAISE
(1951-1953)

par

Prof. Louis Trotabas

Notre précédente *Chronique* sur la législation fiscale française s'arrêtait en 1951, au terme de la première législature de la IV° République (v. ce *Bulletin*, vol. V, p. 231). Elle s'achevait sur l'impression décevante d'une législation pleine d'incohérence et de confusion. La seconde législature, en ses deux premières années d'existence, n'a pas manqué de promettre, comme la précédente, une véritable réforme fiscale, mais, comme elle aussi, elle s'en est tenue à quelques velléités: le bilan de ses entreprises est, en fin de compte, pour l'instant du moins, aussi lamentable que le précédent. Si le législateur fiscal, dans sa prolixité, n'a guère laissé de répit, pendant ces deux années, au contribuable - ni au commentateur de ses textes - il ne reste rien de valable, parmi tant de textes, pour l'amélioration de notre système fiscal. Il ne s'agit toujours, en effet, que d'"aménagements fiscaux", c'est à dire que la législation fiscale continue de se compliquer, monstrueusement, par d'incessantes retouches techniques, qui multiplient les dispositions particulières et se perdent dans mille détails, sans réformer jamais l'esprit et les cadres généraux d'une fiscalité que tout le monde raisonnable — à l'exclusion évidemment de ses „profiteurs" — s'accorde à reconnaître mauvais.

Dans cette *Chronique*, qui ne saurait rendre compte de ces aménagements dans tous leurs détails, on ne peut évidemment pas essayer de dégager les idées générales qui ont manifestement fait défaut pour inspirer tout ce travail législatif. Tout ce que l'on peut espérer, en en dressant le bilan, c'est mettre un peu d'ordre dans ce chaos, en rassemblant ce qui peut être rassemblé, pour rechercher si le législateur a pris du moins, sur quelques points, des attitudes qui peuvent être retenues pour marquer l'évolution de

notre législation fiscale. Or, celle-ci révèle d'abord des particularités formelles, qui se sont tout particulièrement accusées au cours de ces deux dernières années et qui mettent réellement en cause le principe de la légalité fiscale. Ce sont ces particularités qu'il faut d'abord signaler. On relèvera ensuite, dans cet ensemble législatif, les seules dispositions de fond dont l'importance justifie le rappel, en distinguant, d'une part, celles qui tendent à accroître les rigueurs fiscales, et, d'autre part, celles qui tendent, au contraire, à l'adoucissement des charges ou des obligations fiscales.

I — *La présentation formelle de la législation fiscale: loi et décret.*

L'examen de la „législation fiscale" française révèle un tel développement du pouvoir réglementaire que l'atteinte ainsi portée au principe fondamental de *la légalité de l'impôt* compromet les bases essentielles de la science des finances. En ce qui concerne le droit positif français, ce principe de légalité est inscrit parmi „les droits et libertés de l'homme et du citoyen consacrés par la Déclaration des droits de 1789". Ces droits et libertés ont été réaffirmés solennellement par le préambule de la Constitution de 1946, et c'est par là que la Déclaration de 1789 demeure le texte fondamental qui fixe le régime de l'impôt dans le domaine réservé au législateur, puisqu'il doit être consenti par les citoyens ou leur représentants. Et il ne faut pas oublier que ce texte fondamental précise l'étendue de la compétence du législateur, qui ne se limite pas au principe de l'impôt: il appartient à lui seul „d'en déterminer la quotité, l'assiette, le recouvrement et la durée" (art. 14).

On est un peu confus d'être obligé de rappeler ces vieilles formules; mais leur méconnaissance actuelle est telle - et si grave - que le silence du financier devient complicité s'il se borne à signaler telles dispositions nouvelles modifiant l'assiette, la liquidation ou le recouvrement de l'impôt sans protester contre la violation des régles fondamentales de notre discipline lorsqu'elles ne résultent pas de l'intervention directe du législateur. Et ces pratiques se sont encore manifestées et aggravées, depuis 1951, sur les deux terrains où on les observe depuis plusieurs années: le recours au décret-loi et la parafiscalité.

A — Il faut entendre ici par „décret-loi" toutes les procédures de délégation par lesquelles le pouvoir législatif, au lieu de se prononcer lui-même sur les points qui relèvent de sa compétence;

habilite le gouvernement à se substituer à lui par décret. C'est ainsi que, depuis 1951, le gouvernement a été autorisé:

— à ,,aménager'' par décret, c'est-a-dire à modifier, le régime fiscal des revenus des capitaux mobiliers (v. L. 14 avril 1952, art. 15, où la décision du parlement est remplacée par l'avis conforme de la commission des finances de l'Assemblée nationale);

— à ,,aménager'' aussi la législation des impôts indirects, en établissant au besoin des dérogations, pour permettre l'exécution des programmes de défense commune (*ibid.* art. 73);

— à établir des ,,allègements fiscaux'' en faveur de la construction et de l'entretien des immeubles (L. 7 février 1953 art. 53);

— plus généralement, à déposer enfin maints projets de loi, étant entendu que, à défaut de modification ou de rejet de ces projets par le parlement à des dates prévues, ces projets pourraient être mis en vigueur par décret (*ibid.* art. 69).

C'est cette procédure qui devait permettre de réaliser la fameuse réforme fiscale, toujours promise, mais elle n'a pas joué complètement sur ce point, le parlement ayant repris une partie de ses pouvoirs par la loi du 23 juillet 1953 — et c'est ainsi qu'il est de nouveau saisi de ce problème (novembre 1953). Mais l'attribution de ces pouvoirs législatifs au gouvernement n'en est pas moins considérable, d'autant que cet article 69 lui permet, dans son dernier alinéa, de refondre le code général des impôts, ,,en vue de simplifier, unifier et adapter'' ce code en fonction des ,,aménagements'' prévus: et comment le ferait-il sans toucher a ''la quotité, l'assiette, le recouvrement et la durée de l'impôt''?

Il faut encore ajouter à tout cela les nouveaux pouvoirs attribués au gouvernement par la loi du 11 juillet 1953, art. 7. Ceux-ci lui permettent notamment de modifier ,,le régime économique et financier des produits agricoles et industriels'', et de répartir ,,les charges fiscales grevant les divers modes de transports''. Ces pouvoirs se sont manifestés sur le terrain fiscal par le décret du 5 septembre 1953 ,,portant aménagement du régime financier de certains produits de large consommation'': le dit aménagement consiste à suspendre la perception de la taxe sur les transactions et de la taxe locale additionnelle aux taxes sur le chiffre d'affaires, c'est-à-dire à décider, aux lieu et place du législateur, du recouvrement ou de la durée d'application de ces impôts.

B — Quant au régime de la *parafiscalité*, on attendait vainement, depuis la loi du 3 mars 1949, art. 31, le vote d'une loi qui devait fixer le statut des organismes gérant des taxes parafiscales. Le gouvernement avait bien déposé un projet (Ass. Nat., 30 janv. 1951), mais l'Assemblée nationale ne s'en est jamais saisi. Elle a préféré lier la parafiscalité et la réforme fiscale en prévoyant la voie réglementaire pour résoudre simultanément les deux problèmes (L. 7 fév. 1953, art. 69). Mais le législateur s'est ensuite saisi du projet sur la parafiscalité déposé par le gouvernement dans les délais requis, et il a ainsi réglé la question par la loi du 25 juillet 1953 „portant aménagements fiscaux". La parafiscalité a été ainsi replacée dans le champ de la légalité fiscale, et l'on s'en réjouira parce qu'il dit excellement qu' „une taxe parafiscale ne peut être instituée qu'en vertu de la loi" (art. 3). Il subordonne également le recouvrement des taxes parafiscales à l'autorisation annuelle du budget (art. 3) et il les soumet aux contrôles du droit budgétaire et du contentieux fiscal (art. 7). Malgré ces motifs de satisfaction, la parafiscalité continue pourtant de méconnaître le principe de légalité de l'impôt, parce qu'elle admet encore, à côté de la source légale, la source réglementaire — en s'accomodant même, parfois, d'un simple arrêté ministériel — pour déterminer ou approuver les modalités d'assiette et de recouvrement des taxes et même leur taux (art. 4). Lorsque le financement des opérations décidées par les pouvoirs publics, s'effectue ainsi sans recourir à l'impôt, une place encore trop large reste donc acquise au pouvoir gouvernemental ou administratif.

Ce déclassement de la matière fiscale, par le glissement de la loi au décret, ou à l'arrêté ministériel, est extrêmement grave. Il fait perdre à l'impôt, par cette élimination ou retraite volontaire du législateur, la garantie d'égalité que celui-ci nous donnait, et la garantie de liberté qui était attachée au caractère politique du consentement. Les pratiques nouvelles, qui rognent ainsi le principe de légalité, pour déterminer „la quotité, l'assiete, le recouvrement et la durée de l'impôt" (toutes choses qui devraient être expressément réservées au législateur, on l'a vu), sont encore plus graves lorsqu'elles marquent l'abandon complet du principe. C'est ce qui a lieu lorsque le législateur n'intervient plus pour apprécier, préalablement, la nécessité des charges publiques, qui se tradui-

ront en impôts ou taxes parafiscales. Et l'on sait bien qu'il n'éprouve plus le besoin de le faire, c'est-à-dire de „légaliser" ces charges, quand elles sont avalisées, si l'on peut dire, par un impératif économique ou social. N'est-ce pas, notamment, le cas pour tout financement des „plans" dans lesquels on se trouve aujourd'hui engagé sans que leur „nécessité" ait été législativement reconnue? On assiste ainsi, depuis plusieurs années, à une dénaturation formelle de la législation qui réagit nécessairement sur tout régime de l'impôt.

Notre chronique de „législation fiscale" devait rendre compte de l'importance des atteintes ainsi portées au principe de légalité par la dénaturation formelle de cette législation.

II — Les mesures d'aggravation de la fiscalité.

Les nombreuses lois qui ont modifié le régime fiscal français depuis 1951 ne tendent pas, dans leur ensemble, à aggraver la fiscalité. En dehors des dispositions habituelles qui s'efforcent de sévir contre la fraude fiscale — dont on dira un mot ultérieurement — les seules mesures d'aggravation qui méritent d'être signalées portent sur quelques majorations de taux ou sur les modalités de recouvrement de l'impôt.

1°) *Les majorations de taux* sont intervenues d'abord en matière de *taxe à la production* (L. 28 sept. 1951, majoration de 0,30), puis, plus récemment, en matière *de droits de timbre* et *de droits sur l'alcool,* entraînant pour ces derniers, outre une augmentation importante des droits, une atteinte au fameux privilège des bouilleurs de cru (L. 11 juillet 1953, art. 1, 2 et 8; décret 11 juillet 1953 et ar. 10 sept. 1953). Mais on remarquera que ces majorations n'ont pas été réalisées pour répondre aux besoins généraux du budget: elles s'excusent toutes, si l'on peut dire, par la necessité de faire face à des charges particulières (la loi de 1951 se rapporte aux subventions scolaires, et celle de 1953, d'une part au remboursement des avances de la Banque de France, d'autre part au financement du fonds de construction et d'équipement rural et d'expansion économique). Cette particularité montre bien que la tendance législative n'est pas à l'augmentation des tarifs.[1])

[1]) En dehors de ces majorations importantes, on signalera les majorations qui concernent la délivrance des cartes grises et permis de conduire (automobiles), des passeports (v.L. 14 avril 1952, art. 34 et 36 et L. 7 février 1953 art. 25-IV et V).

Il ne faudrait pourtant pas déduire de cette observation que le poids de l'impôt est resté constant, depuis 1951, pour le contribuable français. Le législateur dispose en effet d'un moyen indirect de majoration de l'impôt qui passe inaperçu lorsqu'on se borne à analyser les dispositions nouvelles et positives des lois fiscales: il résulte présicément de son abstention en présence de l'augmentation des prix (qui réduit automatiquement les exonérations à la base) ou de l'augmentation des rémunérations (qui, par le jeu des tarifs progressifs, accélère l'assujettissement des contribuables à des taux majorés). Or, ce phénomène s'est observé d'une manière particulièrement nette, au cours de ces dernières années, spécialement au sujet des traitements et salaires, qui constituent la base principale de la surtaxe progressive (68 p. 100 des revenus imposés en 1952). Les quelques adoucissements prévus par le législateur, qui seront analysés ci-dessous, sont de portée extrêmement réduite, et ne compensent pas, tant s'en faut, l'accroissement indirect, ou occulte, de la progressivité. C'est ainsi que les traitements et salaires ont bénéficié, depuis le dernier trimestre 1951, d'une augmentation moyenne de 11 à 12 p. 100, qui correspond, de 1951 à 1952, à l'élévation de l'indice moyen portant sur l'ensemble des prix pour la consommation familiale: c'est dire que le pouvoir d'achat du salarié est resté constant. Mais cette augmentation nominale du salaire de 12 p. 100 a entraîné, depuis 1952, des augmentations d'impôt de l'ordre de 20 à 60 p. 100, selon les situations personnelles. En face d'un pouvoir d'achat demeuré constant, l'abstention du législateur doit donc être enrègistrée comme une augmentation réelle de la surtaxe progressive. On peut d'ailleurs ajouter qu'elle a contribué, en l'espèce, à accroître l'écrasement de la hiérarchie dont souffre particulièrement, en France, la fonction publique.

2°) *L'accélération du recouvrement,* qui fait participer le contribuable à la solution des problèmes de trésorerie, a été sensible dans le régime et *l'impôt sur les sociétés:* le décret du 29 février 1952 a fixé le premier versement de l'impôt à l'échéance qui suit immédiatement la période d'imposition (et non plus la déclaration). Pour les sociétés qui arrêtent leur exercice le 31 décembre, l'acompte de février devient ainsi le premier versement de l'exercice nouveau, alors qu'il correspondait autrefois au quatrième versement de l'exercice précédent, et la liquidation de l'impôt se fait, en avril,

sous la déduction de trois acomptes versés, au lieu de quatre. On notera d'autre part, pour le régime de droit commun de l'impôt direct et de l'impôt sur le revenu des personnes physiques, que les dates d'exigibilité ont été modifiées par la loi du 14 avril 1952, art. 29, consolidant le regime des acomptes pour cet impôt sur le revenu.

3°) Au titre des mesures d'aggravation de la fiscalité, il reste à analyser les dispositions qui ont pour fin de lutter contre *la fraude fiscale*. Celles-ci sont assez nombreuses. Nous citerons, en matière de *surtaxe progressive*, le remaniement des indices du train de vie, déterminant un minimum d'imposition (L. 14 avr. 1952, art. 59), avec un régime particulier pour les contribuables dont le revenu ainsi établi atteindrait 2 millions de francs (L. 7 fév. 1953. art. 22), mais ce nouveau régime n'est pas encore entré en application, le réglement d'administration publique prévu par la loi pour déterminer son application n'ayant pas été publié. En matière *de bénéfices industriels et commerciaux* des dispositions rigoureuses sont prises pour parer au „camouflage" de ces bénéfices par l'attribution excessive de frais professionnels ou l'octroi d'avantages en nature (notamment pour l'usage des voitures automobiles), ainsi que par le moyen des sommes laissées en compte courant à la disposition d'une société (L. 7 fév. 1953, art. 14 à 17). En matière de *taxes sur le chiffre d'affaires* on cherche à lutter contre les ventes sans factures par l'identification du client (L. 14 avr. 1952, art. 51 et décret 22 oct. 1952, et, pour certaines dispenses, ar. 12 mai 1953).

Toutes ces dispositions témoignent de la nécessité d'une lutte incessante contre l'évasion fiscale, qui démeure la tare majeure du système fiscal français. Cette ténacité dans la poursuite de la fraude conduit le législateur, quand il ne voit plus la possibilité de colmater directement l'évasion, à recourir à *des sanctions* qu'il veut redoutables, dans l'espoir que leur sévérité intimidera le fraudeur. C'est à ce titre qu'il a inventé deux nouvelles sanctions, „l'interdiction provisoire d'exercer toute profession commerciale, industrielle, ou libérale", et „le retrait provisoire du permis de conduire un véhicule automobile.', qui pourraient être prononcées par arrêté ministériel à la suite du simple dépôt d'une plainte par l'administration fiscale (L. 14 avril 1952 art. 47). On ne peut que

confesser sa honte à mentionner au titre de la „légalité" fiscale des dispositions de cette sorte, qui paraissent injustifiables aussi bien au regard de la science des finances que de la science pénale, ou du droit professionnel, et de leur efficacité pratique par surcroît. Il est vrai que, de ce point de vue, le législateur ne parait pas mieux avisé lorsqu'il abandonne la voie rigoureuse pour aller au devant du fraudeur par la voie de bienveillance et de séduction, que nous allons maintenant rencontrer, avec l'amnistie, parmi les mesures favorables au contribuable.

III — Les mesures en faveur du contribuable.

Ces mesures sont beaucoup plus nombreuse que les précédentes, auxquelles elles correspondent d'ailleurs très exactement. En face des augmentations de taux et des dispositions qui accélèrent le recouvrement de l'impôt nous trouvons maintenant des allègements de tarifs, allant parfois jusqu'à l'éxonération, et des formules de payement fractionné ou différé; en face des mesures rigoureuses de lutte contre la fraude fiscale, nous trouvons des témoignages de confiance et la recherche de bons rapports entre le contribuable et le fisc, par la suppression des difficultés et des contestations que suscite l'évaluation réelle des bases d'imposition. Il serait donc logique de présenter maintenant toutes ces dispositions bienveillantes dans l'ordre où l'on a analysé les mesures de sévérité. Mais lorsque le législateur intervient ainsi en faveur du contribuable, ce qu'il est surtout intéressant de montrer, c'est le motif de cette intervention, le but qu'elle vise. La recherche de ces motifs ou de ces buts montre que toutes ces dispositions, à première vue assez disparates, sont inspirées par l'une ou l'autre des préoccupations majeures qui s'imposent aujourd'hui, avec une particulière exigence, à l'attention du législateur: les préoccupations sociales et les préoccupations économiques. C'est autour de ces deux impératifs qu'il faut donc réunir toutes les mesures nouvelles qui ont entraîné quelques adoucissements de la fiscalité par le moyen des abaissements de tarifs ou des facilités de payement. Nous analyserons ensuite pour faire pendant à la lutte contre la fraude fiscale, les dispositions plus spécialement fiscales qui recherchent l'amélioration des rapports entre les contribuables et le fisc.

1°) *Les mesures d'inspiration sociale,* au sens le plus large, portent

d'abord le reflet des préoccupations habituelles en faveur de *la défense de la famille*. Il faut citer à ce titre, en premier lieu, la refonte des droits de mutation par décès: après l'augmentation récente des droits en ligne collatérale (L. 8 janv. 1951, art. 3), on enregistre un très sérieux adoucissement des droits en ligne directe et entre époux (L. 14 avril 1952, art. 43), auquel on peut joindre un élargissement du régime des payements fractionnés en matière de droits de mutation (Décret du 30 juillet 1952) et l'exonération nouvelle en faveur de certains capitaux constitués par l'entremise de sociétés mutualistes (L. 7 fév. 1953, art. 59). Il faut noter encore, dans le même esprit, mais en matière d'impôt sur le revenu des personnes physiques, la nouvelle définition des „enfants à charge", qui s'étend désormais jusqu'à 25 ans, au lieu de 21, pour les enfants poursuivant leurs études (L. 7 fév. 1953, art. 48).

A côté de ces manifestations classiques en faveur de la famille on mentionnera les mesures, elles aussi désormais habituelles, en faveur des „*économiquement faibles*" (L. 14 avr. 1952, art. 39 et L. 7 fév. 1953, art. 36), et, plus largement, des petits contribuables: remaniement du tarif de la surtaxe progressive, avec introduction d'une décote (L. 14 avr. 1952, art. 39), et, dans le régime des traitements et salaires, calcul plus favorable des frais professionnels (L. 14 avril 1952, art. 42 et L. 7 fév. 1953 art. 21).

D'autres mesures fiscales sont inspirées par des préoccupations sociales plus nouvelles ou plus pressantes que celles qui sollicitaient habituellement le législateur: on notera à ce titre, d'abord, de très nombreuses dispositions inspirées par une *politique de construction de logements* (réductions de droits, facilités de payement fractionné, possibilités nouvelles d'amortissement ou de déductions à titre de charges, etc. : L. 7 fév. 1953, art. 26, 35, 53 et 60; L. 15 avril 1953, art. 9; L. 25 juillet 1953, art. 24-25; Décret 6 mai 1953); ensuite une tendance favorable à la *participation du personnel aux bénéfices de l'entreprise* (par déduction correspondante à titre de charges et par exonération du versement forfaitaire: L. 25 juillet 1953, art. 26); enfin, le recours aux réductions d'impôts avec suppression de certains droits, pour obtenir une baisse des prix, sur certains éléments essentiels du coût de la vie (décret 5 et 7 sept. 1953 en matière de denrées de consommation courante et de viande, pour les taxes sur le chiffre d'affaires).

2°) Au titre des mesures *d'inspiration économique,* il faut évidemment mentionner quelques témoignages de bienveillance en faveur de *l'agriculture:* celles-ci sont habituelles dans notre système fiscal, mais elles sont peut-être d'inspiration politique plus qu'économique. Elles sont peu nombreuses, d'ailleurs, et peu importantes dans la législation fiscale et ces dernières années (v. en matière d'abattements pour charges de famille L. 3 janv. 1952, art. 12, ou, pour les pertes de bétail, L. 7 fév. 1953, art. 62). En revanche, les mesures favorables au *commerce et à l'industrie* sont nombreuses et importantes. Elles tendent à la fois à protéger les entreprises contre certains risques de dépérissement, dus à l'insécurité monétaire, ou même aux excès de la fiscalité, et à faciliter la mise en route d'une reprise économique. Il faut ainsi mentionner:

— les mesures qui adaptent la législation fiscale aux échelles nouvelles des prix (L. 14 avr. 1952, art. 41, élevant la limite à l'imposition forfaitaire, pour les entreprises à direction personnelle, jusqu'à 10 millions ou 2 millions 500.000 francs de chiffre d'affaires);

— celles qui tendent à assurer le maintien et la reconstitution des stocks en franchise d'impôt (L. 14 avr. 1952, art 40, et décret 7 mai 1952 et 18 mars 1953);

— celles, très nombreuses, et d'ailleurs complexes, qui se rapportent au régime financier des entreprises, et qui tendent à permettre, en les facilitant, les distributions de portefeuille, les apports, les fusions, les capitalisations de réserves, les rapports entre sociétés mères et filiales, etc. — (v. L. 14 avr. 1952, art. 45; Décret 30 juin et 28 nov. 1952; L. 7 fév. 1953, art. 49, et art. 50 pour extension aux S.A.R.L.). La vieille patente est elle-même ainsi remaniée pour favoriser les transferts ou des créations d'entreprises (L. 26 juillet 1952, art. 8; 14 avr. 1952, art. 39; 7 fév. 1953, art. 35) ou certaines activités, comme le tourisme (Décr. 14 avr. 1953).

Enfin, on peut encore rattacher à ces préoccupations économiques les dispositions fiscales qui ont été prises en faveur du *crédit public,* sous forme d'exonérations destinées à faciliter le placement des fonds publics (v. au sujet du 3 1/2 % 1952, dit emprunt Pinay, L. 21 mai 1952) ou les versements à la Caisse d'épargne, qui pourvoit largement aux besoins du Trésor (décr. 27 juin 1952). Mais on hésite à justifier au même titre l'exonération générale de l'impôt sur les sociétés au profit des départements et communes et de

leurs régies de services publics, qu'il faut pourtant bien mentionner quelque part (L. 7 fév. 1953, art. 44).

3°) Il reste à dire quelques mots des dispositions plus générales qui tendent à établir un „climat de confiance", comme l'on dit, entre le contribuable et le fisc. La plus importante de ces dispositions c'est assurément à *la loi d'amnistie* qu'on la doit (L. 14 avr. 1952, art. 46 à 52). Cette loi, très bienveillante envers les fautes passées, qu'elle permet de couvrir par une large „prescription anticipée" des pouvoirs du fisc au profit des fraudeurs repentis, cherchait ce repentir par la menace d'une répression plus rigoureuse pour l'avenir: mais ni cette menace, ni ce pardon, ne semblent avoir provoqué un ralliement vraiment sérieux des déserteurs du devoir fiscal. Peut-être pourra-t-on trouver plus d'efficacité, pour mieux accorder les rapports du contribuable et du fisc, dans une mesure plus modeste, mais d'application plus constante: c'est celle qui permet de déterminer *la valeur des immeubles ou des éléments incorporels des fonds de commerce,* pour le payement des droits de mutation, d'après des bases forfaitaires (valeur locative cadastrale) ou d'après une moyenne (L. 7 fév. 1953, art. 25). Mais ce n'est pas cette mesure qui permettra de mettre entièrement fin à l'état de guerre qui oppose presque en permanence le contribuable au fisc, dans le système français, qui s'accroche, pour les impôts sur les revenus, à des formules dont la nocivité est pourtant certaine.

Souhaitons, sans trop l'espérer, que la prochaine chronique consacrée à la législation fiscale française puisse annoncer une véritable réforme fiscale, car il serait urgent de rendre au sytème fiscal français les qualités essentielles de rendement et de justice qu'il a perdues.

CHRONIQUE DE LA LEGISLATION FISCALE DES PAYS BENELUX

LA LEGISLATION FISCALE BELGE EN 1952

par

Prof. EDGAR SCHREUDER

Surtaxe sur les bénéfices obtenus en 1951 *ou* 1951-1952.

Pendant l'année sous rubrique, aucun changement notable n'a été apporté à la législation courante relative aux impôts sur les revenus. Mais la loi du 24 juillet 1952 a établi une surtaxe sur la partie exceptionnelle des bénéfices obtenus pendant l'année civile 1951 ou l'exercice comptable 1951-1952.

Cédant à la pression d'une partie de l'opinion et plus particulièrement des milieux syndicaux, le Gouvernement s'est résigné à proposer au Parlement cet impôt spécial, qui s'ajoute aux impôts ordinaires sur les revenus et frappe la partie exceptionnelle, réputée être la résultante du boom économique consécutif au réarmement, des bénéfices réalisés par les exploitations industrielles, commerciales et agricoles ainsi que les profits obtenus grâce à des occupations lucratives de nature industrielle, commerciale ou agricole.

Sociétés.

Pour la taxation des sociétés par actions, il faut considérer la masse constituée par les bénéfices non distribués, les dividendes distribués et les rémunérations allouées aux administrateurs, commissaires et liquidateurs.

Les autres sociétés (sociétés en nom collectif, sociétés en commandite simple, sociétés coopératives et sociétés de personnes à responsabilité limitée) ne sont taxées qu'en raison des bénéfices non distribués, mais la surtaxe atteint aussi individuellement les associés actifs ou non actifs, en raison des bénéfices distribués et des rémunérations allouées. Il n'y a taxation de la société ou des associés, que si le bénéfice social (distribué ou non) est supérieur au bénéfice de référence.

La surtaxe est éventuellement répartie entre la société et les associés, au prorata de leurs bénéfices ou rémunérations excédentaires réels.

Bénéfice de référence.

Est considérée comme exceptionnelle, la partie des revenus réalisés qui dépasse soit les revenus de même nature imposés pour l'exercice le plus favorable parmi les exercices 1947 à 1950 (revenus majorés éventuellement des pertes professionnelles des deux années antérieures, qui en auraient été déduites pour le calcul des impôts sur les revenus); soit une somme correspondant, pour une période de douze mois, à 8 p.c. du total formé par le capital social réellement libéré restant à rembourser et les réserves (en se plaçant à la fin ou au début de la période imposable: certaines réserves sont exclues dans le premier cas); soit une somme de 400.000 frs. pour douze mois d'activité; soit enfin, en ce qui concerne les sociétés par actions, une somme de 400.000 frs., pour douze mois d'activité prestée, pour chacun des administrateurs ou commissaires (200.000 frs. pour celui qui exerce des fonctions dans plusieurs sociétés par actions). Le bénéfice de référence est calculé suivant la formule la plus favorable au contribuable.

Celui qui continue ou reprend une entreprise peut invoquer le bénéfice de référence de son prédécesseur, si les mêmes éléments d'activité sont mis en oeuvre.

Montant.

Le taux de la surtaxe est fixé uniformément à 25 p.c. Il est réduit à 5 p.c. sur la partie exceptionnelle des revenus qui correspondent proportionnellement aux bénéfices réalisés et imposés à l'étranger. Ceci est dans la ligne du régime applicable en matière de taxe professionnelle. Aucune réduction n'est accordée en raison des charges de famille du redevable.

La surtaxe est diminuée du montant de la taxe de transmission à l'exportation payée par le redevable à partir du 29 novembre 1951, date de la mise en application de cette taxe [1]), et pendant une période n'excédant pas la période imposable (en règle générale

[1]) A.R. du 22 novembre 1951 — Bulletin de Documentation fiscale internationale 1952, vol. 6, nr. 3, p. 171.

12 mois), à moins que l'administration n'établisse que le redevable a mis cette taxe de transmission à charge de son client étranger:

Si le redevable de la surtaxe éprouve, au cours de l'année qui suit la période imposable, une perte professionnelle atteignant au moins 30 p.c. du montant de la surtaxe, il obtiendra un dégrèvement de celle-ci égal au montant de la perte professionnelle.

Immunités.

Afin de favoriser la reconstitution et le maintien des stocks, le montant des revenus excédentaires imposables est diminué d'une somme égale à 20 p.c. de la valeur des matières premières, produits et marchandises repris au dernier inventaire. Cette „provision pour maintien des stocks" ne peut faire l'objet d'aucun prélèvement ou distribution dans un délai de trois ans à compter de l'expiration de la période imposable (année 1951 ou exercice 51-52) à peine d'être soumise à la surtaxe sur son montant intégral.

Le bénéfice imposable à la surtaxe est également immunisé à concurrence de la partie des bénéfices affectée, au cours de la partie imposable ou dans les trois ans qui suivent, à des investissements nouveaux (matériel, outillage, bâtiments industriels) et reconnus d'intérêt général.

La loi détermine les investissements qui peuvent être considérés comme d'intérêt général. Ce sont les investissements ayant pour objet, en ordre principal, la résorption du chômage structurel et, en outre, 1° l'accroissement des moyens de production dans le cadre de la politique de réarmement; 2° l'installation dans le pays de fabrications ou de services d'utilité publique nouveaux; 3° l'amélioration des conditions d'exploitation d'industries existantes par une diminution du prix de revient; 4° l'accroissement de la productivité ou une amélioration de la qualité; 5° la recherche scientifique en vue de son application dans l'industrie. Si l'objectif principal ne peut être atteint, pour des raisons techniques ou économiques, l'objectif secondaire suffira pour justifier l'immunisation.

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Diverses mesures ont été prises en faveur des sociétés d'habitation à bon marché et des sociétés pour la petite propriété terrienne:

réduction de la taxe mobilière, de la taxe professionnelle et de la contribution nationale de crise (loi du 1 décembre 1952).

Citons également l'exemption de la taxe de circulation pour les cycles avec moteur d'une cylindrée maximum de 50 cc. (loi du 5 avril 1952) et des dispositions nouvelles relatives à l'application de cette taxe aux véhicules de transport en commun de personnes, alimentés à l'huile lourde (loi du 22 juillet 1952).

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Droits d'accise.

Huiles minérales légères.

Dans un but exclusivement fiscal (recette escomptée: 1100 millions), les droits sur les huiles minérales légères ont été augmentés par l'arrêté royal du 9 avril 1952. Celui-ci fut approuvé par la loi du 26 juillet 1952, qui en a cependant limité les effets à une période prenant fin le 31 décembre 1952. Mais ultérieurement la loi budgétaire du 29 décembre 1952 a prorogé jusqu'au 31 décembre 1953 l'application de la loi du 26 juillet 1952.

L'accise sur la benzine est ainsi passée de 2,19 fr. à 3,20 fr. au litre, à la température de 15° centigrades.

A remarquer que, pour l'exercice 1953, les perceptions résultant de l'augmentation des droits sont inscrites au budget extraordinaire.

Cigares et cigarillos.

La loi du 24 mai 1952 a réduit l'accise des cigares de 27 à 14 p.c. et celle des cigarillos de 33 à 20 p.c. (sur le prix de vente au détail, y compris le droit d'accise). Il s'agit d'une mesure prise en faveur de l'industrie cigarière et dont les effets ne doivent se prolonger que pendant deux ans, soit jusqu'au 27 mai 1954.

Au point de vue du projet d'union économique belgo-néerlando-luxembourgeoise (Benelux), les deux mesures signalées constituent un recul sur la route de l'unification des droits d'accise.

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Taxe de transmission.

De nouvelles extensions de la taxe de transmission forfaitaire[1]) ont été réalisées dans le domaine des denrées alimentaires et des objets de table, de ménage et d'entretien.

La taxe à l'exportation a été réduite à 1 p.c. uniformément pour les marchandises exportées directement à destination de la Colonie et qui y sont consommées. C'est le même taux que pour les exportations similaires vers les Pays-Bas.

Enfin les réparations et ouvrages relatifs à des navires et bateaux ont été exonérés de la taxe sur les entreprises (4,50 p.c.).

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Droits d'enregistrement.

En vue de favoriser le regroupement des exploitations rurales, la loi du 22 juillet 1952 a exempté les échanges *d'immeubles ruraux non bâtis* de tout droit proportionnel d'enregistrement. La législation antérieure avait fixé à 2 p.c. le droit applicable à ces opérations. La différence de valeur entre les lots donnera lieu au droit ordinaire de vente, c'est-à-dire 11 p.c., à moins qu'elle n'excède pas le 1/4 de la valeur du moindre lot, auquel cas le droit est ramené à 6 p.c.

[1]) Taxe couvrant l'ensemble des transmissions d'un même produit *non transformé*. Actuellement l'application de la taxe „en cascade" est devenue l'exception. Mais chaque transformation d'un produit le fait passer dans un nouveau régime: taxe forfaitaire ou taxe en cascade. Rappelons aussi qu'en règle générale la vente au détail échappe à la taxe de transmission.

SURVEY OF ALTERATIONS IN THE NETHERLANDS TAX LEGISLATION DURING 1952

by

Prof. W. J. DE LANGEN and J. VAN SOEST

Contrary to the years 1950 and 1951, the year 1952 has not brought great modifications in the Netherlands tax legislation. The increases in taxes in 1951 have brought the total revenue from taxes to such a level that to all appearances no further aggravation is to be expected for the time being (in March 1953 a relief was announced of the burden of taxation in some respects). Also the change of the Government in 1952 has impeded the introduction of new regulations. However, the new Government has immediately announced important renewals in the tax legislation, among which an entirely new Income Tax Act.

General.

Under the former Government, the Act of 23rd April 1952 was enacted, which for the whole field of taxation deals with two subjects, which before the Second World War were only regulated by separate tax Acts. The first subject reters to the giving of information to tax authorities. After the war extra-ordinarily very far-reaching, originally temporary, obligations in this respect were imposed on private persons and corporate bodies in the Netherlands; these temporary regulations, which were so far-reaching 1st in order to bring order out of the chaotic conditions caused by the occupation, and 2nd in view of the very heavy tax on property increments between May 1, 1940, and December 31, 1945, (levied once), and the capital levy per January 1, 1946, have now been replaced by a permanent regulation, suitable for normal times.

Now, everybody is obliged to give, if required, such data and information as may be of importance in connection with taxes to

be levied *on him*. He who carries on a trade or exercises an independent profession is, however, moreover obliged to let the tax authorities scrutinize accounts and other documents relative to the trade or profession, the examination of which may be of importance in connection with the levying of taxes *on third parties*. However, ministers of religion, notaries public, lawyers, physicians and pharmacists may, with an appeal to the fact that they are bound over to secrecy, refuse to fulfil the latter obligation. By virtue of a regulation made by the Minister of Finance, tax advisers and auditors will in general not be required to submit for inspection the correspondence with and advices to their clients; a legal right to secrecy has not been granted to these categories however, these professions not being regulated by the Netherlands legislation, so that for instance there no exact description to these professions exists, nor are there any generally recognized judicial regulations as to the application of disciplinary measures.

Income tax

Social aspect

As regards the income tax only on one point has an alteration been introduced. In order to promote the giving of donations for religious, charitable, cultural, scientific and similar purposes, the legislator has extended the possibility of deducting these gifts from the taxable income.

So far, only gifts made by those carrying on a trade or exercising an independent profession, in so far as the trade or profession, established on a broad basis, is interested in the object endowed, as well as certain periodical payments made by every taxpayer, could be abated. With maintenance of these possibilities, a regulation has now been made regarding the abatement of other gifts to religious, charitable, cultural and scientific institutions, as well as to institutions having in view the benefit of the community. Within certain limits an allowance is granted for these gifts, namely, as far as in the fiscal year in question they exceed 2 % of the net income in total and at the same time are more than f 100.—, on the understanding, however, that the total amount may not be in excess of 3 % of the net income. This regulation is also applicable to church-rates.

Company tax
Social aspect

For the company tax, too, gifts as meant under Income tax, may be abated. The limits are slightly different, however. An allowance is granted for gifts exceeding 1% of the profit in total and at the same time f 100.—. Also in this case the total deductabe amount may not be in excess of 3% of the profit.

Turnover tax
Economic aspect

In order to meet the financial difficulties newspapers and periodicals have to cope with, the receipts from advertisements between the period June 1, 1952 and May 31st, 1953, are exempt from turnover tax (formerly 4% of these receipts)[1]).

In addition, the period of operation of the measures taken in 1950 in order to secure full employment in the cigar industry (exemption for cigars; increase in the turnover tax on the dearer kind of cigarettes, vide Bulletin for 1951, page 85), has been extended by two years[2]).

Finally, alterations have been made in the turnover tax rates of certain commodities. For some a reduction has been introduced on the ground of the serious consequences which the levying according to the luxury-rate, the so-called "intermediate rate", appeared to have for the sales possibilities in the branches of industry in question, and in connection herewith, for the employment. Moreover, a number of articles designed by an artist as an individual piece of work and executed by himself, have been removed from the list of luxuries, as well as some goods the purchase of which, in view of their application, could not be considered as an indication of luxury.

International fiscal law

To the agreements with foreign countries to avoid double taxation, some more have again been added. Treaties have been concluded with Sweden, one with regard to taxes on income and

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[1]) Besides the levying of import duties on newsprint has been suspended partially.
[2]) At the same time the excise on cigars has been reduced.

property and the other as far as death duties are concerned. These treaties were alrady ratified by Parliament in 1952.

With Belgium and Luxembourg treaties have been concluded under the Benelux-agreement, with regard to a mutual support in the collection ot taxes and a cooperation concerning customs duties and excise.

The treaties with Switzerland became effective on the 9th January, 1952, the treaty with Norway on the 14th may 1952. In conclusion, memorials have been exchanged between the Netherlands Government and the Government of the United States of America, about the exemption from taxation (turnover tax and import duties) with regard to American expenditures in the Netherlands in behalf of the joint defence.

On the 1st January 1953 the following Bills had been introduced in Parliament: a Bill revising the entire legislation in respect of death duties (including gift taxes), a Bill with regard to the reduction of the turnover tax on periodicals, as well as a Bill containing an entirely new regulation of the turnover tax; further a Bill providing fiscal export facilities (meanwhile it has been announced that this Bill will be withdrawn), a Bill about the extension of the restriction of dividends, a Bill dealing with the reduction of the so-called "vereveningsheffing" and a Bill for the ratification of the treaty with France meant to avoid double taxation.

To the readers of the Bulletin.

Those who would like to receive a cover for Volume VII are kindly requested to inform us no later than 15th March 1954. Last year several readers were disappointed. At the same time orders can be given for covers for former volumes; should there be sufficient interest, the covers which are no longer in stock will be made.

The price per cover amounts to f 3.— ($ 0.80).

The description of the covers is as follows:
dark blue linen with a partially read back, on which occurs in gilt lettering:
Bulletin etc. Vol. 19 .

Of the Bulletin itself a few complete sets of the following volumes are still available:

III	(1949)	price	f 10.— ($ 2.75)
IV and V	(1950 and 1951)	,, each	f 16.50 ($ 4.50)
VI	(1952)	,,	f 19.— ($ 5.25)

Orders to be sent to:
INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION
Herengracht 196 – Amsterdam (C.)

CHRONIQUE DE LA LÉGISLATION FISCALE LUXEMBOURGEOISE

LA LÉGISLATION FISCALE DE 1952 [1])

I. *Douane et accises et autres impôts indirects.*

En matière de douane et d'accises il n'existe, comme il convient de le rappeler, pas de législation spécifiquement luxembourgeoise. Le Luxembourg a suivi, comme dans les années précédentes, l'évolution intervenue dans le cadre de la convention douanière néerlando-belgo-luxembourgeoise et de l'Union Economique belgo-luxembourgeoise.

A l'endroit des autres impôts indirects il n'y a pas de changements à signaler.

II. *Impôts directs.*

A défaut de la réforme générale du système des impôts directs, dont le projet est encore à l'étude auprès du Conseil d'Etat, l'année 1952 a cependant apporté quelques modifications nullement négligeables de la législation en vigueur.

Les modifications font l'objet des lois du 1er mars 1952 modifiant certaines dispositions relatives aux impôts directs et du 27 novembre 1952 portant majoration de certains impôts directs et imputation sur l'impôt sur le revenu de la taxe sur le chiffre d'affaires à l'exportation.

L'objectif principal de la loi du 1er mars est un remaniement du tarif de l'impôt sur le revenu des personnes physiques, le quatrième depuis la Libération. En premier lieu le revenu minimum exempté a été relevé d'une façon très substantielle. Pour le groupe des personnes mariées p.ex. il s'agit d'un relèvement de 20.000 à 32.000 fr. L'abaissement des taux a été sensible en faveur des revenus

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[1]) Aperçu préparé au Bureau de la Direction des Contributions Directes de Luxembourg.

moyens et surtout des revenus modestes. Le déchet de rentrées provoqué par ces mesures eût été tel qu'une compensation partielle a dû être recherchée dans une augmentation légère des taux frappant les revenus supérieurs à 250.000 fr.

La législation en vigueur avant la loi du 1er mars 1952 comportait une aggravation de la charge d'impôt à l'endroit des personnes mariées, dont l'union, dans les cinq années postérieures au mariage, était restée sans postérité. La loi du 1er mars 1952 a rapporté cette mesure.

A l'immunisation des cotisations légalement obligatoires versées à l'Etablissement d'assurance contre la vieillesse et l'invalidité ou aux caisses de pension est venue s'ajouter celle des cotisations similaires payées aux caisses de maladie.

En ce qui concerne l'impôt commercial communal l'abbattement à la base qui était de 30.000 fr. a été porté à 80.000 fr. Du fait que le taux de base de 4 % applicable au revenu dépassant la tranche de 80.000 fr. est resté inchangé, il en est résulté une réduction générale de l'impôt.

D'autre part il a été fait table rase d'un système de répartition du produit de l'impôt introduit sous l'occupation. D'après ce système le produit de l'impôt recouvré par l'Administration de l'Etat dans toutes les communes était réparti année par année d'après une clé établie en fonction du rendement par commune à une époque déterminée de l'occupation.

La loi du 1er mars a ainsi rendu à l'impôt commercial son véritable caractère d'impôt communal en rétablissant l'attribution de l'impôt aux communes de situation des exploitations, sous réserve toutefois d'une participation des communes de résidence des salariés occupés par les dites exploitations. Dans l'esprit du législateur ces mesures ne sont cependant pas à considérer comme définitives, puisque l'atténuation qui vient d'être mentionnée doit constituer, comme il a été déclaré formellement par le législateur, une première étape en vue de la suppression totale de l'impôt commercial communal dans le cadre du nouveau système d'impositions communales à créer.

La loi du 27 novembre 1952 contient également, dans sa première partie, des dispositions tarifaires. Le taux de la retenue d'impôt sur certains revenus de capitaux dont en ordre principal les revenus

d'actions, a été porté de 10 % à 15 %. La majoration constitue une adaptation du taux de la retenue au tarif général de l'impôt sur le revenu des personnes physiques. L'incidence du tarif progressif, notamment à l'endroit des revenus élevés, s'était en effet considérablement accrue du fait de l'élevation numérique des revenus depuis la fixation du taux de 10 %.

Pour l'année d'imposition 1951 la même loi a augmenté de 40 à 45 % le taux de l'impôt sur le revenu des collectivités pour la partie du revenu imposable qui est supérieure à 5 millions de francs. Cette mesure dissimule en fait, sous les apparences d'une disposition tarifaire, l'application d'un impôt de conjoncture. Confronté, de même que les législateurs des pays voisins, avec le problème de la création d'un impôt de conjoncture, le législateur luxembourgeois a jugé utile de s'arrêter à une simple majoration temporaire de l'impôt à charge des bénéfices élevés des grandes sociétés, vu que ce sont surtout ces sociétés qui ont particulièrement profité de la conjoncture exceptionnelle. La manière de procéder, pour sommaire qu'elle soit, a pourtant eu l'avantage d'épargner à l'administration, déjà surchargée, le travail considérable qu'eût entraîné l'assiette d'un impôt sur les superbénéfices. Il échet de mentionner qu'une loi du 28 juillet 1953 a étendu la majoration de taux, avec quelques modifications, à l'année 1952.

La seconde partie de la loi du 27 novembre 1952 est relative à l'imputation sur l'impôt sur le revenu des montants payés au titre de la taxe à l'exportation prévue par la loi du 22 décembre 1951.

L'on se rappelle qu'en Belgique la taxe à l'exportation, dont la taxe similaire luxembourgeoise n'est qu'une copie, a pu être déduite de l'impôt de conjoncture créé sous la dénomination de surtaxe sur la partie exceptionnelle de certains revenus de l'année 1951. En prévoyant la susdite imputation de la taxe luxembourgeoise à l'exportation le législateur luxembourgeois n'a fait que suivre l'exemple belge, sauf que l'imputation se fait, sous certaines conditions et restrictions, sur l'impôt sur le revenu majoré à titre exceptionnel en l'absence d'un impôt de conjoncture proprement dit.

Il reste à relater deux faits au sujet des conventions en vue d'éviter la double imposition.

Le 7 février 1952 a été ratifiée la convention entre le Luxembourg et la Belgique en vue d'éviter la double imposition en matière d'im-

pôts extraordinaires sur le capital. La convention stipule en principe que l'imposition n'a lieu que dans l'Etat du domicile fiscal. Certains éléments de fortune, dont notamment les immeubles et les fonds de commerce ou d'industrie, ne sont imposables cependant que dans l'Etat où ils sont situés ou exploités. En ce qui concerne toutefois les sociétés autres que les sociétés en nom collectif et les sociétés en commandite simple l'imposition reste intégrale dans l'Etat du siège social, tandis que les éléments de fortune précités qu'elles possèdent dans l'autre Etat y bénéficient d'une réduction d'un quart du taux normalement applicable. De plus il est, sous certaines conditions, prévu au profit d'une société imposée dans l'un des deux Etats du chef d'une participation dans une société imposable dans l'autre Etat, une ristourne d'impôt d'un quart.

Le deuxième fait à relever est la signature, le 7 février 1952, d'un protocole additionnel à la convention du 9 mars 1931 conclue entre la Belgique et le Luxembourg en vue d'éviter les doubles impositions en matière d'impôts directs[1]). Le protocole contient quelques ajustements nécessaires du fait du remaniement de certains taux d'impôt et de l'introduction de nouveaux impôts après la conclusion de la convention, à savoir la contribution nationale de crise du côté belge et l'impôt commercial communal ainsi que l'impôt sur la fortune du côté luxembourgeois.

[1]) Voir *Bulletin* VI p. 255.

Avis aux lecteurs du Bulletin.

Les lecteurs qui désireraient une reliure pour le Vol. VII de notre Bulletin sont priés d'adresser dès à présent leurs demandes au Bureau avant le 15 mars 1954. L'année dernière et à notre regret nous n'avons pu donner suite à un assez grand nombre de demandes.

On peut profiter de l'occasion pour commander en même temps des reliures pour les volumes précédents; en cas de commandes assez nombreuses le stock des reliures épuisées sera renouvelé. Prix par reliure: f 3.—.

Voici comment sont présentées les reliures:
toile bleu foncé avec dos partiellement rouge et, en lettres dorées, Bulletin etc. Vol. 19 .

Nous possédons encore en stocks quelques séries complètes des volumes suivants:

III (1949)	prix	f 10.—
IV (1950)	,,	f 16.50
V (1951)	,,	f 16.50
VI (1952)	,,	f 19.—

Adresser les commandes au:

BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE
Herengracht 196 – Amsterdam-C.

MISCELLANEOUS – FAITS DIVERS

Australian Budget.

The Federal Treasurer, Sir Arthur Fadden, introduced in the month of September a number of important tax reductions and concessions in the Australian Commonwealth Budget.

They total no less than £118,400,000 (Australian) in a full year, and for the year 1953-54 they amount to £81,560,000, or nearly a tenth of the total Budget turnover. Nevertheless, the Federal Government is budgeting for a slight surplus for 1953-54. Income and expenditure are each estimated in the region of £982 million, the expenditure being some £7 million up on last year.

Sir Arthur said the primary aim of the Budget was to give the utmost encouragement to individual effort, to business enterprise and to individual and collective saving. After passing through a difficult and unbalanced phase Australia's economy had now reached a balance. The Government judged that it required a stimulus to go forward on this more stable basis to higher levels of all-round productivity and was seeking to give that stimulus so far as Government action could do it. Conditions in Australia today were highly favorable to economic expansion. Employment was high and there was no significant labour shortage. Nor were there any shortages now of coal or steel or building materials. Export earnings were relatively high and overseas reserves had been built up again so that the nation could obtain all the essential things required from abroad. Sir Arthur added that there were still problems to be solved. One was the problems of costs. Another was that of savings which were too low to sustain an adequate rate of national expansion. A third was the ever-present problem of productivity.

The Government's policy at this juncture was a bold one of reducing taxes, particularly those which were levied directly upon the individual and upon business, in the belief that this was the best form of assistance which it could give in the attack on costs.

Of the taxation proposals, the Treasurer said that they would benefit the greatest number of people; in fact they would benefit practically everybody. Of course when all taxes are reduced everybody must benefit, but they do not all benefit to the same extent. Nevertheless, where there is much need to reduce costs and increase productivity, everyone must benefit in the long run from tax reductions which encourage the achievement of those ends.

The most important tax reduction is in the rates of individual income-tax and social services contribution. The reductions average 12½ per cent. They extend throughout all income ranges but the percentage reductions will be greatest in the lower and middle income ranges. The maximum rate of tax, at present fifteen shillings in the £ on the excess of income over £10,000, will be reduced to fourteen shillings and will apply only to income in excess of £16,000.

The concessional allowance for a dependent wife is to be increased from £104 to £130. Australia gives an allowance for medical expenses, including dental and optical expenses. The allowance is to be increased from £100

to £150 for each person, the maximum allowance for dental expenses within this total being raised from £20 to £30. The taxpayer can deduct not only the expenditure on himself, but also that on his spouse and on each child under 21 resident in Australia, and the above maxima apply for each person. The maximum amount allowed for education expenses is to be raised from £50 to £75 and the scope of the concession liberalized.

The exemption for aged persons will be increased from £254 to £375 for a single person and from £507 to £750 for a married couple.

The special hardships of authors, artists, composers and inventors have been considered. When they receive a lump sum which represents the fruit of more than one year's work, the operation of graduated rates of income-tax may result in their paying more tax than is just. It is proposed to levy tax on such people at a rate appropriate to the normal income plus one-third of the abnormal receipt.

In place of the familiar earned income relief system, the tax structure in Australia provides for modest further rates of tax on investment income in a certain range. These further rates on individuals are to be abolished.

The reductions to taxation of companies are even more striking. For public companies the rate is to be six shillings in the £ on the first £5,000 of taxable income and seven shillings in the £ on the balance. The temporary additional levy of two shillings in the £ imposed in the two preceding years is not to be renewed. In consequence the proposed rates represent a reduction in tax of one shilling in the £ on the first £5,000 and two shillings in the £ on the balance.

Private companies already enjoy preferential rates and these have been reduced by one shilling. The definition of private company is somewhat different from that in Great Britain. Broadly speaking the company must have not more than twenty members and be controlled by not more than seven persons, and it must not be a subsidiary of a public company.

It has also been decided to raise the annual exemption for Pay-roll Tax from £1,040 to £4,160 on wages and salaries payable after September 1953. This means that more than 50,000 of the 90,000 employers who now pay the Pay-roll Tax will no longer be liable.

The Australian Government has decided to abolish entertainment tax altogether, as from October.

The rates of the Australian sales tax (50 per cent, 33½ per cent and 20 per cent) are now abolished and replaced by rates varying from 16⅔ per cent downwards which came into force on the day following the Budget statement. At the same time a wide range of goods subject to the tax were exempted altogether.

Estate duty is a well recognized source of discouragement of much potential saving. The exemption limit is to be raised from £2,000 to £5,000 where the estate passes to the widow, children or grandchildren. In other cases it is increased from £1,000 to £2,500.

Persons with small incomes will not benefit greatly from the tax reductions, while they will still have to cope with a rise in the cost of living. However, most pensions are to be increased by some 2s 6d a week.

(The Accountant 19 Sept. 1953 -325)

ELEVEN NATIONS HAVE ENDED TAXES ON KNOWLEDGE

An important victory has been won in Unesco's world-wide campaign to eliminate barriers to the free flow of knowledge with the recent entry into force of an international agreement abolishing import duties on a wide range of educational, scientific and cultural materials.

The agreement became effective on May 21 as formal acceptance of the 10th ratifying country, Sweden, was received at United Nations head-

quarters, New York. Other nations now participating are Cambodia, Ceylon, Egypt, Israel, Laos, Monaco, Pakistan, Thailand, Vietnam and Yugoslavia. 19 additional countries have signed and have yet to ratify the agreement. All Member States of Unesco and of the United Nations may adhere to it.

This multilateral agreement, the first to come into force under Unesco's sponsorship, eliminates Customs duties on books, newspapers, magazines, paintings and sculpture. Also exempt are travel literature, musical scores, manuscripts and articles for the blind.

Free import is likewise granted to educational films, filmstrips, newsreels, sound recordings and scientific equipment. But these materials are exempt only if consigned to recognised institutions such as libraries, schools, universities, museums, broadcasting organisations, and research laboratories.

Under a further provision, internal taxes on imported information materials will not exceed those levied on domestic products. Governments also undertake to grant import licences and foreign exchange for books and other publications required by public libraries. Contracting States agree, finally, to "continue their common efforts to promote the free flow of educational, scientific and cultural materials". They will seek to assure these materials safe, simplified and expeditions clearance through Customs.

One hundred years ago it was fairly easy to obtain books from abroad or send them to other countries. Transport by sailingship was slow, but free trade was the rule and educational materials moved around the world unhampered by duties, taxes and other trade barriers.

World War I brought this comparatively happy period to an end. Governments adopted tariffs and licensing systems to limit trade to "Essential goods" and most articles of educational value suffered. The economic depression of the 1930's brought many new restrictions, quotas, currency and export regulations. World War II, wrecking industry, shipping and commerce, dealt a final blow to the free trade system.

Educational materials, which had never before been more greatly needed, suffered as much as or more than other products. This was not the deliberate intention of governments. The rising flood of restrictions had engulfed these materials, along with other commodities, fortuitously rather than by design.

Despite rapid advances in manufacturing, transport and communications people have in recent years found it costly, difficult and sometimes impossible to obtain educational materials from abroad.

More than 50 nations to-day impose Customs duties, postal taxes and other restrictions on imports of books. Some countries tax imported film by the foot and sculpture by the pound. Scientific equipment, needed in research laboratories, is taxed as high as 40 p.c. of its value.

Exhibitions and collections destined for schools and art galleries languish in Customs warehouses while their sponsors try to raise the heavy bond often required by the authorities.

Difficulties are intensified by the tendency of some officials to regard cultural materials as ordinary commodities and therefore liable to the same taxes and restrictions.

Recently at a busy North American port it took an art dealer nearly one hour to convince the Customs officers that three posters by the French artist HENRI MATISSE were "art" and not subject to duty. Officials declared that the posters were "packing material".

At another port a Customs inspector insisted that the abstract sculpture Bird in Flight, worked in brass by the Rumanian artist BRANCUSI, should be classified as "block matter" and pay the relatively high duty for raw metal. Only by appealing to the court did the importer obtain a reversal of this decision.

(The Taxpayers' Bulletin, vol. 22, no.6. June 1953).

CONVENTIONS.

Allemagne occidentale — Danemark.

Selon une publication du Ministère des Finances allemand du 30 juin 1953, la convention pour prévenir la double imposition du revenu et de la fortune, conclue entre l'Allemagne et le Danemark le 16 décembre 1938, est devenue applicable à nouveau, pour l'Allemagne avec effet rétroactif pour l'année fiscale 1952, pour le Danemark pour l'année fiscale 1 Avril 1952/53.

Allemagne occidentale — Grèce.

La convention pour prévenir les doubles droits de succession, conclue entre l'Allemagne et la Grèce le 18 Novembre 1910, est applicable à nouveau.

ALLEMAGNE OCCIDENTALE.

Une loi du 23 Juillet 1953 a abrogé la Reichsfluchtsteuer, introduite par décret provisoire du 8 Décembre 1931. Cette loi avait été faite avec l'intention d'éviter la fuite du capital hors du Reich et frappait d'un taux de 25 % de la fortune imposable, tous ceux qui déclaraient leur résidence fiscale après le 31 Mars 1931 en Allemagne.

La loi du 28 Juin 1951 ayant pour but de favoriser l'exportation a été modifiée par une loi du 6 Août 1953. La restitution de la taxe sur le chiffre d'affaires à l'exportation est modifiée et augmentée légèrement, en rapport avec la „Fünfte Änderungsverordnung zu den Umsatzsteurer-Durchfürungsbestimmungen du 5 Août 1953". Les nouveaux pourcentages sont actuellement pour:

Stufe	I	0.5	%
„	II	1	%
„	III	2	%
„	IV	3	%[1])

La classification des marchandises d'après les différentes „Stufen" est donnée dans les listes annexées à la loi susmentionnée.

Les pourcentages pour la réserve exempte de la taxe et les éléments du profit qui sont exempts, ont été augmentés légèrement aussi, tandis qu'il est également possible de créer une réserve exempte de la taxe concernant la „Transithandel, Beförderungsleistungen der Handels- und Binnenschiffahrt im Auslandverkehr und sonstige Leistungen gem. Verordnung."

NICARAGUA.

A partir du 1er Janvier 1953 il a été introduit un impôt progressif sur le revenu.

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(1) Voir pour les pourcentage d'autrefois et pour une explication plus détaillée :
J. C. L. Huiskamp - Tax facilities for the furthering of the export - Bulletin Vol. VI, nr. 5, p. 292 et suiv.

IV

REVIEWS — COMPTES RENDUS

FR. LOECKX & R. VAN DIONANT: *Overzicht van de Belastingwetenschap*. (2 parts, 142 & 228 pages) Ministry of Finance, Brussels, 1951.

These books have been written in order to be used by the training of revenue officials. The subjects, which are dealt with, belong to the general problems of the tax law. Consequently it is not a review of certain Belgian taxes. As remarked in the preface this book tries to give a general and objective survey of the main elements of the fiscal science. It is not the intention of the authors to build up, or defend a doctrine, on the contrary, they wish to give a view on the present situation of the principal doctrines which are in force.

An enumeration of a number of the subjects treated may give an impression of the contents of said book: the government and its revenue; taxes — how must taxes be in order to ensure the authorities sufficient revenue? — how is the financial burden to be divided? — economic results and actions of the levying and the employment of the taxes — employment of the taxes for non-fiscal puposes — tax-technique — the financial proportions between the state and local governments, — double taxation.

At the end a bibliography of works in the field of the Belgian as well as other fiscal science, has been added.

ALBERT BUISSERET: *Répertoire de jurisprudence fiscale* 1944-1951. Editions Jaric, S.A., 34 Rue de la Tulipe 34, Bruxelles.

The tax jurisdiction of 1944-1951 has systematically been arranged in this book. For every statement the concise contents and the finding-place are mentioned.

The table of contents, inserted at the end, makes it easy to find the jurisdiction.

E/CN.4/52 *Supplement No.* 11 *3rd year 6th session Economic and Social Council.*

The "Economic and Social Council" of the UNO issued the "Report to the Commission on Human Rights on the first session of the sub-commission on prevention of discrimination and protection of minorities, held at Geneva, from 24 November to 6 December 1947." This report gives en explanation of the activities and their result during the first session of the sub-commission. Besides the propositions made by the sub-commission this report contains the dissenting opinions and observations of different members of the sub-commission who asked for insertion in the report.

E/1369 (E/CN. 4/Sub. 1/98/rev. 1) *Supplement no* 10*A* *4th year: 9th session Economic and Social Council.*

The "Sub-commission on freedom of information and of the press" held its third session at Lake Success, New York, from 31 May till 14 June 1949 the result of which has been issued by the "Economic and social council"

at the UNO in the "Report on the third session on the sub-commission on freedom of information and of the press".

The E.C.E. Quarterly Bulletin of Steel-statistics for Europe No. 6 (March 1952) shows that the production of crude steel (not including the production of USSR) amounted to 11,6 % more than in 1950, that of pig iron 13,2 % more than in 1950. These figures are the highest reached sofar. The production of iron ore also showed a remarkable increase in the important iron ore production countries on Europe. The consumption of scrap by blast furnaces and steel industries remained the same as compared with 1950.

No 7 of the E.C.E. Quarterly Bulletin of Steel Statistics for Europe (June 1952) gives new figures of the European production of crude steel which have relation to the first quarter of 1950. This number of the Quarterly Bulletin has been enlarged by tables, which have relation to the production of crude steel in certain overseas countries which are important for the supply of Europe.

United Nations — European Steel Exports and Steel demand in non-European countries. Geneva 1953.

The main purpose of this study is to throw a light upon the possible development of the demand of steel outside Europe and on the possible level of the European steelexports in the years 1956 till 1960. By acquiring a survey of the amount of future exports the European steelproducers can adapt their production capacity already at this moment to the future demand and a prolonged shortage of steel will be avoided.

J. K. Lasser: *Handbook of Tax Techniques*. With the collaboration of about 60 experts in the domain of taxation. New York, Prentice Hall, Inc. 70 Fifth Avenue USA, 1952, 3rd edition. 1225 pp.

"This is a book for tax advisers, a book devoted to precise directions for the important tax planning on which they are most often consulted. This is a record of what to do and what not to do to obtain for a client the most that the law offers him." Such is the preface of this voluminous book and these sentences express so precisely the character of the book, that we could not but quote them here. The book is a guide for the tax adviser who is consulted in connection with the internal and external building up of the business. Not enough attention is frequently paid to the taxation side of this problem. This extremely well made-up book indeed proves how important this side of the matter is. The book is a guide for the tax adviser who is consulted in connection with capital-transactions, divorces etc. In short it is an indispensable aid for every adviser who has as his task to examine how in a certain case as advantageous a result as possible from the fiscal point of view can be reached. The book has been written according to the North-American legislation but we can not but hope that also for other countries soon a book of such importance may be issued.

Dr. Kurt Pentzlin: *Wirtschaftspolitische Grundsätze einer organischen Steuerreform*" — Institut „Finanzen und Steuern" Markt 14 Bonn am Rhein Heft 22, 1952, 27 pp.

On October 24th 1951 a lecture was delivered by Dr. Kurt Pentzlin under the above title, on the occasion of the members' meeting of the "Institut Finanzen und Steuern". The Institute has decided after one year to issue this lecture, as it has not yet lost anything of its importance.

Association Nationale des Sociétés par Actions: La Réforme fiscale et les sociétés. Avril 1949. Avec additif No 1; Juillet 1949.

Although published already a long time ago, this brochure, issued by the

French A.N.S.A. in the well-known clear and surveyable form, is, notwithstanding, of great importance for the many who are interested in what the great tax-revision of 1948 brought.

The brochure (in total 124 pages) discusses first of all the tax on corporate-profits, the earned profits as well as those which are distributed. The many important problems which present themselves here, are fully discussed as far as this is possible in a summary. Less space has been devoted to the tax on wages, salaries, pensions and annuities, and the "taxe d'apprentissage". That both these taxes have been discussed at all is caused by the fact that the wage-tax etc. has to be paid temporarily by the companies, while the taxe d'apprentissage is a tax owed by all enterprises for a percentage of all salaries paid out during the fiscal year. Several administrative arrangements have been included.

UNITED NATIONS — *Comparative approach to national and international corporate tax problems*. Economic and Social Council, E/CN 8/55 3 May 1951.

The interesting work that we announce here, contains 159 stencilled pages, and contains a very summary survey of the tax levying as far as those corporate bodies are concerned. After a short introduction, in the 2nd chapter a number of general problems are raised: The tax levying of natural and legal persons; must the tariffs which are valid for natural persons be applied to the profit of corporate bodies; ought corporations to be wholly exempt from income tax; the problems of the double taxation of corporate profits and dividends; the "excess profits taxes"; the importance of corporate taxes as a source of tax revenue; the tax levying of foreign corporations in underdeveloped territories.

In Chapter III attention is paid to the discussion of profits and dividends in the international field. The chapter has been divided into three paragraphs, entitled:

1. insufficiency of unilateral action; 2. the continental European type of tax agreement; 3. the Anglo-American type of tax agreement.

Added to that is an appendix with 3 tableaux which represent the percentages respectively of the revenues of corporation tax compared with the income taxes of natural persons; and the corporate profits compared with the total tax receipts. These tableaux refer to 14 countries. A second appendix presents a number of "country studies", in which briefly are outlined the fiscal treatment of corporate profits and dividends in Argentina, Canada, France, Holland, New Zealand, England and the U.S.A. Finally appendix III presents "summary outlines on the treatment of domestic corporations and shareholders in some countries: Argentina, Brazil, Chile, Colombia, El Salvador, Finland, France, India, Iraq, Holland, New Zealand, Switzerland, England, U.S.A., Uruguay, Venezuela.

UNITED NATIONS : *International Tax Agreements*. Volume II 1952, *International Tax Agreements* Volume III, *World Guide to International Tax Agreements* 1843-1951, New York, 1951.

The second part of the series International Tax Agreements the first part of which was reviewed in the Bulletin for International Fiscal Documentation, Vol. III, p. 136, contains the tax agreements which have been brought about since the last part and a number of agreements which had not yet been issued in the first part, nor in the agreements series of the League of Nations.

The agreements have been grouped together according to the subject to which they relate, such as agreements in regard to: income or property tax; non-residents; industrial and commercial enterprises; transport by air and by sea; death duties; and mutual aid.

Also to the third part we are pleased to draw the attention of our readers. This has been issued by the Fiscal Division of the United Nations Depart-

ment of Economic Affairs. It constitutes the first codification of authentic information on the present status of the 480 known international tax conventions. The interest of this codification is clear when one considers that between the two World Wars 180 conventions were brought about, against 150 in the years 1946-1951.

The World War was the cause, that a number of treaties were never ratified, while about 50 conventions between the Allied countries and their adversaries lost in some way their validity.

In this issue the Fiscal Division indicates what agreements have effect at present. The following data are also given: the dates of signature, ratification, suspensions if any, coming into effect again etc.; the place where data can be found in the Issues of the United Nations or the League of Nations; the object of the conventions; the effective date of the relief provided and the impact of the agreements on the national tax legislation through implementing laws and regulations.

All in all it is very gratifying that this work has been brought about.

In order to maintain it, special supplements will appear in subsequent volumes of the series "International Tax Agreements", to be published bi-annually.

MAURICE CAILLEZ: *Le régime fiscal des sociétés immobilières*. Librairie Technique. Librairie de la Cour de Cassation. Paris 1953.

For twenty years different causes, among which often many fiscal causes, have effected an increase of the number of corporate bodies, which are occupying themselves with the exploiting of immovable goods (sociétés immobilières). Many forms of corporations are used for these entities and diverse are their activities. They can be busy with the exploiting of agricultural or forest lands or of houses, there are also people who restrict themselves to the buying of vacant sites to sell these later on with profit. Many other examples can still be mentioned. This sort of corporations in France (limited companies, sociétés à responsabilité limité, cooperative societies, etc.) is discussed in this book of 130 pages.

The author discusses the problems which in connection with different taxes (sales tax, corporate tax, taxe proportionnelle) may occur and which can be very complicated, as the legislator scarcely occupied himself with these corporations and the whole matter has been regulated by the administration.

Very important are also the chapters which are occupied with the liquidation of these corporations and with the transformation of these entities from one legal form into the other, in which connexion precise consideration is given to what are the taxation effects of these acts.

J. DE LA VILLEGUERIN and M. BERNARD: *Le Bilan au Maroc* 2nd edition — La Revue fiduciaire Marocaine, Casablanca 1952.

The second edition of this brochure of 63 pages, gives a description of the different problems which generally come up for discussion when the balance sheet for fiscal purposes is drawn up, but also particularly of the rules which are applicable to this subject in Marocco. Much attention is specially paid to the estimation of stocks, to the writings-down and to the different deduction-items. The laws and decrees relating there to can be found in the appendix, brought up to 1952.

But as already mentioned, this brochure is not only important for those who are merely interested in concrete data from Marocco, it also contains general considerations and conclusions, which justify being known on a larger scale.

Dr. FRITZ JOHS. VOGT: *Amtliche Betriebsprüfung*. Verlag Dr. Otto Schmidt — K.G. Köln 1952.

In this brochure of 52 pages the relation of the public accountant to business life is examined; therefore it does not discuss the real technique of the accountancy. Though consequently the subject is limited, the author, as he remarks on his own statement, had to indicate merely the different problems that can arise when reviewing the subject, as a profound examination would not correspond with the design of this pamphlet. Naturally at the different functions which the author distinguishes in the accountants-work (we mention the advising and the educative function) the taxation aspect occupies a great place, so that we can recommend this brochure to every library in the fiscal domain.

EUGENE SCHUELLER: 1. *Vers une économie proportionnelle* (salaire-impôt-monnaie.
2. *L'impôt sur l'énergie* — Ed. du Rond Point Paris 1952.
3. *Réfutation au rapport de la commission fiscale sur la taxation de l'énergie* 1952.

Several publications have already appeared of which Mr. EUGÈNE SCHUELLER is the author. The subjects however, varying they may be, are on a level and some are mentioned here: Le deuxième salaire (1939); La révolution de l'Economie (1941); La Révolution de l'Economie Illustrée (1942), Faire Vivre (1945) and the above mentioned works. About ten studies could still be added to this list. Of all these studies we call special attention to the three above-mentioned ones, of 1947 and 1952 and especially to their fiscal part. The two last-mentioned studies are wholly dedicated to this. In the preface of the first-mentioned book the author states that he had sent the first planning to a number of experts and that in connection with the answers received, he has come to a co-operation with one of the former pupils of Prof. LAUFENBURGER, viz CHRISTIAN DEMUND. And now when we see the result of their co-operation it is as with the father, who, after having been absent for years, on returning could not recognize his own son in the young man who greeted him.

Prof. LAUFENBURGER wrote an introduction, demonstrating his great appreciation but also his serious criticism. Prof. LAUFENBURGER is also of opinion that the number of taxes can be considerably diminished but he cannot agree that the whole fiscal system could be reduced to *one* consumption tax.

Besides an introduction, the first mentioned book consists of three divisions: 1. the proportional salary, 2. the proportional taxation, 3. the proportional currency.

The theory of the proportional salary neither wishes to make the salary dependant on the working-hours, nor on the minimum for the subsistance, nor on the work done, but it should be based on a division of the results of the production.

In this light the author also regards the fiscal question and to that end he ascertains how the results of the production are divided between the groups of the parties interested. This leads him to a criticism of the French Tax system in all kinds of respects: undermining of the iniative, fraud etc. A proportional tax on the results of the production would solve it, in his opinion. This idea has been worked out by the author in extenso.

This leads the reader automatically to the second work: l'impôt sur l'énergie. The introduction gives a sketch of the "économie proportionnelle" "ni libéralisme ni dirigisme". Everyone likes to pay for what he uses but he detests the payment of taxes, because he cannot form a conception of the services which are rendered to him. Therefore in his opinion the "fiscalité directe" must be substituted by a system with which he does not feel that he is paying taxes. In his opinion this is possible, with the „impôt sur l'énergie unique". The author does not desire a "Réforme", but a "Révo-

lution fiscale''. He regards the levying of taxes in our days as the great cause that prevent the attainment of decent economic, social and political conditions.

This cannot be reached combatting fraud in his opinion; the whole system, 150 years old, must be abandoned. Still conditions belonging to the past have existed a long time already; their faults are set out in detail. These are manifested not only in France, but also in other countries.

The tax on energy, ''l'impôt sans larmes'', is seen as just one proportional tax on the three material sources of our production — coal — levied at the pithead; liquid fuel— when entering France; electricity — at the meter.

One should just try to realize it: the disappearing of all state and municipal taxes, the fall of prices, increase of the standard of living, end of inflation . . . All this is possible if this tax is raised up to 25 % of the national production.

A separate chapter has been devoted to the refutation of the objections brought forward and this is also treated in the third abovementioned paper (stenciled), in which the report of the ''Commission de Réforme fiscale sur la taxation de l'énergie'' is discussed and which gives the author rise to regard the problem still from other sides. The book about: ''L'impôt sur l'énergie'' still contains a chapter about the enforcement of the proposed tax, while the final chapter gives a picture of social life awaiting us when ''l'impôt sur l'énergie'' will have become reality.

MARCEL LALOIRE, PIERRE DE BIE, PIERRE BOISACQ.: *La fiscalité en Belgique dans ses rapports avec la distribution et la publicité.* — Chambre de Commerce Internationale, Comité National Belge, Rue Ducale 33, Bruxelles, 1953.

In this 16 page brochure a survey is given of the taxes, which direct or indirect have an influence on the costs of distribution. First the yields of taxation of 1950 are compared with those of 1938 in a table; next the various taxes are dealt with separately and the influence is traced which these taxes have on the costs of distribution.

A separate chapter is dedicated to the taxes which weigh on publicity.

Dr. H. BECKENDORFF: *Ausgleich der Familienlasten?* Finanzwirtschaftliche Probleme einer Kinderbeihilfe. Mit einem Geleitwort von Prof. Dr. G. Schmölders, Köln. — Dünker & Humblot, Berlin.

The ''Finanzwirtschaftliche Forschungsinstitut an der Universität Köln'' enters with this study a domain, which, according to Prof. Schmölders, has been neglected too long, to wit the aspect of the public economy expenditure.

It is a social-political problem, especially for that very reason of so much interest, because, besides the military expenses, those for social purposes have come to belong to the most important. In this connection it concerns the shifting of the responsibility of the family to collective organizations, with or without the assistance of the State: the growing uniformity of the community.

The connection with the levying of taxes is obvious. In the introduction the author remarks, that if the distribution of the family costs is effected by the authorities, the means are derived from the yields of taxation, either the general or the special ones. But also if the furnishing is less general and is effected on the basis of civil law the problem will be the same in many respects.

The author's investigation deals also with weighing up the pros and cons of the measures in question; where is the line between pros and cons? He believes he observes a growing tendency to surmount the problem of existtence by own efforts.

This general indication suffices, because the fiscal problem only touches one side of the subject dealt with. But it comes into prominence again and again, for instance by the indirect family allowance, where i.a. the table of wage tax is discussed. From its very nature the fiscal problem also plays a part in financing. The varous points of view are clearly set out in the tables. The financial side is discussed in a separate chapter; besides levying taxes there are other possiblities.

DIRECCIÓN GENERAL DE CONTRIBUCIONES Y REGIMEN DE EMPRESAS: *Estadistica de la Contribución Industrial, de Comercio y Profesiones*, Año 1944.

Cette édition comprend les modifications des taux de la Contribution Industrielle espagnole de l'année 1944.

DIRECCIÓN GENERAL DE CONTRIBUCIONES Y REGIMEN DE EMPRESAS: *Estadistica de la Contribución Industrial de Comercio y Profesiones*. Años de 1945, 1946, 1947, 1948.

Cette édition comprend les modifications des taux de la Contribution Industrielle espagnole des années 1945 à 1949.

MINISTERIO DE HACIENDA: *Dirección General de la Contribución de Usos y Consumos*. Memoria correspondiente al ejercicio de 1952. Madrid 1953.

Cette édition du Ministère des Finances comprend des données statistiques sur les recettes provenant de l'impôt sur divers produits, mentionnés dans la Contribution Industrielle et d'autres impôts espagnols.

RAFAEL BIELSA: *Estudios de Derecho Público*, II — *Derecho Fiscal* (604 p.); — Editorial De Palma, Buenos Aires 1951.

Monsieur Bielsa nous a donné dans le cycle des études du Droit public une oeuvre très solide et vaste sur le droit fiscal.

L'ouvrage est divisé en quatre chapitres, à savoir: les problèmes généraux, les institutions et les questions diverses, le droit pénal fiscal et une étude supplémentaire.

Les problèmes généraux traitent, après une introduction de caractère dogmatique, dans laquelle l'auteur fait une distinction entre le droit financier et le droit fiscal, principalement l'autonomie du droit financier et l'interprétation des lois fiscales.

Dans le deuxième chapitre de l'oeuvre, la conception "cause" par rapport au droit financier a fait l'objet de la pleine attention de l'auteur. Il compare la conception ,,cause civil'' à la ,,cause'' en droit financier. Son exposé à ce sujet est d'une clarté remarquable.

Puis, l'auteur nous conduit dans le domaine de l'acte juridique irrégulier et dans le régime fiscal. L'acte nul de plein droit et l'acte imparfait et inexistant sont traités dans ce paragraphe.

Dans les paragraphes suivants on examine les diverses exemptions d'impôt pour terminer le deuxième chapitre par quelques questions fiscales exclusivement argentines.

Le troisième chapitre comprend un exposé sur le droit pénal fiscal. L'auteur commence par une description du caractère du droit pénal, puis il explique ce que l'on doit entendre par les mots: ,,responsabilité et imputabilité fiscale'' et il termine ce chapitre en donnant une divison des délits fiscaux, sans oublier la fraude fiscale, analysée dans tous ses détails.

Une étude supplémentaire, dans laquelle figurent certains aspects du régime fiscal, termine ce livre d'une abondante richesse scientifique et très important pour les fiscalistes de langue espagnole.

Steuerbelastung in der Schweiz-1952 *Charge fiscale en Suisse* 1952. *Statistische Quellenwerbe der Schweiz/Heft* 244 - Herausgegeben vom Eidgenössischen Statistischen Amt. 63 pp.

An annual statistical survey of the taxation burden in Switzerland. It is stated, that for the federal taxes the year 1952 was characterised by a relatively slight change in the taxation burden. The cantonal and municipal taxes decreased the taxation burden on little incomes and property.

R. BLANCHER *Notes de législation financière et de Droit Fiscal, à l'usage des Etudiants en droit,* 1951.

This stencilled work of 190 pages is, as the title already says, intended to be used by students. The purpose of this work is not to discuss profoundly the different tax problems, but to give a more general summary of the different taxes and the taxation law. A beginning has been made in the theoretical part; it occupies the first 50 pages. Consequently it can be nothing else but succinct, but it gives a clear survey of the different problems, which may occur. Thereupon all the taxes which exist in France are successively considered. This also is not profoundly done of course, but of each tax its character is clearly set out and the principal rules (also the rates) are mentioned. This study is consequently not only suitable for students, in our opinion it can also be very useful for persons who want to acquire informations for practical reasons of the French taxation law, provided that the problem raised for them is not too profound.

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V

RESOLUTIONS OF THE I.F.A. CONGRESS

RESOLUTIONS DU CONGRES DE L'I.F.A.

(Paris, 1953.)

First subject: *Premier sujet:*

The reform of taxation on turnover, transactions and sales in the various countries of Western Europe, with a view to their unification.

La réforme des impôts sur le chiffre d'affaires ou sur les transactions ou sur les ventes dans les différents pays de l'Europe occidentale, en vue de leur unification.

National reports had been presented by: Mr. SCAILTEUR (Belgium), Mr. LAURÉ (France), Prof. SPITALER (Germany), Mr. NEZIS (Greece); Prof. STAMMATI (Italy), Mr. HIJSZELER (Netherlands): *General reporter:* Mr LAURÉ (France).

Des *rapports nationaux* avaient été présentés par MM. SCAILTEUR (Belgique), LAURÉ (France), SPITALER (Allemagne), NEZIS (Grèce), STAMMATI (Italie), HIJSZELER (Pays-Bas). *Rapporteur général:* M. LAURÉ (France).

The 7th congress of the International Fiscal Association—

Whereas it is necessary to restore the freedom of international exchanges within the limits of sound competition,

Whereas not only the existence of customs duties but also the diversity of the various internal fiscal regulations, especially those relating to taxes levied on production or sales of commodities, as well as on services performed, may gravely impair the establishment of this competition,

Considers that it is advisable to aim at a consensus of views which would permit a progressive reconciliation of present-day fiscal structures as and when this is facilitated by reconciliation

in other fields. To establish this consensus of views it is desirable for contacts between qualified representatives of all interested spheres to be developed to an increasing extent,

Suggests that national legislators should in their own legislation proceed to carry out suitable fiscal adjustments with a view to equalizing the charges affecting the cost price of a given product in such a way as to ensure that taxation is impartial,

Wishes agreements to be made, in the meantime, between the nations of Europe:

1. in order to reduce, if not to abolish, customs barriers;
2. in order to determine the manner in which each country should equalize or reconcile fiscal dues levied on the various products it exports.

Le 7ème Congres de l'Association Fiscale Internationale

Considérant qu'il est nécessaire de rétablir la liberté des échanges internationaux dans le cadre d'une saine concurrence,

Considérant que non seulement l'existence des droits de douane, mais encore la diversité des régimes fiscaux internes, notamment en ce qui concerne les taxes frappant la production ou le commerce des marchandises, ainsi que les prestations de services, peuvent nuire gravement à l'établissement de cette concurrence,

Estime qu'il convient de tendre vers des vues communes devant permettre le rapprochement progressif des structures fiscales actuelles au fur et à mesure qu'un rapprochement dans les autres domaines le facilitera. Pour l'établissement de ces vues communes, il est souhaitable que se développent de plus en plus des contacts entre les représentants qualifiés de tous les milieux intéressés,

Suggère aux législateurs nationaux de procéder dans leurs propres législations à toutes les adaptations fiscales opportunes en vue d'égaliser les charges qui influencent le prix de revient d'un produit déterminé, de manière à assurer la neutralité de l'impôt;

Souhaite, en attendant, la conclusion d'accords entre les nations européennes:

1. afin de réduire, sinon de supprimer, les barrières douanières;
2. afin de déterminer la manière dont chaque pays devra égaliser ou rapprocher les charges fiscales supportées par les différents produits qu'il exporte.

Second subject: *Deuxième sujet:*

The different conceptions, whether already accepted or possible for defining the fiscal value of tangible or intangible goods (the subject should deal at the same time with the valuation of immovables, of goodwill, stock and cash and of non-quoted securities).

Les différentes conceptions admises ou possibles pour définir la valeur fiscale des biens corporels ou incorporels (le sujet devant traiter à la fois de l'estimation des immeubles, des fonds de commerce et des titres non-côtés).

National reports had been submitted by: Mr. DONNAY (Belgium), Messrs. DE LA VILLEGUÉRIN, CAILLEZ AND DELATTRE (France), Prof. BÜHLER (Germany), Mr. SOULTANIS (Greece), Mr. PIMENTEL (Israel), Prof. DI PAOLO (Italie), Messrs. ANTAL DE FELSÖGELÈR and ZEVEN (Netherlands) and Prof. FOLLIET (Switzerland). *General reporter:* Prof. CHRÉTIEN (France).

Des *rapports nationaux* avaient été présentés par MM. DONNAY (Belgique), DE LA VILLEGUÉRIN, CAILLEZ, DELATTRE (France), BÜHLER (Allemagne), SOULTANIS (Grèce), PIMENTEL (Israel), DI PAOLO (Italie), ANTAL DE FELSÖGELÈR, ZEVEN (Pays-Bas), FOLLIET (Suisse). *Rapporteur général:* M. CHRÉTIEN (France).

The 7th Congress of the International Fiscal Association

Whereas the diversity of legislation for evaluating goods for taxation purposes prevents many delegations from coming to a decision on the common development which is desirable,

and whereas the discussions have brought to light the existence of a common problem of evaluating goods liable to be earmarked for taxation in various countries,

has decided to continue the exchange of documents between the national sections of I.F.A.,

wishes Governments to proceed to make agreements between themselves relating to the assessment of goods subject to taxation in various countries.

Le 7ème Congres de l'Association Fiscale Internationale

Considérant que la diversité des législations en matière d'évaluation de biens à des fins fiscales ne permet pas à de nombreuses délégations de se prononcer sur l'évolution commune souhaitable,

Mais considérant que les discussions ont mis en lumière l'existence d'un problème commun, pour l'évaluation des biens susceptibles d'être retenus pour l'imposition dans plusieurs pays,

Decide de continuer à échanger des documents entre les sections nationales de l'I.F.A.

Souhaite que les gouvernements procèdent entre eux à des accords à propos de l'estimation des biens soumis à taxation dans plusieurs pays.

Publications of the Intern. Bureau of Fiscal Documentation

No. 6

LA CONVENTION FISCALE FRANCO-BRITANNIQUE DU 14 DECEMBRE 1950

Etude d'Application Pratique

par

Dr. F. E. KOCH, A.A.C.C.A. A.C.W.A.

(Londres)

et

JEAN H. ROTHSTEIN H.E.C.

(Paris)

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*) 19 Droit fiscal international
*) 20 Règlements internes
Règlements autonomes
*) 21 Convention
*) 22 Traité
*) 23 Accord
*) 24 Droit fiscal comparé
*) 25 Double imposition (internationale)
*) 26 Domicile
*) 27 Résidence habituelle

DEUTSCH

NUMERISCHE ORDNUNG

*) 19 Internationales Steuerrecht
*) 20 Interne Rechtsvorschriften
Autonome Rechtsvorschriften
*) 21 Vertrag
Konvention
*) 22 Vertrag
*) 23 Abkommen
*) 24 Steuerrechtsnormenvergleich
*) 25 Doppelbesteuerung (internationale)
*) 26 Wohnsitz
*) 27 Gewöhnlicher Aufenthalt

ITALIANO

ORDINE NUMERICO

*) 19 Diritto finanziario internazionale
*) 20 Regolamento interno autonomo
*) 21 Convenzione
*) 22 Trattato
*) 23 Accordo
*) 24 Diritto finanziario comparato
*) 25 Doppia imposizione (internazionale)
*) 26 Domicilio
*) 27 Residenza

ESPAÑOL	NEDERLANDS
ORDEN NUMÉRICO	NUMMER-VOLGORDE
*) 19 Derecho fiscal internacional	*) 19 Internationaal belastingrecht
*) 20 Reglamentos internos autónomos	*) 20 Interne regelingen Autonome regelingen
*) 21 Convención	*) 21 Verdrag
*) 22 Tratado	*) 22 Tractaat
*) 23 Acuerdo	*) 23 Overeenkomst
*) 24 Derecho fiscal comparado	*) 24 Vergelijkend belastingrecht
*) 25 Doble imposición (internacional)	*) 25 Dubbele belasting (internationaal)
*) 26 Domicilio	*) 26 Woonplaats
*) 27 Residencia	*) 27 Verblijfplaats

* See commentary in Section III — Voir commentaire dans Section III

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SECTION III

ENCYCLOPAEDIC PART — PARTIE ENCYCLOPEDIQUE

E = English; F = Français, D = Deutsch, I = Italiano, E = Español N = Nederlands

19. *E. International Tax Law.*
F. Droit Fiscal International.
D. Internationales Steuerrecht.
I. Diritto Finanziario Internazionale.
Es. Derecho Fiscal Internacional.
N. Internationaal Belastingrecht.

In a wide sense it is the rules of law concerning the limitation of the power of a state to levy taxes.

They can be found in national autonomous rules, in legal systems extending to several states and in rules emanating from supernational corporations. In the last case, an example of which is the "European Board of Coal and Steel", the expression "supernational tax law" could be used.

In a narrow sense the international character is denied to the autonomous rules.

The first concept has its basis in the Law itself and seeks an answer to the question which state in a certain case has the right to levy taxes; the second has its basis in the origin of the Law and whether the rules originate from a source which is above the national legislation.

Il existe une conception large: les règles de droit concernant la limitation des pouvoirs d'un Etat de lever des impôts. On peut les trouver dans des règlements internes, dans une règlementation comprenant plusieurs Etats et dans les règles provenant d'une corporation supranationale. En ce dernier cas dont la ,,Communauté Européenne du Charbon et de L'Acier", est un exemple, on pourrait parler de ,,Droit Fiscal Supranational."

Par contre, d'après une conception limitée il est dénié aux règles autonomes internes le caractère international.

La première conception voit le critère dans le Droit lui-même, cherche une réponse à la question de savoir quel Etat, dans une certaine hypothèse, a le droit de lever des impôts; la deuxième voit le critère dans l'origine du Droit: les règles proviennent-elles d'une source supra-nationale?

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20. *E. Internal (autonomous) rules.*
F. Règlements internes (autonomes).
D. Interne (autonome) Rechtsvorschriften.
I. Regolamento interno autonomo.
Es. Reglamentos internos autónomos.
N. Interne autonome regelingen.

By internal rules to prevent double taxation are understood, the rules in national laws to prevent double taxation. These rules which limit the levying of taxes prescribed by the national laws, have the force of law only in the country in whose legislation they occur.

On entend par règlements internes pour éviter les doubles impositions les règles que contiennent les législations nationales en vue d'éviter les doubles impositions. Ces règles qui limitent l'imposition d'un impôt prescrit par la loi nationale, n'ont force de loi que dans le pays dans la législation duquel on les trouve.

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21. *E. Convention.*
F. Convention.
D. Vertrag, Konvention.
I. Convenzione.
Es. Convención.
N. Verdrag.

The convention or treaty constituted according to the national constitutional law is a source of law equal to the national laws.

It depends on the national law if a tax debt can be created by a treaty or convention when this would not be the case according to the national law.

In any case it is possible that a tax debt arising from the national law, is not created as a result of a treaty (convention) to prevent double taxation.

La convention ou le traité qui se sont constitués conformément au droit constitutionnel national, sont des sources de droit, à côté de la loi. Il dépend du droit national si une dette fiscale peut prendre naissance par suite d'une convention internationale, également dans des cas où il n'en serait pas ainsi d'après la loi nationale.

Quoi qu'il en soit, en tout cas il est possible qu'une dette fiscal, qui prendrait naissance d' après la loi nationale, ne se produise pas en conséquence d'une convention internationale pour éviter les doubles impositions.

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22. *E. Treaty.*
F. Traité.
D. Vertrag.
I. Trattato.
Es. Tratado.
N. Tractaat.

See 21.

Voir 21.

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23. *E. Agreement.*
F. Accord.
D. Abkommen.
I. Accordo.
Es. Acuerdo.
N. Overeenkomst.

The constitutional law of certain countries also recognises "agreements" with other States.

D'après le droit constitutionnel de certains pays, il existe aussi des "accords" avec d'autres Etats. La force

The legal force depends on the constitutional law. It is possible that the legal force is limited to an obligation of the Government to change the national law or to apply it in a certain way.

de loi en dépend du droit constitutionnel. Il est possible que la force de loi de ces accords se borne au simple engagement de la part du Gouvernement à modifier la législation nationale ou à l'appliquer d'une certaine manière.

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24. *E. Comparative Tax Law.*
F. Droit Fiscal Comparé.
D. Steuerrechtsnormenvergleich.
I. Diritto Finanziario Comparato.
Es. Derecho Fiscal Comparado.
N. Vergelijkend Belastingrecht.

The consideration of the national tax laws of a number of countries and the study of the points of resemblance and difference, and of their causes.

Comparative law is not concerned with the cases when the laws of two or more countries come into contact with each other. This is the domain of international law.

Considérations sur le droit fiscal national de plusieurs pays, comprenant l'étude des points de concordance et de différence, avec leurs causes. Cette étude ne s'occupe pas des cas dans lesquels le droit fiscal d'un pays se trouve en rapport avec celui d'un autre. Ces derniers cas appartiennent au domaine du droit fiscal international.

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25. *E. Double Taxation (international).*
F. Double imposition (internationale).
D. Doppelbesteuerung (internationale).
I. Doppia imposizione (internazionale).
Es. Doble imposición (internacional).
N. Dubbele Belasting (internationaal).

According to the most general conception international double taxation exists when two or more countries subject the same person or the same corporation in the same period in respect of the same object to a similar tax.

Les cas se présentent d'après la conception la plus générale, si deux ou plusieurs États assujettissent à un impôt similaire une même personne physique ou morale en ce qui concerne un même objet, et cela dans la même période.

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26. *E. Domicile.*
F. Domicile.
D. Wohnsitz.
I. Domicilio.
Es. Domicilio.
N. Woonplaats.

The term has not always the same meaning in the tax legislation. Not only is there a difference between countries, but even in the same country the term is often differently defined for the different taxes.

In the conventions, too, definitions have been embodied.

The two extreme conceptions are:
a. that according to civil law and
b. that based on facts. The civil law concept is not always constant because the civil law concept definitions differ; neither is the conception, based on facts always the same, because the facts can be approached in different ways and sometimes weight is attached to circumstances other than the facts, e.g. the will or the intention. Moreover, the case can be distinguished when only the will appearing from the facts is taken into account or when weight is attached to the will itself.

The domicile is not only of importance for the substantive law (e.g. for the question whether a person can be assessed for income tax or whether death duties must be paid on an estate) but also for the procedural law (e.g. where assessment must be effected).

The definitions as given in the laws of the various countries and in conventions are generally based on the circumstances or on the will which appears from the circumstances.

I. The circumstances play a part in the following laws and conventions:
Circumstances in general.
Netherlands:

For the Income Tax, Capital Tax, Capital Increment Tax and Capital levy, domicile is judged "according to circumstances."

La notion ,,domicile'' n'a pas toujours un sens fixe dans les législations fiscales. Non seulement il y a des différences de pays à pays, mais aussi dans un même pays on trouve pour différents impôts des conceptions différentes. Dans la plupart des conventions internationales aussi on en trouve des définitions.

On pourrait mentionner les deux extrêmes, à savoir
a. le domicile dans le sens du droit civil,
b. une notion de domicile basée sur les circonstances de fait. La notion du droit civil n'est pas constante parce que pour le droit civil les définitions sont divergentes. Les notions basées sur les circonstances de fait ne sont pas toujours les mêmes non plus, parce que l'on peut considérer les faits de divers points de vue, tandis que dans certains cas, même des circonstances personnelles ont une influence, par exemple la volonté ou l'intention. Alors on peut encore distinguer le cas où l'on ne tient compte que de la volonté etc. qui se manifeste dans les faits ou bien le cas où aussi la volonté intérieur joue un rôle.

Le domicile n'est pas seulement d'importance pour le droit matériel (par exemple pour la question de savoir si une personne entre en ligne de compte pour être assujettie à l'impôt sur le revenu, ou si sur un héritage il faut lever un droit de succession), mais aussi pour le droit formel (par exemple pour la question de savoir à quel lieu le contribuable doit faire sa déclaration).

Les définitions données dans les lois des différents pays et dans les conventions sont basées généralement sur les circonstances ou sur la volonté qui se manifeste dans ces faits.

I. Les circonstances jouent un rôle dans les lois et conventions suivantes:
Circonstances en général.
Pays Bas:

En ce qui concerne l'impôt sur le revenu, sur la fortune, sur l'accroissement de fortune, ainsi que l'imdôt extraordinaire sur le capital, le domicile ,,dépend des circonstances.''

Special Circumstances.
Conventions.

a.) Model conventions London and Mexico (1943 and 1946) with respect to taxes on Income and Property.

"The term "fiscal domicile" in the case of a natural person is the place where a person has his normal residence, the term "residence" understood in the sense of a permanent home."

This and similar definitions can also be found in the conventions between Belgium and France (1931); Belgium and Italy (1931); Belgium and Luxemburg (1931); Belgium and the Netherlands (1933); France and Italy (1930); France and the Netherlands (1949); France and Sweden (1936).

b.) Other circumstances are a criterion in the following circumscription: "A physical person is domiciled in the place where he has a permanent dwelling available. If there is more than one such place, the place of domicile shall be that where the personal relations are closest (centre of vital interest)".

This definition occurs in the conventions concluded between Switzerland and Sweden (1948); and Switzerland and the Netherlands (1951).

II. The will is of importance in the following cases.

National Laws.
Belgium:

For the income tax domicile is according to jurisprudence:

" . . . the place where a person has a real dwelling and where he has shown his intention to stay or to return."

For the succession duty the will is also of importance.

Germany:

The "Steueranpassungsgesetz" gives a definition which has effect for all tax laws:

"Domicile is the place . . . where a person has a dwelling under circumstances from which it may be concluded that he will keep possession of and utilize it."

Circonstances spéciales.
Conventions.

a) Modèles de conventions de Londres et Mexique (1943 et 1946) en matière d'impôts sur le revenu et sur la fortune.

„Le terme „domicile fiscal" signifie dans le cas d'une personne physique le lieu où cette personne a sa résidence normale, le terme „residence" étant entendu au sens de foyer permanent d'habitation."

On peut trouver cette même définition ou d'autres de même nature également dans les conventions entre: la Belgique et la France (1931); la Belgique et l'Italie (1931); la Belgique et le Luxembourg (1931); la Belgique et les Pays-Bas (1933); La France et l'Italie (1930); La France et les Pays-Bas (1949); La France et le Suède (1936).

b) D'autres circonstances font leur critère dans les definitions suivantes:

„Une personne physique est domiciliée à l'endroit où elle a la possibilité d'habiter de façon permanente. S'il existe plusieurs endroits de ce genre, est considéré comme domicile celui avec lequel les relations personnelles sont les plus étroites (centre des intérêts vitaux)".

On trouve cette définition dans les conventions entre la Suisse et la Suède; et la Suisse et les Pays Bas (resp. 1948 et 1951).

II. La volonté est d'importance dans les cas suivants.

Lois Nationales.
Belgique.

En ce qui concerne l'impôt sur le revenu on entend par domicile d'après la jurisprudence ". . . le lieu où une personne a sa demeure réelle et où il a manifesté son intention de rester ou de rentrer."

Pour les droits de succession la volonté est également d'importance:

Allemagne:

La „Steueranpassungsgesetz" donne une définition qui est applicable à toutes les lois fiscales.

„Le domicile est le lieu où une personne demeure dans de telles circonstances qne l'on peut en conclure qu'il veut le maintenir ou l'utiliser.

Netherlands:

For the succession and gift duty the will is also a criterion to decide whether a person has a domicile in the country.

Conventions.

a.) Model conventions London and Mexico (1943 and 1946) with respect to death duties.

"The domicile of a person at the moment of his death is the place where he had his permanent residence with the clear intention to retain it."

b.) "Domicile shall exist in cases in which any person possesses a dwelling under circumstances which give good grounds for assuming that he intends to retain it."

See for this or a similar definitions the conventions between Germany and Austria (1922), Germany and Sweden (1928); Switzerland and France (1937).

c) Domicile is " . . . an abode under conditions which imply the intention to retain it continuously." Convention between Germany and France (1934).

Special attention must be drawn to the Anglosaxon countries. Domicile is of much slighter importance there: residence (and especially in the U.S.A.: citizenship) prevails.

In the *U.S.A.* however, the administration for succession and gift duties considers a person whose domicile is in the U.S.A. as a resident.

Although no general rule can be given, it may be said that for domicile the will to reside in a certain place is required (For residence see no. 27).

In the conventions with respect to death duties of Great-Britain and the U.S.A. domicile is also of importance, but for the meaning of the word it is always referred to national law.

Pays Bas:

En ce qui concerne les droits de succession et de donation la volonté constitue également un critère pour déterminer si ou non une personne a un domicile dans le pays.

Conventions.

a) Modèles de conventions de Londres et Mexique (1943 et 1946) en matière de droits de succession.

„Le domicile d'une personne au moment de son décès est le lieu où elle avait alors sa résidence permanente avec l'intention manifeste de l'y maintenir."

b) „Est réputée domicile toute habitation occupée dans les conditions telles qu'elles permettent de conclure à l'intention de la conserver d'une manière continue".

Voir pour la même définition et d'autres de même nature les conventions entre l'Allemagne et l'Autriche (1922); l'Allemagne et la Suède, (1928) la Suisse et la France (1937).

c) Domicile est „ . . . une habitation dans des conditions permettant de conclure qu'il veut la garder." Convention Franco-Allemande (1934).

Plus spécialement il faut attirer l'attention sur les pays anglo-saxons. Le domicile a une importance beaucoup moins grande: résidence (et spécialement aux Etats Unis: „citizenship") est une conception prédominante.

Pourtant aux Etats-Unis l'administration des droits de succession et de donation considèrent comme résidante une personne qui est domiciliée aux Etats-Unis. Bien qu'une règle générale ne puisse pas être donnée on peut dire que pour domicile la volonté à demeurer dans un certain lieu est indispensable (Pour résidence voir no. 27) Dans les conventions en rapport aux droits de succession conclues par le Royaume Uni et les Etats Unis le domicile joue également un rôle important mais quant à la signification du mot on réfère toujours aux lois nationales.

27. *E. Residence.*
F. Résidence habituelle.
D. Gewöhnlicher Aufenthalt.
I. Residenza.
Es. Residencia.
N. Verblijfplaats.

In the Tax laws of some countries the criterion "residence" occurs side by side with "domicile": domicile-residence; Wohnsitz-Aufenthalt.

The concepts are used to indicate a more or less close connection with the country that levies the tax for all those cases where the fiscal consequences are different according to the connection. It is for this reason that not always the same meaning is attached to this expression.

Germany:

The "Steueranpassungsgesetz" gives a definition of "Gewöhnlicher Aufenthalt" which has effect for all tax laws: "the normal residence . . . is the place where a person resides under circumstances from which it appears that he does not reside in that place or in that country temporarily."

So "Gewöhnlicher Aufenthalt" already exists when a person resides in a country even when such a residence is in different places.

Generally speaking it may be said that for "Gewöhnlicher Aufenthalt" fewer conditions are made than for "domicile."

U.S.A.:

As pointed out above, rules with respect to the levy of income, death and gift taxes by the National Government in the United States vary dependent on whether or not a person is a citizen, resident or non-resident. Although residence and domicile have been interpreted as synonymous for purposes of the death and gift taxes (compare nr. 26) residence is something less than domicile for purposes of the income tax.

In administering the income tax the U.S. Bureau of Internal Revenu has issued a regulation which provid-

Dans les lois fiscales d'un certain nombre de pays on trouve l'expression „résidence" à côté de „domicile" domicile-résidence; Wohnsitz-Aufenthalt.

Ces expressions sont employées pour indiquer une relation plus ou moins étroite avec le pays impositeur et elles s'appliquent à tous les cas pour lesquels les conséquences fiscales sont différentes en vertu de la relation en question.

Allemagne.

Le „Steueranpassungsgesetz" donne une définition de „Gewöhnlicher Aufenthalt" qui est applicable à toutes les lois fiscales: „la résidence habituelle . . . est le lieu où une personne réside dans de telles circonstances qu'il est évident que son séjour dans ce lieu ou dans ce pays n'est pas temporaire."

Un „Gewöhnlicher Aufenthalt" peut donc être admis déjà quand une personne réside dans un pays même dans divers lieux.

En général on pourrait dire que „Gewöhnlicher Aufenthalt" dépend de moins de conditions que „domicile."

E.U.A.:

Comme il a été indiqué ci-dessus les règles concernant l'imposition par le Gouvernement National des Etats-Unis d'impôts sur le revenu et de droits de succession ou de donation, varient selon les cas qu'il s'agit de ressortissants, de résidents ou de non-résidents. Bien que les expressions résidence et domicile aient été interprétées comme étant de synonymes en ce qui concerne les droits de succession et de donation, (cfr. nr. 26) résidence est un peu moins que domicile, quand il s'agit de l'impôt sur le revenu.

A ce sujet, le Bureau of Internal Revenue des Etats-Unis a promulgué un arrêté stipulant ce qui suit:

es that:

,,An alien actually present in the United States who is not a more transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay.

A more floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident.

One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient, but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned.

An alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of this section, in the absence of exceptional circumstances.''

Conventions.

In the German conventions ''Dauernder Aufenthalt'' is frequently used instead of ''Gewöhnlicher Aufenthalt''.

There is hardly any difference between these two expressions, cf. the convention between Germany and Switzerland (1931) and Germany-Sweden (1928). In the conventions of Great-Britain and the U.S.A. with respect to direct taxes, for the interpretation of the word residence reference is always made to the national laws.

,,Un étranger réellement présent aux Etats-Unis et qui n'est pas seulement une personne passagère ou séjournante, est considéré comme résidant aux Etats-Unis pour autant qu'il concerne l'impôt sur le revenu. Il dépend de ses intentions quant à la longueur et la nature de son séjour, s'il est ou non considéré comme une personne passagère.

Une intention vague et indéterminée à retourner à un autre pays ne suffit pas pour le considérer comme une personne passagère. S'il demeure aux Etats-Unis et s'il n'a pas d'intention fixe quant à son séjour, il est un résident.

Quelqu'un qui visite les Etats-Unis dans un but déterminé qui peut être réalisé promptement par nature, est une personne passagère; mais si son but est tel qu'un séjour prolongué pourrait être nécessaire pour que sa mission soit réalisée, et si à cette fin l'étranger adopte une résidence temporaire aux Etats-Unis il devient un résident, bien qu'il soit son intention, à chaque instant à rentrer dans son domicile étranger quand le but pour lequel il est venu est réalisé ou abandonné. Un étranger dont le séjour aux Etats-Unis est limité, par les lois d'immigration, à une période déterminée, n'est pas un résident des Etats Unis en vertu de cet article, faute de circonstances exceptionnelles.''

Conventions.

Dans les conventions conclues par l'Allemagne on a employé souvent ,,Dauernder Aufenthalt'' en lieu de ,,Gewöhnlicher Aufenthalt''.

Presqu'aucune difference n'existe entre ces deux expressions, cf. les conventions Allemagne-Suisse (1931) et l'Allemagne-Suède (1928). Quant à la signification du mot ,,Residence'' en rapport aux impôts directs, les conventions conclues par le Royaume Uni et les Etats Unis réfèrent toujours aux lois nationales.

I

FRAUD AND THE FEDERAL INCOME TAX IN THE UNITED STATES

by

HAROLD M. GROVES[1]) and ARTHUR M. SELLE, JR.[2])

The income tax is generally accepted as one of the best if not the best means of raising revenue for the modern state. But no tax is any better than its administration. An important aspect of administration is the avoidance of fraud. Some of the more important instrumentalities for dealing with fraud in the federal tax system of the United States are described in the following article.

Tax students commonly distinguish between evasion and avoidance of tax statutes. Avoidance can be defined as any conscious attempt, successful or unsuccessful, to take advantage of some provision, or lack of provision in the law.[3]) Evasion, on the other hand, involves an attempt to reduce or eliminate tax liability by means the statutes declare unlawful.[4]) Randolph E. Paul contrasts the two with the observation that "avoidance is virtually a high-bracket game, while evasion is a crude means of tax dodging practiced in all economic strata."[5]) Both the evader and the avoider seek to soften the blow of taxation but the latter stays within the law and his intent is unimpeachable; the evader goes beyond the law and his intent may be described ad dishonest.

High tax rates put a premium on avoidance, and complicated statutes provide many opportunities for its application; but the courts interpret the statutes strictly and frequently with high regard for the prevention of avoidance.[6]) Justice Holmes in *Bullen v. Wisconsin*[7]) suggests that avoidance is what works and evasion what does not work. However, it is also stated that "an attempt to avoid may fail if the taxpayer misconceives the law, but the fact that he has guessed wrong can hardly convert his attempted avoidance into evasion." And the success of evasion through failure of the

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[1]) Professor of Economics, University of Wisconsin.

[2]) Research Assistant.

[3]) "The Ingenious Taxpayer", *Fortune Magazine* (Feb., 1947), p. 108.

[4]) Harry Graham Balter, *Fraud Under Federal Tax Law* (Commerce Clearing House, Inc., New York, 1951), p. 14.

[5]) Randolph E. Paul, *Taxation for Prosperity* (Callaghan and Company, Chicago, 1947), p. 285.

[6]) Randolph E. Paul, *Studies in Federal Taxation* (Callaghan and Company, Chicago, 1937), p. 61.

[7]) 240 U.S. 625 at 630: " . . . when the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion, what is meant is that it is on the wrong side of the line . . ."

administration to reach the attempt cannot convert evasion into avoidance. [1]) State of mind is the basis of the fraud situation, be it civil or criminal. "The false act by itself is not fraud unless a fraudulent state of mind accompanies it; so the failure to pay the tax legally due, or the filing of a false return, is not enough; the evil state of mind which must accompany the act may be variously referred to as (1) bad faith; (2) intent to evade tax; (3) wilfulness, etc.". [2])

An unsuccessful avoidance scheme, honestly carried out, will rarely bring a fraud penalty, but it may result in the imposition of a negligence penalty. "The prevailing judicial concept of an unsuccessful avoidance is generally that of a poor but honest attempt". [3]) There are numerous instances where the courts have interchanged the concept of "wilfulness" as used in the criminal tax statute and that of "fraud with intent to evade tax" as used in the civil statute. [4]) As used here, the terms "fraud" or "evasion" will connote the integration of the end to be achieved (the payment of less tax than is known to be legally due) with the necessary evil state of mind, resulting in a course of action which is unlawful.

1. *Penalties for Fraud.*

The penalties for fraudulent conduct in relation to the federal tax laws may be classified in any of several ways, but the simplest classification would seem to be that of civil and criminal.

a. *The Civil Penalties.*

The civil penalty provisions of the internal revenue code are of the *ad valorem* type and are imposed for either improper action or for a failure to act. The penalties are assessed and collected administratively as a part of the tax. The fact that the taxpayer has been acquitted or convicted in a prosecution involving criminal penalties does not bar the imposition of the civil penalties.

The civil penalties are of two general types: fraud and non-fraud. While the latter would not seem to be properly included in this discussion, actually they are indirectly connected with the fraud situation as they are repeatedly used as a means of compromise where the Bureau expects difficulty in sustaining the burden of proof in a fraud situation.

The first of these non-fraud penalties is imposed "if any part of any deficiency is due to negligence, or intentional disregard of rules and regulations . ... without intent to defraud". [5]) A penalty of 5 % is assessed on the total amount of the deficiency and is collected along with the deficiency. This penalty must be asserted by the Director; it will not be imposed by the courts. [6]) Once the deficiency assessment is made and the penalty asserted, the burden is on the taxpayer either to pay the additional assessment plus interest plus the penalty or to show freedom from negligence. [7])

The terms "negligence" and "intentional disregard" are, as usual, too broad to permit generalization. They must be treated by reference to decided cases lying beyond the scope of this discussion. The test, however, is that of the reasonable and prudent man. [8])

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[1]) Randolph E. Paul, *Studies in Federal Taxation*, op. cit., p. 13.
[2]) Harry Graham Balter, op. cit., p. 36.
[3]) Ibid., p. 40.
[4]) See discussion in 40 B.T.A. 387 (1939) at 422.
[5]) I.R.C. 293 (2).
[6]) James Nichelson, 32 B.T.A. 977 (1935); aff'd 90 F. 2 978 (1937).
[7]) J.T.S. Brown's Son Co., 10 T.C. 840 (1948); Gibbs and Hudson, Inc., 35 B.T.A. 205 (1936).
[8]) Southeastern Finance Co. v. Commissioner, 153 F. 2 205 (1946).

Regarding the effectiveness of this penalty, Robert Montgomery feels that under the reasoning of the Board of Tax Appeals, a taxpayer could never resolve a doubtful point in his own favor without making himself subject to an additional 5 % of the tax involved; on the other hand, he also states that "in view of the complexities and ambiguities of the law . . . no reasonably careful person need fear this penalty." [1])

The other civil penalty of the non-fraud type is imposed by Section 291 (a) of the Internal Revenue Code in cases in which the taxpayer fails to file a return within the prescribed time, unless such failure can be shown to be due to reasonable cause. The amount of the penalty is 5 % of the total tax liability for every 30 days, or fraction thereof, that the return is delinquent, with a maximum of 25 %.

The main problem in this area is exactly what constitutes a "failure to file". The issue does not seem to be whether a return was or was not filed by the taxpayer within the prescribed time, but rather whether or not the correct return was filed, or whether the return, as filed, was sufficient to preclude the penalty or to start the running of the statute of limitations. The statute of limitations for failure to file does not begin to run against assessment and collection until a return is filed. [2])

Where the taxpayer has not qualified in the filing of a return, the prescribed penalty is automatically imposed unless there are extenuating circumstances showing a "reasonable cause" for the delay. The regulations define such reasonable cause as follows: [3])

"If the taxpayer exercised reasonable care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause."

The reasonable-cause area provides a problem that may be of more than ordinary interest to the taxpayer; namely, the effect of tax advice that is later found to be in error. It is not always possible, nor can it be expected, that a businessman should be aware of all the tax problems with which he may be faced. But ignorance of the law [4]) and forgetfulness [5]) have never been accepted as adequate reasons for non-assertion of the penalty. Whether a taxpayer may avoid the penalty by reliance on the advice of counsel is a question of degree and jurisdiction. There must be positive actions other than mere reliance to rebut the question of wilful neglect. [6]) It has been generally held, however, that a failure to file will be considered due to reasonable cause if such failure was based on the advice of "competent" tax counsel. [7]) This poses the problem of "what is competent tax advice?" [8]) What the taxpayer has disclosed to his counsel in the particular case is also a matter for consideration, as even competent tax advisors can do little when important information is withheld, or that given is erroneous. [9])

As in the case of the 5 % negligence penalty discussed above, the burden of proof is on the taxpayer, and unless he can show compliance with the law, the penalty will be assessed. This penalty is distinct from the 50 % civil

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[1]) Robert Hiester Montgomery, *Federal Taxes*, (Ronald Press Company, New York, 1949–1950), Vol. II, p. 644.
[2]) I.R.C. 276 (a).
[3]) Reg. 111, sec. 29.291–1.
[4]) Southeastern Finance Co. v. Commissioner, 153 F. 2 205 (1946).
[5]) Rogers Hornsby, 26 B.T.A. 591 (1932).
[6]) Abraham H. Spilky, "Reasonable Cause as an Excuse for Delinquent Filing", 28 Taxes 325, (Commerce Clearing House, Inc., New York, 1950).
[7]) Genesee Valley Gas Company, Inc., 11 T.C. 184 (1948).
[8]) See Ralph M. Lewis, "What is Competent Tax Advice", 28 Taxes 33, op cit.
[9]) See Victor R. Wolder, "Disclosure to Counsel", 27 Taxes 621, op. cit.

fraud penalty and may be assessed in addition thereto, making a total penalty of 75 %. [1])

Before passing on to the civil penalty for fraud, it may be interesting to note that if a taxpayer fails to file a return, one may be filed for him upon the basis of such information as may be available to the Bureau, which may then proceed to use the return as a basis for enforcing collection of the tax shown thereby. Such a return will naturally not be too charitable toward the taxpayer, particularly in the matter of such deductions as might have been claimed had he filed the return himself. [2])

In discussing the first of the two non-fraud penalties it was pointed out that Section 293 (a) of the Internal Revenue Code imposed a penalty for any tax deficiency caused by negligence in reporting income. Section 293 (b), the civil fraud provision, increases the penalty to 50 % of the tax deficiency if it should be found that any part of this tax deficiency be due to fraud with intent to evade tax. As in the case of the lighter negligence penalty, the 50 % addition is assessed, collected, and paid along with, and in addition to, the deficiency itself. Should the fraud involve a failure to file, the penalty imposed by 291 (a) may be added to the 50 % fraud penalty, resulting in a total penalty of 75 % of the original tax (i.e., deficiency) found due. [3]) Further, the imposition of the civil penalties does not preclude criminal prosecution under section 145. [4])

What constitutes fraud, either civil or criminal is a question of fact, the determination of which involves the consideration of all facts and circumstances which surround the conduct of the taxpayer's business and all of the facts incident to the preparation of the alleged fraudulent return. The difference between civil and criminal fraud lies in the degree of proof required by the government; the language of 293 (b) does not seem to suggest a higher standard of conduct than is indicated under the felony provision of Section 145 (b). [5])

To sustain either a civil or criminal fraud penalty, the Director has the burden of proof. In the case of "fraud with intent to evade tax" under 293 (b) it is a statutory burden, imposed by Section 311 (a) of the code. The proof required is more than a mere preponderance of the evidence and must be shown in a clear and convincing manner. [6]) This rule is to be distinguished from the rule in criminal prosecutions which requires that fraud be proven beyond a reasonable doubt. [7])

If fraud can be established, the only remaining element necessary for the imposition of the 50 % civil penalty is a tax deficiency, [8]) for the amount of the penalty is based on a percentage of the total tax deficiency. If no deficiency can be found, no penalty can be imposed. [9]) Where there is a

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1) Jacob Mertens, *Law of Federal Taxation* (Callaghan and Company, Chicago, 1948), p. 48.

2) James Max Henderson, *Introduction to Income Taxation* (Lawyer's Cooperative Publishing Company, New York, 1949, Second Edition), p. 486.

3) See note 1, supra.

4) 53 CCH 1518.196.

5) Gerald L. Wallace, "Penalties and Prosecutions for Evasion of the Federal Income Tax", 1 Tax Law Review 335 (New York University School of Law, 1946).

6) Walter H. Schulman, "Penalties and Problems Arising in Civil Fraud Cases", 26 Taxes 795, op. cit.

7) Jacob Mertens, op. cit., p. 29.

8) Deficiency is defined in I.R.C. 271 (a); see also Reg. 111, sec. 29.271–1 (a), (b). Also: Maitland A. Wilson, 7 T.C. 395 (1946) for application of 271 (a) to 293 (b).

9) Summerill Tubing Co., 36 B.T.A. 347 (1935).

deficiency, however, the tax liability for the year is regarded as a unit, regardless of the fact that part of the deficiency may be due to negligence and part due to fraud. The statute makes no provision for dividing up the deficiency and applying different penalties to various parts. No part of the deficiency or understatement is free from penalty if fraud appears "in any part of any deficiency." [1])

While the taxpayer's normal reaction is to fear the criminal charge more than the civil, the cumulative feature of the civil penalties when applied to the entire deficiency may well prove overwhelming. Successful avoidance of a criminal action is little cause for celebration since the Director may still impose civil penalties that might prove disastrous.

b. *The Criminal Penalties.*

While the purpose of the civil penalty for fraud is to safeguard the revenue and to reimburse the government for the heavy expense of continual investigation and for the losses resulting from fraud, [2]) the criminal penalties have the special role of deterring future violations. [3]) The penalties available for this latter purpose are scattered throughout the whole body of statutory law. For purposes of analysis, the following classification is presented:

1. criminal penalties outside the revenue code that may be brought to bear upon tax fraud cases; [4])
2. criminal penalties within the revenue code:
   a. those other than IRC 145; [5])
   b. IRC 145.

As enforcement of the income tax law has improved and as increased rates have placed a high premium on tax evasion, the criminal penalties

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[1]) I.R.C. 293 (b).
[2]) Spies v. United States, 317 U.S. 492 (1943) at 495.
[3]) United States v. La Fontaine, 54 F. 2 371 (1931) at 374.
[4]) Criminal penalties outside of the I.R.C.:

(a) 18 U.S.C.A., sec. 287: for presenting false claims against any department or agency of the United States; $10,000 fine, or a maximum of five years imprisonment, or both.
(b) 18 U.S.C.A., sec. 1001: for making false statements to any department or agency of the United States; $10,000, or a maximum of five years imprisonment, or both.
(c) 18 U.S.C.A., sec. 1621: for perjury before competent tribunal, officer, or person where an oath is authorized by law; $2,000, or a maximum of five years imprisonment, or both. I.R.C. 3809 restates this so that it extends to written declarations in tax returns.
(d) 18 U.S.C.A., sec. 371: for conspiracy to commit any offense against the United States, or agency or department thereof; $10,000, or a maximum of five years imprisonment, or both.

[5]) Criminal penalties in the I.R.C. other than those in section 145:

(a) Failure to file information returns with respect to certain foreign corporations: Section 340.
(b) Information returns by counselors and advisors with respect to organization or reorganization of any foreign corporation: Section 3604 (c).
(c) Penalties in connection with the withholding tax on wages and salaries: Section 1626 (a), (d).
(d) Penalties for assisting in preparation or presentation of false tax returns, etc.: Section 3793 (b) (1).
(e) Penalties in connection with estate taxes: Section 894 (b) (2) (A), (B) (C).
(f) Penalties in connection with gift taxes: Section 1024 (a), (b).

have become increasingly important in the enforcement of the law. In many cases the possible gains in tax evasion will offset a mere civil penalty, and the threat of something more drastic is needed to prevent the taxpayer's ingenuity from running to excess. The criminal provisions of the tax law have long been used for the collateral purpose of prosecuting those who could not be convicted of other law violations. [1])

The principal "all around criminal enforcement weapon available to the treasury is Section 145 of the Internal Revenue Code, which provides penalties for wilfully failing to pay a tax or make a return thereof [2]) and for a 'wilful attempt' in any manner to evade or defeat any tax." [3])

Section 145 (a) is the criminal counterpart of Section 291 (a) discussed above, but in addition to a criminal penalty for failure to file a return, its coverage is extended to include a penalty for a failure to keep records, submit information, and to pay a tax. Any such failure constitutes a misdemeanor and is punishable by a fine of $10,000 or imprisonment for not more than one year, or both. To sustain a conviction under this section the government must show: [4])

1. that there was a duty to act;
2. that there was a failure to act under such duty;
3. that the failure to act was wilful.

The duty to act is imposed by statute, [5]) but it is not necessary to prove that a tax is due except in the case of a failure to pay a tax. Further, there is no reason to believe that a return sufficient for 291 (a) would not be sufficient under 145 (a); thus what has been said above about failure to file would seem to apply here. It must be kept in mind, however, that 145 (a) covers failures other than the failure to file. [6])

All criminal offenses against the revenue require that an act, or failure to act, be "wilful". As mentioned above, this is not unlike the "intent to evade tax" necessary to support a civil fraud penalty, except that the evidence of wilfulness, to obtain a conviction, in a criminal case must be stronger.

The Supreme Court has defined the term "wilful" as follows: [7]) ". . . any act which is intentional, or knowing, or voluntary, as distinguished from accidental . . . when used in a criminal statute . : . means an act done with a bad purpose . . . without justifiable excuse . . . stubbornly, obstinately, perversely . . ." As in the case of "intent to evade tax" and "fraud", we are dealing here with a definition that can never be comprehensive. Because "wilfully" involves the defendant's state of mind, it becomes a problem which a jury must decide upon the precise facts in each case. [8]) And as such intent can rarely be established by direct evidence, the jury must find the requisite intent by inference. [9])

The most frequent type of tax prosecution, aside from the imposition of

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[1]) Jacob Mertens, op. cit., p. 67.
[2]) I.R.C. 145 (a).
[3]) I.R.C. 145 (b).
[4]) United States v. McCormick, 67 F. 2 867 (1933) at 868.
[5]) I.R.C. 51 (a) for individuals.
[6]) Sydney A. Gutkin, "Tax Law Violations and Enforcement; the Handling of Penalty Cases", New York University Sixth Annual Institute on Federal Taxation (Matthew Bender and Company, Albany, 1948), p. 193.
[7]) United States v. Murdock, 290 U.S. 389 (1933) at 393.
[8]) Battjes v. United States, 172 F.2 1 (1949); O'brien v. United States, 51 F. 2 193, cert. den. 284 U.S. 673 (1931).
[9]) United States v. Zimmerman, 108 F. 2 370 (1939); Paschen v. United States, 70 F. 2 491.(1934).

the ad valorem penalties, is for a violation of 145 (b) which provides that "any person who wilfully attempts in any manner to evade or defeat any tax . . . (is) . . . guilty of a felony," and upon conviction thereof shall be subject to a fine of not more than $10,000 or five years imprisonment, or both.

The distinction between "fraud with intent to evade tax" as found in the civil penalty section 293 (b) and the term "wilfully" in 145 (b) as interpreted by the courts is now so slight that "only theoretically could one violate one section and not the other." [1]) The real difference lies in the stricter burden of proof in criminal prosecution: in 145 (b)-prosecutions, the government is required to prove income in excess of that reported, and any guilt must be established beyond a reasonable doubt. The government does not have to prove the exact amount of the understatement - evidence of an understatement in substantial amount has been held sufficient. [2]) In civil cases the amount of understatement has to be clearly shown as it determines the penalty, and the fraud need only be established by proof that is clear and convincing. "On such a basis, it is conceivable that a taxpayer might have a civil fraud penalty imposed and yet not be convicted of the 145 (b) offense." [3])

In summarizing the requirements of 145 (b), it appears that the following conditions must exist to support a prosecution:

1. an affirmative act
2. wilfully undertaken
3. in an attempt to evade or defeat a tax.

While a conviction may stand under 145 (a) even though there is no proof of tax due, it has been settled judicially. [4]) that in the absence of proof that the defendant owed more tax than was paid, he cannot be convicted under 145 (b). [5]) In addition, 145 (b) permits action against persons other than the taxpayer, thus possibly including a husband for abetting evasion by his wife, corporate officials for evading corporate taxes, and a tax counselor for assisting evasion by his clients. [6])

2. *Administration of Fraud Cases.*

a. *Origin of case:*

Tax fraud cases are not initiated by the Department of Justice since that department does not have an investigating force with the general authority necessary to unearth, investigate and report on alleged evaders. This "detective" work is left to the Treasury Department, and more particularly, to the Internal Revenue Service. There the auditing function is that of the Revenue Agent, while the investigating function is carried out by a Special Agent assisted by a Revenue Agent. [7])

The multitude of methods whereby taxpayers attempt to evade income taxes range from the simple and crude to the complex and ingenious, but for analytical purposes, they may be divided as follows: [8])

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[1]) Sydney A. Gutkin, op. cit., p. 202.
[2]) Meyer Rothwacks, "Law and Procedure in Criminal Tax Prosecutions", 26 Taxes 802, op. cit.
[3]) Sydney A. Gutkin, op. cit., p. 203.
[4]) United States v. Schenck, 126 F. 2 702 (1942) at 704.
[5]) Harry Graham Balter, op. cit., p. 186.
[6]) Meyer Rothwacks, op. cit., p. 800.
[7]) Turner L. Smith, "Policies and Procedures in Income Tax Fraud Cases", 28 Taxes 762, op. cit.
[8]) Meyer Rothwacks, op. cit., p. 803.

(1) understatement of receipts
(2) overstatement of expenses.

The specific devices employed may involve one or more of the following: double sets of books, counterfeit invoices, false entries, fictitious transactions, non-recordation of sales, personal expenditures disguised as business items, and bonus kickbacks.

Despite a mathematical probability of non-detection, the risk of detection is considerable. [1]) With an adequate staff of competent investigators, discovery of tax evasion becomes a matter of time and industry. It is understandable, therefore, that the usual source of information regarding a possible evasion is the routine investigation made by a Revenue Agent. [2]) Thus an investigation which is initially directed toward a simple verification of figures on the original return may bring to light suspicious circumstances demanding a more thorough investigation by a Special Agent of the Intelligence Unit. This source of information turns up only the more obvious fraudulent entries and transactions; the Revenue Agent, in his routine examination, is not specifically looking for fraud.

Information leading to investigation may result from the examination of a third party. [3]) Investigation by other government agencies, state or federal, constitute a third means of discovery. These latter findings may have been reported to the Service directly, or notice may have come through newspapers and other media of public information. Whatever the method of transmission, the Service will assign an agent to make an investigation. [4])

A fourth source of information is the informer - every year the treasury receives a great number of leads from dissatisfied employees, jealous social acquaintances, business competitors, etc. Informers generally may be classified into two types: (1) those who anonymously write into the Service and (2) those who desire a reward. Rewards for such information are covered by Section 3792 of the Code and are based on total taxes, penalties, fines, and forfeitures, not to exceed 10 % of the total. [5])

b. *Processing a fraud case.*

Regardless of the source of information, once fraud is suspected, the case is turned over to a Special Agent of the Intelligence Unit of the Treasury Department. A Revenue Agent is assigned to work with the Special Agent. "The revenue agent is responsible for the audit features of the case, and must be able, through facts found and his knowledge of accounting and of the income tax laws, reasonably to substantiate in his report all technical adjustments made. The special agent . . . holds a position more in the nature of an assistant to the United States District Attorney in that he is responsible

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1) "Percentagewise the number of individuals audited by the Bureau each year is nominal (approximately 1.5 % of all individual returns filed) but the number of civil fraud penalties sustained upon recommendations of the Intelligence Unit bulks large in proportion to the number of tax cases worked by the special agents. With the internal revenue service employing nearly 60,000 men and women, literally hundreds of pairs of eyes scan the pages of every federal income tax return filed; thus it is no wonder that the chance of being audited in the case of returns with large income, large refunds, large numbers of dependants, unexplained items of consequence, and irregular or suspicious transactions is almost one hundred percent".
See John J. Griffin, "Fraud", 28 Taxes 152.

2) Sydney A. Gutkin, op. cit., p. 206.
3) Meyer Rothwacks, op. cit., p. 803.
4) Sydney A. Gutkin, op. cit., p. 206.
5) Ibid.

for the so-called 'fraud' features and must be able to identify in his report valid evidence existing to support his recommendations of the assessment of the civil penalty and criminal prosecution." [1])

When a Special Agent completes an investigation, he submits his recommendations in the form of a report to his superiors. If only a civil penalty is recommended, and such recommendation is concurred in by the Special Agent in Charge, the criminal phase of the case is closed and the procedure from that point is the same as in an ordinary deficiency assessment. [2]) At any stage of the proceedings, even after the case has left the Treasury Department, should the criminal charges be dropped, the civil penalties will usually be invoked, with the consequent deficiency proceeding.

Where criminal prosecution is recommended, however, the file is carefully reviewed by the Special Agent in Charge, who may either overrule or concur in the recommendation. Should he concur, the file is forwarded to the Chief of the Intelligence Unit who forwards it to the appropriate regional office of the Penal Division of the Internal Revenue Service. [3])

In the office of the Regional Counsel the case is assigned to an attorney who, in conjunction with a highly trained technical advisor, makes an extremely critical review of the whole file. Two factors are of primary concern: [4])

(1) is it possible to establish a tax deficiency by the proof available to the government, independent of admissions by the taxpayer?

(2) is there available other evidence, independent of the failure of the taxpayer to pay the correct tax or the filing of a false return, which would establish "beyond a reasonable doubt" that the failure to pay the correct tax was "wilful" within the meaning of that term in federal criminal law?

Regardless of what the reviewing attorney and his technical advisor may recommend, the Regional Counsel has full power to review and overrule the decision. But if the case is considered to be one for prosecution, a statement to this effect is included in the file audit that is forwarded to the Penal Division in Washington, where it is subsequently reviewed by the Head of the Penal Division, the Chief Counsel of the Service, and the Director of the Internal Revenue Service. [5])

At this point the case has slowly been processed right to the top of the Revenue Service without a final decision as to presecution. If prosecution is still recommended, the file leaves the Treasury Department and is forwarded to the Tax Division of the Department of Justice, where it is assigned to an attorney in the Criminal Section. Before any final decision can be made, the case must be reviewed by the Head of the Criminal Section, the Principal Assistant to the Assistant Attorney General and the Assistant Attorney General in Charge of the Tax Division.

As a result of this rather elaborate procedure the final decision is often postponed for several years after the filing of the return, and the necessary indictment may be returned only a few days before the applicable statute of limitations has run. This is a serious defect in administration, since the majority of evasion cases involve three or more taxable years and many taxpayers who will in fact be eventually indicted will have succeeded in their scheme for evasion. [6])

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[1]) John J. Griffin, op. cit., p. 152.
[2]) Harry Graham Balter, op. cit., p. 62.
[3]) Ibid.
[4]) Meyer Rothwacks, op. cit., p. 804.
[5]) Gerald L. Wallace, op. cit., p. 339.
[6]) Gerald L. Wallace, op. cit., p. 342. An excellent chronological list of the statements of this policy may be found in Harry Graham Balter, *Fraud under Federal Tax Law*, op. cit., pp. 194–197.

c. *Conferences.*

The opportunity of conferring with the governmental representative assigned to the case is offered to the taxpayer or his representative at all stages of the procedure outlined above. Although the taxpayer seldom obtains much information as to the government's evidence, the government representative may be materially assisted in reaching a sound conclusion. Careful consideration is given to any information of a truly defensive character. Evidence favorable to the defense, overlooked by the investigating agents, may be so presented that prosecution is declined and the case reduced to a civil matter. On the other hand, the explanations offered may strain credulity and fail to achieve the desired effect.

But what is expected of the taxpayer or his representatives when they appear at a conference? What defenses, or possible bars to prosecution are available? The first of these defense-contentions is that of voluntary disclosure. The Treasury has a policy not to recommend prosecution where a true voluntary disclosure has been made. This policy has not been codified but may be gleaned from occasional references made to it by responsible Treasury officials. Thus voluntary disclosure has been defined by one such official as that which occurs "when a taxpayer, of his own free will and accord, and before any investigation is initiated, discloses fraud upon the government." [1])

A disclosure may be accomplished by appearing before any official of the Internal Revenue Service and by making a statement regarding the particular fraud involved. Some written record should be made as to what was said and the date of the disclosure. The latter can be quite important, since a disclosure, to qualify as voluntary, must be made before any investigation has been initiated. An investigation has been initiated when a Special Agent, a Revenue Agent, or some other Service officer is assigned a return for examination, or where an investigating officer has requested advice of appropriate officers of the Service with respect to the filing of a return or the payment of taxes. [2])

Making a disclosure in accordance with the above policy, has no binding effect upon the government beyond the integrity and conscience of the Director and his subordinates. "A voluntary disclosure is not an excuse or justification for a crime already committed, and thus, morally, there does not appear to be any reason whatsoever for estopping the Commissioner simply because the taxpayer has no legal claim." [3])

Once a case has been forwarded to the Justice Department, the question of whether a voluntary disclosure is a legal defense may arise. Generally it is not. [4]) The Justice Department has no voluntary disclosure policy, and if the Director concludes that the taxpayer has not made a voluntary disclosure, the Justice Department will usually abide by that decision. [5])

Avoidance of criminal prosecution for fraud by voluntary disclosure does not mean that the corresponding civil penalties will be likewise effected. The Director is not bound to assert such penalties, however. After deciding not to push prosecution of a violator of 145 (a), for example, the Director

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[1]) J. P. Wenchell, Chief Counsel of the Bureau of Internal Revenue, in an address before the annual dinner of the Tax Executives Institute, New York City, May 14, 1947; reprinted in 25 Taxes 485, op. cit., at 487.

[2]) Ibid.

[3]) Sydney A. Gutkin, op. cit., p. 214.

[4]) For discussion see William R. Frazier, "Is a Voluntary Disclosure a Legal Defense to a Criminal Prosecution", 28 Taxes 1071, op. cit.

[5]) Dheron L. Caudle, "How the Department of Justice Operates in Income Tax Fraud Cases", 88 Journal of Accountancy 206 (American Institute of Accountants, New York, 19), at pp. 213–214.

may consider it to be sound administrative policy not to assert the penalty provided in 293 (b). [1])

Once an investigation has been initiated, any chance of a voluntary disclosure is past. The question then becomes one of the extent of government power in the conduct of the investigation and of the extent to which the taxpayer should cooperate. The Director has an imposing array of powers whereby he can ascertain the correctness of the taxpayer's return. For example, he is authorized to examine any books, papers or other records bearing upon the matter required to be included in the return and to require attendance and take testimony of persons having knowledge in the premises. [2])

The powers given to aid in investigation, though broad, are not entirely unrestricted. IRC 3631 states that "no taxpayer shall be subject to unnecessary examinations or investigations and only one inspection of a taxpayer's books of accounts shall be made for each taxable year . . ." Further, the courts will not permit a "fishing expedition" for information; the investigators must have something definite in mind. [3]) And regardless of the sections of the Code requiring a taxpayer to produce his books and records or to testify, the taxpayer may always invoke the Fourth Amendment (unreasonable search and seizure) and the Fifth Amendment (self-incrimination) to protect his rights. [4])

Even the Constitution may be effectively by-passed, however, by the application of Section 3612 which provides that where any person fails to make or file a return, or files a false or fraudulent return, the Director may make up the return himself from his own information and knowledge, thus placing the taxpayer in the position of establishing his correct income should he desire to resist the Director's determination. [5])

To what extent should the taxpayer, looking at the matter from the standpoint of self-interest, cooperate with his investigators? This is a matter to be decided on the facts of the particular case - while cooperation may keep the government from recommending criminal prosecution in one case, it might easily be the cause of such prosecution in another. In the latter situation, however, the recommendation is subject to such critical review on an impersonal basis that the unfavorable impressions of the investigator are all but completely divorced from the case. And it may well be that the particular information offered will supply the essential elements necessary to support criminal prosecution. Thus while cooperation may be of some psychological use in lightening a charge, this cannot be relied upon as a general rule; advice in each case must rest upon particular circumstances.

A third possible defense-approach is the offer to compromise the criminal case together with the civil liability. Such action is authorized by Section 3761 of the Code, whereby the Director, with the approval of the Secretary of the Treasury or a responsible assistant may "compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense." Once the case is passed to the Department of Justice, the power to compromise is lodged in the Attorney General.

The usual course of a fraud case first involves consideration of criminal prosecution. Under current administrative procedure, therefore, a case will be channeled toward compromise only after the matter of prosecution is

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[1]) Gerald L. Wallace, op. cit., p. 243.

[2]) I.R.C. 3614 (a); the power to compel compliance is set forth in I.R.C. 3615 (a).

[3]) Martin v. Chandler Securities Company, et al., 33 F. Supp. 478 (1940), aff'd. 128 F. 2 731 (1942).

[4]) Sydney A. Gutkin, op. cit., p. 220.

[5]) Joseph Colafato, 42 B.T.A. 881; aff'd per curiam 142 F. 2 (1941).

concluded. As a general rule, any attempt to settle civil liability will be futile so long as the case is in the field and prior to decision of the Special Agent regarding prosecution. [1]) Where the evidence of criminal intent is not strong, or where, for some other reason a conviction would be improbable, a satisfactory pecuniary offer may be accepted.

The Treasury Department does not compromise criminal liability. Once the Director recommends prosecution, any offer to compromise is forwarded along with the file to the Department of Justice. In case of a decision not to prosecute, the offer is rejected and the case is returned to the Treasury Department for disposition of the civil liability through the ordinary procedures available for that purpose. If the case is held to be one appropriate for prosecution, no offer would be accepted on the basis of payment of money alone, however satisfactory the amount. [2]) The defendant must couple his offer to pay the tax with an unconditional offer to enter a plea of guilty to a major count of the indictment. In effect, therefore, a compromise of a criminal case must result in a conviction.

A possible defense contention that has become a popular last resort is to urge the bad health of the taxpayer. Whenever the government has a strong case, policy requires that it be prosecuted unless to do so would endanger the taxpayer's life. "The decision by the department to prosecute or not to prosecute rests entirely and squarely upon the merits and evidence in a particular case, except in circumstances where a competent doctor, conducting the examination at the department's request, certifies that prosecution and trial would constitute a clear and present danger to the prospective defendant's life." [3])

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[1]) Herman H. Krekstein, "Civil Settlement of Fraud Cases", New York University Eighth Annual Institute on Federal Taxation (Matthew Bender and Company, Albany, 1950), pp. 270–271.

[2]) Gerald L. Wallace, op. cit., p. 245.

[3]) Turner L. Smith, op. cit., p. 764.

To the readers of the Bulletin.

Those who would like to receive a cover for Volume VII are kindly requested to inform us as soon as possible. Last year several readers were disappointed. At the same time orders can be given for covers for former volumes; should there be sufficient interest, the covers which are no longer in stock will be made.

The price per cover amounts to f 3.— ($ 0.80).

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II

MISCELLANEOUS — FAITS DIVERS

New Laws passed in Egypt aim at attracting foreign investment.

Two new laws have been passed in Egypt to introduce a more favorable investment climate.

The first of these (law Nr. 424 of 1953) exempts foreign technicians and experts who are domiciled in Egypt from payment of the progressive income tax on income received from abroad, as specified in Law Nr. 99 of 1949. The exemption is to apply whether the individuals are employed by the Egyptian Government or by private enterprise.

The second Law (Law Nr. 430 of 1953) exempts joint-stock companies and limited partnerships by shares from certain income taxes previously required by Law Nr. 14 of 1939. Briefly summarized the main points of this new law are the following:

Joint-stock companies (sociétés anonymes) and limited partnerships by shares (sociétés en commandites), formed in the future for the expansion of the national economy, may enjoy the tax exemptions for 7 years from the dates of their formation by departmental order from the Ministry of Finance and Economy upon recommendation to that effect by a committee of the Ministry of Commerce and Industry on which the National Production Council is represented.

Existing joint-stock companies and limited partnerships by shares may enjoy the same exemptions if their capital is increased for purposes which expand the national economy. Their exemptions, however, are limited to a proportion of the taxes due, equal to the percentage of increase in the paid-up capital, and to a period of 5 years, commencing 2 years after the date of increase in the paid-up capital.

The exemptions are specifically confined to the tax on income derived from capital invested in personal property — stocks and shares — which is collected at source (first paragraph of article I and article II of Law Nr, 14 of 1939) and to the tax on commercial and industrial profits (book II, Law Nr. 14 of 1939).

In addition, starting with their next financial year, joint-stock companies and limited partnerships by share engaged in industry, power, mining, hotels, and fallow-land improvement, will be exempted from one-half of the taxes due on their undistributed profits.

To obtain the tax exemptions, application must be made to the committee under regulations to be prescribed by the Ministry of Finance and Economy.

(Source: *Foreign Commerce Weekly:* November 16, 1953, p. 14).

III

JURISPRUDENCE SUR LA TERRITORIALITE D'IMPOT

Dans la Gazette Fiscale, Commerciale et Industrielle (Egypte) numéro de Mai-Juin 1953, *nous avons trouvé une décision de la Cour d'Appel d'Alexandrie qui pourrait intéresser nos lecteurs. C'est pourquoi nous la réproduisons ci-dessous.*

COUR D'APPEL — ALEXANDRIE

6 Novembre 1952

IMPOTS SUR LES BENEFICES COMMERCIAUX. — Territorialité. Compagnies étrangères de navigation. Opérations effectuées en Egypte. Assujettissement à l'impôt.

1. En vertu du principe de la territorialité de l'impôt, celui-ci n'est dû que sur les bénéfices réalisés dans le pays où l'activité a été exercée.

En conséquence, si les opérations effectuées par une société de navigation hors du pays où se trouve son siège social ne sont pas soumises à l'impôt, par contre pour la société étrangère qui réalise des bénéfices dans un pays où elle a exercé une activité commerciale, ces bénéfices sont soumis à l'impôt.

Ce principe de la territorialité de l'impôt est confirmé par le fait que les sociétés étrangères de navigation ne sont exemptées de l'impôt qu'en cas de législation spéciale, suivie, la plupart du temps, par un accord commercial entre les pays dont les navires battent pavillon et les pays intéressés.

2. L'art. 33 de la loi n. 14 de 1939 qui édicte que « l'impôt est dû à raison des bénéfices réalisés dans toute entreprise exploitée en Egypte » est basé sur le principe de la territorialité et assujettit à l'impôt sur les bénéfices commerciaux toute compagnie étrangère de navigation qui accomplit en Egypte, d'une façon constante, des opérations d'embarquement, de débarquement de marchandises et de vente de billets aux voyageurs, sans s'arrêter au principe que la dite compagnie n'a pas de succursale en Egypte mais se trouve uniquement représentée par un agent qui perçoit une commission sur les opérations effectuées.

La Cour,

Attendu que les motifs sur lesquels s'est basée l'appelante dans son acte d'appel du 20 juillet 1951 et dans les conclusions qu'elle a présentées, sont fondés sur le fait qu'elle est une société non assujettie a l'impôt sur les bénéfices commerciaux, étant une société de navigation maritime grecque opérant en Grèce où se trouvent

son siège social, sa direction, ses travaux et son activité; qu'elle réalise des bénéfices par le transport maritime à l'aide de ses navires qui naviguent sous pavillon étranger et qu'elle n'a, en territoire égyptien, qu'un agent, le sieur S.C., lequel exerce la profession d'agent maritime en prenant de l'appelante, comme d'autres personnes, des salaires sous forme de commissions pour les opérations qu'il exécute pour son compte; qu'il n'est donc pas une « succursale » de la société, mais un commerçant indépendant, n'ayant aucune qualité pour contracter au nom de la société sans son autorisation et son approbation;

Que l'appelante ajoute qu'en l'état du principe de la territorialité de l'impôt tel que défini par l'art. 33 de la loi n. 14 de 1939, l'exploitation d'une entreprise exige l'existence d'une entreprise et non pas seulement la réalisation de certaines opérations par un agent ayant une personnalité distincte; que pour appliquer sainement la loi, il doit être fait une différence entre les sociétés étrangères de navigation qui exercent en Egypte par l'intermédiaire d'un agent et celles qui exercent par elles-mêmes, par le moyen de leurs succursales; que la première catégorie n'est tenue à aucune sorte d'impôt sur les bénéfices commerciaux et industriels, car autrement, seraient assujetties aux impôts égyptiens toutes les opérations commerciales — de n'importe quelle nature — effectuées en Egypte par des maisons étrangères, et même la vente des marchandises, quoique cela ne corresponde pas à l'intention du législateur;

Attendu que l'Administration des Impôts persiste, de son côté, à s'en tenir au principe établi par l'art. 33 de l'exigibilité des impôts sur les bénéfices de toute entreprise fonctionnant en Egypte; qu'elle ajoute qu'il n'est pas nécessaire pour cette exigibilité que l'entreprise se trouve effectivement en Egypte et qu'il suffit pour rendre les impôts exigibles qu'elle exerce son activité commerciale d'une façon constante en Egypte; que la société appelante exerce par l'intermédiaire de son agent, le sieur S.C., une activité commerciale constante dans le port d'Alexandrie, activité qui comprend l'embarquement et le débarquement de marchandises, la vente de billets de voyage, la perception du nolis des manifestes d'exportation et d'importation;

Attendu qu'il doit être relevé que les sociétés de navigation

n'exercent pas leur activité dans une région déterminée et ce en raison de la nature même de leur activité commerciale qui consiste dans le transport d'une contrée à une autre, avec escales dans des ports étrangers ou dépendant de leur pays ou dans la ville où se trouve leur siège social; que cette activité ne se limite pas aux opérations locales seulement, mais comprend, également, toutes les opérations effectuées à l'étranger; que dans tous les pays, la législation fiscale considère que l'impôt n'est dû que sur les bénéfices réalisés dans le pays où l'activité a été exercée et ce, par application du principe de la territorialité de l'impôt sur les opérations commerciales ou industrielles; que de ce fait, les opérations effectuées par une société de navigation hors du pays où se trouve son siège social ne sont pas soumises à l'impôt; qu'au contraire, quand la société étrangère réalise des bénéfices dans un pays où elle a exercé une activité commerciale, ces bénéfices sont assujettis à l'impôt (V. arrêt du Conseil d'Etat français du 4 juillet 1924, *Gazette* 1924/2/463 et *Recueil des questions fiscales* 1925, p. 43, n. 1280);

Attendu que cette législation entend ainsi appliquer le principe de la territorialité de l'impôt; que lorsque les circonstances ont imposé d'écarter ce principe pour éviter le cumul d'impôts et pour faciliter les opérations des sociétés de navigation, certains Etats ont promulgué des lois en vertu desquelles les sociétés de navigation son exemptées de l'impôt à condition qu'intervienne un accord de réciprocité; que le Gouvernement français a promulgué à cet effet une loi du 29 avril 1926 à la suite de laquelle un accord commercial a été conclu avec la Belgique le 7 octobre 1929, avec l'Italie le 16 juin 1930, avec l'Angleterre le 1er octobre 1932, avec la Grèce le 18 février 1929 et avec d'autres pays; que tous ces accords ont même objet: soit la réciprocité dans l'exemption des sociétés de navigation étrangères de l'impôt sur les bénéfices résultant des opérations qu'elles effectuent, tels que transport, embarquement et débarquement des marchandises, vente des billets de passage dans les ports des pays contractants;

Attendu que ces accords répétés sont une preuve nouvelle du principe de la territorialité de l'impôt et de ce que les sociétés de navigation étrangères ne sont exemptées de l'impôt qu'en cas d'accord commercial entre le pays dont les navires battent pavillon et les pays intéressés;

Attendu que la législation égyptienne ne diffère pas des législations étrangères en ce qui concerne la territorialité de l'impôt; que l'impôt est donc dû sur les bénéfices de toute entreprise exerçant en Egypte; que les sociétés de navigation n'en sont exemptées que s'il est intervenu un accord commercial entre l'Egypte et les gouvernements desquels dépendent ces sociétés de navigation, ce qui n'est pas le cas pour l'appelante;

Attendu quant à l'application du principe de la territorialité de l'impôt et de l'art. 33 de la loi n. 14 de 1939 que l'impot est dû par toute exploitation exerçant en Egypte et qu'il n'y a pas à faire de différence entre l'entreprise qui possède une succursale lui appartenant et portant son nom et celle qui agit par l'intermédiaire d'un délégué ou d'un mandataire la représentant; que, dans ce dernier cas, deux solutions sont à envisager suivant que le mandataire ou l'agent s'approprie tous les bénéfices ou que l'entreprise représentée se les approprie; que dans les deux cas l'impôt est dû; que la société appelante est mal venue à prétendre que son agent, le sieur S.C., prélève un bénéfice autre que la commission qui lui a été consentie sur le prix des transports et la vente des billets; que le contraire résulte de la lettre du 25 juin 1946 qu'elle a adressée à son agent pour lui confirmer que toutes les opérations d'embarquement, de débarquement et de vente des billets seraient effectuées pour son compte et qu'il n'aurait droit qu'à une commission de 5 % sur les sommes encaissées;

Attendu que si certaines sociétés étrangères confient leurs affaires à un intermédiaire ou à un agent contre une commission qu'elles leur versent, la raison habituelle en est leur désir d'économiser les dépenses qu'elles devraient supporter pour la création d'une succursale propre, pour laquelle elles devraient payer des loyers, les appointements d'un directeur et des employés et d'autres dépenses dont elles sont dispensées par la commission quelles versent à leurs agents; que cette façon d'agir ne change en rien la nature de leur activité et ne modifie pas leur qualité d'entreprises exerçant en Egypte;

Attendu que la société appelante est une société de navigation accomplissant en Egypte d'une façon constante des opérations d'embarquement, de débarquement de marchandises et de vente de billets aux voyageurs contre une rémunération qu'elle perçoit;

que c'est donc une entreprise qui exécute des opérations commerciales assujetties à l'impôt sur les bénéfices commerciaux et industriels; qu'aucun changement n'est apporté à sa nature ou à la nature de ses opérations par le fait qu'une personne désignée par elle exécute en ses lieu et place ces opérations;

Attendu que la société appelante ne s'est pas conformée aux règlements établis par l'Administration des Impôts pour l'évaluation de ses bénéfices et que cette Administration a démontré avoir suivi l'usage adopté dans tous les pays pour l'évaluation des bénéfices;

Attendu que de ce qui précède, il appert que le jugement dont appel doit être confirmé.

Il est à noter que la même Cour d'Appel, dans sa décision du 2 *Janvier* 1951, *a donné un jugement en sens contraire.*
Il nous semble intéressant de réproduire ce texte également:

COUR D'APPEL — ALEXANDRIE

2 Janvier 1951

IMPOTS SUR LES BENEFICES COMMERCIAUX. — 1. Compagnies de navigation étrangères. Représentation en Egypte par des courtiers à la commission. Non assujettissement à l'impot. Territorialité de l'impôt. — 2. Restitution des sommes indûment perçues par le Fisc. Intérêts légaux.

1. Les opérations auxquelles se livrent les compagnies de navigation maritime se répartissent en deux groupes:

1°) Opérations d'exploitation, qui sont les opérations fondamentales auxquelles se livrent les compagnies de par leur destination, parmi lesquelles figurent en premier lieu le transport en haute mer;

2°) Opérations accessoires, qui consistent ordinairement à exécuter les instructions quant au transport, au chargement et au déchargement des marchandises dans les ports étrangers où mouillent les navires des dites compagnies.

Les bénéfices provenant des opérations d'exploitation ne sont pas assujettis à l'impôt égyptien, car ils ont été réalisés à l'étranger et supportent l'impôt du pays dont dépendent les compagnies de navigation.

Quant aux bénéfices provenant des autres opérations, elles sont assujetties à l'impôt égyptien si elles sont effectuées en Egypte

Si ces dernières opérations accessoires sont confiées en Egypte à des courtiers et agents maritimes prêtant leurs services contre paiement d'une commission à la compagnie de navigation étrangère, etc., celle-ci n'est point soumise à l'impôt pour ces opérations effectuées par les dits intermédiaires.

Seuls ces derniers auront à payer l'impôt sur le montant des commissions perçues.

2. Aux termes de l'art. 226 du nouveau Code civil (et qui est l'équivalent des art. 182/124 des anciens codes) lorsque l'objet de l'obligation consiste en une somme d'argent dont le montant est fixé au moment de la demande en justice, le débiteur sera tenu de payer les intérêts légaux depuis la date où ils sont demandés en justice.

En conséquence, les intérêts légaux sont dus par l'Administration Fiscale sur la somme qu'elle est condamnée de restituer au contribuable, calculés depuis le jour de la demande en justice jusqu'au 29 août 1950, date de publication au « Journal Officiel » de la loi n. 146 de 1950 qui a, entre autres, modifié l'art. 101 de la loi n. 14 de 1939 dans le sens que l'Administration des Impôts ne pourra pas être condamnée à des intérêts sur la somme qu'elle sera tenue de restituer au contribuable.

La Cour.

Attendu que l'appelante demande à la Cour d'infirmer le jugement déféré et de dire que les bénéfices de la société intimée, résultant des opérations conclues en Egypte, par l'intermédiaire de la Maison X (Egypt) Ltd. sont assujettis à l'impôt égyptien. A l'appui de son recours, elle fait valoir les arguments suivants:

1° L'appelante[1]) exerce une activité commerciale en Egypte par l'intermédiaire de la Maison X (Egypt) Ltd., qui la représente. Elle doit donc être assujettie à l'impôt égyptien aux termes de l'art. 33 de la loi n. 14 de 1939;

2° La Maison X qui représente la societé intimée, effectue des opérations pour compte et au nom de cette dernière. Elle doit être considérée pour ses opérations comme une succursale de la société Y Ltd. Les bénéfices de la société intimée sont par conséquent assujettis à l'impôt égyptien;

3° La société intimée exerce son activité dans le port d'Alexandrie par l'entreprise d'un représentant permanent, la Maison X qui agit en son nom et pour son compte, en vertu d'un mandat établi en sa faveur pour la livraison et la réception des marchandises chargées et déchargées par ses navires. La Maison X reçoit également des demandes de transport de marchandises et de passagers;

Le fait que la Maison X se charge des opérations de représentation maritime pour compte d'autres sociétés de navigation ne s'oppose pas à sa qualité de représentante commerciale, permanente, de la société intimée, dans le port d'Alexandrie. Au contraire, ce fait confirme cette qualité et prouve que la Maison X n'est pas

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[1]) Il faut sans doute lire „La société intimée" au lieu de „L'appelante" — N. d. l. R.

un simple courtier d'opérations de transports, car le représentant commercial opère pour le compte d'une ou de plusieurs maisons commerciales et n'offre pas ses services, comme le courtier, à n'importe quelle maison:

Attendu que le jugement déféré a retenu que la société intimée n'était pas assujettie à l'impôt égyptien, pour les motifs suivants:

1° Il est constant que la société intimée est représentée en Egypte par la Maison X, courtiers et agents maritimes, qui traite les affaires de fret, pour compte de la société intimée et d'autres compagnies de navigation, contre encaissement d'une commission;

2° Que la Maison X n'est pas une succursale de la société intimée, mais un établissement commercial indépendant. Elle ne peut d'ailleurs conclure un contrat et engager la société intimée sans son consentement;

3° Que dans ces conditions, l'on ne saurait admettre que la société intimée exploite en Egypte une entreprise, ce qui présuppose l'existence d'un établissement, et non seulement la réalisation d'affaires commerciales par l'intermédiaire d'agents indépendants. S'il en était autrement, les bénéfices de toutes sortes de transactions commerciales effectuées en Egypte par des maisons étrangères, y compris la vente de marchandises, seraient assujettis à l'impôt égyptien, ce qui n'a certainement pas été l'intention du législateur;

4° Que dans l'affaire de la Khédivial Mail Line contre le Fisc, l'Administration a précisément soutenu la thèse qu'elle combat dans la présente instance;

Attendu que le législateur a adopté dans l'art. 33 de la loi n. 14 de 1939 le principe de la territorialité de l'impôt. Cet article dispose que «l'impôt est dû à raison des bénéfices réalisés dans toute entreprise exploitée en Egypte ». Il importe avant tout de rechercher si cet article s'applique à la société intimée qui, sans aucun doute, est une société de navigation anglaise, opérant en Angleterre où se trouve son siège social, le centre de ses activités et où elle réalise ses bénéfices provenant du transport maritime au moyen de ses navires battant pavillon britannique;

Attendu que cet article pose comme condition l'existence d'une entreprise exploitée en Egypte. Il faut donc rechercher, en premier lieu, si la société intimée exploite en Egypte une entreprise;

Attendu que le Fisc soutient que la Maison X, courtiers et agents

maritimes exerçant en Egypte, est une succursale en Egypte de la société intimée, en sa qualité de représentante permanente, qui agit en son nom et pour son compte, en vertu d'un mandat établi en sa faveur, pour la livraison et la réception des marchandises chargées et déchargées par ses navires et qui reçoit également les demandes de transport de marchandises et de passagers. Il importe, par conséquent, de déterminer tant l'activité exercée en Egypte par la société intimée, par l'intermédiaire de la Maison X, que les rapports existant entre ces deux sociétés;

Attendu qu'en ce qui concerne l'activité exercée en Egypte par la société intimée, par l'intermédiaire de la Maison X, il importe de distinguer entre les opérations d'exploitation — qui sont des opérations fondamentales auxquelles se livrent les compagnies de navigation maritime de par leur fonction parmi lesquelles figure en premier lieu le transport en haute mer — et les autres opérations qui consistent ordinairement à exécuter les instructions quant au transport, au chargement et au déchargement des marchandises dans les ports étrangers où mouillent les navires des dites compagnies. Ces dernières opérations sont généralement effectuées par les courtiers et agents maritimes. Par application du principe de la territorialité de l'impôt, les bénéfices provenant des opérations d'exploitation, y compris le transport maritime, ne sont pas assujettis à l'impôt local, car ils ont été réalisés à l'étranger et supportent l'impôt édicté par le pays dont dépendent les sociétés de navigation et dont les navires portent le pavillon. Quant aux bénéfics provenant des opérations de chargement et de déchargement, des instructions de transport, de la vente des billets de passage, du recouvrement du fret, ils sont assujettis à l'impôt du lieu où ses opérations ont été conclues, dans les limites de cette activité seulement qui se traduit dans le bénéfice réalisé par les courtiers et agents maritimes au moyen de la commission qu'ils perçoivent pour leur rôle d'intermédiaire entre les sociétés de navigation et leurs clients sans que cet impôt puisse frapper les bénéfices résultant de l'opération de transport en elle-même qui s'exécute à l'étranger. Si donc les sociétés de navigation possèdent des bureaux gérés par des employés nommés par elles, et se trouvant dans des locaux loués en son nom, ces bureaux sont considérés comme des établissements indépendants assujettis à l'impôt du lieu. Les

tribunaux égyptiens ont admis ce principe, et l'Administration appelante elle-même déclare que les opérations effectuées par la société intimée en Egypte par l'intermédiaire de la Maison X, se limitent à la livraison et à la réception des marchandises chargées et déchargées sur ses navires, à la réception des demandes de transport de marchandises et de passagers. Dans sa lettre du 3 décembre 1948, adressée a l'appelante, la Maison X déclare que ses bénéfices, provenant des services rendus à la société intimée, sont assujettis à l'impôt égyptien, sans que cette déclaration soit contestée par l'appelante;

Attendu qu'au sujet de la détermination des rapports existant entre la société intimée et la Maison X, il importe de se référer à la lettre du 19 mars 1936 adressée par le directeur de la société intimée à la dite Maison. Cette lettre détermine les rapports existant entre les deux sociétés et donne les détails des opérations dont la Maison X a été chargée d'effectuer pour compte de la société intimée. Comme le déclare l'appelante, ces opérations consistent dans la représentation de la société intimée, contre commission et honoraires à des taux fixés par la société intimée. Son rôle consiste à livrer et à recevoir les marchandises chargées et déchargées sur les navires de la société intimée, à recevoir les demandes de transport de marchandises et de passagers, conformément aux instructions de la société intimée. Toutes ces opérations sont généralement celles effectuées par les courtiers et les agents maritimes pour compte des sociétés de navigation. On ne peut soutenir que le fait par eux de se liver à ces opérations leur donne la qualité d'entreprises dépendantes des sociétés de navigation, ou la qualité de représentants spéciaux et permanents ou encore d'agents délégués. Leur rôle est bien délimité et ils ne peuvent dépasser ou modifier les limites assignées à leur activité. Ce qui précède est d'ailleurs confirmé par la teneur du dernier paragraphe de la susdite lettre, paragraphe que l'Administration appelante a omis de reproduire dans ses conclusions. Il y est dit: « Pour tout ce qui ne rentre pas ordinairement dans la compétence de l'agent maritime — comme la modification du fret, de l'itinéraire des navires, la fixation des prix de transport pour des voyages non prévus, la conclusion de conventions ou de contrats au nom de la société intimée ou d'opérations similaires — la Maison X ne

pourra s'y engager sans le consentement préalable de la société intimée ». On ne peut, dans ces conditions, soutenir que la Maison X est un établissement dépendant de la société intimée, la représentant d'une façon permanente et agissant en son nom et pour son compte en vertu d'un mandat. En réalité, c'est un établissement tout-à-fait indépendant de la société intimée, qui exerce la profession de courtier de transport et d'agent maritime en Egypte. Il agit pour son compte personnel et rend des services à l'intimée et à d'autres sociétés de navigation, comme cela résulte des documents produits. Il règle l'impôt égyptien sur ses bénéfices provenant de la commission qu'il perçoit de l'intimée et des autres sociétés de navigation, selon des taux convenus, et ce après déduction de toutes ses charges comme loyers, salaires, frais généraux, etc. Au sujet des formulaires imprimés au nom de la société intimée et se trouvant entre les mains de la Maison X, il échet de relever que ces formulaires ne sauraient modifier la nature des rapports existant entre la société intimée et la dite Maison. Ces formulaires contiennent les conditions du transport qui ne peuvent être ni modifiées ni remplacées par la Maison X. La société intimée a d'ailleurs communiqué des formulaires imprimés, similaires, au nom d'autres sociétés de navigation, utilisés par la Maison X, également courtiers et agents maritimes de ces sociétés;

Attendu qu'il est utile de rappeler que l'appelante a soutenu cette thèse par devant le tribunal de première instance dans l'affaire Khedivial Mail Line pour prouver que cette société est assujettie à l'impôt égyptien sur les bénéfices provenant de ses activités à l'étranger, par l'entremise des agents et courtiers maritimes, dans des circonstances identiques à celles du cas de l'espèce. Le tribunal de première instance a adopté cette thèse du Fisc. La Cour d'appel mixte ,dans son arrêt rendu le 20 juin 1949, a confirmé ce jugement;

Attendu que de ce qui précède, il résulte que c'est à bon droit que le jugement déféré a retenu que la société intimée n'est pas assujettie à l'impôt égyptien sur ses bénéfices provenant de ses opérations de transport, et ce pour les motifs exposés dans ce jugement, que la Cour adopte en plus de ses propres motifs. C'est pourquoi il n'est pas nécessaire d'examiner les conclusions subsidiaires prises par la société intimée au sujet de la nullité de la procédure d'imposition engagée par l'Administration appelante;

. Attendu que l'appelante fait grief au jugement de l'avoir condamnée à des intérêts. La Cour constate que ce grief est mal fondé. En effet l'art. 226 du Code civil, promulgué le 16 juillet 1948, soit avant l'introduction de cette instance, et qui est l'équivalent des art. 182 du Code civil mixte et 124 du Code civil national, édicte que les intérêts sont dus, au taux légal, dans tous les cas où l'objet de l'obligation consiste en une somme d'argent. Ces intérêts courent depuis la date où ils sont demandés en justice, à moins de disposition légale contraire. Ce principe n'a reçu une exception que par la loi n. 146 de 1950 qui a modifié l'art. 101 de la loi n. 14 de 1939 et qui est entrée en vigueur le jour de la publication de la loi au « Journal Officiel », soit le 29 août 1950. Le second alinéa du nouvel art. 101 stipule: « L'Administration des Impôts ne pourra pas être condamnée à des intérêts sur les sommes qu'elle sera tenue de restituer au contribuable ». Il échet, par conséquent, de préciser que les intérêts, objet de la condamnation, dont au jugement déféré, courront depuis la date de la demande en justice jusqu'au 28 août 1950.

Par ces motifs: Confirme.

(source: La Gazette Fiscale, Mars-Avril 1951)

Tandis que les deux arrêts susmentionnés concernent des sociétés de navigation, la Cour d'Appel d'Alexandrie a donné un autre jugement, cette fois concernant une opération isolée et faite par une société étrangère.

Afin de faciliter une comparaison avec d'autres interprétations de la notion « territorialité d'impôt », nous publions également deux arrêts du Conseil d'Etat français. Bien qu'ils datent de 1942 et 1945, ils présentent un intérêt actuel.

COUR D'APPEL — ALEXANDRIE

2 Janvier 1951

IMPOTS SUR LES BENEFICES COMMERCIAUX. — Territorialité de l'impôt. Entreprise étrangère. Abscence d'activités en Epypte. Opération isolée. Non assujettissement à l'impôt.

L'art. 33 de la loi n. 14 de 1939 d'après lequel « l'impôt est dû à raison des bénéfices réalisés dans toute entreprise exploitée en Egypte » exige

une double condition pour rendre l'impôt sur les bénéfices commerciaux et industriels exigible:

1°) qu'il existe une entreprise;

2°) que cette entreprise soit exploitée en Egypte.

En conséquence, une société qui a son siège et qui exerce ses activités à l'étranger, ne peut être assujettie à l'impôt égyptien sur les bénéfices commerciaux à l'occasion d'une opération isolée effectuée en Egypte.

La Cour,

Attendu que l'Administration Fiscale a interjeté appel du jugement rendu par le Tribunal mixte d'Alexandrie, le 25 mai 1949, en demandant que la somme de L.E. 5475. représentant les bénéfices réalisés en Egypte par la société intimée, soit assujettie à l'impôt sur les bénéfices commerciaux et industriels et à l'impôt ser les bénéfices exceptionnels conformément à l'art. 1er de la loi n. 60 de 1941. Elle soutient que c'est à tort que le jugement dont appel a retenu que la société intimée ne possède pas en Egypte un établissement pour qu'elle puisse être assujettie à l'impôt en conformité de l'art. 33 de la loi n. 14 de 1939. Cependant, soutient l'Administration Fiscale, par « entreprise exploitée en Egypte », il faut entendre, non point l'établissement en lui-même en tant que constitution ou agencement, qui n'est qu'un simple signe extérieur de l'activité, mais plutôt les bénéfices réalisés par cette entreprise dans le pays qui a établi l'impôt. Le Fisc relève que ce principe a été définitivement admis par la jurisprudence française lors de l'interprétation de l'art. 2 du Code général des impôts directs — et qui est l'équivalent de l'art. 33 de la loi n. 14 de 1939. L'opération ayant été conclue en territoire égyptien sur des marchandises s'y trouvant, les bénéfices résultant de cette opération doivent être assujettis à l'impôt sur les bénéfices commerciaux et industriels et à l'impôt sur les bénéfices exceptionnels;

Attendu qu'il résulte des éléments de la cause que la société intimée qui est une société anonyme, ayant son siège en Belgique, avait conclu avec la Compagnie Commerciale Cotonnière, société anonyme égyptienne ayant siège à Alexandrie, deux contrats pour l'achat de 250 balles de coton Zagora, dont 100 balles seulement lui furent expédiées . . . A la suite d'une forte hausse dans le prix du coton égyptien, la société intimée a revendu le reste, soit 150 balles, à la société venderesse réalisant ainsi un bénéfice de L.E. 5475. Le Contrôle des Changes égyptien, à la demande de l'Admi-

nistration des Impôts, ne voulait autoriser le transfert en Belgique de ce montant qu'a la condition de régler au préalable l'impôt sur les bénéfices commerciaux et l'impôt sur les bénéfices exceptionnels . . .

. . . La Société intimée, ayant refusé de faire assujettir ce montant à l'impôt, a introduit une action devant le tribunal mixte d'Alexandrie . . . en soutenant qu'elle est une société industrielle, établie en Belgique, assujettie, pour les bénéfices et les pertes résultant de cette opération, à l'impôt belge. Bien plus, elle soutient qu'elle ne possède pas en Egypte un établissement permettant de la considérer comme assujettie à l'impôt égyptien en conformité de l'art. 33 de la loi n. 14 de 1939 . . .;

Attendu que le jugement dont appel a fait dépendre la solution du litige de la question de savoir si la société intimée exploite une entreprise en Egypte, aux termes de l'art. 33 de la loi n. 14 de 1939. Il est constant, dit ce jugement, que le siège social de la société est en Belgique et qu'elle ne possède en Egypte ni bureau, ni succursale ni représentation d'aucune sorte. Elle ne saurait donc être considérée comme exploitant une entreprise en Egypte, car la notion d'exploitation en Egypte implique nécessairement l'existence dans ce pays d'un établissement représentatif quelconque. En faisant abstraction de cette condition, on arriverait au résultat que toute activité commerciale exercée en Egypte serait assujettie à l'impôt, ce qui serait contraire au principe de la territorialité de l'impôt, qui est à la base de la loi. D'autre part, si telle avait été l'intention du législateur, il se serait exprimé différemment et aurait stipulé que l'impôt est dû en raison des bénéfices réalisés sur toute opération commerciale et industrielle traitée en Egypte;

Attendu que le Fisc soutient que l'impôt sur les bénéfices est dû dans le lieu où le revenu est réalisé. Les bénéfices de la société intimée ayant été réalisés en Egypte, à la suite d'une opération conclue dans ce pays, le fait que la société est belge et qu'elle n'a pas une succursale ou une agence en Egypte, n'empêche pas qu'elle soit assujettie à l'impôt égyptien sur les bénéfices commerciaux. Cet impôt est basé sur le principe de la territorialité. Il est dû au lieu de la réalisation du revenu. Ce principe a été, du reste, admis par l'art. 33 de la loi n. 14 de 1939. A l'appui de sa thèse, le Fisc invoque des arrêts rendus par le Conseil d'Etat français;

Attendu que cette thèse est, en réalité, contraire aux dispositions de l'art. 33 de la loi n. 14 de 1939. Cet article stipule formellement que l'impôt est dû à raison des bénéfices réalisés par toute entreprise exploitée en Egypte. En conséquence, si on ne se trouve pas en présence d'un établissement, d'une succursale ou d'une représentation ayant son siège en Egypte, l'impôt ne saurait être dû. Cet article est si formel qu'il ne peut prêter à aucune équivoque. Soutenir qu'il n'est pas nécessaire que l'établissement existe en fait, est en contradiction avec le texte de l'article susdit. Qu'il résulte de la jurisprudence même du Conseil d'Etat français, invoquée par le Fisc, que l'imposition des bénéfices des entreprises étrangères exerçant une activité en France, est conditionnée par une activité commerciale constante. Ce qui n'est pas le cas de l'espèce. La société intimée a, en effet, accompli une opération occasionnelle et isolée et aucune preuve n'a été rapportée qu'elle se livre d'une façon suivie à des opérations similaires en Egypte, pour qu'on puisse considérer que son activité, comme le veut l'Administration appelante, tienne lieu et place de l'existence d'un établissement en Egypte;

Par ces motifs: confirme.

(Source: La Gazette Fiscale, Mars-Avril 1951).

CONSEIL D'ETAT — FRANCE
15 Juin 1942

Bénéfices commerciaux – Territorialité – Compagnie d'assurances étrangère effectuant habituellement en France des opérations de réassurances – Imposition en France.

L'assujettissement à l'impôt sur les bénéfices industriels et commerciaux dépendant non de l'existence d'un établissement en France, mais uniquement de l'exercice habituel dans notre pays d'une activité commerciale, une compagnie d'assurances étrangère y est passible dudit impôt dès l'instant qu'elle s'y livre habituellement à des opérations de réassurances, alors surtout qu'elle a un représentant accrédité auprès du Ministère du Travail.

Recours du ministre secrétaire d'Etat à l'Economie nationale et aux Finances, ledit recours enregistré au Secrétariat de la Section du contentieux du Conseil d'Etat, le 30 Octobre 1941, et tendant à ce qu'il plaise au Conseil annuler un arrêté, en date du 18 avril 1941, par lequel le conseil de préfecture du département de A . . . a accordé à la „Compagnie X . . .” la décharge de l'impôt sur les bénéfices industriels et commerciaux qui lui a été assigné dans les rôles de la ville de A . . . au titre des années 1936 et 1937;

Considérant qu'aux termes de l'article 2 du Code général des impôts directs, l'impôt sur les bénéfices industriels et commerciaux est dû à raison des bénéfices réalisés dans les entreprises exploitées en France; qu'ainsi l'imposition ne dépend pas de l'existence d'un établissement mais de l'exercice habituel en France d'une activité commerciale;

Considérant qu'il résulte de l'instruction que la « Compagnie X . . . » s'est livrée habituellement en France, au cours des années envisagées, à des opérations de réassurances; que, dans ces conditions, ladite société, qui avait, d'ailleurs, un représentant accrédité auprès du ministre du Travail, a exploité en France une entreprise en raison de laquelle elle a été à bon droit assujettie à l'impôt sur les bénéfices industriels et commerciaux; que c'est, par suite, à tort que le conseil de préfecture lui a accordé décharge dudit impôt.

(Source: Revue des Impôts sur le Commerce et l'Industrie, 1943, no. 5980).

CONSEIL D'ETAT — FRANCE

30 Juillet 1945

Bénéfices commerciaux – Territorialité – Opérations effectuées en France par une entreprise ayant son siège à l'étranger.

Un commissionnaire en marchandises qui procède en France à la prospection et à la visite de sa clientèle, y est passible de l'impôt sur les bénéfices industriels et commerciaux, alors même qu'il réside à l'étranger et ne dispose dans notre pays d'aucune installation professionnelle.

Requête du sieur . . . tendant à ce qu'il plaise au Conseil annuler un arrêté, en date du 14 février 1941, par lequel le Conseil de préfecture de . . . a notamment rejeté sa demande en décharge de l'impôt sur les bénéfices industriels et commerciaux auquel il a été assujetti au titre des années 1930, 1931 et 1932, sur les rôles de la ville . . .;

Vu la loi du 15 juillet 1880 sur la contribution des patentes;

Vu la loi du 16 avril 1920, article 66;

Considérant que si, d'aprés la loi du 22 juillet 1859, les réclamations en matière de contributions directes doivent être jugées en séance publique, l'article 142 du code général des impôts directs apporte une exception à cette régle en ce qui concerne les impôts et taxes visés aux titres I à IV et VI dudit code et que les réclamations qui les concernent doivent être jugées en séance non publique, qu'il en résulte que les réclamations relatives à un de ces impôts et taxes ne sauraient être jointes à une réclamation relative à une autre contribution directe et être jugées par un seul arrêté du conseil de préfecture;

Considérant que par l'arrêté attaqué le Conseil de préfecture de Nice a statué non seulement sur les réclamations du sieur . . . relative à l'impôt sur les bénéfices industriels et commerciaux mais aussi sur une demande de ce contribuable concernant la contribution des patentes; que, ce faisant, il a méconnu la portée des dispositions des lois précitées; qu'il y a lieu, dès lors, pour le Conseil d'Etat, statuant sur les conclusions du sieur . . . relatives à l'impôt sur les bénéfices industriels et commerciaux de prononcer l'annulation en la forme dudit arrêté en tant qu'il concerné cet impôt;

Considérant que l'affaire est en état, qu'il y a lieu d'évoquer et de statuer au fond;

Considérant qu'il résulte de l'instruction que le sieur . . . qui exerçait la profession de représentant de commerce de vins et liqueurs pour le compte de différentes maisons françaises et étrangères, ne s'est pas borné, en ce qui concerne la vente du gin et du whisky que lui envoyait la société . . . à agir en qualité de représentant, qu'il a procédé à cette vente en qualité de commissionnaire et, pendant une certaine période, pour son propre compte; que sa rémunération n'était pas connue à l'avance de la maison, mais provenait de la différence entre les prix qu'il fixait librement à

ses propres clients, déduction faite des frais qui lui ont un moment incombé (transport de Londres à . . ., frais d'assurance, de douane, de magasinage, etc . . .) et ceux qui ladite maison entendait obtenir de ses marchandises; qu'ainsi le sieur . . . n'est pas fondé à soutenir ne pas avoir exercé la profession commerciale de commissionnaire;

Considérant que, d'autre part, les marchandises vendues par le sieur . . . étaient entreposées et livrées en France, que si en raison de la proximité où Monaco se trouve de la frontière française il était domicilié dans cette ville, tenait dans la principauté sa correspondance et sa comptabilité, c'est en France qu'il procédait à la prospection et à la visite de sa clientèle que, dès lors, il doit être regardé comme ayant exploité en France son entreprise commerciale; qu'aux termes de l'article 2 du décret de codification du 15 octobre 1928 l'impôt sur les bénéfices industriels et commerciaux est dû à raison des bénéfices réalisés dans les entreprises exploitées en France; que le requérant n'est, par suite, pas fondé à obtenir décharge des cotisations contestées à l'impôt sur les bénéfices industriels et commerciaux.

DECIDE:

Article premier.

L'arrêté susvisé du conseil de préfecture interdépartemental de . . . en date du 14 février 1941 est annulé en ce qui concerne l'impôt sur les bénéfices industriels et commerciaux.

Article 2.

Les conclusions de la requête et les réclamations du sieur . . . relatives à l'impôt sur les bénéfices industriels et commerciaux sont rejetées.

Arrêté annulé; requête rejetée.

(Source: Revue des Impôts sur le Commerce et l'Industrie, 1947, no. 6420).

IV

REVIEWS — COMPTES RENDUS

GABRIEL DE USERA: *Legislación de hacienda Española y declarada de utilidad general por Orden ministerial de 10 de Marzo* 1946. — Biblioteca de Ciencias economicas, politicas y sociales de Aguilar, S.A. de Ediciones Madrid 1950.

Le fameux professeur à la Faculté des sciences politiques et économiques à Madrid s'est donné le plaisir de publier en quelques années quatre éditions de son oeuvre sur la législation financière espagnole. Ce fait et la circonstance que cette oeuvre capitale a été déclarée d'importance générale par arrêté ministériel, expliquent l'importance de cet ouvrage de 464 pages. L'oeuvre est divisée en 37 chapitres. Dans les deux premiers l'auteur traite la conception des finances, les dépenses publiques, les revenus et le système fiscal en vigueur en Espagne. Les chapitres 3-5 traitent successivement le budget, l'organisation administrative et les fonctionnaires. Le Ministère des Finances comprend les organes suivants: le ministre; le soussecrétariat; 13 directions générales. En outre il y a encore un certain nombre d'autres services centraux, comme entre autres la Cour des Comptes. Un résumé détaillé est donné sur l'organisation et la position juridique de ces services. Dans les chapitres 6 et 7 les revenus ordinaires et extraordinaires de droit privé sont traités. Après, dans les chapitres 8-29, l'auteur traite en détail la législation fiscale: les ,,impuestos de producto'' (contribución territorial rústica, urbana, contribución industrial, de comercio y profesiones, contribución sobre las utilidades de la riqueza mobiliaria). Comme on le comprendra une description y a été donnée des taxes cédulaires qui touchent les revenus provenant de différentes sources. Dans le quinzième chapitre on a attiré spécialement l'attention sur les sociétés espagnoles ayant des intérêts étrangers, et sur les sociétés étrangères travaillant en Espagne.

Outre les impôts cédulaires il existe une contribution générale sur le revenu, une taxe personnelle qui est perçue en plus des autres. On connait ce système aussi en Belgique, en Italie et en France.

Les droits d'enregistrement, avec les droits de succession et de timbre, ont été traités dans quatre chapitres. Parmi les autres impositions nous ne mentionnons ici que la taxe sur le chiffre d'affaires, importante en Espagne, perçue sous la forme d'une taxe de consommation: la contribución de usos y consumos. Dans les derniers chapitres l'auteur passe en revue des sujets généraux, dont nous mentionnons le contentieux et le droit fiscal pénal. L'auteur a eu l'excellente idée d'énumérer dans chaque chapitre la législation qui se rapporte au sujet traité. Là où il est nécessaire il donne une brève considération théorique et un résumé historique avant de procéder au traitement du droit positif.

Ce livre a été écrit pour les compatriotes de l'auteur. Par la manière de traiter les sujets, manière qui est succincte et bien ordonnée, ce livre sera important pour des non-espagnols aussi, aussi bien du point de vue pratique que scientifique. Après la lecture de ce livre, on aura une bonne idée du droit fiscal espagnol qui à plusieurs points de vue diffère assez de celui de beaucoup d'autres pays.

MAURICE LAURÉ: *La taxe sur la valeur ajoutée*, avec une préface du Prof. Henry Laufenburger — Librairie du Recueil Sirey S.A., 22 Rue Soufflot, *Paris Ve*, 1952, 130 pp.

The value-added tax is attracting at present much notice again. The insufficiency of the sales-tax systems in various countries brought the idea of Siemens "veredelte Umsatzsteurer" to the fore-front, particularly in France, where the government has been drawing out plans for some time to change the "taxe sur les transactions" (from 1939) into a "taxe unique sur la valeur ajoutée". In Cameroun a similar tax was brought into operation. With regard to the advantages which the value-added tax could have in a federal organized European Unity, it is no doubt important, that this system will be profoundly examined. In contrast to what the title would suggest this book does not give a general critique of the "taxe sur la valeur ajoutée", but it is limited to indicating the necessity to bring into force a similar sales tax in France, a consequence of the adverse economic influences, arising from the "taxes à la production" (rate: 15.35 %). After a general part (Préambules à l'étude critique) follows as 2nd chapter an "étude critique" of the "Taxe à la production" in France. This tax however, has in spite of the many objections, two advantages which must be maintained, viz.

1) — its character of a tax ad valorem
2) — its feature that it falls in principle on all goods and in principle on every good only once.

In the 3rd part, "étude constructive", is set forth that the "taxe sur la valeur ajoutée" too, has these advantages and moreover meets the many objections of the "taxe à la production". The book concludes with a survey of the present position of the sales tax in a number of countries.

This study, which passes in review the Swiss, Belgian, German, Italian, English, American and Russian system, will be usuful for those who have been present at the I.F.A.-congress which was held in Paris, September 1953. See also the resolution reproduced on p. 305 of the *Bulletin*, Vol. VII, No. 5.

W. SCHÄDEL: *Mineralölsteuer und Mineralölzoll*, Kommentar zum Mineralölsteuergesetze und zu den einschlägigen Vorschriften des Zolltarifs mit sämtlichen Durchführungsbestimmungen. 176 pp. — Verlag Franz Vahlen GmbH Berlin — Frankfort a.M. 1953.

A new book in the series with the well-known green covers of Franz Vahlen. A detailed commentary on the "Neufassung" of the Mineralölsteuer brought about by the law of 21 May 1953.

The book will supply a real want. Some thoughts of the authors are left for discussion.

Dr. OTTO MODEL: *Grundgesetz der Bundesrepublik Deutschland*. 2. Auflage — Verlag Gerhard Pannen K.G. Mons / Ndrrh. 1952, 176 pp.

This book offers more than the title suggests. It is divided into three parts:

1. Überblick über die staatliche Entwicklung seit 8. Mai 1945.
2. Kurzkommentar zum Grundgesetz.
3. Überstaatliche Einrichtungen (UNO, Marshallplan, Schumanplan, European Defence community, Deutschland-Vertrag).

The book is a valuable guide in the German constitutional law.

1. WOLFS: *Leitfaden für die Gewinnermittlung und die Gewinn- und Gewerbesteuer-Erklärung.*
2. WOLFS: *Leitfaden für die Umsatzsteuer, die Umsatzsteuer-Voranmeldung und die Jahres-Umsatzsteuererklärung.*

3. WOLFS: *Leitfaden für die Einkommensteuererklärung für* 1952.— Verlagsanstalt Leonard Wolf, Regensburg, 1953.

These three brochures have been written for practical use. It is a guide when handling the fiscal laws, which is not only of interest for the specialist, but which also is very useful for the ordinary taxpayer.

Briefly and clearly the difficulties are solved without the theoretical problems being taken up. These brochures are also of much interest for him, who wants to get a clear perception of the application of the fiscal laws within a small scope.

Die Steuertarife sämtlicher Steuergesetze: Western Germany: 11. Auflage, (looseleaf) Eastern Germany: 11. Auflage, (looseleaf) - Verlag der Steuertarife P. Wachsmann K.G. in Gladbach & Verlag der Steuertarife GmbH/ Wachsmann, Potsdam.

These two booklets give a survey of all rates of taxation in force, resp. in the Western and Eastern sector of Germany. They are extremely handy and as they are loose-leaf, they can always be brought up to date, which is an essential necessity, especially with rates of taxation.

The publisher issues supplementary leaves on the occasion of *each* important alteration.

Finanzen und Steuern von Bund, Kantonen und Gemeinden (*Finances et Impôts de la confédération, des cantons et des communes*). Bern 1953. Beiträge zur Schweizerischen Statistik, Heft 26, — herausgegeben vom Eidgenössischen Statistischen Amt, 170 pp.

The above work is the annual survey regarding the fiscal position of the Swiss authorities, giving the yields of taxation, the spending of the taxpayers' money, etc.

The survey is written in the German and French language.

KOCH WIRCKAU, SÖLCH, RINGLEB: *Umsatzsteuergesetz*. Beck'sche Kurz Kommentare, Band 19, Fünfte Auflage. — C.H. Beck'sche Verlagsbuchhandlung, München und Berlin, 1952, 772 pp.

This book, which owing to the decease of the original authors KOCH and WIRCKAU has been re-edited by SÖLCH (Senatpräsident beim Bundesfinanzhof) and Dr. RINGLEB (Oberregierungsrat bei der Oberfinanzdirektion München), comprises, besides the explanations of the purchase tax-Act and the provisions laid down for its execution, an excellent survey of the jurisdiction. This book is of interest both for practical and scientific purposes and answers many questions, which can arise when applying the complicated purchase tax-Act. The matter has been treated succinctly.

Long explanations about any certain point are missing. It is obviously the intention of the authors to cover the whole field as far as possible. They have succeeded without the work becoming unclear. A word of praise is entirely in its place here.

In the taxation law, especially nowadays, problems often come up for discussion, which are of great actuality. The war caused all sorts of consequences in the economic domain, which have confronted the different states with great problems. The searching for a solution often means a handling of taxation measures which make their repercussions felt in the fiscal legislation. Here below we draw attention to some little books in which a number of actual problems are treated:

HANS STRATHUS: *Der Kapitalmarkt in Westdeutschland und die Probleme seines Wiederaufbaus* — Institut "Finanzen und Steuern", Heft 16, Bonn 1952.

In this book of 150 pages a problem is touched on that is known in many countries: that of the reconstruction of the capital market and particularly the stock-capital market. First of all a view is given of the development of this capital market from the beginning of the 2nd World War till now. The author follows besides the historical-empirical method. Very interesting is the comparison which the author makes between the years 1948-1951 on the one hand and the years 1924-1928 and 1933-1938 on the other hand. A comparison between the stock-capital market and other forms of creation of capital gives interesting results. It is no easy matter to enter briefly into the conclusions of the author. However it should be mentioned that he elucidates his summary with many tables and figures, and that in his comparisons he only takes nominal sums into account, but reckoned with the relapse of the purchasing value of the money.

In a second chapter the author reviews what reasons (psychological and economic) exist for the deficiency of the stock-capital market. In the 3rd and 4th chapters the author gives a survey respectively about the arrangements already made to further the reconstruction of the capital-market and the arrangements which are in his opinion still necessary. It is comprehensible that in this connection tax-arrangements are also mentioned. After pointing to the fact that in the twenties the idea of the heavy taxing of the spent income relative to the savings existed on a wide scale in Germany, the author gives on page 59 and further a survey of that which after the currency reform of 1948 has been achieved in this domain: the possibility of rebating from the taxable income — to determined maxima — sums used for saving-purposes. This not only concerns premiums for life-insurance, old age and buildingfunds etc., but also for deposits at saving-banks, the first obtainment of mortgage bonds etc., as well as sums applied for self-financing.

All this has been regulated in the articles 10 and 10A of the Income Tax Act. On page 119 and further the author reviews what other arrangements should be made and how consequently the tax policy would have to proceed in this direction. This study by Mr. Strathus will very certainly be read with interest in many other countries because all sorts of problems are thoroughly reviewed and solutions are provided which are very worthy of consideration even though the circumstances elsewhere may demand other solutions.

In an annex a further 19 tables are given which i.a. have relation to issue-statics, average-price etc.

Founded on studies from this author the Institute "Finanzen und Steuern" has issued another 2 brochures the first of which forms an earlier issued complement upon the just reviewed brochure.

Die Entwickelung der Investionen in der Bundesrepublik, Heft 14, — Bonn, October '51.

This study has been issued to provide for a requirement to give a thorough analysis of the development of the investments in Germany. In this connexion international comparisons are given which are very instructive. In 10 little chapters are discussed level and constitution of the bruto-investments; an examination of the height of the stock investments (the different branches of production: industry, trade etc. are mentioned separately); the height of the normal writing downs (with a comparison between Germany,

Great Britain, France, Holland, Denmark, Norway, Italy and U.S.A. per capita of the population); an international comparison of the bruto-investments etc.

Verteidigungsbeitrag und Steuerbelastung? Heft 13, — Bonn, July 1951.

In this brochure of 24 pages a survey is given of the effects of the contribution of the defence for the community which will have to be subnitted to a higher tax burden. After a survey of the development of the occupation-costs and the covering of it, a conclusion is arrived at that a tax increasing at this moment is not possible in Germany. In the 4th paragraph of this pamphlet a comparative survey is given of the fiscal and social burden in the great European countries, of which the data have been derived from the budget 1951 resp. 1951/52. After that the apportionment of the burdens of defence among the population. This brochure which we are pleased to draw to the attention of our readers concludes with a recapitulation.

A completely different character has a study about an actual subject from the hands of the Spanish professor F. SAINZ DE BUJANDA: *Repercusiones fiscales de la depreciación monetaria.* 1950.

It concerns a review of the 4th tax congress. This survey, issued as an article in the "Revista de Derecho Mercantil", no 29 September/October 1950, treats the following subjects: The economic and juridical elements in the financial phenomena; the monetary varieties, the devaluation and the depreciation of money; the effect of it for the business-profits-tax; "la reducción de los tipos de gravamen"; the revaluation of assets and writing downs, after which the author mentions the resolution of the whole problem accepted by the congress.

As no proceedings of this congress have been issued due to all sorts of circumstances, it is very useful to read from the hands of one of the — very expert — members such a summary about the important things which have been put forward about the effects of the depreciation of the money for the tax-levying.

Dr. PHILIPP BUSSIGEL: *Die Hauptabschlussübersicht,* Bücherei des Steuerrechts, Band 4. — Industrie-Verlag Carlheinz Gehlsen, vorm. Spaeth & Linde, Siegburg Rhld., 1950, 119 pages.

§ 42 Absatz 2 of the Einkommensteuer Durchführungsverordnung of 2nd June 1949 — as it is also still valid at present in its complete form — lays down, that the enterprises have to add to the returns a "Hauptabschlussübersicht", when their accountancy is composed according to the system of the double accountancy.

The purpose of this little book is to familiarize the reader with the technique of the "Hauptabschluss" and with the character of the "Hauptabschlussübersicht." "Hauptabschluss" is the total of arrangements of the accountancy which are made to determine and to fix the tradihg results during a definite period of time.

Dr. EB. LITTMANN *Grundriss der Gewerbesteuer.* Band 16, Buchreihe Finanz und Steuern. — Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co, Stuttgart 1950, 160 pages.

This little book gives a comprehensive and clear summary ot the Gewerbesteuer (trade tax). This book is of great value because also the juridical administration of the Reichsfinanzhof and the Oberste Finanzgerechtshof have been embodied in it.

Dr. W. ECKHARDT AND Dr. K. SCHLETTER: *Grundriss der Umsatzsteuer.* Band 1 Buchreihe Finanz und Steuern. — Fachverlag für Wirtschafts- und Steuerrecht, Schäffer und Co, Stuttgart 1949, 104 pages.

Just as in most of the other W. European countries the sales tax has become the cornerstone of the fiscal legislation in Germany, too. The history of the sales tax, however, is only short. In 1916 Germany came with its first Warenumsatzsteuergesetz, as the first European country which introduced this new costprice increasing tax. The purpose of this little book is to familiarize the reader with the character of the sales tax and particularly with German sales tax, as it was in force about 1949.

Dr. ESZER *Gezetz über den Lastenausgleich* — Institut "Finanzen und Steuern" Heft 23, 172 pp. 1952.

In this study the author takes a stand against the Lastenausgleich in its complete form (the delivery of property and the delivery of profit in foreign exchange.)

This book is useful for the practice, but in the first place it gives us material for academical discussions.

UNITED NATIONS: *Economic and social Council-Official records.*

In this series a number of reports gave again been issued, to wit: "Report of the sixth session of the administrative committee co-ordination", which took place in Paris on November 12th 1948 (E/1076), the "Report of the economic employment commission on its fourth session", which took place at Lake Success, New York from May 9th till 26th 1949 (E/1356 and Add. 1, E/CN. 1/74) as well as the reports of the sixth session of the Economic and Social Council during the 3rd year.

UNITED NATIONS: *Catalogue of Economic and Social Projects* 1952.

This pamphlet which is published annually sums up and describes the activities of the secretariats of the United Nations and of the special agencies, engaged in the economic and social domain during 1951, as well as the activities, which are on the programme.

UNITED NATIONS: *Economic Bulletin for Europe- First Quarter* 1952 *Vol.* 4. *No.* 2.

Besides a survey of the economic situation during the first quarter 1952 in Europe, this Bulletin subjects the direct taxes in 11 European countries to an analysis, as far as these taxes press on the working class. "Family allowances" are incorporated in the analysis as well as the taxes which forms for the employer a cost-factor.

W. F. PRINS: *Het Belastingrecht van Indonesië (The Taxation law of Indonesia)* — J. B. Wolters, Groningen, Djakarta, 1952.

In this book the author does not give a survey of the Indonesian Taxation law as a whole as the title would suggest, but only as far as it is of significance for the notarial law i.e. the stamp duty, transfer fee, death duties and transitory duty. As the death duty was abrogated in 1949, the author restricts himself to the transfer fee, transitory duty and stamp duty. After a detailed consideration about taxes and taxation law on the whole and survey of the history of the tax system in Indonesia, the author reviews in chapters III and IV the above-mentioned taxes. It is regrettable that the author omitted to review the taxes relating to income and property. Not only is the knowledge of these taxes of importance also for notaries, but a review of these levyings would have procured for this book a greater circle of readers than will be the case now.

Les Codes LARCIER Tome IV, *Droit Fiscal,* — Ferdinand Larcier (S.A.), 26-28 Rue des Minimes, Bruxelles, 1953.

Les Codes Larcier contain all the codes and separate laws that are of any interest. The fourth part contains the tax laws with the relative Royal Decrees and Orders, together with the laws and decisions by which the law has been altered, so that the Belgian fiscal legislation can be found here in a very surveyable way.

The following subjects are included: the constitutional Act, registration-, mortgage- and court-fees, death duties, stamp duties, income taxes, (the treaties have been included too) war taxes, sales taxes and special taxes, such for instance as the tax on vehicles. Separate laws are also given, which are of interest, such as the law of 18 October 1945, regarding the fiscal amnesty.

A very elaborate alphabetical and chronological index facilitates finding one's way in this detailed legislation.

T. S. MONDORF: *Phillipika an die unbussfertigen Steuerhöher* (1952).

This brochure contains a speech delivered in the fourth congress of the "Steuerberater" in Cologne. The name "Phillipika" is a very applicable one, for the author reviews in very sharp terms, but with a feeling for humor, the present tendencies in the tax legislation. Not only the very complicated character of the system, but also the political backgrounds are critically considered. He points to the dangers that lie in the present development. On page 53 he remarks: "We are already living at present — and it is high time that we become aware of it — in a sort of "Precommunism". The Tendencies reviewed in this brochure are also noticeable in other countries and consequently the contents will be important also for readers outside Germany.

E. J. H. VOLKMAARS: *Omzetbelasting — Voorbeelden voor Handel en Industrie.* — Kluwer, Deventer, 1952.

A very convenient book if you want to know at what rate of the Netherlands turnover tax particular transactions are taxed. It does not give an insight into the question why this rate exists. (e.g. on account of services rendered, contract for goods by the manufacturers, wholesale trade etc.).

Précis Fiscal, 4th édition — issued by Impôts et Sociétés, Paris 1952.

This book contains a summary of all laws existing at present in France with explanation and is, just like the first 3 editions, very conveniently arranged. It is up to date to the loi de finance of 14th April 1952 inclusive. Good wine needs no bush.

KENNETH C. BACK: *The Indiana Gross Income Tax,* published by University of Kentucky, Lexington, Kentucky, U.S.A. 1950.

The historical growth, the administration and the effect of the tax upon the economic life of the state Indiana are considered.

Accounts and taxes — published by the University of Kentucky, Lexington, Kentucky, U.S.A. 1950.

The following subjects are treated in this booklet:

1. Procedure and Practice before the Treasury Department, by AUBREY R. MARRS.
2. Planning estates for federal taxation, by WILLIAM J. CASEY.
3. A trust Officer's Views on Estate Planning, by BART A. BROWN.

4. What the Banker expects in Reports by Certified Public Accountants, by GEORGE S. ALLEN.
5. The Accountant's Service to small businesses, by CHARLES J. GAA.
6. The use of accounting data in economic analyses, by W. A. PATOU.
7. Current accounting problems, by CARMEN J. BLOUGH.

W. D. SMALL: *Taxation in Canada.* — Bank of Montreal Securities Dept., Head Office, Montreal, July 1951.

In a pamphlet of 31 pages the author, taxation officer of the Bank of Montreal, gives a clear review of the tax-levying in Canada.

After viewing the taxes which are levied by the federation, the provinces and the municipalities, the author discusses successively the tax-system, the federal income tax, which is levied from physical and juridical persons, the provincial taxes on companies, a sort of patent right, death duties and any other taxes as excise duty and sales tax.

Especially in the part concerning the income tax all sorts of points which will be very important for many persons are briefly discussed: the calculations of the taxable income / profits, the writings-off, the tax-levying on non-residents, etc. Elaborate data about the tariffs have likewise been inserted and make this brochure very usable for a foreigner.

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V

GREAT BRITAIN

Extra-statutory concessions [1])

In operation at 31st December 1951.

In this Bulletin Vol. V, no. 3, p. 189 we reproduced a list of extra-statutory concessions, published as an appendix to the ninety-third Report of the Commissioners of Inland Revenue.

In the present issue we reproduce the alterations in this main list of the years 1950 and 1951. Though the concessions described below are of general application, 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.

A — ALTERATIONS IN 1950 [2])

INCOME TAX

1. *Double Taxation Relief: Interest or Royalty exempt under Double Taxation Agreement.*

Where a payment of interest or royalty is made for business purposes in a year for which a trading loss is made, the amount of the payment is charged to tax under Rule 21 (so recovering for the Revenue the tax deducted from the payment), and the amount of the Rule 21 assessment is available for carry forward as a loss against future profits under Section 19, Finance Act, 1928. Where, in similar circumstances, there is a double taxation agreement providing for the exemption from United Kingdom tax of interest or royalty paid to a resident of the country with which the agreement is made, no assessment under Rule 21 is made — S.R. & O. 1946, No. 466, paragraph 3. The amount of interest paid is, however, allowed to be carried forward as though a Rule 21 assessment has been made.

ESTATE DUTY

1. *Property Abroad Requisitioned by the Government.*

Property situate abroad of a person who dies domiciled abroad is in general not liable to estate duty.

Consideration moneys received in respect of balances and securities abroad which have been requisitioned by the Government under the Defence (Finance) Regulations, or investments earmarked as representing such consideration moneys, are regarded as situate abroad where the person dies domiciled abroad and the death on which those moneys or investments pass occurs not later than six months after the expiry of the Regulations.

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[1]) Reproduced with the permission of the Controller of Her Britannic Majesty's Stationery Office. The concessions have been published as an appendix to the ninety-fourth and the ninety-fifth Report of the Commissioners of Inland Revenue for the years ended 31 st March 1951 and 1952; respectively. (Documents Cmd. 8436 and 8726).

[2]) see Bulletin V, 3, p. 194.

PROFITS TAX

1. *Double Taxation Relief: Interest or Royalty exempt under Double Taxation Agreement.*

Where interest or royalty is paid by a United Kingdom subsidiary to its parent company (or a United Kingdom parent company to its subsidiary) and the recipient company is resident in a country with which there is a double taxation agreement providing for exemption from United Kingdom tax of interest or royalty payments flowing from the United Kingdom to that country, the interest or royalty is, notwithstanding the provisions of Section 42 (5), Finance Act, 1938, allowed as a deduction in computing the profits of the United Kingdom company for profits tax purposes.

2. *Determination of Net Relevant Distributions to Proprietors of Body Corporate controlled by Overseas Body Corporate.*

Section 39 (2), Finance Act, 1947, provides that where a body corporate not ordinarily resident in the United Kingdom controls, directly or indirectly, not less than half the voting power in a United Kingdom body corporate, distributions by the United Kingdom body to the overseas body shall be left out of account in determining the distributions to proprietors of the United Kingdom body taxable at the higher (distributed) rate. In a case where the overseas body exercises its control of the United Kingdom body indirectly through the medium of a 100 per cent United Kingdom subsidiary, distributions by the first-mentioned United Kingdom company to that subsidiary are ignored in the same way as if they had been made to the overseas body.

EXTRA-STATUTORY CONCESSIONS WHICH HAVE CEASED TO OPERATE during the year ended December 31st, 1950

INCOME TAX

No. on List in Board's 93rd Report.

24. DOMINION INCOME TAX RELIEF UNDER SECTION 27, FINANCE ACT, 1920: EFFECT OF EXCESS PROFITS TAX.
25. DOMINION INCOME TAX RELIEF UNDER SECTION 27, FINANCE ACT, 1920: SUR-TAX PAYER.

Section 36, Finance Act, 1950, providing for unilateral relief, has taken the place of Dominion income-tax relief.

B — ALTERATIONS IN 1951

ESTATE DUTY

1. *Civilian Deaths in Malaya and Korea.*

The relief from estate duty formerly granted by wartime legislation (which expired in October 1950) to the estates of civilians dying from injuries caused by the operations of war is applied to the estates of civilians dying from injuries caused by the operations in Malaya and Korea.

STAMP DUTIES

1. *Transfers of stock issued by the Northern Ireland Electricity Board or the Ulster Transport Authority.*

Transfers of stock issued by the Northern Ireland Electricity Board or the Ulster Transport Authority, which are exempt from stamp duty in Northern Ireland, are treated as exempt from stamp duty in Great Britain if the stock is not registered in Great Britain. (Reciprocal treatment is given

by the Northern Ireland Government to transfers of stock issued by the nationalized industries in Great Britain, which are exempt from stamp duty in Great Britain).

2. *Stamping of Replicas of Documents which have been spoilt or lost.*

Where the stamp duty is allowed on a document because it has been spoilt or lost and replaced by a replica but the duty has been increased so that the amount to be impressed on the replica is more than the amount allowable on the original, the additional duty is impressed free of charge.

PROFITS TAX

1. *Directors' Remuneration from Director-controlled Companies.*

Rule 11, Fourth Schedule, Finance Act, 1937 (as amended by Section 30, Finance Act, 1951) lays down, in the case of director-controlled companies, certain limits on the amount 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) which is to be allowed as a deduction in computing the profits of such a company for profits tax purposes. As from the beginning of 1951, in certain cases the limits depend on, *inter alia*, whether, for more than half the chargeable accounting period, there are two or more directors of the company (not being 'whole-time service directors') who are required to devote substantially the whole of their time to its service in a managerial or technical capacity. If a director works as such for more than one company he is in practice regarded as falling within this definition in relation to that company which has occupied the largest fraction of his time during the chargeable accounting period if:

(*a*) he has worked substantially full time for the companies as a whole for more than half the chargeable accounting period; and
(*b*) the time worked for the particular company under consideration amounts in the aggregate to more than half the full normal working hours of the chargeable accounting period.

INTEREST ON UNPAID TAX

1. *Death of Taxpayer before due date for Payment of Tax.*

Section 8, Finance (No. 2) Act, 1947 (see now, as regards income-tax, Schedule D and sur-tax, Section 495, Income Tax Act, 1952), provided for interest (at 3 per cent per annum) to be charged on unpaid Schedule D tax, sur-tax and other taxes where:

(*a*) the tax due on the assessment in question is more than £1,000, and
(*b*) payment is not made within three months of the date on which the tax fell due.

Where a taxpayer has died before the date on which the tax fell due and his executors or administrators cannot pay the tax before they obtain probate or letters of administration, the interest charge on the unpaid tax is abated to the amount (if any) which would have been charged if the tax had become due on the date on which probate or letters of administration are obtained.

Alteration of existing concession

INCOME TAX

1. *Income of Roman Catholic Religious Communities or of their Members.*

The Appendix to the Board's 93rd Report stated (Income Tax Concession No. 30) that in the case of Contemplative Orders and other Orders which are not in law capable of being regarded as charities, a proportion of the aggregate income of the community 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. The figure of £50 has been increased to £70 with effect from the year 1949–50.

Application of extra-statutory concession.

Estate Duty: House Owned and Occupied by Deceased.

The Board of Inland Revenue has issued the following statement about the valuation of house property for estate duty purposes in cases where the extra-statutory concession [1]) as to vacant possession is applicable, because it would seem that the scope of the concession is sometimes not clearly understood by executors and others.

Where the concession is applicable,

'. . . any increase in the market value above the prewar value is disregarded in so far as it could only be realized by a sale with vacant possession.'

This does not mean simply that the house is to be valued at its pre-war value. In particular, the concession does not operate to exclude vacant possession value on the pre-war level or appreciation in value which is not attributable to vacant possession, e.g., a rise in the value of property due to a change in the value of money generally since before the war.

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[1]) see Bulletin V, 3, p. 197.

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ELMER D. FAGAN, Stanford, U.S.A.	The Shifting of Sales Taxes under Joint Costs.
HANYA ITO, Tokyo	Direct Taxes in Japan and the Shoup Report.
JOHN F. DUE, Urbana, U.S.A.	The Economic Effects of Local Non-Property Taxes.
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Etude d'Application Pratique

par
Dr. F. E. KOCH, A.A.C.C.A. A.C.W.A.
(Londres)
et
JEAN H. ROTHSTEIN H.E.C.
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Les lecteurs qui désireraient une reliure pour le Vol. VII de notre Bulletin sont priés d'adresser dès à présent leurs demandes au Bureau au plus tôt possible. L'année dernière et à notre regret nous n'avons pu donner suite à un assez grand nombre de demandes.

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Le Comité chargé de l'organisation de la conférence de 1954 de l'International Bar Association nous a fait parvenir son programme, et nous a prié de le reproduire dans le *Bulletin*.

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rapporteur: Son Exc. Amos J. Peaslee, Ambassadeur des Etats Unis en Australie.

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rapporteur: Me J. R. Voûte (Amsterdam)

Expériences acquises à l'application des traités évitant double imposition.
rapporteur: Me John Senter Q. C. (Londres)

La protection de la propriété privée en temps de guerre et de détresse, particulièrement en vue de la restauration du Droit à la termination de l'époque exceptionnelle.
rapporteur: Me Edward V. Saher

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rapporteur: Me F. M. Joseph (New York).

Problème de l'Obtention des Preuves à l'Etranger.
rapporteur: M. le professeur B. Goldman (Paris)

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Tomás Gistau y Manzantini
Madrid (Espagne)

Prof. John N. Hazard
New York (Etats Unis)

Thomas G. Lund
Londres (Angleterre)

Robert Martin
Paris (France)

A. Pestalozzi-Henggeler
Zurich (Suisse)

Mustafa Kamil Yassen
Baghdad (Iraq)

Prof. Dr. D. H. Ruscheweyh
Hamburg (Allemagne)

Toshio Sato
Tokio (Japon)

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