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Bureau International de Documentation Fiscale

Official Organ of the International Fiscal Association (I.F.A.)
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International Bureau of Fiscal Documentation

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

(*art.* 2) The Object of the International Bureau of Fiscal Documentation is the foundation and maintenance of an international documentation bureau, in order to supply information on fiscal legislation and the application of fiscal law, and to stimulate the study of fiscal science.

(*art.* 3) The International Bureau of Fiscal Documentation shall endeavour to realise this object by:

a. founding a library on fiscal legislation, books, periodicals and other publications;
b. supplying informàtion;
c. giving any one the opportunity to study all material available in its library;
d. issuing a periodical;
e. any other appropriate measures.

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

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

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

(art. 2) le but du Bureau International de Documentation Fiscale est d'établir et de maintenir un bureau international de documentation tendant à fournir des informations concernant la législation fiscale et l'application du droit fiscal, ainsi qu'à stimuler l'étude de la science fiscale.

(art. 3) C'est par les moyens suivants que le Bureau se propose d'atteindre ce but:

a) en établissant une bibliothèque contenant un grand nombre d'ouvrages, revues et d'autres publications dans le domaine fiscal;
b) en fournissant des informations;
c) en procurant à tous ceux qui s'y intéressent l'occasion de consulter les ouvrages qui se trouvent dans la bibliothèque;
d) en publiant un périodique;
e) en recourant à tous les autres moyens dont on peut disposer.

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

II

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

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

(*art.* 3) The Association shall endeavour to realise this object by:

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

L'IFA fut fondée le 12 fevrier 1938 par un nombre d'experts en matière fiscale de divers pays. Le but et l'organisation sont définis dans les Statuts comme suit:

(*art.* 2) le but de l'Association est l'étude du droit financier et fiscal international et comparé notamment du droit fiscal international et comparé, ainsi que les problèmes financiers et économiques y adhérents.

(*art.* 3) l'Association se propose de réaliser ce but en

(a) organisant des Congrès;
(b) publiant un périodique;
(c) établissant une ou plusieurs bibliothèques ainsi qu'un bureau de documentation;
(d) par toutes mesures légales.

***

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

Dans les pays suivants, l'IFA a un groupement national. Les membres habitant ces pays peuvent s'adresser au secrétaire de leur groupement dont l'adresse est donné ci-dessous:

BELGIUM — BELGIQUE
Monsieur Charles Cardijn, 27 rue dú Châtelain, Bruxelles.

BRAZIL — BRESIL
Dr. Gilberto de Ulhôa Canto, Av. Graça Aranha 57, 10th floor, Rio de Janeiro.

FRANCE — FRANCE
Monsieur A. Jacot, 5 rue du Cardinal Mercier, Paris

GERMANY — ALLEMAGNE
Prof. Dr. A. Spitaler, Wilhelm Waldeyerstrasze 14, Köln.

GREAT BRITAIN — GRANDE BRETAGNE

—

GREECE — GRECE
M. le Professeur A. Angelopoulos, 8 Route de Malagnou, Genève, Suisse.

ISRAEL — ISRAEL
Dr. E. Alexander, Israel Institute of Technology, Haifa.

ITALY — ITALIE
Prof. Cesare Cosciani, Via Cesare Battisti 121, p. III, Roma.

NETHERLANDS — PAYS-BAS

H. G. Hootsen, Grotestraat 9, Almelo

SWEDEN — SUEDE

Mr. K.-G. A. Sandström, The Swedish Institute of Foreign Law, Vasagatan 12, Stockholm.

SWITZERLAND — SUISSE

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Mr. Raymond L. Brittenham, 67 Broad Street, New York 4, N.Y.

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Membership is possible: 1. to I.F.A. only; 2. to the Documentation Bureau only; 3. to both organizations combined.

1. *I.F.A. only.* There are 3 gategories: I (individuals): Dfl. 10.— p.a. (U.S.A. and Canada $ 4.00); II (non-corporate bodies): Dfl. 25.— ($ 10 00); III (corporations etc.): Dfl. 50.— ($ 20.00).

Reductions: (a) 10 % on the fees for information requested from the Documentation Bureau as compared with non-members. Information of a purely scientific character free of charge. (b) 33⅓ % on the subscription price of the BULLETIN (at present the reduced price amounts to Dfl. 12.50 ($ 3.50) without, and Dfl. 20.— ($ 5.75) with supplements). (c) 10 % on the price of other publications of the Bureau.

2. *Documentation Bureau only.* IV (ordinary members): Dfl. 25.— p.a. ($ 10.00); V (donors): Dfl. 200.— ($ 80.—). *Reductions:* (a) 25 % and 50 %, respectively, on the fees for information requested from the Doc. Bureau as compared with non-members. (b) Ordinary members, see above, I (b); Donors receive the BULLETIN free of charge. (c) 25 % on the price of other publications of the Doc. Bureau.

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For full details please apply to I.F.A. or to the International Bureau of Fiscal Documentation.

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3. *Adhésion combinée.* VI (= I +IV ci-dessus); VII (= I +V); VIII (= II +IV); IX (= II +V); X (= III +IV); XI (= III +V).

Réductions: voir les catégories I—V ci-dessus. Les réductions ne s'accumulent pas.

Pour détails complets prière d'écrire à l'I.F.A. ou au Bureau de Documentation.

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Prof. Dr. P. J. A. ADRIANI

Prof. Dr. P. J. A. ADRIANI exit.

Le Bureau International de Documentation Fiscale a payé son tribut au temps: c'est à cause de son age que Monsieur le Professeur ADRIANI a exprimé son désir de laisser la direction de ce Bureau entre des mains plus jeunes. Le Conseil du Bureau a respecté ce désir et il a accepté la démission de Monsieur ADRIANI à partir du 1er mai 1954, après l'avoir remercié, tout en exprimant son admiration pour la façon dont le Directeur démissionnaire a rempli ses fonctions depuis la fondation du Bureau.

Après consultation du Conseil d'Administration de l'I.F.A., consultation faite conformément aux statuts du Bureau, à l'unanimité, le Conseil du Bureau a pris la décision de nommer Monsieur J. VAN HOORN JR. Directeur. Ce dernier remplissait déjà les fonctions de Directeur adjoint, de sorte que la continuité et les bonnes traditions du Bureau sont assurées, et cela d'autant plus que Monsieur ADRIANI s'est déclaré disposé à prêter son concours au Bureau pendant quelque temps en qualité de Conseiller. Le Conseil a accepté cette proposition avec la plus grande satisfaction.

Tout cela signifie la fin d'une époque où le Bureau a établi très clairement et très profondément ses traditions scientifiques et morales. Personne mieux que le professeur ADRIANI n'était qualifié pour guider les premiers pas du Bureau, vu ses connaissances universelles dans le domaine du droit fiscal comparé et son esprit d'ordre et de synthèse.

Il va de soi qu'on aurait pu réaliser beaucoup d'autres buts si le Bureau avait disposé de plus amples moyens financiers. Si malgré cela le Bureau dispose d'une bibliothèque qui est probablement dans son domaine la plus étendue de l'Europe entière, si malgré cela les entreprises, les gouvernements, les conseillers fiscaux, les étudiants etc., non seulement des Pays-Bas, mais encore du monde entier, s'adressent au Bureau en toute confiance, c'est sans aucun doute grâce à l'essor donné au Bureau par son premier Directeur, qui par sa compétence et surtout par sa personnalité captivante a su éveiller chez ses collaborateurs l'enthousiasme nécessaire pour former un tout ordonné et utile de cet amas de renseignements et de documents qui continuellement afflue du monde entier.

B. SCHENDSTOK
Président du Conseil du Bureau International de Documentation Fiscale

Le maître et l'éducateur a transféré ses fonctions, et maintenant l'élève doit essayer de poursuivre seul son chemin en appliquant tout ce qu'il a appris. Vu les qualités extraordinaires de son prédécesseur cette tâche est loin d'être facile. Cependant il y a quelques lueurs d'espoir qui rendent plus praticable le chemin à suivre.

Tout d'abord j'éprouve le vif désir d'exprimer ma joie au sujet du fait que Monsieur ADRIANI s'est déclaré disposé à gratifier le Bureau de ses précieux conseils toutes les fois que cela semblera être nécessaire.

Ensuite il faut mentionner la circonstance que le Bureau International de Documentation Fiscale, sous sa direction, est devenu d'un enfant assez faible un vigoureux adolescent, qui promet beaucoup pour l'avenir, un

avenir qui, toujours grâce aux travaux de Monsieur ADRIANI, est observé avec une très grande sympathie par les nombreux amis que le Bureau compte dans le monde entier.

Je puis me réjouir à la pensée qu'il m'est permis de reprendre la tâche de Monsieur ADRIANI à un moment où le Bureau est arrivé à un si haut niveau de développement, et j'ose caresser le grand espoir qu'il me sera donné de profiter de l'amitié si précieuse de tous ceux qui ont contribué à faire du Bureau ce qu'il est devenu maintenant: un institut scientifique international qui cherche à exécuter ses travaux dans l'intérêt public.

Sans amitié, sans sympathie, sans la collaboration internationale si nécessaire, le Bureau ne pourra rien entreprendre. Aussi, de mon côté, je ferai tout ce qui sera nécessaire et utile pour un bon développement de notre discipline. Je m'efforcerai d'assurer ma collaboration, par tous les moyens possibles, à de nouvelles initiatives dans lesquelles le Bureau pourrait jouer un rôle utile.

Au Bureau il existe déjà un grand nombre de projets et on n'attend que la possibilité de les réaliser. On se gardera de faire de travail double; cependant, on veillera à ce que le service soit aussi parfait que possible.

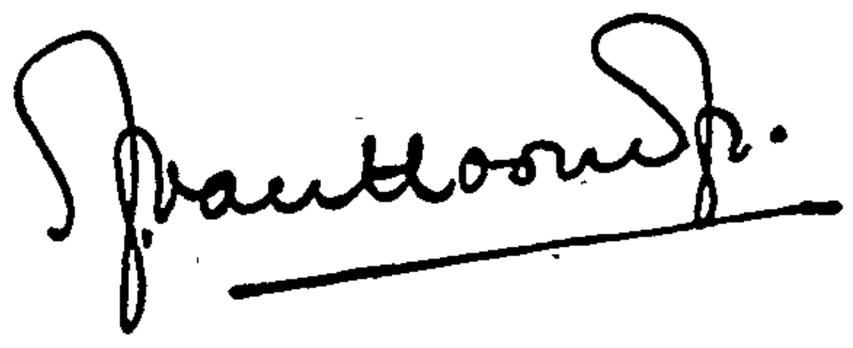
Surtout en ce qui concerne les informations d'ordre général, mes collaborateurs et moi-même tâcherons de répondre aux désirs de nos collègues. Le Bulletin peut encore plus qu'il ne le fait déjà, remplir la tâche de procurer des renseignements généraux. D'autres publications sont encore préparées avec le plus grand soin. Ce sont seulement les circonstances financières — qui ne sont jamais très florissantes lorsqu'il s'agit d'un organisme scientifique, surtout quand on travaille dans un domaine si variable que celui du droit fiscal — qui ont entravé une réalisation plus rapide des projets.

En ce qui concerne les informations d'ordre spécial, à savoir la procuration de renseignements détaillés à tous ceux qui nous demandent des informations, nous continuerons également à leur assurer tous nos soins.

Le contenu du rapport annuel qui cette année sera adressé à tous les amis et collaborateurs, montre que, de toutes les parties du monde, on consulte le Bureau. Je me permets de prier instamment tous les intéressés de faire part au Bureau de leurs problèmes dont la solution ne peut souvent être trouvée dans leur propre pays. Pour des informations complémentaires. voir le rapport annuel.

La bibliothèque croît journellement grâce aux livres et publications qui nous arrivent régulièrement de la part de nos donateurs. Grâce à une telle collaboration nous étions à même de mettre la première main à notre dictionnaire; nous espérons pouvoir agir de même pour d'autres projets.

Je ne demande qu'une chose: que personne ne nous épargne ses critiques, mais que tout le monde nous assure de son aide; mes collaborateurs quotidiens et très dévoués en feront leur profit et mettront tout en oeuvre pour s'en montrer dignes.



Directeur du Bureau International de Documentation Fiscale.

Prof. Dr. P. J. A. ADRIANI exit.

The International Bureau of Fiscal Documentation has paid its debt to time, which has roused in Prof. ADRIANI the desire to see the management of the Bureau in younger hands. The Board of the Bureau could not but respect this desire. Consequently, Prof. ADRIANI was granted his most honourable dismissal as manager on and from 1st May 1954 and the Board gave expression to their thanks and admiration for the manner in which he had performed his task since the foundation of the Bureau.

By an unanimous decision of the Board, together with the statutory statement of agreement of the Board of the I.F.A., Mr. J. VAN HOORN JR. has now been appointed manager. For a considerable time Mr. VAN HOORN had been assistant-manager of the Bureau, and this guarantees a continuity in the good traditions of the Bureau. This is so much more the case as Prof. ADRIANI has declared himself prepared to serve the Bureau for some time as an adviser, which promise the Board accepted with great pleasure. All this implies that a period has come to an end in which the Bureau established its scientific and moral traditions.

No one could have better directed the first steps of the Bureau than Professor ADRIANI, with his universal knowledge in the domain of comparative tax-law and with his clear insight and synthetic mind. It is obvious that even more could have been achieved if the Bureau had had ampler means at its disposal. If, in spite of this, the Bureau possesses a library which in this domain is probably the most extensive in Europe, if, in spite of this, commercial enterprises, governments, tax-advisers and students not only from Holland, but also from other parts of the world, confidentially apply to the Bureau, then this is undoubtedly due to Professor ADRIANI, whose ability, but no less whose charming personality it was, that could again and again rouse in his collaborators the enthusiasm, necessary to create out of the avalanche of information and literature an orderly and useful whole.

PROF. B. SCHENDSTOK
President of the Board of the International
Bureau of Fiscal Documentation.

The preceptor and educator has deputed his task, and now the pupil, relying on what he has learned must try to seek his way alone. Bearing in mind the calibre of his predecessor, this task is by no means an easy one. However there are some bright spots and important ones at that, making the path of the future easier to travel.

In the very first place there is the joy that Prof. ADRIANI has professed himself willing to continue to give the Bureau his invaluable advice whenever this should be necessary.

Further the circumstance that under Prof. ADRIANI's energetic management the International Bureau of Fiscal Documentation has grown from a rather feeble infant into a sturdy lad, promising much for the future, a future which is being sympathetically watched by the numerous friends the Bureau possesses all over the world.

I am very happy that I am to take over Professor ADRIANI's task at a

stage when the Bureau has attained such a position and I wish to express the hope that I, too, shall be permitted to benefit by the great and important friendships of all those who have helped to make of the Bureau what it is: a scientific, international institution, which tries to perform it's work in the common interest.

Without friendship and sympathy, without the international cooperation that is so essential, the Bureau cannot fulfil its task. I, on my part, shall not neglect to do everything that is necessary and useful for a good development in our common domain. My endeavours shall be directed to giving cooperation with all the means at my disposal, to new initiatives in which the Bureau might play a part.

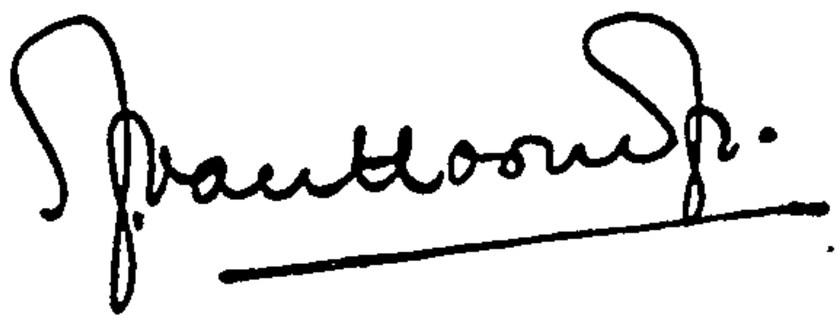
At the Bureau many plans are waiting for the possibility of execution. We shall be on our guard not to do double work, but on the other hand shall strive after the giving of the greatest possible service.

Especially in the field of general information my collaborators and I shall try to comply with the wishes of our colleagues. To a still greater extent than hitherto the Bulletin is to be given a general informative character. Other publications are being prepared with the greatest care and it is after all only the financial circumstances, which are never very good for a scientific institution, especially not when one has to work with such a mobile material as tax-law, that are the cause that these plans have not been put into execution before this.

In the field of special information too, the furnishing of detailed data to all who submit questions to us, we shall continue to give our utmost care. From the annual report, which this time is being sent to all our friends and collaborators, it appears that applications for information reach the Bureau from all parts of the globe. Therefore I appeal to all, to submit their questions to the Bureau to obtain solutions of their problems, which solutions can frequently not be found in their own country. For further particulars I refer to the annual report.

Thanks to larger and smaller gifts in the form of books and periodicals the library is growing daily. Thanks to the same cooperation a start could be made with the dictionary. In this way we hope to proceed, likewise with many other matters.

My request is: let no one spare us his criticism, let no one withhold his support. My daily collaborators devoted to their task as they are, will know how to make the best use of it, so that it may bear fruit.



Managing-Director of the
International Bureau of
Fiscal Documentation

I

APERCU DU SYSTEME FISCAL ESPAGNOL

par

JUAN ANTONIO ORTIZ GRACIA
Inspecteur des Services du Ministère des Finances, Madrid.

La structure actuelle du budget des recettes du gouvernement espagnol ressort du tableau ci-dessous montrant le recouvrement du dernier exercice fiscal (1er. janvier à 31 décembre 1952):

Impôts	Recouvrement en millions de pts.	Pourcentage du total
I. IMPÔTS SUR LE REVENU		
Contribution foncière:		
Contribution sur la proprieté rurale et du bétail	866	3,76
Contribution sur la richesse urbaine	748	3,24
Contribution industrielle, de commerce et professions	905	3,92
Contribution sur les „utilidades" de la richesse mobilière:		
Tarif 1 – du travail personnel	1.859	8,06
Tarif 2 – du capital	847	3,67
Tarif 3 – du travail et du capital ensemble	2.697	11,69
Impôt sur les bénéfices extraordinaires	17	0,08
Impôt général sur le revenu	355	1,54
	8.294	35,96
II. IMPÔTS SUR LE CAPITAL		
Droits réels et de transmission de biens	1.543	6,69
Valeurs mobilières	497	2,15
	2.040	8,84

Impôts	Recouvrement en millions de pts.	Pourcentage du total
III. IMPÔTS SUR LA CONSOMMATION		
Douanes	951	4,12
Impôt sur l'usage et la consommation:		
Tarif 1 – Produits alimentaires	696	3,02
Tarif 2 – Energie, matières premières et éclairage	3.022	13,10
Tarif 3 – Produits elaborés	1.522	6,60
Tarif 4 – Communications	306	1,33
Tarif 5 – Luxe	1.116	4,84
Tabacs et allumettes	884	3,83
Pétrole	532	2,30
Paiements du gouvernement	129	0,56
Timbre	1.973	8,55
	11.131	48,25
IV. AUTRES RECETTES		
Loteries	666	2,89
Domaine de l'État	78	0,34
Maison de la Monnaie	28	0,12
Impôts forfaitairs des provinces d'Alava et Navarre	89	0,39
Autres	742	3,21
	1.603	6,95
TOTAL GÉNÉRAL	23.068	100,00

Ce classement des impôts ne s'accorde pas avec la structure administrative du budget, suivant laquelle le recouvrement des recettes est réparti en cinq groupements intitulés comme suit:

Contributions directes;
Contributions indirectes;
Monopoles et services exploités par l'état;
Proprietés et droits du Trésor;
Recours du Trésor.

Nous croyons néanmoins que, pour le lecteur étranger, un classement plus précis qui reflète plus clairement la nature de chaque impôt serait sans doute désirable, compte tenu qu'en Espagne, comme ailleurs, la réglementation administrative a été souvent la conséquence de circonstances historiques donnant lieu à la naissance des impôts. [1])

IMPÔTS SUR LE REVENU

Le régime espagnol sur le revenu englobe une série d'impôts qui frappent le revenu partiellement à raison de leurs différentes sources, série qui a été completée ultérieurement par la contribution générale sur le revenu qui atteint la somme totale. Chacun de ces impôts, dont le titre explique la nature du revenu, a son régime fiscal et sa réglementation propres. De ce fait, nous allons nous en occuper séparément:

A). L'impôt sur la richesse foncière frappant la propriété rurale et du bétail est dû pour le revenu que ladite richesse produit ou qu'elle est susceptible d'en produire. L'impôt fonctionne d'après le régime de cadastre, sauf dans quelques provinces ou le cadastre n'a pas été encore achevé et dans lesquelles le régime dit d',,amillaramiento'' est appliqué. Ce dernier est, certes, plus primitif, mais il permet néanmoins une assiete assez réelle, bien qu'il ait le désavantage — imputable également au cadastre — de que la base imposable s'établissant de temps en temps, l'impôt ne s'ajuste pas aux variations du revenu si tôt qu'il serait désirable. L'impôt est dû par le proprietaire. En Espagne, à différence d'autres pays, il n' existe pas un autre impôt qui frappe les revenus provenant de l'exploitation agricole; cependant et par suite de la répercussion de l'impôt, ce but a été atteint, notamment à compter de l'entrée en vigueur d'une loi fiscale conformément à laquelle les propriétaires ont été facultés à répercutir légalement la fraction de l'impôt dépassant le 20 % du revenu perçu. A cet effet, ils ont été autorisés

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1) Il faut souligner que le classement choisi présente aussi d'autres difficultés, quelques uns des impôts ne s'adaptant pas exactement à certains des groupements établis, alors qu'il y a d'autres, comme c'est le cas de l'impôt du timbre, qui constituent en fait une série d'impôts n'ayant de commun entre eux que leur modalité de recouvrement, consistante en l'apposition de timbres ou en des imprimés officiels timbrés.

à y computer non seulement l'impôt d'État, mais aussi les charges perçues au profit des collectivités provinciales et locales dont il sera question plus loin. Le taux actuel de l'impôt est de 17,50 %.

Etrangers. Pour le recuvrement de cet impôt ont se tient au critère de la source, comme c'est la règle générale dans tous les pays. Ainsi, la qualité d'étranger (de nationalité ou de domicile) n'a en fait aucune importance, l'impôt étant exigible du fait de l'existence dans le territoire espagnol de l'immeuble source du revenu.

B). Sont passibles de la contribution urbaine les revenus que les édifices produisent ou qu'ils sont susceptibles d'en produire. Cet impôt fonctionne en régime de cadastre, bien que le propriétaire assujetti est contraint à déclarer le véritable montant du bail. Cette obligation est devenue effective à compter d'une loi de 1940 accordant aux locataires le droit de réduire le montant du loyer à concurrence du chiffre que le propriétaire aura déclaré comme revenu taxable. Le taux de l'impôt est de 21,50 % auquel sont additionées certaines charges dont les plus importantes sont celles perçues au profit des communes et diputations (conséils généraux).

Etrangers. De même qu'en matière de la contribution foncière rurale, ici, c'est également le critère de la source ou origine qui est appliqué.

C). La contribution industrielle, de commerce et professions frappe le simple exercice des activités commerciales, industrielles, mercantiles et professionnelles.

Sauf des rares exceptions, cet impôt est établi d'après le système de cotes fixes, différentes pour chacune des activités soumises à la taxe et dont le montant est normalément établi en fonction de la nature de ladite activité, de l'importance du lieu d'imposition et d'autres signes extérieurs assimilés. En vue de pallier les désavantages de ce système, les contribuables peuvent opter par la modalité dite d',,agremiación'', d'après laquelle tous les commerçants rangés dans la même catégorie peuvent se grouper afin de se distribuer entr'eux, de la façon la plus avantageuse possible, la somme totale des cotes forfaitaires à verser.

Sont passibles de la contribution industrielle tous les entrepreneurs, qu'ils soient individuels ou collectifs, à l'exclusion de sociétés anonymes ou commanditaires par actions dont le capital fiscal dépasse 5 millions de pesètes. Cette contribution est étroites

ment liée à la contribution sur les ,,utilidades'' — Tarif 3 — ,,utilidades'' du travail et du capital ensemble, que — comme nous le verrons plus loin — frappe aussi les bénéfices industriels et commerciaux, quoiq'en régime de bénéfices effectifs.

Etrangers. Ici, c'est également le critère de l'origine qui est appliqué. Pas de problèmes donc quant à son application, étant donné que la taxe n'est exigible qu'à des contribuables plutôt faibles. (Nous verrons cela plus loin en ce qui concerne la contribution sur les ,,utilidades''), l'exiguïté des sommes à verser ne soulévant pas dans la pratique des controverses sur le fait si la source du bénéfice se trouve dehors ou dedans le territoire national.

D). Sous la rubrique contribution sur les ,,utilidades'' de la richesse mobilière trois impôts sont groupés frappant respectivement les revenus du travail personnel, les revenus du capital et les bénéfices commerciaux et industriels.

Quoique tous trois soient réglementés par le même texte légal, ils ont toutefois des particularités propres et même une législation spéciale à chacun d'eux, se classant en trois tarifs différents:

1) Sont passibles de la contribution sur les ,,utilidades'' de la richesse mobilière — tarif 1 — ,,utilidades'' du travail personnel — tous les revenus provenant de l'activité personnelle, tels que les traitements, gratifications, émoluments, rémunérations, primes, pensions, indemnités, etc. Les taux d'imposition sont échelonnés progressivement dès 5% (fonctionnaires publiques 6%) pour les revenus présentant le caractère de fixes et periodiques et dont le montant soit compris entre 6.000 et 7.000 pts. par an, à 15% pour les revenus dépassant 30.000 pts. par an, les rémunérations inferieures à 6.000 pts. étant éxonerées de la taxe.

Les revenus non fixes ni périodiques (c'est-à-dire, ceux dont le montant ne peut pas être determiné avant son obtention) sont passibles de l'impôt au taux unique de 8 p. 100 lorsque les redevables en sont des personnes privées, et de 12 p. 100 lorsqu'ils sont fonctionnaires publiques. Ce taux de 12% est aussi appliqué aux émoluments alloués aux directeurs et gérants d'entreprises. Les rémunérations perçues par des membres de conseils d'administration sont assujeties au taux fixe de 20 p. 100. Les rémunérations de toute nature perçues dans l'exercice de certaines activités professionnelles (médecins, vétérinaires, commissionaires, professeurs,

etc.) bénéficient de réductions forfaitaires de 20 à 50 p. 100: Le montant de l'impôt ainsi determiné est soumis à déduction à raison de la somme versée à titre de la contribution industrielle pour autant que les professions ou activités imposées en soient passibles. Les salaires des ouvriers ainsi que les émoluments des classes de l'armée ou assimilées sont, parmi d'autres moins importants, exemptés du tarif 1 d',,utilidades'', quelque soit leur montant. [1])

Des exonérations ont été aussi accordées pour charges de famille. A cet effet, les familles sont divisées en deux catégories: celles dont le nombre d'enfants à charge — c'est-à-dire, agés de moins de 18 ans ou ineptes — est superieur à 4 sans dépasser 7 et celles avec plus de 7 enfants à charge.

Lorsque les revenus du travail du contribuable ne dépassent pas 40.000 pts. ils sont exemptés en totalité; ceux au delà de 40.000 pts., sans éxceder 125.000 pts. bénéficient d'une réduction de 50 p. 100 pour la première catégorie et d'exemption totale pour la seconde. Ces exonérations sont applicables non seulement au chef de famille, mais aussi et dans la même proportion à son conjoint à la condition que les revenus de tous deux provenant de leur travail n'excèdent pas les limites ci-après indiqués:

jusqu'à 60.000 pts. annuelles, exonération totale pour les deux catégories;

de 60.000 a 150.000 pts., réduction du 50 % pour ceux de la première catégorie et exonération totale pour ceux de la seconde.

L'impôt est perçu, d'après la modalité de retenue à la source, à charge de celui qui fait le payement. Ce système de recouvrement n'est pas applicable à certaines catégories de redevables (médecins, architectes, etc.) travaillant par leur propre compte, lesquels sont soumis au versement direct de leurs cotes et à la déclaration obligatoire de leurs revenus, regulièrement.

2) Les revenus du capital sont soumis au tarif 2 de la contribution sur les ,,utilidades'' de la richesse mobilière — ,,utilidades'' du capital.

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[1]) Il faut en convenir que cette exonération comporte un certain degré d'inégalité à l'égard des employés, étant donné que les rémunérations des ouvriers, notamment de ceux qualifiés comme des ,,spécialistes'', sont fréquemment plus élevées que celles touchées par la plupart des employés.

Les revenus obtenus des apports en société (dividendes, actions, bénéfices des societés commanditaires par actions, parts de fondateur, etc.) sont soumis à l'impôt conformément à un barème progressif qui a été établi eu egard de la proportion que le dividende ou somme à répartir représente par rapport au capital fiscal de la société, celui-ci étant determiné à son tour par l'addition des apports des associés, plus les réserves effectives. Ce barème est appliqué comme suit:

Lorsque le dividende ou participation représente par rapport au capital fiscal:

Au delá de pts.	Sans excéder de pts.	Taux d'imposition pour cent.
—	4	7,9
4	5	8,7
5	6	10,5
6	7	12,3
7	10	13,5
10	14	14,5
14	20	15,0
20	25	15,4
25	—	22,7

Les intérêts sont assujetis à l'impôt à des taux différents:

au 20% les intérêts de la dette publique du gouvernement espagnol qui n'en soit pas expressément exemptée;

au 24% les intérêts fixes d'obligations, cédules, bons ou assimilés;

au 26,40% les intérêts des dettes publiques des États étrangers, les prêts avec ou sans garantie réelle, les rentes viagères et, d'une manière générale, tous les revenus du capital n'entrant pas dans les catégories susvisées.

Les taux de fonds de commerce sont atteints par l'impôt au taux de 22%; les rendements de la propriété intellectuelle au 6,6% lorsque l'auteur retient le domaine des oeuvres literaires; au 13,40% si celles-ci appartiennent au conjoint, veuve ou enfants à charges de l'auteur, et au 26,4% tous les autres.

Les patentes, marques et procédés de fabrication sont imposés au taux de 19,8 % appliqué sur le 70 % de leur rendement brut. C'est également ce pourcentage de 19,8 % qui est appliqué aux rendements de la vente, cession, loyer ou utilisation des films ou des disques gramophoniques, le taux s'applicant sur le quart de leur rendement brut, exception faite des fims en langue espagnole dont le taux d'imposition est appliqué sur le dixième. Quant aux disques gramophoniques, ils sont taxés à raison du dixième de leur prix de détail.

Sont exonérés du versement de ce tarif les parts des associés collectifs en sociétés collectives et commanditaires sans actions.

3) Des trois tarifs de la contribution sur les ,,utilidades'' de la richesse mobilière et même de tous les impôts sur le rèvenu, c'est sans doute le tarif 3 — ,,utilidades'' du travail personnel et du capital ensemble — c'est-à-dire, l'impôt sur les profits, qui a une importance plus considérable. Sont atteints par ce tarif tous les êtres collectifs. Également le sont les personnes physiques qui soient passibles de la contribution industrielle et remplissent quelq'une des conditions ci-dessous prevues:

a) que le capital investi dans l'entreprise dépasse 200.000 pts.;
b) que leur cotisation annuelle à titre de la contribution industrielle soit superieure à 2.000 pts.;
c) que le volume global de leurs ventes dépasse 500.000 pesètes par an;
d) que le nombre de salariés employés dans l'entreprise soit superieur à 50;
e) que le contribuable se livre à la profession de banquier.

D'autre part et toujours dans le cadre de ce même tarif 3, la loi fiscale a prevu que les sociétés anonymes à capital dépassant cinq millions de pesètes ne sauraient être frappées par la contribution industrielle, alors qu'en revanche, elles sont tenues du versement d'une cote minima du 6 p. 1.000 de leur capital, abstraction faite des compagnies d'assurances dont la cotisation minima susvisée est égale au 1,3 % du montant des primes émises en Espagne, afférentes à des assurances-vie, contre les accidents, maritimes et sur les transports. Cette cotisation minima est de 4,10 % lorsqu'il

s'agit d'assurances contre l'incendie et autres comportant l'indemnité de dommages intérêts sur les choses ou les propriétés. Il s'ensuit que la taxation des profits s'établit de la façon suivante:

Les personnes physiques ne remplissant pas les conditions susvisées ne seront passibles que de la contribution industrielle.

Les sociétés anonymes et commanditaires par actions à capital supérieur à cinq millions de pesètes ne sont assujetties qu'au tarif 3 de la contribution sur les „utilidades" de la richesse mobilière, l'imposition minima desdites sociétés étant determinée, en tout état de cause, en fonction de leur cote minima sur le capital.

Tous les autres contribuables, soient-ils individuels ou collectifs, sont soumis à la contribution industrielle en même temps qu'au tarif 3 d'„utilidades", la première étant admise en déduction du montant à verser à titre de cette dernière.

Des exonérations intégrales ou partielles ont été accordées en raison soit des assujetis soit des objets imposables. Tel est le cas, par exemple, des syndicats agricoles qui en sont exonerés intégralement. Il en est de même pour les coopératives des classes ouvrières, qu'elles soient de crédit, de production ou de consommation, pourvu qu'elles remplissent certaines conditions. Également, les societés se livrant exclusivement à la construction de maisons d'habitation en vue de leur exploitation par voie de loyer sont exonérées dudit tarif. Les entreprises définies comme ayant d'intérêt national, ainsi que celles se livrant exclusivement à la production de films, sont exemptées jusqu'à concurrence du 50 p. 100 de l'impôt.

La base à rétenir pour l'établissement de l'impôt est constituée par le bénéfice net obtenu pendant la période d'imposition, lequel est determiné à son tour en déduisant des revenus bruts realisés par l'entreprise au cours de la même période, tant s'ils proviennent de l'exploitation directe que s'ils sont le produit du bail du fonds de commerce, les charges suivantes: les dépenses nécessaires à l'obtention desdits bénéfices; les frais d'administration et d'entretien; les frais originés par l'assurance des biens source des revenus en cause et leurs produits.

Cette définition de la base imposable est largement illustrée sur le texte ordenateur de l'impôt où un nombre d'exemples concrets de ce qui doit être considéré comme des revenus et ce qui

doit être consideré comme des frais est mentionné. Ainsi parmi, les revenus, sont comprises les subventions de l'État et d'autres collectivités administratives contribuant de quelque façon que ce soit au revenu de l'entreprise. Sont également considérés comme des revenus les bénéfices provenant de l'augmentation de la valeur des effets ou autres éléments d'actif pour autant qu'ils aient été obtenus moyennant l'aliénation des valeurs ou qu'ils soient inscrits, d'une manière quelconque, en comptabilité. Il s'ensuit notamment que toute augmentation de la valeur comptable est considérée comme bénéfice fiscal obtenu au cours de l'exercice où il ait été réalisé, et que les gains de capital en sont aussi assujetties.

Il est admis en déduction:

les frais exigés pour la réparation du matériel; par contre, ceux affectés à l'ampliation de ce dernier, ne sont pas susceptibles d'être admis en déduction;

les sommes affectées à l'amortissement des valeurs d'actif du chef de dépréciation ou perte de ceux-ci, à condition que lesdites sommes soient-elles effectives et qu'elles aient été inscrites en comptabilité par l'entreprise;

les participations allouées aux gérants, administrateurs, et membres de conseil, pourvu qu'elles soient obligatoires en vertu de contrat, précepte statutaire ou ordonnance;

les cotisations versées par l'entreprise dans des organisations de prévision ou bienfaisance en faveur de ses cadres de personnel, à la condition qu'elles ne dépassent pas 10 p. 100 du montant des traitements de ce dernier;

les sommes affectées à l'assurance des valeurs de l'entreprise et des accidents du travail de son personnel, pourvu que lesdites sommes soient elles obligatoires pour l'entreprise;

les intérêts dérivant de la gestion normale de l'entreprise ainsi que ceux d'obligations, hypothécaires ou non, et, d'une manière générale, tous ceux se dégageant de l'inversion des capitaux d'autrui dans l'entreprise;

les sommes affectées à l'amortissement d'obligations hypothécaires légalement émises par des entreprises exploitant des concessions devant retourner à l'Etat libérées de ces charges;

les cotisations versées par les entreprises en vertu de précepte legal et pour des buts sociaux.

Par contre, ne sont pas admises en déduction:

les sommes destinées au payement du dividende des actions, ainsi que, d'une manière générale, les rémunérations des participations au capital social;

celles affectées à l'aide à d'autres entreprises, soit par le financement des dépenses de celles-ci, soit en assurant le capital investi dans leurs exploitations, sauf dans le cas où l'entreprise bénéficiant de l'aide serait déjà assujettie au même impôt dans le pays;

les donations en faveur d'un tiers;

les versements à l'Etat à titre du même impôt;

le payement des intérêts exigés par les entreprises mères étrangères à leurs filiales ou succursales établies en Espagne, à titre quelconque;

les intérêts des prêts accordés par des associés collectifs à leurs associations respectives, quelque soit la forme juridique du contrat.

En ce qui concerne les amortissements, dont nous venons de montrer la règle générale, il faut ajouter que, tout récemment, par une loi de 20 décembre 1952, un aménagement a été introduit aux termes duquel ces amortissements peuvent ils, sous certaines conditions, atteindre, en régime d'exonération de l'impôt, jusqu'à concurrence de 200 p. 100 de la valeur des biens d'inventaire. Par le même texte legal, il a été stipulé que les acquisitions de valeurs d'immobilisé effectuées après la promulgation de ladite loi, peuvent bénéficier d'un amortissement dit „anticipé", ce qu'en fait leur permet de profiter des dégrèvements fiscaux l'année même dans laquelle les investissements ont été effectués. Ces mesures, si semblables, par ailleurs, à celles établies dans d'autres pays en vue d'encourager les investissements en atténuant les dommages que la perte de valeur de la monnaie entraîne pour les entreprises, ont été inspirées par des raisons économiques d'interêt national visant à stimuler l'autofinancement des entreprises et les investissements.

La période d'imposition coïncide avec l'exercice comptable de l'entreprise; toutefois, si la durée de ce dernier était inférieure ou supérieure à 12 mois, des calculs proportionnels doivent être opérés afin de déterminer le bénéfice afférant à ladite période de 12 mois.

Les résultats d'un exercice ne comptent point pour le calcul des autres. C'est ainsi que les pertes d'un exercice ne peuvent pas être rapportées aux exercices précédents ou suivants.

Les taux d'imposition sont réglés par un barème progressif établi, comme c'est le cas en matière du tarif 2, eu égard du pourcentage que le bénéfice realisé représente à l'égard du capital fiscal déterminé d'après ce qu'il a été indiqué plus haut. Le barème à appliquer est le suivant:

Lorsque le pourcentage du bénéfice à l'égard du capital est:

Numéro	Au delá de	Sans dépasser	Taux d'imposition pour 100 du bénéfice
1	0	4	15,10
2	4	5	16,50
3	5	5,50	18,30
4	5,50	6,00	19,80
5	6	6,50	21,20
6	6,50	7	22,40
7	7	7,50	23,50
8	7,50	8	24,50
9	8	9	25,50
10	9	10	26,30
11	10	11	27,10
12	11	12	27,30
13	12	13	28,40
14	13	14	28,90
15	14	15	29,50

Les bénéfices excédant 15 p. 100 du capital sont imposés:
une prèmière tranche égale au 15 p. 100, au taux de 29,50 %;
le reste du bénéfice, au taux de 34,50 %.

L'addition de ces deux produits constitue la cote à verser par le redevable.

Cërtaines catégories de contribuables bénéficient des exemptions de l'impôt. C'est ainsi que les caisses d'épargne ayant un caractère bienfaisant n'en sont assujetties qu'au taux de 15,10 %, quelques aient été leurs bénéfices. Le barème est appliqué également aux

sociétés regulières collectives commanditaires par actions, ainsi qu'aux commerçants individuels, bien que le taux à appliquer ne peut pas dépasser 24,8 % dans le premier cas et 22 % dans le dernier.

Le montant résultant de l'applications desdits taux sur la base imposable est soumis à déduction à raison des cotisations versées à titre des contributions foncière industrielle et rurale et urbaine. Il est également admis en déduction dudit montant la quote, part correspondant au 80 % des dividendes que la société aurait perçus d'une autre entreprise soumise à ce même impôt à titre du même exercice.

Les sociétés anonymes à capital supérieur à cinq millions de pesètes qui, comme nous avons vu plus haut, ne sont pas assujetties à la contribution industrielle, sont, en revanche, passibles d'une imposition minima au titre du tarif 3 d',,utilidades'', dite ,,cote minima de capital'', suivant laquelle l'impôt ne peut pas, en tout état de cause, être inférieur au 6 p. 1.000 du capital de l'entreprise, sauf quand il s'agit des compagnies d'assurances pour lesquelles la cote minima est égale au 1,3 % des primes d'assurance sur la vie, contre les accidents, maritimes et transports, et au 4,1 % de celles afférantes aux assurances contre l'incendie et autres risques ayant comme but la réparation ou l'indemnité des dommages-intérêts sur les choses ou les propriétés. Cette cote minima est due en tout état de cause, même si la société a subi des pertes au cours de l'exercice.

Toutes les autres entreprises sont tenues, aux fins de l'exaction de l'impôt, de présenter leurs bilans, lesquels, après liquidation provisoire par l'administration, sont soumis à vérification pratiquée par les inspecteurs des Finances. Toutefois, les commerçants individuels ont été autorisés à tenir leurs comptes en cinq livres dont le model a été expressément établi par l'Administration fiscale. Les commerçants optant pour cette modalité sont affranchis de l'obligation de tenir leur comptabilité en partie double, exigible aux autres.

4). *Etrangers*. L'application de l'impôt dans l'espace est soumise à une règle générale commune, sauf quelques exceptions que nous verrons ci-après, pour les trois tarifs. D'après cette règle générale, sont passibles de l'impôt:

a) les revenus obtenus dans territoire espagnol;

b) les revenus versés soit dedans soit dehors le territoire espagnol par quelque personne ou collectivité y ayant son domicile ou résidence;
c) les revenus encaissés en territoire espagnol, même si la personne ou collectivité assujettie a son siège ou domicile hors d'Espagne.

Tout revenu compris dans les conditions susvisées rentre dans le champ d'application de l'impôt. Par conséquent, les mentions „source du revenu", „domicile ou résidence" de la personne qui en verse le montant ou „lieu" où celui-ci a été encaissé, sont utilisées indistinctement. Ce régime, plutôt étrange, certes, a été parfois la conséquence des raisons historiques prédominant lors de la naissance de chaque impôt. Il ne comporte pas la mention de „domicile ou résidence" du récepteur, si fréquémment utilisée dans d'autres legislations, bien que cette nuance ait été admise ultérieurement dans des dispositions ou sentences de la jurisprudence espagnole.

Voici les exceptions à la règle générale que nous venons d'énoncer:

1ère. Le tarif 3 comporte une modification visant tant aux sociétés espagnoles pratiquant des opérations à l'étranger qu'aux sociétés étrangeres pratiquant des opérations en Espagne. Il s'agit du fonctionnement au ministère des Finances d'un organisme de haute hiérarchie administrative dénommé „Jurado de Utilidades" qui est chargé de la fixation pour chaque entreprise, après une étude approfondie non seulement de l'actuation fiscale de celle-ci, mais du bilan total du monde et partiel de l'Espagne aussi, d'un dit „chiffre d'affaires" en Espagne sous la forme d'un pourcentage de l'activité totale de l'entreprise. La base imposable est déterminée en applicant ce „chiffre" au total des bénéfices, a l'échellé mondiale. [1])

Sont considérées comme des entreprises étrangères se livrant à des opérations en Espagne celles y possédant des bureaux, usines, installations, magasins, boutiques ou établissements de quelque nature, ou bien des succursales ou agences autorisées pour y contracter au nom et par compte desdites entreprises. Les opérations

[1]) Ce système a été amplement décrit dans la publication des Sociétés des Nations, „L'Imposition des entreprises étrangères et nationales".

pratiquées en Espagne par des collectivités étrangères moyennant une organisation spéciale pour la vente ou simplement la centralisation des ordres dont l'exécution correspond à plusieurs entreprises donnent lieu à l'égard de celles-ci à l'obligation de s'acquitter de l'impôt, même si l'organisation de ventes a une personnalité juridique propre et si, de son côté, est déjà assujettie en Espagne audit tarif 3 d',,utilidades".

C'est le ,,Jurado de Utilidades" qui décide en définitive sur le fait de savoir si une société doit être considerée comme agence de ventes ou de centralisation des commandes. Il faut souligner le cas spécial des compagnies de transports maritimes dont les vapeurs font escale aux ports espagnols et pour lesquelles la seule existence de consignataires ou agents ne donne pas lieu à l'assujettissement à l'impôt. Par contre, les entreprises étrangères qui, par l'entremise d'installations permanentes, effectuent des fournitures à l'Espagne, sont passibles de l'impôt, même si elles n'ont pas dans le territoire espagnol des établissements, ou les installations ne leur appartiennent pas.

2ème. Sont exonérés de l'impôt; tarif 1:

à condition de réciprocité, les émoluments perçus à l'étranger par les employés ou commis d'entreprises ayant son siège social en Espagne;

les jetons de présence et autres émoluments fixes encaissés à l'étranger par des membres des conseils d'administration des sociétés étrangères n'ayant qu'une partie de leurs affaires en Espagne, alors que leur participation aux bénéfices n'est taxée que proportionnellement à la quote-part du chiffre d'affaires en Espagne, établie aux fins du calcul de l'impôt au titre du tarif 3.

3ème. En ce qui concerne le tarif 2, deux règles ont été notamment établies. D'après la première, sont exclus du champ d'application de l'impôt en Espagne les dividendes des actions, parts de fondateur ou assimilées perçus par des étrangers (propriétaires des actions) et versés par des sòcietés se livrant à des operations à l'étranger, à la condition que les redevables en justifient la pleine possession ou le droit de jouissance pendant toute la durée de l'exercice imposable et que lesdites personnes ou associations étrangères n'aient pas leur domicile en Espagne ou n'y aient pas résidé pour une durée supérieure à la moitié de ladite période.

Aux termes de la seconde règle et en ce qui concerne les sociétés étrangères se livrant à des affaires en Espagne, il est considéré comme ayant été obtenu en Espagne et comme étant, par suite, assujettie à l'impôt, la fraction des dividendes et des intérêts des obligations des entreprises étrangères qui ait par rapport à la totalité des dividendes et intérêts de l'entreprise la même proportion que les bénéfices attribués à l'Espagne aux fins de l'imposition à titre du tarif 3 ont par rapport à la totalité des bénéfices. Quant aux sociétés espagnoles se livrant à des opérations à l'étranger, sont affranchies de l'impôt pour la fraction des dividendes et intérêts de leurs obligations proportionnelle au chiffre d'affaires obtenue dans des pays étrangers où elles auraient, en raison desdits dividendes et intérêts, été déjà l'objet d'imposition directe.

E). L'importance de l'impôt exceptionnel sur les bénéfices extraordinaires a décliné des qu'il cessa d'être perçu, le 1er. juillet 1943. Il fût en vigueur pendant deux différentes périodes allant des 1936 à 30 juillet 1943. Ses rendements furent assez élevés, atteignant un montant de 509 millions de pts. à la fin de l'exercice dans lequel les recettes en furent plus importantes. En 1952, les recettes provenant de cette rubrique ne comportaient que des arrérages.

L'impôt était dû à raison des bénéfices extraordinaires obtenus, ces bénéfices s'entendant comme suit:

a) les bénéfices excédant la moyenne de ceux obtenus au cours des trois années inmédiatement précédentes au 18 juillet 1936;

b) pour les entreprises nouvelles, ceux dépassant le 7 % du capital investi l'entreprise. Les taux d'imposition étaient fort élevés, allant de 40 à 80 p. 100.

F). La contribution générale sur le revenu est un impôt complémentaire sur le revenu total. Elle frappe tous les revenus, quelle que soit leur source, bien que seulement les personnes physiques en sont passibles. Pour la détermination de la base imposable il est tenu compte de tous les revenus bruts du contribuable, sous déduction de tous ceux n'ayant pas le caractère des frais privés, notamment ceux nécessaires pour l'entretien et conservation des biens source du revenu; les amortissements nécessaires pour la rénovation des élements de production; le coût effectif pour le redevable des assurances et cotisations sociales obligatoires en faveur des cadres d'entreprise; les impôts directs ou indirects versés au profit du

Trésor, provinces et communes, ainsi qu'au profit des collectivités ayant le caractère de publiques; les intérêts payés à raison des capitaux investis dans l'entreprise, etc. etc. et, d'une manière générale, tous ceux qui ne peuvent pas être considérés comme des frais privés.

Ils ne sauraient être, en tout état de cause, considérés comme des revenus taxables ceux provenant des héritages, des prix de la loterie national ou des gains de capital provenant de contrats d'assurance. Contrairement, les gains obtenus de l'aliénation d'un bien sont considérés comme des revenus taxables, à la condition que l'adquisition en aurait été effectuée au moins trois années auparavant à sa vente. L'estimation du revenu est operée par la méthode directe, moyennant vérification des déclarations produites par le contribuable. Toutefois, une autre modalité, dite ,,estimation par des rendements minima'' est également admise; elle consiste à considérer comme minimum, aux fins de cet impôt, les bases utilisées pour le calcul des impôts partiels sur le revenu.

L'exercice fiscal coïncide avec l'an naturel, les pertes afférentes à des exercices précédents ou suivants ne pouvant pas y être affectées.

Les contribuables sont rangés dans deux catégories: ceux assujettis à l'obligation personnelle de contribuer, d'une part, et ceux assujettis à l'imposition réelle, d'autre part, suivant qu'ils aient résidé moins ou plus de 180 jours dans le territoire national. Pour ceux compris dans la première catégorie, l'impôt est dû à raison de tous leurs revenus, tant s'ils ont été obtenus en Espagne qu' ailleurs, alors que ceux entrant dans la seconde catégorie ne sont taxés qu'à raison des revenus obtenus par eux dans le territoire espagnol. Les taux d'imposition sont établis comme suit:

Fraction du revenu imposable comprise entre:			Taux d'imposition
0	et	60.000	0 per 100
60.001	,,	100.000	7,5 ,, 100
100.001	,,	150.000	18 ,, 100
150.001	,,	250.000	20 ,, 100
250.001	,,	500.000	27 ,, 100
500.001	,,	1.000.000	33 ,, 100
Au delá de		1.000.000	44 ,, 100

Aux termes de la loi budgétaire de 1949, ces taux ont été majorés de 5 % en général, outre la majoration spéciale de 30 % grévant les célibataires ou veufs agés de plus de 25 ans et sans enfants à charge.

Pour ce qui est des assujettis à l'obligation personnelle à contribuer, sont admis en déduction de l'impôt déterminé d'après ce qui a été dit:

1) le montant versé à titre de la contribution d',,utilidades'' de la richesse mobilière afférant au rendement de la propriété intellectuelle, pour autant que le domaine des oeuvres appartienne à leurs auteurs (tarif 2) et aux rendements provenant du travail ou service personnel, (tarif 1), à l'exception des rémunerations allouées aux membres des conseils d'administration, ces déductions ne pouvant pas, le cas échéant, excéder le montant dû à titre de la contribution générale sur le revenu à raison desdits revenus ou rendements, ni dépasser le chiffre absolu de 15.000 pts.

2) la fraction de la cotisation établie à titre du tarif 3 de la contribution sur les ,,utilidades'' qui correspond proportionnellement aux rendements obtenus par l'entreprise au cours de l'exercice économique, qui soit computable comme base d'imposition à titre de contribution sur le revenu et provienne des opérations commerciales, industrielles ou minières, respectivement.

Etrangers. Pour le calcul de l'impôt, il est fait application du critère de résidence mentionné plus haut (180 jours dedans le territoire espagnol) et qui sert à établir si le redevable est assujetti soit à l'obligation personnelle soit à l'obligation réelle de contribuer. D'autre part, les assujettis à l'obligation personnelle ayant des revenus provenant de l'étranger bénéficient de la déduction sur sa cotisation du plus faible des deux montants suivants:

a) le montant effectif versé à l'étranger à raison de la taxe personnelle grevant les rendements de source étrangère imputés comme revenu du contribuable aux effets de déterminer la base de la contribution générale sur le revenu ou sur la valeur patrimoniale des biens d'où ces revenus proviennent;

b) le résultat d'appliquer le taux moyen effectif de l'impôt au revenu du contribuable à raison de la fraction de ce revenu de source étrangère.

Le régime administratif de l'impôt comporte le fonctionnement d'un nommé „Jurado central", constitué par des représentants du ministère des Finances, d'une part, et par des délégués des contribuables, d'autre part, chargé de décider sur les divergences qui éventuellement peuvent se soulever entre les contribuables et l'administration fiscale. En même temps, il y existe un registre des revenus et patrimoines dans lequel sont enregistrées toutes les variations intervenues en matière de revenus et patrimoines des personnes physiques, afin de pouvoir disposer des données suffisantes en vue d'une amélioration de l'administration, non seulement de cet impôt, mais aussi de l'impôt sur les transmissions (droits réels).

Au moment où ces lignes ont été écrites (moitié juin 1953) un projet a été déposé aux *Cortes* espagnoles dont la votation comporterait des aménagements notables au régime de cette contribution.

II. Impôts sur le Capital

A). L'impôt intitulé de Droits réels et transmission de biens a une longue portée, puisqu'il atteint non seulement les droits réels mais toutes les transmissions de biens *inter vivos* ou *mortis causa* aussi, en même temps que les biens des personnes morales.

Entrent expressément dans le champ d'application de cet impôt la constitution, reconnaissance et modification des droits d'hypothèque, les avertissements de saisie, sequestres et interdiction d'aliénation; les contrats d'approvisionnement de vivres et autres biens meubles, les contrats de prêts, les cautionnements et leur cancellation, les concessions administratives de biens, travaux et services, les contrats d'exécution de travaux, les baux de biens, droits et exploitations. Des exonérations, tant absolues que relatives ont été octroyées, ces dernières consistant en un réduction des cotes à verser.

La base imposable est égal à la valeur réelle que les biens ou les droits auraient le jour même où le contrat aurait été passé, sous déduction des charges pésant sur lesdits biens ou droits. Pour ce qui est des transmission *inter vivos*, les taux d'imposition sont extrêmement variés, selon l'opération dont il s'agit. Ainsi, par exemple, sont taxées:

les transmissions de biens immeubles et droits réels, au taux de 6,90 %;

la transmission de biens meubles et bétail, au 3,45 %;

la constitution, reconnaissance et extinction du droit d'hypothèque, au 1,38 %;

les apports en société, au 1,15 % de la valeur des biens;

l'émission ou cancellation d'obligations, leur transformation ou prorogation, au 1,15 %, majoré jusqu'au 1,38 % du capital garanti lorsque lesdites obligations sont hypothécaires, etc.

Les transmissions *mortis causa* sont soumises à deux modes d'imposition: sur la masse héréditaire ou sur ses fractions.

L'impôt intitulé sur le „caudal relicto", c'est-à-dire l'impôt qui grève les biens laissés en héritage, frappe la masse héréditaire d'après un tarif progressif s'échelonnant des 1 % pour des bases comprises entre 2.000 et 10.000 pesètes (la première tranche de 2.000 pesètes étant exemptée), jusqu'à 11 % pour des bases dont le montant dépasse cinq millions de pesètes. Ces taux ont été majorés de 15 % en vertu de la loi budgetaire de 1950. Sont exclus du champ d'application de cet impôt les biens ou dons dont la propriété passe du décédé à ses parents legitimes, descendents légitimes ou reconnus, à son conjoint ou bien à un établissement de bienfaisance.

L'impôt qui grève les portions héréditaires et dont l'importance est encore plus considérable que celle qui a l'impôt ci-dessus décrit, est établi d'après un barème progressif que voici:

Héritage, legs, préciput ou don en faveur:												
Montant de la portion de l'héritage correspondant à chaque héritier ou légataire.	De l'âme	Des collatéraux au degré le plus éloigné ou des personnes n'ayant pas de parenté avec le testateur..	Des collatéraux au 4ème. degré..	Des collatéraux au 3ème, degré..	Des collatéraux au 2ème. degré..	Des ascendents ou descendents par afinité	Conjoints	Ascendents ou descendents par adoption	Ascendents ou descendents naturels	Ascendents ou descendents legitimes	Descendents legitimes au 2ème. degré et posterieurs	Enfants legitimes ou legitimés par mariage .....
a) Jusqu'a 1.000 pts.	0,00	0,00	0,00	0,00	9,00	0,00	16,00	23,00	33,00	38,00	47,00	0,00
b) Des 1000,01 a 10.000 ,,	2,00	6,50	6,50	7,00	10,00	5,00	18,00	24,00	34,00	39,00	49,00	15,00
c) ,, 10000,01 ,, 50.000 ,,	4,00	7,25	7,25	7,75	11,00	6,00	20,00	25,00	35,00	40,00	50,00	30,00
d) ,, 50000,01 ,, 100.000 ,,	6,00	8,00	8,00	8,50	12,00	6,50	21,00	26,00	36,00	41,00	51,00	32,00
e) ,, 100000,01 ,, 250.000 ,,	6,50	8,50	8,50	9,25	12,50	7,00	22,00	27,00	37,50	42,50	52,00	32,00
f) ,, 250000,01 ,, 500.000 ,,	7,25	9,00	9,00	10,00	13,00	7,50	23,00	28,00	39,00	44,00	54,00	32,00
g) ,, 500000,01 ,, 1.000.000 ,,	7,75	9,50	9,50	10,50	13,50	8,00	24,00	29,00	40,00	45,00	55,00	32,00
h) ,, 1.000000,01 ,, 2.000.000 ,,	8,25	10,25	10,25	11,00	14,50	8,50	26,00	30,00	41,00	46,00	56,00	32,00
i) ,, 2.000000,01 ,, 5.000.000 ,,	8,75	10,75	10,75	11,50	14,75	9,00	27,00	31,00	41,50	46,50	57,00	32,00
j) Au delá de 5.000.000 pts.	9,00	11,00	11,00	12,00	15,00	10,00	28,00	32,00	42,00	47,00	58,00	32,00

Ces taux ont été également majorés de 15 % en vertu de la loi budgétaire de 1950.

Quant à l'impôt sur les biens des personnes morales il est dû en équivalence de l'impôt successoral, auquel se substitue, au taux de 30 p. 100 de la valeur des biens, majoré également de 15 % aux termes de la loi budgétaire de 1950 precitée.

Etrangers. Sont passibles de l'impôt tous les actes et contrats se rapportant aux biens de toute nature se trouvant dans territoire espagnol, tant si les décédés, acheteurs ou contractants ont la nationalité espagnole comme s'ils ne l'ont pas. A cet effet sont considérés comme se trouvant dans territoire espagnol:

1. les biens immeubles y se trouvant effectivement;
2. les biens meubles y existant physiquement, encore qu'ils appartiennent à des ressortissants d'autres pays;
3. les biens meubles adquis par des espagnols, même si lesdits biens ne sont ils pas sis dans le territoire espagnol;
4. les droits, actions ou obligations dónt la naissance, l'exercice ou l'accomplissement doivent être exercés ou accomplis respectivement dans territoire soumis à l'impôt ou bien par des autorités y exerçant leurs fonctions;
5. le capital que les sociétés ayant son siège social a l'étranger affectent aux opérations à pratiquer dans le lieu où l'impôt serait exigible.

Les transmissions de biens meubles ou droits réels sis dedans la territoire soumis à l'impôt, sont passibles, en tout état de cause et quelque soit la nationalité ou le domicile des personnes y visées et l'endroit où les documents, par lesquels ladite transmission s'est effectuée, aient été dressés.

Sauf ce qui a été prévu au paragraphe ci-dessus, les successions en faveur des sujets espagnols, ainsi que les transmissions ou adjudications en leur faveur par voie d'actions *inter vivos* sont passibles de l'impôt à raison des biens meubles, crédits ou actions de toute nature qui en soient l'objet. Il en est de même pour les titres de la dette publique ou des sociétés étrangères, même si lesdits biens, valeurs ou effets se trouvaient hors d'Espagne ou auraient été déposés dans des établissements domiciliés à l'étranger.

Les transmissions à titre quelconque des biens meubles appartenant à des étrangers ou celles effectuées en faveur de ceux-ci lorsque, tant dans l'un comme dans l'autre cas ils se trouvent ou sont considérés comme se trouvant dans territoire national, même s'ils sont déposés dans des sociétés, entreprises ou particuliers étrangers, sont soumis à l'impôt dans tous les cas où l'exonération n'en aurait été convenue avec le pays interessé.

B). Sous l'impôt sur les valeurs mobilières crée par la loi du 13 mars 1943 ont été groupées et modernisées quelques taxes anciennes qui jusqu'alors entraient dans le champ d'application de l'impôt du timbre. La taxe englobe d'une part: a) la taxe sur l'émission de valeurs mobilières; b) l'impôt complémentaire d'émission et c) la taxe sur la négotiation ou transmission de valeurs mobilières.

B-1). La taxe sur l'émission des valeurs mobilières est due par toutes les sociétés espagnoles émettant des actions, obligations et titres assimilés; par d'autres collectivités émettant des titres de la même nature, ainsi que par les porteurs en Espagne de valeurs étrangers, sous les conditions ci-dessous mentionnées. L'impôt est dû du fait pur et simple de la décision d'émettre des valeurs, la base imposable état égal à la valeur nominale desdits valeurs mobilières, même si elles ont été cédées aux souscripteurs par un montant inférieur a ladite valeur nominale. Le taux d'imposition est de 1 p. 100, sur lequel une réduction de 50 % est admise dans la cas où la durée du titre ne dépasse pas 10 ans. Ce taux a été en outre majoré de 5 % conformément à la loi budgétaire de 1949.

Etrangers. L'impôt frappe les porteurs de valeurs étrangers, sauf si ces valeurs sont de la propriété des sociétés étrangères se livrant à des opérations en Espagne. L'obligation de déclarer que, quand il s'agit de sociétés espagnoles est exigible à celles-ci, correspond ici au porteur qui devra s'en acquitter dans le délai de 10 jours suivants à l'introduction desdites valeurs en Espagne. Cette obligation correspond aux banques lorsque les titres en cause y sont constitués en depôt.

B-2). L'impôt complémentaire d'émission frappe également l'émission d'actions lorsque celles déjà en circulation sont cotées avec une plus-value superieure au 20 % de leur valeur nominale; les actions aliénées par la société émettrice par voie de vente aux enchères, boursière ou notariée étant exonérées de l'impôt à la

condition que les plus-values obtenues soient imputées au compte des pertes et profits.

Les actions non cotées à la bourse et les titres à revenu fixe (obligations), ainsi que les actions des sociétés espagnoles ayant leurs affaires à l'étranger qui aient été souscrites hors d'Espagne, sont exonérées de l'impôt.

Les taux d'imposition figurent dans un barème progressif, établi en fonction, d'une part, de la plus-value que les anciennes actions ordinaires auraient par rapport à sa valeur nominale, et d'autre part, du pourcentage représentant la valeur nominale totale émise par rapport à la totalité de la valeur nominale des actions déjà en circulation. Les taux d'imposition sont compris entre 1 p. 100 et 10 p. 100 de la valeur nominale émise, majorés de 5 %, d'après la loi budgétaire de 1949.

B-3). La taxe sur la négotiation ou transmission de valeurs mobilières est due annuellement par toutes les sociétés espagnoles ou étrangères se livrant à des opérations en Espagne, ayant en circulation des actions, obligations ou assimilées, ainsi que par d'autres collectivités se trouvant dans les mêmes conditions. La taxe est exigible du fait de l'existence de valeurs mobilières susceptibles d'être transférés par voie des moyens spéciaux stipulés par le Code de Commerce. Pour ce qui est des actions de sociétés espagnoles, la base d'imposition doit être égal au plus élevé des trois résultats suivants: a) soit à leur cote moyenne au cours de l'année anterieure a celle de l'impôt; b) soit au chiffre résultant de la capitalisation au taux d'intérêt légal (4 %) le montant des dividendes à distribuer imputés aux résultats de l'exercice précédent, plus les sommes affectées à la dotation des fonds de réserve; ou c) soit à la valeur théorique des actions d'après le bilan.

Quant aux obligations ou effets assimilés, le calcul de la base imposable est opéré d'après les modalités suivantes: a) par la cote moyenne pendant l'année précédente à celle de l'impôt; b) à défaut de cette cote, par la valeur nominale, pourvu que le paiement des intérêts soit au courant; c) par estimation ou expertise, dans les autres cas.

Le taux d'imposition est de 2 p. 1000, majoré de 5 %.

Etrangers. Les sociétés étrangères se livrant à des opérations en Espagne sont également soumises au versement de l'impôt, lequel

se substitue à l'impôt de negotiation des titres, au taux de 2,70 p. 1.000 de la valeur effective afférente à la fraction de leurs actions, obligations ou titres assimilés reputée comme étant imputable à leurs affaires dans territoire espagnol.

Pour le calcul de la base imposable on utilise un procédé semblable d'autre part à celui qui a été indiqué ci-dessus en matière d'imposition des sociétés espagnoles.

A cet effet, les représentants des sociétés étrangères sont tenus de produire un certificat faisant état des cotisations de leurs titres aux bourses nationales ou étrangères, en indiquant quelle est la bourse qu'à son avis a cote plus au juste la valeur réelle desdits titres. Sur la base ainsi determinée, il est fait application du chiffre d'affaires relatif en Espagne, fixée par le „Jurado de Utilidades" aux fins de l'imposition à titre du tarif 3 de ladite contribution d'„utilidades", le résultat servant de base impositive.

III. Impôts sur la Consommation

A). La contribution sur l'usage et la consommation fût établie en Espagne par une loi de 16 décembre 1940. Au présent et dû au fait de l'importance de son chiffre de recouvrement, elle est placée au premier rang dans le cadre des recettes budgétaires du gouvernement espagnol. Il ne s'agit pas, ici, d'un impôt général sur les ventes ou sur la production, puisque l'impôt ne frappe que quelques produits, s'applicant soit à la source soit au cours de la consommation desdits produits, suivant ce que l'on considère, d'après les caractéristiques de l'objet imposable, le plus avantageux pour son recouvrement.

L'impôt englobe les différentes rubriques ci-après énumerées:

TARIF 1 *Produits alimentaires:*

Conserves alimentaires.
Vins, cidres et „chacolis"
Alcool.
Sucre et saccharines.
Bière et boissons rafraichissants.
Achicorée.

TARIF 2 *Energie, matières premières et éclairage.*

Benzine et leurs mixtures.
Produit brut des mines.
Sel commun.
Gaz, électricité et carbure de calcium.

TARIF 3 *Produits elaborés.*

Fontes.
Filatures.
Chaussures.
Meubles.
Verres et céramiques.
Peaux et assimilées.
Papier, carton et bristol.
Bandages pour les véhicules.
Poudres et mélanges explosives.

TARIF 4 *Communications.*

Transports de voyageurs et marchandises.
Téléphones.
Radiodiffusion.

TARIF 5 *Luxe.*

Caisses de sécurité.
Patente nationale d'automobiles.
Consommation de luxe.

Etrangers. L'importation de marchandises assujetties à la contribution sur l'usage et la consommation est atteinte par l'impôt à la douane, à raison du prix C.I.F. de l'objet imposable. Sont affranchis de l'impôt les articles exportés, l'impôt étant remboursable lorsque le redevable s'en serait déjà acquitté. Cette règle est également applicable aux marchandises ou produits exportés qui, après versement de l'impôt, ont été l'objet de transformation et, par la suite, la valeur en aurait été augmentée. Dans ce dernier cas, des règles spéciales fixant des coefficients du prix du produit fini et servant à déterminer le montant de l'impôt remboursé sont appliquées.

B). L'impôt du timbre est composé d'un nombre d'impôts ayant comme trait commun leur modalité de recouvrement consistant en des timbres détachés ou en l'utilisation obligatoire pour certains actes ou contrats, de documents debités par le gouvernement et sur lesquels le timbre est imprimé. Aux termes de la propre loi de l'impôt, le timbre d'État doit être utilisé pour:

1. taxer les documents publics ou privés en vertu desquels la transmission de biens, l'engagement d'obligations de toute nature ou la constitution, reconnaissance, modification ou expiration de droits réels sur des biens immeubles aient été accomplies;

2. l'imposition des documents qui, ne représentant pas d'obligations ou de transmissions, aient rapport aux autres actions expressément énumerées dans ladite loi;

3. le payement du prix des services publiques monopolisés par l'Etat devant, d'après des lois spéciales ou conformément à la loi du timbre, être ainsi acquittés;

4. la perception de quelques impôts au regard desquels ce mode de recouvrement ait été établi;

5. la réalisation des responsabilités pecuniaires qui ne soient pas expressément exclues de cette modalité de perception. L'impôt peut être parfois acquitté en espèces, mais seulement dans le cas où il ait été ainsi expressément établi.

Nous nous bornerons à mentionner ci-après quelques uns des cas plus importants de ceux rentrant dans le champ d'application de l'impôt:

les premières feuilles des premières copies dressées des protocoles d'actes authentiques notariées dont l'objet soit une somme ou chose évaluable, suivant un barème progressif qui commence par des timbres de 1,50 pts. pour des montants inférieurs à 500 pts., jusqu'à 150 pts. pour des sommes comprises entre 25.000 et 50.000 pts., le reste, s'il y en a, étant soumis au versement en espèces à raison de 4,50 pts. pour tranches de 1.000 pts. ou fraction dépassant 50.000 pts.

les lettres de change, moyennant des documents timbrés débités par l'Etat à des prix compris entre 0,20 pts, pour les lettres dont le principal ne dépasse pas 100 pts., et 120 pts. pour les lettres dont le principal soit compris entre 35.000 et 70.000, en ajoutant des timbres mobiles spéciaux à raison de 1,20 pts. pour

tranche de 750 pts. ou fraction du principal. Lorsque l'échéance desdits effets dépasse les trois mois, l'impôt en est doublé;

les chèques au porteur doivent être munis d'un timbre de 0,25 pts., quelque soit leur montant;

les contrats de loyer s'acquittent de l'impôt par l'apposition de timbres dont le prix varie dès 0,50 pts. lorsque le prix du loyer ne dépasse pas 150 pts. par mois, jusqu'à 150 pts. lorsque le prix du loyer est compris entre 8.000 et 12.000 pts. par an; l'exces étant taxé au taux de 15 pts. pour tranche de 1.000 pts. ou fraction;

les quittances, moyennant l'apposition d'un timbre de 0,15 pts. si la somme acquittée est compris entre 5 et 150 pts. et de 3 pts. si ladite somme est supérieure à 5.000 pts. sans dépasser 10.000 pts.; au delà de ces montants, le timbre est dû à raison de 0,30 pts. pour tranche de 1.000 pts. ou fraction;

timbres poste: 0,50 pts. pour les lettres adressées à l'intérieur de l'Espagne ou à l'Ibéroamérique.

La loi budgétaire de 1949 établit en outre une majoration de 5 % pour tous les taux de l'impôt, à l'exclusion des timbres-poste.

B). L'impôt des douanes a comme trait caracteristique le régime „ad specificum" auquel sont soumis ses taux d'imposition.

Les impôts sur le tabac, les allumettes et le pétrole ont comme but principal le recouvrement des revenus que l'Etat retire de ces articles dont l'entrée et vente en Espagne est l'objet de monopole octroyé a des entreprises largement soumises au contrôle d'État.

D). Par son originalité, l'impôt de paiements à l'Etat mérite d'être souligné. Aux termes de la loi de cet impôt, tous les paiements effectués par le gouvernement espagnol en raison d'achats de matériel ou fournitures sont soumis a un décompte de 1,30 % sur la totalité des sommes à payer. L'impôt ne grève pas les paiements au personnel, c'est-à-dire, ceux afférents aux traitements, émoluments, etc. qui sont déjà assujettis à retenue à raison de la contribution d'„utilidades" — tarif 1 (du travail personnel).

IV. Autres Recettes

Les recettes groupées sous cette rubrique n'ont pas évidemment le caractère spécifique d'impôts.

Les recettes provenant de la loterie nationale sont constituées par les profits obtenus par l'Etat de ce jeu, éxistant en Espagne depuis longtemps.

Sous la rubrique „Domaine de l'Etat" sont groupés les revenus des rentes et ventes dudit domaine, leur importance étant plutôt faible.

Sous la rubrique „Maison de la Monnaie" sont réunis les profits tirés de la frappe de la monnaie métallique du chef du décalage entre la valeur intrinsèque du metal utilisé dans la fabrication et la valeur legal de ladite monnaie.

Les contributions forfaitaires d'Alava et Navarre sont le résultat du système fiscal spécial existant dans ces deux provinces, auxquelles lui est accordé le droit à garder leurs anciens „fueros" et, par suite, à établir et recouvrer à son profit certains impôts d'Etat. En contrapartie, elles ont l'obligation de se charger de l'exécution de quelques services publiques, ainsi, que de verser annuellement dans les caisses du Trésor une somme forfaitaire, somme qui constitue, en fait, la matière de cette rubrique.

Aménagements plus Importants Intervenus depuis 1940

C'est sans doute la contribution sur l'usage et la consommation, instituée en 1940 (loi du 16 décembre 1940) à laquelle nous avons fait mention plus haut, l'aménagement le plus important intervenu dernièrement dans la législation fiscale espagnole. Il faut aussi mentionner quelques majorations des taux d'imposition qui ont été établies de temps en temps.

Notons toutefois que, malgré ces majorations, la pression fiscale demeure plutôt faible. C'est ainsi que dans l'exercice 1951, avec un revenu national de 233.851 millions de pesètes, le recouvrement des recettes budgétaires n'atteignit que 18.249 millions de pts., soit un pourcentage de 7,80 %. En 1952, les recettes fiscales ont été largement accrues et, quoique l'estimation du revenu national pendant la même periode n'est pas encore connue, il peut être anticipé que le poids des impôts ne sera que d'environ 10 %.

D'autre part, la création de la contribution sur l'usage et la consommation n'a donné pas lieu à ce que les impôts grevant la consommation aient montré, par rapport à ceux qui pèsent sur les

revenus, une augmentation considérable, ce qui s'explique par le fait de que l'importance de quelques uns des anciens impôts sur la consommation est devenue progressivement plus faible, comme c'est le cas, par exemple, de l'impôt des douanes, alors que les recettes provenant des impôts sur le revenu se sont accrues. C'est ainsi que les impôts sur le revenu, qu'en 1940 étaient pour 40,5 % des recettes fiscales, alors que ceux sur la consommation ne dépassaient pas 34,2 %, ont passé, en 1952, a 39,5 % et 43,1 %, respectivement, montrant une amélioration des impôts sur la consommation, mais d'ailleurs sans que la part correspondante a ceux sur le revenu ait été amoindrie substantiellement.

Quant aux activités législatives développées au cours de l'année 1952, il faut mentionner les suivantes:

Loi du 20 décembre 1952, portant réforme au régime d'inspection des tributs dans le sens d'augmenter, bien que légèrement, les pénalités à appliquer lors de la constatation de bases non declarés. En même temps, les facultés d'investigation des inspecteurs ont été élargies en ce sens que désormais elles peuvent atteindre non seulement la propre comptabilité et les documents du redevable, mais aussi ceux appartenant à quiconque ait des rapports economiques avec celui-ci, soit client, soit fournisseur de marchandises, matières primes ou services.

Une autre loi du 20 décembre 1952 structurant le service et accordant des crédits suffissants pour établir le cadastre dans tout le territoire national, de telle façon que le pays entier soit soumis, en matière de contribution foncière rurale, à ce régime d'imposition.

Une autre loi de la même date (20 décembre 1952), accordant quelques avantages en matière des amortissements exonérés d'impôt, auxquelles nous avons fait mention plus haut quand il a été question du tarif 3 de la contribution d',,utilidades'' de la richesse mobilière.

Il faut citer aussi la loi de 15 juillet 1952 instituant en Espagne, pour la première fois, un régime fiscal spécial pour les sociétés à portefeuille d'après lequel toutes les sociétés de ce genre remplissant les conditions et formalités y exigées sont exemptées d'un nombre d'impôts dont les plus importants sont ceux qui grèvent les bénéfices et les dividendes (tarifs 2 et 3 de la contribution d',,utilidades'' de la richesse mobilière). Sont susceptibles de bénéficier de ces

dégrèvements: les entreprises n'ayant pas investi au delà du 10 % de son active social dans des valeurs émises par une seule collectivité ou entreprise ou ne participant pas pour un chiffre supérieur au 10 % dans les sociétés où elles mêmes sont intéressées. Elles sont tenues en outre à dresser semestriellement un bilan auquel il est anexé un état montrant les valeurs qui constituent leur portefeuille, la valoration de ceux-ci et les taux moyens de cotisation au cours du dernier mois dudit bilan. Les entreprises susviées doivent avoir son siège social dans territoire espagnol et leurs actions doivent être de la propriété de sujets du gouvernement espagnol.

Finances Locales et Provinciales

Par une Loi récente du 3 décembre 1953, des importantes modifications ont été introduites dans le régime financier des communes et diputations. A partir de l'exercice 1954, ce régime s'établit comme suit:

A). L'imposition communale se compose de trois groupements: le premier englobe les impôts ayant effectivement le caractère d'impôts municipaux; le second embrasse les charges préleveés au profit des communes sur les impôts d'Etat et le troisième n'affecte qu'aux communes qui ont moins de 20.000 habitants.

Parmi les impôts proprement dits il faut mentionner comme les plus importants la taxe sur la richesse urbaine, avec un taux maximum d'imposition de 17,20 % sur le net imposable et la taxe sur la richesse rurale et du bétail, dont le taux maximum est de 8,96 % sur le net imposable. Il y a en plus d'autres impôts tels que les droits sur les casinos et salles de jeux; sur les terrains non édifiés; sur l'accroisement en valeur des terrains; sur les boissons spiritueuses et alcools; sur les viandes et poissons; sur les pompes funèbres; sur les paris aux spectacles publics; sur le vin et la cidre et sur la consommation de luxe. Ce dernier poste a une importance considérable du moment qu'il frappe d'abondantes soúrces de recouvrement (débits dans les cafés, consommation dans les hotels et restaurants, cinémas, cours de taureaux, etc.), ayant été cédé par l'Etat aux collectivités locales par une loi de 17 juillet 1945.

Parmi les charges ajoutées aux impôts de l'Etat et recouvrées par les communes il faut citer les tantièmes suivantes: 25 % sur

les cotes de la contribution foncière et celle de commerce; 32 % sur les cotes minima des entreprises d'assurance à raison du Tarif 3 d',,Utilidades''. Ce même taux est imposé à raison du Tarif 1 d',,Utilidades'' (travail personnel) aux rémunérations perçues par les directeurs et gérants de sociétés, présidents et membres de conseils d'administration, agents de compagnies d'assurances, commissionaires et artistes; 50 % sur la consommation domestique d'électricité et gaz pour l'éclairage et 25 % sur les autres usages; 16 % sur la taxe que, dans le cadre de la contribution sur l'usage et la consommation, grève le produit brut des mines.

Il y a en outre des charges dont l'application est spécifiquement determinée et soumise à une autorisation spécial. Tel est le cas des 10 centièmes des cotes de la contribution foncière urbaine et de la contribution industrielle, prélevées aux fins de l'amortissement d'emprunts.

Finalement, les communes dont la population soit inférieure à 20.000 habitants ont recours à des ressources nivelateurs a fournir par les diputations provinciales lorsque lesdites communes n'arrivent pas à équilibrer leur budget, pourvu qu'elles accomplissent certaines formalités.

B). Les finances provinciales sont également nourries du produit des impôts propres et du prélèvement des tantièmes sur les impôts de l'Etat.

Parmi les premiers il faut citer:

a). une taxe sur la richesse provinciale qui à trait a toute la production, tant des matières premières que des produits obtenus, laquelle est perçue au moment même où se produisent l'espèce ou la richesse visées, quelque soit leur destin ou application. Le taux d'imposition va jusqu'au 3 % maximum;

b). une taxe sur le produit net des exploitations industrielles ou commerciales, quelque soit leur statut, qui ne soient pas assujetties à la contribution industrielle, à l'exception des compagnies d'assurances, le taux maximum étant de 15 %;

c). d'autres taxes, telles que celles grevant les terrains non cultivés mais qui n'entrent pas dans la classification des terrains sans édifier, ainsi que le roulage et l'entrainement des véhicles non

assujettis à la Patente Nationale grèvant les véhicles à moteur d'explosion.

Parmi les derniers figurent: une charge de 30 % sur les cotes de la contribution industrielle d'Etat et une autre de 10 % sur les cotes du Tarif 3 d',,Utilidades''.

Madrid, décembre 1953.

INCOME TAX TREATIES — A COMPARISON OF BASIC PROVISIONS

by

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I. LIST OF TREATIES

Treaties for the avoidance of double taxation and the prevention of fiscal evasion with respect to income taxes are presently in effect between the United States and Australia, [1]) Belgium, [2]) Canada, [3]) Denmark, [4]) Finland, [5]) France, [6]) Greece, [7]) Ireland, [8]) Netherlands, [9]) New Zealand, [10]) Norway, [11]) Sweden, [12]) Switzerland, [13]) Union of South Africa, [14]) and the United Kingdom. [15]) Treaty negotiations are in various stages of progress with a number of other countries. [16])

II. GENERAL TREATY SCHEME

Under the conventions the contracting countries mutually agree to grant certain exemptions, credits or reductions in tax rates. As far as the United States is concerned, the conventions apply only to Federal income taxes. Taxation by the States is not affected. Each treaty government reserves the right to tax its own citizens, residents and legal entities in accordance with its own tax laws, [17]) irrespective of treaty changes. The United States has, however, in all treaties undertaken to permit domestic taxpayers to claim a credit against the American income tax for certain taxes paid to other treaty countries. The foreign treaty-governments have in turn agreed either to grant a credit against their taxes for the United States taxes paid, or to make allowance for American taxes by means of exemptions or lower tax rates. [18])

Treaty modifications of the Federal tax law, in the form of tax-

exemptions or reductions in tax rates are, therefore, confined almost exclusively to the taxpayers described in the Internal Revenue Code as non-resident alien individuals or foreign corporations.

III. TREATY CONCEPTS

A. *Types of Taxpayers*

Individuals: In all conventions the contracting governments agree to grant certain benefits to residents of the other treaty country. American citizens residing in foreign treaty countries can never have the status of a treaty-country resident for purposes of the United States tax benefits conferred upon such residents by the treaties. It is not necessary, however, that an alien resident of a foreign treaty country be also a national thereof. Citizens of foreign treaty countries, residing outside of their country of nationality, cannot qualify as resident thereof, except in one case. The convention with Sweden provides that a citizen of one of the contracting states not residing in the territory of either shall be deemed to be a resident of his country of nationality. [19]) A Swedish citizen residing in Spain, therefore, can claim the United States tax benefits granted to residents of Sweden under the Swedish convention. [20])

Most treaties do not define the term "resident". A taxpayer's residence will therefore be determined in accordance with the laws of the country imposing the tax. [21]) It is possible that both contracting states may consider an individual as residing within their territory. In such case it would appear that neither country would be obligated to accord to such individual the treaty benefits granted by it to residents of the other treaty country. The conventions with Australia, Ireland, New Zealand and the United Kingdom contain a definition of residence. An individual resident of one of these countries is described as any person, other than a United States citizen, who is resident in the particular treaty country for the purposes of its tax and not resident in the United States for purposes of United States tax. [22]) It is possible that this definition excludes not only individuals who are deemed to be residents of the United States but also persons who from the viewpoint of the American tax law could be considered as residing in the respective

British treaty country, but who do not qualify as residents of such country under its own tax laws.

Corporations: The conventions also bestow tax benefits upon corporations of treaty countries. In most cases a treaty-country corporation is described as any corporation or other juridical person organized in or under the laws of a treaty country. [23]) In the absence of any such express provision the definition of the country imposing the tax is to be applied. [24]) As a rule foreign corporations not organized in a treaty country cannot qualify. The conventions with Australia, Ireland, New Zealand and the United Kingdom, [25]) however, include within the definition of a person "resident in" those countries any corporation, other than a United States corporation, which is deemed to be a resident of the particular treaty country for purposes of its income tax and is not resident in the United States for purposes of U.S. income tax. [26]) Under the income tax law of these four countries a corporation is considered to be a resident thereof if its business is "managed and controlled" within their territory. [27]) For the purpose of all treaties, the identity of the stockholder, member or beneficiary of the foreign legal entity is generally immaterial. A foreign treaty-country corporation the stock of which is owned entirely by United States citizens or residents will still qualify.

Other entities: The conventions have reference also to "other entities" which are not juridical persons Such entities may be partnerships or other associations without legal personality, organized in or under the laws of a foreign treaty country. The general rule determining tax liability according to the circumstances of the partner and not those of the partnership, remains unchanged. [28]) In order to simplify tax collection, however, a foreign partnership is treated like an individual for withholding tax purposes. [29]) If, for example, a Swiss partnership receives dividend income from sources in the United States the American withholding agent will withhold tax thereon at the reduced rate under the Swiss treaty. [30]) The ultimate Federal income tax liability of any American citizen or resident partner with respect to his distributive share of partnership income will remain unchanged. Nor will such initial withholding at the reduced rate decrease the final U.S. tax liability of any other foreign partners who are not entitled to the lower treaty rate.

The Swiss partnership is obligated to withhold from the distributive shares of such non-entitled partners the difference between the U.S. tax withhold under the treaty and the tax which would otherwise have been withhold, and pay the tax difference to the Swiss Government for transmittal to the U.S. Treasury Department. [31])

In the case of trusts, estates and other fiduciary arrangements, a distinction must be made between income which is distributed or distributable, on the one hand, and income which is retained, on the other. Income of an American or foreign trust or estate which is distributed or distributable to treaty-country residents will, in the hands of such beneficiaries, be entitled to the same treaty benefits which would have accrued had the beneficiaries received the income without the interposition of the trust or estate. [32]) As long as a foreign trust or estate does not distribute income, and is under no obligation to do so, it is considered to be a separate entity and treated like an individual. It appears that the residence of a foreign estate is determined by the decedent's last domicile, and the residence of a foreign trust by that of the fiduciary. An estate or trust which qualifies as a treaty-country resident can claim treaty benefits with respect to its accumulated income. [33]) The identify of the ultimate beneficiaries is immaterial in this connection. Presumably, therefore, the accumulated income of a treaty-country trust managed by a treaty-country resident trustee will enjoy treaty advantages even if all the trust beneficiaries are citizens or residents of the United States. Such domestic beneficiaries will then eventually receive the treaty-exempt trust income tax-free.

Enterprises: In connection with the taxation of commercial and industrial profits and income from shipping and aircraft operations, the convention describe the recipient of such income as a treaty-country "enterprise". This term is normally defined as a commercial or industrial undertaking carried on in a treaty country by an individual treaty-country resident, partnership, corporation or other entity. [34]) There is no requirement that all activities of the enterprise must be carried on in the treaty country. If, however, no activities take place in the treaty country and business is done elsewhere, the enterprise is not a treaty-country enterprise, even

though it is conducted by a treaty-country resident or organization. [35])

B. *Permanent Establishment*

The Internal Revenue Code, in dealing with the taxation of non-resident alien individuals and foreign corporations, distinguishes between such taxpayers engaged in trade or business in the United States, and those not so engaged. [36]) The test under the conventions is whether a treaty-country taxpayer is engaged in business in the United States through a "permanent establishment". [37]) This concept is uniformly applied in connection with the taxation of business profits derived by treaty-country enterprises from sources within the United States. Tax reductions and exemptions granted by the conventions with respect to investment income, such as dividends, interest, royalties and capital gains, are also predicated in most cases [38]) upon the recipient's not having a permanent establishment in the United States. While some treaties define a permanent establishment in greater detail than others, the basic principles appear to be the same. [39]) The term denotes the conduct of commercial or industrial activities through some fixed center situated in the United States. This includes a branch, office, factory and warehouse. While not specifically listed in all treaties, it furthermore embraces plantations, timberlands, oil wells, mines and other installations. [40]) The more ownership of such property without some substantial commercial or industrial use thereof does not suffice. The maintenance in the United States of an office used exclusively for purchasing, or of warehouses or showrooms primarily for storage or display purposes, are not the types of commercial or industrial activity which will result in a permanent establishment in this country. [41])

The promotion of sales or solicitation of orders in the United States through travelling salesmen does not give rise to a permanent establishment in the United States. A foreign principal who works through domestic agents is normally engaged in business in the United States within the meaning of the Internal Revenue Code. [42]) The treaties expressly exclude from the permanent establishment concept the conduct of business through bona fide commission agents, brokers, or custodians acting in the ordinary course of their

business. Other agents will be considered as a permanent establishment if they habitually exercise general contract authority on behalf of the foreign principal or if they have control over a stock of merchandise from which they regularly, not merely occasionally, fill orders on behalf of the principal. The status of a foreign enterprise is ordinarily not affected by the fact that a domestic or foreign company controlled by it has a permanent establishment in this country.

IV. TYPES OF INCOME

With respect to certain non-resident alien individuals and foreign corporations, the treaties exempt some types of income from United States taxation and reduce the tax rate on others. The treaty with Canada is the only one which prescribes a maximum U.S. tax rate of 15 % in respect of all income, not otherwise specifically covered, derived from domestic sources by a non-resident alien individual residing in Canada or a Canadian corporation, not having a permanent establishment in the United States. [43]) To the extent that the Internal Revenue Code either directly or indirectly imposes a higher tax rate than prescribed by the treaties, it is abrogated. For example, I.R.C. Section 211 (c), dealing with the taxation of certain non-resident alien individuals deriving more than $15,400.00 determinable and periodical profits from United States sources, does not affect income which is either rendered tax-exempt or entitled to a lower tax rate under the conventions. [44])

A. *Business Income*

Industrial and commercial profits: A treaty-country enterprise which has no permanent establishment in the United States, is not subject to United States income tax on its industrial and commercial profits from sources within the United States. [45]) The term "industrial and commercial profits" does not include such items as investment income or compensation for personal services. [46]) A treaty-country enterprise which is engaged in business in the United States through a permanent establishment is subjected to tax on its income from United States sources like any other foreign taxpayer engaged in business in the United States within the meaning of the Internal

Revenue Code. Individual residents and corporations or other entities of treaty countries, having a permanent establishment in the United States are, therefore, faced with the usual problems in determining their income from United States sources. [47]) Under the treaties as well as under the Code rule the permanent establishment will be charged with the net profits which it might be expected to derive if it were an independent enterprise dealing at arm's length. The establishment in the United States should therefore keep separate accounts from those of the home organization. It can deduct expenses reasonably allocable to its activities in the United States, including a ratable portion of executive and general administrative expenses wherever incurred. [48]) All industrial and commercial profits from sources within the United States are deemed allocable to the permanent establishment even though they may not have been caused by the activities of the establishment. If, for example, a treaty-country enterprise with a permanent American establishment effects a part of its sales in the United States directly from the home office or through a regular commission agent, the profits from such sales are considered as having been earned by the permanent establishment. [49]) Under treaty provisions akin to Internal Revenue Code Section 45 the Commissioner is given power to adjust accounts between a domestic establishment and a treaty-country parent enterprise which by reason of its control imposes on the domestic establishment conditions different from those which would have been imposed on an independent enterprise. The Commissioner in such case may reallocate profits in such manner as to arrive at a realistic income. [50])

Shipping and aircraft operations: Due to the difficulty encountered in arriving at a fair allocation of the profits realized by foreign carriers from shipping and aircraft operations in or with this country, [51]) Congress has unilaterally exempted such earnings from United States income taxation if they were derived from the operation of ships or aircraft registered under the laws of a foreign country which grants an equivalent exemption to United States citizens or corporations. [52]) The treaties adopt the same principle and make the exemption generally available to treaty-country enterprises. [53]) Some convention, however, do not require registration or documentation in a treaty country. [54])

B. *Income From Real Property and Natural Resources*

The treaties generally affirm the Code rule taxing income from real property and natural resources at the situs of the property, so that rentals and royalties derived from United States real property are taxable in this country.[55]) Such rentals and royalties are, however, subject to a reduced tax rate of 15% if received by resident individuals or entities of Canada,[56]) Ireland[57]) or the United Kingdom,[58]) not having a permanent establishment in the United States.[59]) Furthermore, residents or legal entities of all treaty countries other than France or Sweden, deriving such rentals or royalties from United States sources, are given the option to elect to be subject to United States tax on a net basis as if they were engaged in business in the United States through a permanent establishment.[60]) The election affords such taxpayers an opportunity to claim depreciation and depletion allowances. On the other hand, it will deprive them of the tax reductions or exemptions which they would otherwise have enjoyed under the respective treaties as to other types of income, assuming that they had no permanent American establishment.

C. *Other Royalties*

Royalties and other payments received as consideration for the right to use copyrights, patents, designs, secret processes, trademarks, motion pictures and other similar property are exempt from United States tax if obtained by treaty-country residents or legal entities not having a permanent establishment in the United States.[61]) The Swedish treaty contains no requirement as to absence of a permanent establishment. The convention with Canada and Australia confine the exemption to copyright and other cultural royalties, thereby excluding industrial royalties. Furthermore, the two last-named conventions, as well as those with Finland and Greece, make the exemption inapplicable to motion picture rentals and royalties. The South African convention contains no tax relief of any kind with respect to royalty income other than natural resource royalties.

D. *Investment Income*

Dividends from United States payors: A majority of the conventions prescribes a maximum United States tax rate of 15 % with respect to dividends received from domestic sources by individual residents or legal entities of treaty countries, not having a permanent establishment in the United States. [62]) The treaty with Sweden reduces the tax to 10 % and contains no prohibition against the taxpayer's having a permanent establishment. [63]) Many conventions further reduce the tax to 5 % on dividends paid by a domestic corporation to a treaty-country legal entity not having a permanent United States establishment, which controls at least 95 % of the voting power of the payor corporation, provided that not more than 25 % of the payor's gross income is derived from dividends and interest. [64]) This special tax rate on subsidiary dividends is not allowed if the relationship between the two legal entities was arranged primarily with the intention of securing the reduced rate. The conventions with France, Greece, Norway and the Union of South Africa contain no tax reduction of any kind with respect to dividends.

Interest from United States payors: Under a number of conventions interest paid to individual residents or legal entities of treaty countries is exempted from tax if such taxpayers have no permanent establishment in the United States. [65]) Some of these treaties, however, deny the exemption in respect of interest paid by a domestic corporation to a treaty-country parent corporation which controls more than 50 % of the subsidiary's voting power. [66]) Interest paid to Canadian and Belgian recipients is subject to a maximum tax rate of 15 % [67]) and interest to Swiss payees to a maximum rate of 5 %, [68]) always provided there is no permanent establishment in the United States. This exemption or reduction, as the case may be, normally applies to all types of interest from sources within the United States, whether the obligor be an individual, corporation or government agency. As a rule it includes interest from mortgages on domestic realty. The treaty with the Netherlands, however, excludes real-property mortgage interest from the exemption. [69]) Taxpayers residing or organized in Australia, France, New Zealand, Sweden or the Union of South Africa receive no reductions or exemptions with respect to interest from sources within the United States. [70])

Dividends and interest from foreign payors: Under the Internal Revenue Code dividends and interest paid by certain foreign payors are deemed to be income from United States sources, i.e. dividends declared by a foreign corporation 50 % or more of the gross income of which for a designated period is derived from sources within the United States, and interest paid by resident alien individuals or resident foreign corporations deriving 20 % or more of their gross income from domestic sources. [71]) The majority of treaties eliminates the taxability of this type of income to a large extent, by providing that dividends and interest paid by treaty-country corporations, [72]) whether resident in the United States or not, to recipients other than United States citizens, residents or domestic corporations, shall be exempt from tax. [73]) There is no requirement that the payee be a treaty-country resident or corporation. Any non-resident alien or foreign corporation will qualify. Under the Swiss convention, however, dividends and interest paid by any foreign corporation are exempt from tax provided that the recipient is a non-resident alien residing in Switzerland or a Swiss corporation, not having a permanent establishment in the United States. [74]) The Swiss exemption, therefore, is more liberal in its definition of the foreign corporate payor but more restrictive as regards the recipient. The Australian convention confines the exemption to dividends (not interest) paid to an Australian resident by a company resident in Australia. [75]) The treaties with Belgium, France, Norway, Sweden and the Union of South Africa contain no provisions regarding dividend or interest payments made by foreign corporations. [76])

Capital gains: Under the Internal Revenue Code non-resident alien individuals and foreign corporations engaged in business in the United States are subject to taxation on their capital gains. Since the passage of the Revenue Act of 1950, even capital gains realized by non-resident alien individuals not engaged in business in the United States are taxable under certain contingencies. [77]) Subsequent to that Code amendment, the United States Senate has consistently refused to consent to the ratification of clauses in new treaties which would exempt treaty-country residents from tax liability with respect to capital gains. [78]) The treaties with Canada, [79]) France [80]), Sweden, [81]) and the United Kingdom, [82]) however, which antedate

the Revenue Act of 1950 provide that gains from the sale or exchange of capital assets[83]) realized by residents or legal entities of those countries not having a permanent American establishment, shall be exempt from United States income tax.

E. *Earned Income*

Compensation for personal services: The Internal Revenue Code stipulates that the term "income from sources within the United States" shall not include compensation for personal services performed in the United States by a non-resident alien individual who is temporarily present in the United States for periods not exceeding a total of 90 days during any taxable year, provided his total compensation does not exceed $3,000.00 and the services are performed on behalf of a non-resident alien, foreign partnership or foreign corporation, not engaged in trade or business in the United States.[84]) The treaties uniformly liberalize this exemption by either prolonging the maximum period of stay, enlarging the amount of permissible compensation, removing the requirement that the employer be a non-resident alien or foreign corporation, or by a combination of the foregoing.

Under a number of conventions compensation for personal services rendered to any employer, whether foreign or domestic, is exempt if received by a treaty-country resident who did not spend more than a total of 90 days out of the taxable year in the United States, provided the total compensation did not exceed $3,000.00.[85]) In the case of Canada, the maximum period of stay is 183 days and the maximum compensation $5,000.00,[86]) while under certain other conventions the maximum permissible compensation is $10,000.00.[87]) In addition to or, in some cases in lieu of, the foregoing exemptions based on length of stay and amount of compensation, a number of treaties grants an exemption dependent on length of stay and nature of the employer. They free from tax any compensation for personal services, regardless of amount, if the work was performed for or on behalf of a treaty-country resident, corporation or other entity, by a treaty-country resident who was temporarily present in the United States for a total period not exceeding half a taxable year[88]) or, in the case of France, aggregating less than a full taxable year.[89]) The fact that the treaty-country

employer is engaged in business in the United States or even has a permanent establishment therein is immaterial for purposes of either type of exemption. [90])

Some conventions include in the term "personal services" not only the rendition of services as a corporate director [91]) but also the exercise of a liberal profession. [92]) The treaty with France is unique in its treatment of the latter type of income. It confines its taxability to the country in which the professional activity has a fixed center. [93]) The Swedish treaty excludes from the exemption compensation received by actors, musicians, artists, athletes and other professional entertainers. [94])

Visiting teachers: Alien residents of treaty countries other than France and Sweden, who visit the United States for the purpose of teaching or lecturing [95]) at a university, college, school or other educational institution, are for a period of two years from the date of their arrival exempted from United States income taxation on remunerations received for such services. [96]) Some treaties specify that the individual must be a treaty-country citizen, while others merely require him to be an alien resident of the treaty country. The United States Treasury Department has unilaterally added the further tax concession that for a period of two years immediately succeeding the date of the foreign resident's arrival in the United States for teaching purposes, he shall be deemed to have the tax status of a non-resident alien, in the absence of proof of a contrary intention. [97])

Government employees: The Internal Revenue Code excludes from taxable gross income salaries or other compensation paid by foreign governments to employees other than United States citizens, provided the services rendered are similar to those performed by United States government employees abroad and provided the foreign government grants an equivalent exemption to American Government employees working within its territory. [98]) The treaties, with one exception, [99]) contain clauses exempting salaries and similar compensation paid by treaty governments from tax. [100]) The main effect of these provision is to supply the reciprocal exemption on the part of the treaty government where it had not previously existed. [101]) The conventions with Belgium and the Netherlands extend the exemption to United States citizens who are also

nationals of those countries.[102]) All treaties include within the exemption compensation received from political subdivisions, territories and other public agencies of the treaty country.[103]) The conventions with Ireland, New Zealand and the United Kingdom expressly exclude compensation for services rendered in connection with any business carried on for profit by a treaty government. Except in the case of Canada[104]) and New Zealand, the exemption for government salaries is extended to pensions and annuities paid by treaty governments.

F. *Miscellaneous Types of Income*

Remittances to students: Most conventions exempt from United States income taxation remittances for maintenance or studies received from abroad by treaty-country students or apprentices.[105]) Despite variations in language among the different treaties, the implementing Treasury Regulations make it clear that this exemption has application to non-resident alien individuals residing in a treaty country who are temporarily in the United States for purposes of training or study.[106]) Some conventions require treaty-country nationality as well as residence.[107]) In some it is not sufficient that the remittances be received from abroad. They must come from sources within the particular treaty country.[108])

In no event will followships, scholarships or similar payments from American sources qualify for the exemption. The scope of these treaty clauses would appear to be rather limited. Support or tuition contributions received while attending an educational institution would not normally constituts taxable income unless given for a valuable consideration.[109])

Pensions and life annuities: Private pensions and life annuities received from American sources by non-resident alien individuals residing in a treaty country are exempt from United States tax, regardless of whether the recipient has a permanent establishment or is engaged in business in the United States.[110]) The term "pension" refers to periodic payments made as compensation for injuries received or in consideration of services rendered.[111]) It presumably embraces payments received by employees under employee pension plans.

A life annuity within the meaning of the conventions is a stated

sum payable at stated times, during a specified or ascertainable period, under an obligation entered into in consideration of money paid. [112]) The exemption, therefore, does not include gratuitous testamentary or lifetime gifts expressed in the form of annuities. Some treaties expressly require the annuitant to have paid the consideration. [113]) Some stipulate that the annuity contracts must have been issued in consideration of a lump sum payment. [114]) The convention with Canada includes within the annuity exemption payments received under a contributory retirement plan, irrespective of whether the contributions have been paid by the recipient or by the deceased employee who was his predecessor in interest. [115]) *Income of exempt organizations:* The conventions with Australie, [116]) Canada [117]) and the Union of South Africa [118]) specify that income derived from American sources by religious, scientific, educational or charitable organizations of those countries shall be exempt from United States tax if similar income received by a domestic entity would be exempt under the American tax law. [119]) This treaty exemption would not appear to be a substantial modification of the existing American law. The Internal Revenue Code [120]) frees the income [121]) of certain charitable and similar organizations from tax, without requiring such organizations to be domestic entities. Any foreign organization, therefore, which possess the necessary qualifications can come under the statutory exemption. [122])

G. *Improper Corporate Accumulations*

Only two conventions directly relieve certain treaty country corporations from liability for surtax under either Internal Revenue Code Section 102 or the Sub-Chapter A personal holding company provisions. The conventions with Canada [123]) and the United Kingdom [124]) provide that corporations organized under the laws of these two countries, more than 50 % of the outstanding voting stock of which is owned or controlled [125]) directly or indirectly by individual treaty-country residents shall be exempt from taxes imposed by the United States with respect to accumulated or undistributed earnings, profit or surplus. Similar provisions originally contained in the conventions with Ireland [126]) and the Netherlands [127]) were rejected by the United States Senate. Canadian or British corporations which fulfill the stock ownership requirement of the treaties

can, therefore, accumulate surplus without incurring United States surtax liability. The Treasury Regulations implementing the two treaties state that ownership of the voting stock of treaty-country corporations shall be determined in accordance with the provisions of the Internal Revenue Code [128]) insofar as they are not inconsistent with the conventions. [129]) The Code rules regarding constructive ownership are in the words of the statute to be applied "only if the effect is to make the corporation a personal holding company". [130]) In view of the clearly expressed legislative intent to benefit the revenue by means of the constructive ownership rules, it is doubtful whether these rules could be put to use by a taxpayer in an attempt to bring a corporation within the treaty exemption. [131])

Corporations of treaty countries other than Canada and the United Kingdom still face the possibility of surtax liability under Section 102 or Sub-Chapter A. [132]) However, they can avoid the impact of these punitive taxes by distributing, or having their stockholders consent to the distribution of, the net income. [133]) Under those conventions which exempt all dividends paid by treaty-country corporations from American taxation, non-resident alien stockholders will receive such distributions tax-free. [134]) The question has been raised whether the "dividends-paid credit" allowed by I.R.C. Section 27 can be availed of in the case of such tax-exempt distributions, in view of the fact that the Statute denies this credit with respect to any part of a distribution which is not taxable in the hands of the shareholders. [135]) The Bureau, however, has ruled that credit can be taken for distributions rendered tax-free by reason of a treaty. Accordingly, consent distributions made by a Swiss personal holding company to its non-resident alien stockholders residing in Switzerland were held to be deductible by the corporation, with the result that the corporation was freed of personal holding company surtax liability while the stockholders were not taxed on the consent dividends. [136])

V. INTERNATIONAL INFORMATION EXCHANGE AND ASSISTANCE IN TAX COLLECTION

A. *Information Exchange*

Under all conventions the treaty governments undertake to

supply each other with information for the purpose of carrying out the treaty provisions and combatting illegal avoidance of the taxes to which the treaties relate. A few conventions spell out the information exchange system in detail.[137]) The majority covers it in one general clause.[138]) A typical clause of this kind reads:

> "The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention . . ."[139])

The Treasury Regulations implementing the tax conventions, however, make it clear that under either type of information clause the American Government will supply substantially identical information.[140]) It will furnish certain date in the ordinary course without specific request. At the application of another treaty government, it will furthermore give additional information conserving concrete cases.

Information in the ordinary course: The United States Government will without special request forward to another treaty government the names and addresses of all individuals and entities whose addresses are in a treaty country, and the amounts of fixed or determinable periodical income derived by such taxpayers from United States sources.[141]) This information is collected by the United States through its existing withholding tax system applicable to non-resident alien individuals and foreign entities.[142]) The communication to the other treaty government of information obtained through the withholding system is deemed by our government to be full compliance with its automatic treaty obligations.[14]) From the fact that tax is withheld only on income paid to non-resident alien individuals and foreign entities, it follows that resident aliens, United States citizens and domestic corporations cannot become subject to treaty information in the ordinary course.

Every American withholding agent paying income to non-resident alien individuals or foreign entities whose addresses are in a treaty country must either file a special information return[144]) together

with his annual withholding tax return, or embody information concerning treaty-exempt income in his regular withholding tax return. [145])

The concept of "address" used in connection with treaty information is defined neither in the conventions nor in the Treasury Regulations issued thereunder. It is clear, however, that an "address" in a treaty country, which renders a taxpayer subject to information in the ordinary course, is not synonymous with residence. The address contemplated for purposes of automatic treaty information is the taxpayer's address shown on the records of the American withholding agent. [146]) An address in a treaty country will cause automatic information to be supplied to that country. A taxpayer whose record address is in a treaty country cannot escape treaty information even though he is willing to forego the treaty benefits. The United States tax law does not impose upon the withholding agent the obligation to ascertain whether a taxpayer is a resident of a treaty country, and entitled to treaty benefits. In the case of dividends, tax shall be withheld at reduced treaty rates on all payments made to treaty-country addresses, [147]) even though their residence is known to be elsewhere. [148]) Treaty benefits with respect to other types of income have to be claimed by the taxpayer, normally by filing an ownership certificate. In either case information will be furnished in due course to the treaty government. Even if a taxpayer does not receive treaty benefits an address in a treaty country may subject him to information in the ordinary course. Thus the Treasury Department has expressed the opinion that in the case of a Venezuelan corporation with an address in care of a lawyer in Switzerland which receives American dividends, tax at the regular rate of 30 % should be withheld but information should nevertheless be forwarded to Switzerland. [149]) By furnishing the withholding agent with an address outside of a treaty country, a taxpayer forecloses the possibility of automatic information. If, however, the taxpayer claims treaty advantages on the basis of residence in the treaty country, information in the ordinary course will probably have to be given in all cases. [150])

Information in particular cases: In addition to receiving information in the ordinary course, a treaty government is entitled to request another treaty government to supply information concerning con-

crete cases involving the application of the treaty-taxes of the requesting state. [151]) Here the taxpayer's record address is of no significance. The treaty with France leaves it to the discretion of the state to which application is made to decide whether it will give information about its own citizens or domestic entities. [152]) The convention with Sweden confers a right to specific information only with respect to citizens, corporations or other entities of the applying state. [153])

Limitations on information: A government need supply only such information, whether in the ordinary course or upon special request, which it has at its disposal or may obtain under its revenue laws. [154]) Any information exchanged is to be treated as secret and not to be disclosed to persons other than those concerned with the assessment or collection of the taxes covered by the conventions. [155]) The conventions with Belgium, [156]) France [157]) and Sweden [157a]) permit disclosure to be made to the extent authorized under the laws of the receiving state. Under all conventions, however, it would appear that the information may be utilized only by the taxing authorities and only for the purposes of the taxes covered by the conventions. It would be improper, for example, to use such information in prosecuting violations of currency restrictions incidentally revealed.

A government can refuse to comply with a request for information on the grounds that compliance would constitute a violation of its public policy. [158]) Public policy necessarily embraces a wide field. Furthermore, no information may be exchanged which would disclose a trade, business or professional process or secret. [159]) Due process would probably require the American government to give interested parties notice and an opportunity to be heard before revealing information which might have any such effect. An injunction against unauthorized disclosure might then be available. [160])

B. *Assistance in Tax Collection*

Most conventions contain clauses either obligating or authorizing the government of one treaty country to collect and enforce tax liability imposed by another treaty country. [161]) The provisions, however, vary considerably from treaty to treaty. A number of conventions recently submitted for ratification to the U.S. Senate, which contained detailed and far-reaching enforcement provisions,

were sanctioned by the Senate only on the condition and understanding that assistance was to be rendered solely for the purpose of ensuring that treaty exemptions or reductions will not be enjoyed by persons not entitled thereto. [162]) In a number of treaties this limitation is expressly set forth. The treaty with New Zealand, for instance, contains the following clause:

> "Each of the Contracting Governments may collect such tax imposed by the other Contracting Government as will ensure that the exemption or reduced rate of tax granted under the present Convention by such other Government shall not be enjoyed by persons not entitled to such benefits." [163])

In the treaties with Denmark, France, the Netherlands and Sweden, however, the provisions for reciprocal tax collection are not so restricted. [164]) In those cases one treaty government undertakes at the request of another treaty government to collect such taxes covered by the respective treaties, including interest, costs and non-penal fines, as have been assessed by the other government. Assistance need be given only after the applying state has certified that its revenue claims have been finally determined. [165]) The treaty with France [166]) obligates, and the treaty with Sweden [166a]) authorizes, a government receiving a request for assistance with respect to a revenue claim which has not been finally determined to take appropriate measures of conservancy. Both collection and conservation are to be carried out by the enforcing state only in accordance with the laws applicable to its own taxes. [167])

Doubt has been expressed as to the constitutionality of treaty provisions obligating the United States Government to enforce the fiscal claims of foreign governments. [168]) It would also appear difficult, in the absence of special enabling legislation, to adapt the sections of the Internal Revenue Code dealing with the collection of taxes, to such foreign claims. [169])

The reciprocal enforcement provisions are subject to a number of restrictions. As a rule assistance is not to be accorded with respect to citizens, corporations or other entities of the state to which application is made. [170]) Under the Swedish convention assistance appears to be confined to taxes claimed from citizens, corporations or other entities of the applying treaty country. [171]) As in the case

of treaty information, the enforcement clauses also provide that a state to which application for assistance is made may refuse to act thereon on the ground of public policy, or because compliance would result in this disclosure of a trade, business, industrial or professional secret or process. [172])

VI. TREATY BENEFITS FOR DOMESTIC TAXPAYERS

Most of the treaty benefits accruing to American citizens, residents or domestic corporations, consist of exemptions, reductions and other tax relief accorded to them by foreign treaty countries. Each convention, however, after confirming the right of the United States to tax its citizens, residents or corporations in accordance with its general tax laws, also stipulates that the United States shall grant a credit against its taxes for taxes paid to the foreign treaty country. [173]) The general rule is that the credit is to be allowed in accordance with and to the extent permitted by the provisions of the Internal Revenue Code. [174]) Certain foreign property and other taxes which might not heretofore have qualified as "income, war profits and excess profit taxes" may be claimed for credit under the treaties. [175]) The conventions with Ireland and the United Kingdom remove an inequity resulting from an unfavorable judical interpretation of the Code provisions regarding the allowability of the credit for certain taxes paid to those countries. For purposes of the British and Irish income tax laws a stockholder receiving dividends from a company organized in one of those countries is credited with corporate taxes "appropriate to" his dividends. [176]) Prior to the treaties the United States Supreme Court had held that a United States citizen receiving dividends from a British company could not claim either a credit or a deduction for a proportionate part of the British taxes. The reasoning of the Court was that the individual taxpayer had not paid the tax and that it constituted a liability of the British company. [177]) Under the treaties with Ireland [178]) and the United Kingdom [179]) the recipient of a dividend paid by a company which is a "resident" [180]) of those countries is now deemed, for purposes of the tax credit, to have paid the Irish or British tax, as the case may be, appropriate to such div-

idend, provided he elects to include the amount of such tax in his gross income. [181])

To alien residents of the United States the treaty credit provisions assume greater importances. The Code credit may be claimed by a resident alien only if the country of which he is a citizen or subject allows a similar credit against its taxes to United States citizens residing within its territory. [182]) The treaties supply the required reciprocity in respect of treaty-country citizens residing in the United States. [183]) Before the treaty with Belgium went into effect, it was held under the Canadian treaty that a citizen of Belgium residing in the United States was not entitled to claim credit for Canadian taxes, since his country of nationality did not fulfill the equivalent credit requirement. [184]) A treaty-country citizen residing in the United States will be entitled to credit only for treaty-country taxes, unless his country of nationality, independent of treaty, grants to United States citizens residing in its territory credit for all foreign taxes. The Treasury Department has ruled that under French income tax law United States citizens residing in France are not entitled to a credit for all foreign taxes. Accordingly, a French national residing in the United States was permitted to claim credit only for taxes paid to France but not for taxes paid to other foreign countries. [185])

VII. GENERAL TAX RELIEF

All conventions stipulate that citizens, corporations or other entities of one treaty country shall not be subjected by another treaty country to the payment of more burdensome taxes than those which such other country imposes upon its own citizens, corporations or other entities. The scope of this general safeguard is somewhat difficult to assess. [186])

A taxpayer who proves that the action of the taxing authorities of a treaty country have resulted or will result in double taxation with respect to any of the taxes covered by the respective conventions, is given the right to lodge a claim with the state of nationality or organization. If the taxpayer is not a citizen of or organized in either treaty country, application can be made to the state of

residence.[187]) The competent authorities of the countries in question shall then endeavor to arrive at an arrangement for the equitable avoidance of the particular double taxation.[188])

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1) Treaty signed May 14, 1953, ratified by U.S. Senate July 9, 1953, without reservation. Subsequent to the preparation of this paper, the State Department announced that instruments of ratification were exchanged with Australia on December 14, 1953, and that the treaty became effective upon its proclamation by the President on December 22, 1953. With respect to U.S. taxes the treaty is effective for taxable years commencing January 1, 1953; with respect to Australian taxes, for taxable years commencing July 1, 1953 (State Dept. Press Rel. No. 670, of 12/22/53).

2) Treaty of October 28, 1948, as amended by supplementary treaty of September 9, 1952. Ratifications were exchanged on September 9, 1953. Treaty is effective for taxable years commencing January 1, 1953.

3) Treaty of June 17, 1942, as amended by supplementary treaty of June 12, 1950, effective in its present form for taxable years commencing January 1, 1951.

4) Treaty of May 6, 1948, effective with respect to U.S. taxes for taxable years commencing January 1, 1948; with respect to Danish taxes as of April 1, 1948.

5) Treaty of March 3, 1952, effective for taxable years commencing January 1, 1952.

6) Treaty of July 25, 1939, effective for taxable years commencing January 1, 1945, as amended and supplemented by treaty of October 18, 1946, and supplementary protocol of May 17, 1948, both effective for taxable years commencing January 1, 1950.

7) Treaty signed February 20, 1950, ratified by U.S. Senate with certain reservations on September 17, 1951. Subsequent to the preparation of this paper, the writer was informed by Mr. Eldon P. King, Director, International Tax Relations Division, U.S. Treasury Department, that instruments of ratification were exchanged with Greece on December 30, 1953, whereupon the treaty became effective for taxable years commencing January 1, 1953.

8) Treaty of September 13, 1949, effective with respect to U.S. taxes for taxable years commencing January 1, 1951; with respect to Irish income tax, April 6, 1951; Irish surtax, April 6, 1950; Irish corporation profits tax, April 1, 1951.

9) Treaty of April 29, 1948, effective for taxable years commencing January 1, 1947.

10) Treaty of March 16, 1948, effective with respect to U.S. taxes for taxable years commencing January 1, 1951; New Zealand taxes for taxable years commencing April 1, 1952.

11) Treaty of June 13, 1949, effective for taxable years commencing January 1, 1951.

12) Treaty of March 23, 1939, effective for taxable years commencing January 1, 1940.

13) Treaty of May 24, 1951, effective for taxable years commencing January 1, 1951.

14) Treaty of December 13, 1946, as amended by Protocol of July 14, 1950; effective for taxable years commencing July 1, 1946.

15) Treaty of April 16, 1945, as amended by Protocol of June 6, 1946, effective with respect to U.S. taxes for taxable years commencing January 1, 1945; United Kingdom taxes for taxable years commencing April 6, 1945.

16) Argentina, Austria, Brazil, Colombia, Cuba, Germany, Israel, Italy, Japan, Luxembourg, Mexico, Philippines, Uruguay.

[17]) Most conventions state this reservation in express terms. The conventions with Australia, Ireland, New Zealand and the United Kingdom reach the same result by a somewhat more circuitous route. They make various tax deductions and exemptions available to "residents" of those countries under certain circumstances, and then define a "resident" as any person residing in the treaty country, other than a United States citizen or corporation and other than one who is considered a resident for United States tax purposes; *cf.* Australia, Art. II (1) (f); Ireland, Art. II (1) (g); New Zealand, Art. II (1) (j); United Kingdom, Art. II (1) (g).

[18]) For example, Belgium and France reduce their tax rates on income from U.S. sources taxable by them. Switzerland grants a tax exemption with respect to U.S. income taxables under its laws; *cf.* Belgium, Art. XII (3); France, Title I, Art. 14 B; Switzerland, Art. XV (1) (b).

[19]) Sweden, Protocol, Art. 3. A person who is a citizen of both Sweden and the United States cannot qualify as a Swedish resident within the meaning of this article.

[20]) It would appear that a Swedish citizen residing in another treaty country, e.g. Switzerland, can make an election. He can either assert residence in Switzerland and claim the benefits under the Swiss treaty, or claim to be a "resident of" Sweden and take the benefits under the Swedish treaty.

[21]) All terms not specifically defined in the treaties are to be given the meanings which they have under the law of the taxing country; *cf.* Australia, Art. II (3); Belgium, Art. II (2); Denmark, Art. II (2); Greece, Art. II (2); Ireland, Art. II (3); Netherlands, Art. II (2); New Zealand, Art. II (2); Norway, Art. II (2); Switzerland, Art. II (2); United Kingdom, Art. II (3).

[22]) Conversely, a resident of the United States, for purposes of these conventions, is any individual residing, and any corporation or partnership organized, in the United States, who or which is not "resident in" the particular foreign treaty country; *cf.* Australia, Art. II (1) (j, k); Ireland, Art. II (1) (g, h); New Zealand, Art. II (1) (j, k); United Kingdom, Art. II (1) (g, h).

[23]) *Cf.* Belgium, Art. II (1) (d); Greece, Art. II (1) (e); Ireland, Art. II (1) (e); Netherlands, Art. II (1) (d); New Zealand, Art. II (1) (h); United Kingdom, Art. II (1) (e).

[24]) *Cf.* Canada, Protocol, Art. 3 (a); Union of South Africa, Art. II (2) (a); *see also* I.R.C. § 3797 (a) (3), defining "corporation". The Code definition is included verbatim in the convention with Sweden, Protocol, Art. 2.

[25]) *See* treaties cit., footnote 22 *supra*; *also* T.D. 5569, § 7.515 (d) (United Kingdom).

[26]) A foreign corporation is a United States resident if it is engaged in trade or business in this country; Reg. 118, § 39.231-1 (a).

[27]) On the other hand, a corporation organized in one of those countries will not qualify as a resident thereof for treaty purposes if its management and control are located outside of the treaty country. A corporation is deemed to be "managed and controlled" in the treaty country if its management activities are centered there; *see* Ehrenzweig and Koch, Income Tax Treaties, at p. 69 (1949).

[28]) This point may become important in determining whether a partner is entitled to claim treaty benefits with respect to his individual income, even though the partnership is not so entitled by reason of the fact that it has a permanent establishment in the United States. I.R.C. Section 219 deems a non-resident alien partner to be engaged in business in the United States if the partnership is so engaged. The conventions contain no analogous rule with respect to a permanent establishment. It has therefore been asserted that a treaty-country resident partner does not necessarily have a permanent establishment in this country merely because the partnership has such an establishment. As a result the partner could, with respect to

his personal non-partnership income, claim treaty benefits predicated on his not having a permanent establishment in the United States, even though the partnership could not have claimed such benefits with respect to similar income; *see* Ehrenzweig and Koch, Income Tax Treaties, at p. 102 (1949).

[29]) *Cf.* Reg. 118, § 39.143-1 (a) (withholding tax regulations).

[30]) T.D. 5867, § 7.301 (c) (Swiss treaty withholding regulations). The same provision is contained in the withholding tax regulations under the other conventions.

[31]) T.D. 5867, § 7.307. Conversely, any excess tax withheld from taxpayers entitled to treaty benefits is to be refunded: *ibid.*, § 7.306.

[32]) *See* T.D. 5777, § 7.957 (c) (Denmark); T.D. 5778, § 7.857 (c) (Netherlands); T.D. 5569, § 7.519 (c) (United Kingdom); *see also* I.T. 4019, 1950-2, C.B. 58, holding certain payments from a domestic trust to Canadian beneficiaries to be tax exempt under the Canadian Convention and disapproving a contrary decision in *Estate of Emily S. Tait*, 11 T.C. 731 (1949), rem. by 4th Cir., order of "no deficiency" entered 9 T.C.M. 122 (1950).

[33]) *See* treaty regulations cit., footnote 32, *supra*. The Treasury Regulations under all convention state that the term "non-resident alien" includes a non-resident alien fiduciary.

[34]) *Cf.* Belgium, Art. II (1) (d); Canada, Protocol, Art. 3 (d), (e); Denmark, Art. II (1) (g); Finland, Art. II (1) (d); France, Protocol, Art. III (d), (e); Greece, Art. II (1) (g); Netherlands, Art. II (1) (g); Norway, Art. II (1) (g); Sweden, Protocol, Art. I (d), (e); Switzerland, Art. II (1) (f); Union of South Africa, Art. II (1) (c). The convention with Australia,Ireland, New Zealand and the United Kingdom characterize a treaty-country enterprise as one carried on by any "resident" of those countries.

[35]) *See* T.D. 5206, § 7.22 (c) (Canada); T.D. 5499, § 7.413 (c) (France); T.D. 4975, § 25.2 (c) (Sweden).

[36]) *Cf.* I.R.C. §§ 211, 231.

[37]) Some conventions speak of "being engaged in trade or business in the United States" through a permanent establishment while others merely refer to taxpayers "having" a permanent establishment. This difference in language, however, would not appear to be significant.

[38]) *But see* the Swedish treaty discussed below, in connection with dividends.

[39]) For definitions of "permanent establishment" see Australia, Art. II (1) (o); Belgium, Art. II (1) (f); Canada, Protocol, Art. 3 (f) as amended, T.D. 5206, § 7.22 (a); Denmark, Art. II (1) (c), T.D. 5777, § 7.953 (a); Finland, Art. II (1) (f); France, Protocol, Art. III (a), T.D. 5499, § 7.413 (a); Greece, Art. II (1) (i); Ireland, Art. II (1) (i); Netherlands, Art. II (1) (i), T.D. 5778, § 7.853 (a); New Zealand, Art. II (1) (i); Norway, Art. II (1) (c); Sweden, Protocol, Art. 1 (a), T.D. 4975, § 25.2 (a); Switzerland, Art. II (1) (c); Union of South Africa, Art. II (1) (d); United Kingdom, Art. II (1) (1), T.D. 5569, § 7.515 (a).

[40]) The supplementary convention with Canada and the convention with Australia describe the use of substantial equipment or machinery as a permanent establishment; Canada, Protocol, Art. 3 (f), as amended; Australia, Art. II (1) (o). The French treaty spells out that insurance enterprises are considered as having a permanent establishment if they receive premiums from or insure risks in the United States; Protocol, Art. III (a).

[41]) *See* Treasury Regulations cit. footnote 39, *supra*. Presumably, a laboratory devoted solely to research would also not constitute a permanent establishment.

[42]) *See* King, *Modification of United States Tax Law by Treaty*, 26 Taxes 1001, 1002 (Nov. 1948).

[43]) Canada, Art. XI (1).

[44]) For example, a resident of Denmark who has no permanent establishment and is not engaged in business in the United States derives $ 30,000.00

dividends, $ 15,000.00 interest, and $ 10,000.00 other fixed annual income from United States sources. The dividends will be taxed at a maximum rate of 15%, the interest will be exempt, and the other income which is not specifically covered by the treaty, will be taxed at 30%, even though his total income from U.S. sources is in excess of $ 15,400.00.

[45]) *Cf.* Australia, Art. III; Belgium, Art. III, Canada, Art. III; Denmark, Art. III; Finland, Art. III; France, Title I, Art. 3; Greece, Art. III; Ireland, Art. III; Netherlands, Art. III; New Zealand, Art. III; Norway, Art. III; Sweden, Art. II; Switzerland, Art. III; Union of South Africa, Art. V; United Kingdom, Art. III.

[46]) *See e.g.* Belgium, Art. II (i) (g); T.D. 5777, § 7.954 (a) (Denmark); France, Title I, Art. 3; T.D. 5778, § 7.854 (a) (Netherlands).

[47]) Profits from the sale of merchandise produced abroad do not constitute income from U.S. sources if title to the goods is transferred abroad; G.C.M. 25131, 1947-2 C.B. 85; Comm. v. East Coast Oil Co., 85 F (2d) 322 (5th Cir. 1936), cert. den. 299 U.S. 608. Profits from the sale of goods manufactured abroad and sold in the U.S., or vice versa, are allocable to U.S. sources according to a prescribed formula; *cf.* I.R.C. § 119 (e), Reg. 118, § 39.119 (e) -1.

[48]) A few treaties refer specifically to such general expenses; *cf.* Australia, Art. III (3); Canada, Art. III (1); New Zealand, Art. III (5); Switzerland, Art. III (4).

[49]) *Cf.* T.D. 5206, § 7.23 (c) (Canada); T.D. 5777, § 7.954 (c) (Denmark); T.D. 5499, § 7.414 (c) (France); T.D. 5778, § 7.854 (c) (Netherlands); T.D. 5569, § 7.516 (e) (United Kingdom).

[50]) *Cf.* Australia, Art. IV; Belgium, Art. V; Canada, Art. IV; Denmark, Art. IV; Finland, Art. IV; France, Title I, Art. 5; Greece, Art. IV; Ireland, Art. IV; Netherlands, Art. IV; New Zealand, Art. IV; Norway, Art. IV; Sweden, Art. III; Switzerland, Art. IV; Union of South Africa, Art. VII; United Kingdom, Art. IV.

[51]) *Cf.* Reg. 118, § 39.119 (e) 2, daeling with the allocation of profits from transportation services.

[52]) I.R.C. §§ 212, 231 (d). No reciprocal exemption requirement exists in the case of taxpayers not engaged in business in the United States; Reg. 118, §§39.212-2, 231-3 (a).

[53]) The regulations under the Canadian treaty provide that profits derived by a Canadian enterprise from the operation of ships or aircraft registered in a country other than Canada, are to receive the same treatment as industrial and commercial profits; T.D. 5206, § 7.26.

[54]) *Cf.* New Zealand, Art. V; Norway, Art. V. Under all the treaties the shipping and aircraft exemption is granted regardless of whether or not the taxpayer has a permanent establishment in the United States.

[55]) *Cf.* I.R.C. § 119 (a) (4).

[56]) Art. XI (1) (general reduction clause).

[57]) Art. IX (1); T.D. 5897, § 7.1004.

[58]) Art. IX (1); T.D. 5569, § 7.519.

[59]) The reduced rate under the Irish and United Kingdom treaties is subject to the further condition that the income be subject to tax in those countries.

[60]) *Cf.* Australia, Art. XI; Belgium, Art. IX (1); Canada, Art. XIII (A) (1) (the election appears to be confined to real property rentals); Denmark, Art. IX (2); Finland, Art. IX (2); Greece, Art. VIII; Ireland, Art. IX (1); Netherlands, Art. X; New Zealand, Art. VII (1); Norway, Art. VIII (2); Switzerland, Art. IX (2); Union of South Africa, Protocol, Art. III; United Kingdom, Art. IX (1).

[61]) Australia, Art. X; Belgium, Art. IX (2); Canada, Art. XIII (C); Denmark, Art. VIII; Finland, Art. VIII; France, Title I, Art. 7; Greece, Art. VII; Ireland, Art. VIII (1) (provided the taxpayer is subject to Irish tax

thereon); Netherlands, Art. IX; Sweden, Art. VI, T.D. 4975, § 25.8; Switzerland, Art. VIII; United Kingdom, Art. VIII (1) (provided the taxpayer is subject to United Kingdom tax thereon. The treaty with Norway grants the exemption (Art. VII) but reserves to the treaty governments the right to deny a deduction to the payer of the royalty, to the extent that it is not considered to be "reasonable consideration" for the right in question. However, the taxpayer may appeal to the courts; see Sen Rep No. 1, 82d Cong. 1st Sess. 18 (1951).

[62]) Australia, Art. VI (2); Belgium, Art. VIII; Canada, Art. XI (1); Denmark, Art. VI (2); Finland, Art. VI; Ireland, Art. VI (1) (provided the taxpayer is subject to Irish tax thereon); Netherlands, Art. VII (1); New Zealand, Art. VI (1); Switzerland, Art. VI (1); United Kingdom, Art. VI (1) (provided the income is subject to United Kingdom tax).

[63]) Art. VII (1) It would appear that individual Swedish residents can claim the reduced rate even if they are engaged in business in the United States. Swedish corporations, however, must be nonresident as to the United States, i.e. not engaged in business in this country; *cf.* T.D. 4975, § 25.9.

[64]) *See* treaties cit. footnote 62, *supra*, with the exception of the Australian, Belgian and Swedish treaties, which contain no such special reduction.

[65]) Denmark, Art. VII; Finland, Art. VII; Greece, Art. VI; Ireland, Art. VII (1) (if subject to Irish tax); Netherlands, Art. VIII; Norway, Art. VI; United Kingdom, Art. VII (1) (if subject to U. K. tax).

[66]) Greece, Ireland, Netherlands, United Kingdom; *see* footnote 65, *supra*.

[67]) Canada, Art. XI (1); Belgium, Art. VIII A.

[68]) Switzerland, Art. VII.

[69]) *Cf.* Netherlands, Arts. V, VII (1). The Treasury Regulations under the Dutch treaty unilateraly confine the exclusion to interest from mortgage notes. The exemption can therefore apparently be claimed with respect to interest from mortgage bonds; *cf.* T.D. 5778, § 7.857 (b); T.D. 5690, § 7.802 (a).

[70]) While Swedish taxpayers are subject to a 30% withholding rate, however, interest is excluded for purposes of determining whether an individual Swedish taxpayer's gross income from U. S. sources exceeds $15,400.00 and may therefore be subject to higher tax rates. With respect to interest a non-resident alien residing in Sweden can never be subject to a higher rate than 30%; *see* T.D. 4975, § 25.9.

[71]) I.R.C. § 119 (a).

[72]) The statutory rule regarding interest paid by resident alien individuals has not been changed by the treaties.

[73]) *Cf.* Canada, Art. XII; Finland, Art. XII; Greece, Art. IX; Ireland, Art. XV; Netherlands, Art. XII; New Zealand, Art. XII (the exception applies to dividends only); United Kingdom, Art. XV. It should be noted that while the Irish and United Kingdom treaties normally refer to corporations which are "residents of" those countries, the exception in the present case applies only to payments made by corporations organized in the treaty countries.

[74]) Switzerland, Art. XIV (1).

[75]) Art. VI (2). There is no prohibition against the recipient's having a permanent U. S. establishment or being engaged in business in the United States.

[76]) It would appear, however, that the tax reductions and exemptions contained in the conventions with Belgium, Norway, and Sweden, with respect to dividends and/or interest, apply equally to the payments here in question.

[77]) *Cf.* I.R.C. § 211 (a) (1) (B).

[78]) The following treaties originally contained capital gain exemption clauses which the Senate refused to ratify: Denmark, Art. XII; Ireland, Art. XIV; Netherlands, Art. XI.

[79]) Art. VIII; *see also* Special Ruling of January 11, 1951 (1951-5 CCH Fed. Tax Reporter P 6067), confirming that the passage of the Revenue Act of 1950 did not affect this exemption.

[80]) Title I, Art. 11.

[81]) Art. IX.

[82]) Art. XIV.

[83]) The French treaty refers to gains from the sale of "stocks, securities or commodities" which is somewhat more restrictive than the term "capital assets". The treaty with Sweden specifically provides that gains from the sale of real property shall be taxable in the country of situs, so that gains from the sale of U. S. real property will be taxable in the United States; *cf.* Art. V; *see also* Ian C. Lewenhaupt, 20 T.C. § 19 (1953).

[84]) I.R. C. § 119 (a) (3).

[85]) Belgium, Art. XI (2) (a); Denmark, Art. XI (2) (a); Sweden, Art. XI (b) (2).

[86]) Art. VII (1) (b). If the services were performed for a Canadian employer there is no limit as to the amount of compensation.

[87]) Finland, Art. XI (1) (b); Greece, Art. X (1) (b); Norway, Art. X (1) (b); Switzerland, Art. X (1) (b).

[88]) The period is variously described as 180 or 183 days; *cf.* Australia, Art. IX (1); Belgium, Art. XI (2) (b); Canada, Art. VII (1) (a); Denmark, Art. XI (2) (a); Finland, Art. XI (1) (a); Greece, Art. X (1) (a); Ireland, Art. XI (1); Netherlands, Art. XVI (1); New Zealand, Art. X (2); Norway, Art. X (1) (a); Switzerland, Art. X (1) (a); Sweden, Art. XI (b) (1); Union of South Africa, Prot. Art. II (2) (provided the compensation is subject to South African tax); United Kingdom, Art. XI (1).

[89]) Title I, Art. 9.

[90]) *Cf.* Australia, Art. IX (3); New Zealand, Art. X (3); T.D. 5777, § 7.961 (b) (Denmark); T.D. 5778, § 7.860 (b) (Netherlands).

[91]) E.g. Canada, Art. XIII (B); Switzerland, Art. X (1). The Belgian treaty expressly excludes remuneration of officers and directors of U. S. corporations; Art. XI (2) (a).

[92]) Canada, Denmark, Finland, Greece, Ireland, New Zealand, Norway, Sweden, Switzerland, Union of South Africa, United Kingdom; *see* footnote 88, *supra.*

[93]) France, Title I, Art. 10. For example, a French doctor or lawyer, residing in France, may perform professional services in the United States and remain exempt on the income from such services regardless of amount or length of stay, so long as he has no office in the United States and is not otherwise a resident; *cf.* T.D. 5499, § 7.420 (b).

[94]) Art. XI (d). The United States Senate has consistently refused to accept similar limitations in later treaties; *cf.* Canada Supplem., Art. VII (2); New Zealand, Art. IX (4); Switzerland, Art. X (4); Union of South Africa, Prot. Art. II; United Kingdom, Art. XI (3); *see* Field, *United Kingdom Tax Treaty and its Effect on United States Artists*, 30 Taxes 274 (1952).

[95]) While the conventions in most cases refer only to "teaching" activity, the implementing regulations include among the permitted activities "teaching, lecturing, or instructing"; *cf.* T.D. 5777, § 7.963 (Denmark); T.D. 5778, § 7.862 (Netherlands); T.D. 5569, § 7.526 (United Kingdom).

[96]) Belgium, Art. XIII; Canada, Art. VIII A; Denmark, Art. XIV; Finland, Art. XIII; Greece, Art. XII; Ireland, Art. XVIII; Netherlands, Art. XVII; New Zealand, Art. XIV; Norway, Art. XII; Switzerland, Art. XII; Union of South Africa, Art. IX; United Kingdom, Art. XVIII. The conventions with France and Sweden contain no provision with respect to visiting professors or teachers.

[97]) *See* Regulations cit. footnote 95, *supra.*

[98]) I.R.C. § 116 (h); Reg. 118, § 39.116-2 (a) (2).

[99]) The treaty with Australia contains no exemption for salaries paid to government employees. However, Australian government employees enjoy the exemption conferred under I.R.C. § 116 (h) since Australia by statute grants an equivalent exemption to U.S. government employees. The exemption was emitted from the treaty in view of the possibility of a conflict with § 247 of the Immigration and Nationality Act (P. L. 414, 82nd Cong.) which provides that aliens whose occupational status would place them in the non-immigrant category may be required to surrender their non-immigrant status unless they execute a written of all "rights, privileges, exemptions and immunities under any law or any executive order" which they would otherwise enjoy because of such occupational status. While the U. S. Treasury officials negotiating the Australian treaty were not certain whether § 247 of the Immigration Act would supersede a treaty exemption, it was decided to omit any such clause from the Australian treaty in order to avoid any possible conflict; *cf.* Report of the U. S. Senate Committee on Foreign Relations, dated July 2, 1953, recommending the ratification of the treaties with Belgium and Australia, Rep. No. 2, 83rd Cong. 1st Sess. (1952).

[100]) Belgium, Art. X (1); Canada, Art. VI (1) (b); Denmark, Art. X (1); Finland, Art. X; France, Title I, Art. 8; Greece, Art. XI (1); Ireland, Art. X (2); Netherlands, Art. XV (1); New Zealand, Art. X (2); Norway, Art. XI (1) (b); Sweden, Art. X; Switzerland, Art. XI (1) (b); Union of South Africa, Art. VIII (1); United Kingdom, Art. X (2).

[101]) It is doubtful whether the treaty exemption otherwise constitutes a modification of the Code. Most conventions expressly state that the savings clause, under which the United States retains the right to tax its residents in accordance with its general tax rules, shall have no application to the exemption for government salaries. On the other hand, the Code exemption itself is not confined to non-resident but extends to any foreign government employee who is not a U. S. citizen.

[102]) *Cf.* Belgium, Art. X (1); Netherlands, Art. XIX (1), T.D. 5778, § 7.858.

[103]) The Code exemption appears to be confined to compensation paid by the national governments. The Treasury Regulations provide that the exemption of income received by foreign governments applies also to their political subdivisions (Reg. 118, § 39.116-2 (1) (1)), but contain no similar provisions dealing with compensation paid by foreign governments (Reg. 118, § 39.116-2 (a) (2)).

[104]) Canada, Art. VI A, exempts government pensions. Art. XVII, however (which permits the U. S. to tax its citizens, residents, or corporations in the same manner as if the treaty had not come into effect), only excepts from its scope government salaries, covered by Art. VI (1) (b) of the convention.

[105]) *Cf.* Belgium, Art. XIV; Canada, Art. IX; Denmark, Art. XIII; Finland, Art. XIV; France, Title I, Art. 12; Greece, Art. XIII; Ireland, Art. XIX; Netherlands, Art. XVIII; New Zealand, Art. XV; Norway, Art. XIII; Sweden, Art. XII; Switzerland, Art. VIII; Union of South Africa, Art. X; United Kingdom, Art. XIX. Only the Australian convention contains no clause referring to this type of compensation.

[106]) *Cf.* T.D. 5206, § 7.29 (b) (Canada); T.D. 5499, § 7.422 (France); T.D. 5778, § 7.863 (Netherlands); T.D. 5569, § 7.527 (United Kingdom).

[107]) *Cf.* Belgium, Art. XIV; Finland, Art. XIV.

[108]) Ireland, New Zealand, Sweden, Union of South Africa, United Kingdom; *see* footnote 105, *supra*.

[109]) For example, payments arising out of an employer-employee relationship might constitute taxable income. In many cases, however, such payments would also fall within the treaty exemption with respect to compensation for personal services.

[110]) *Cf.* Australia, Art. XII (1); Belgium, Art. X (2); Canada, Art. VI A; Denmark, Art. X (2); Finland, Art. X (2); France, Title I, Art. 8; Greece, Art. XI (2); Ireland, Art. XII (1); Netherlands, Art. XV (1); Norway, Art. II (2); Sweden, Art. X; Switzerland, Art. XI (2); Union of South Africa, Art. VIII (2); United Kingdom, Art. XII (1). The convention with New Zealand is the only one containing no exemption for private pensions or annuities.

[111]) *Cf.* Belgium, Art. X (3); Canada Protocol, Art. 8; T.D. 6777 § 7.960 (Denmark); Finland, Art. X (4); Greece, Art. XI (3); Netherlands, Art. XV (3); Norway, Art. XX (3); Switzerland, Art. XI (3); *see also* Estate of Emily S. Tait, footnote 32, *supra* (payments by a domestic trust to ex employees residing in Canada).

[112]) *Cf.* Australia, Art. XII (2); Belgium, Art. X (4); Canada, Protocol Art. 9; Denmark, Art. X (3); Finland, Art. X (3); France, Protocol Art. IV; Greece, Art. XI (4); Ireland, Art. XII (3); Netherlands, Art. XV (4); Norway, Art. XI (4); Sweden, Protocol Art. 5; Switzerland, Art. XI (4); United Kingdom, Art. XII (3). The treaties with Greece, the Netherlands, Norway, and Switzerland, require that the consideration be "adequate and full consideration in money or money's worth".

[113]) *Cf.* Canada, France, footnote 112, *supra.*

[114]) Canada, Denmark, Sweden. The treaty with France refers to both recurrent premiums and lump sum payments.

[115]) Canada, Protocol Art. 9; T.D. 5206, § 7.27.

[116]) Art. XIV.

[117]) Art. X.

[118]) Art. XI.

[119]) The conventions specify that it must be so exempt within the meaning of the tax laws of both countries. However, since the convention also state that their provisions shall not be construed as restricting any exemption otherwise available under the tax law of either country (e.g. Canada, Protocol, Art. 11), the exemption is available regardless of whether the foreign treaty country treats the income as exempt; *cf.* T.D. 5206, § 7.30 (Canada).

[120]) I.R.C. § 101 (6).

[121]) *See*, however, I.R.C. §§ 421-4, dealing with "unrelated business income".

[122]) I.R.C. § 143 (h) specifies that tax must be withheld on "unrelated business income" derived by tax exempt foreign corporations. It would appear by implication that non-prohibited income of such organizations is exempt; *cf.* also Reg. 118, § 39.143-1 (a) (7).

[123]) Art. XIII (1); T.D. 5206, § 7.33.

[124]) Art. XVI; T.D. 5569, § 7.525.

[125]) The British treaty speaks of "control" instead of ownership. It would appear, however, that the criterion under the British treaty is the same as that under the Canadian; *cf.* T.D. 5569, § 7.525.

[126]) Art. XVI.

[127]) Art. XIII.

[128]) *Cf.* I.R.C. § 503; Reg. 118, § 39.503 (a) -1, 2.

[129]) *Cf.* T.D. 5206, § 7.33 (Canada); T.D. 5569, § 7.525 (United Kingdom).

[130]) I.R.C. § 503 (a) (4); Reg. 118, § 39.503 (a) -5.

[131]) Assume for example a Canadian personal holding company, the stock of which is owned in equal shares by four brothers, only two of whom are Canadian residents. Can the brothers residing in Canada, for purposes of the treaty exemption, be deemed to own the stock of the non-Canadian brothers, by applying the constructive ownership rules of the statute? At least one commentator inclines toward that view; *see* Alexander, *The Income Tax Convention with the United Kingdom*, 2 Tax L. Rev. 295, 298 (1947).

[132]) *Cf.* Special Bureau Ruling, dated April 9, 1952, holding that a Swiss corporation, which otherwise fulfilled the personal holding company re-

quirements, was subject to personal holding company tax liability with respect to its undistributed income; 1952-5 CCH Fed. Tax Reporter PP 6183.

133) *Cf.* I.R.C. §§ 102 (d) (2); 504 (a), 27 (b).

134) *Cf.* footnote 73, *supra.* The same result would obtain in the case of distributions made by any foreign corporation to stockholders residing in Switzerland or Swiss corporations, who or which do not have permanent establishments in the United States.

135) I.R.C. § 27 (i).

136) Special Ruling of April 9, 1952, footnote 132, *supra.*

137) *Cf.* Canada, Arts. XIX, XX, XXI; France, Title II, Arts. 8, 9, 10, 11; Norway, Arts. XV, XVI; Sweden, Arts. XV, XVI.

138) Australia, Art. XVIII (1); Belgium, Art. XV (1); Denmark, Art. XVII; Finland, Art. XVII; Greece, Art. XVIII; Ireland, Art. XX (1); Netherlands, Art. XXI; New Zealand, Art. XVI; Switzerland, Art. XVI (1); Union of South Africa, Art. XIV; United Kingdom, Art. XX (1).

139) United Kingdom, Art. XX (1).

140) For an example of regulations under a detailed treaty clause, *see* T.D. 5499, § 7.425 (France); for regulations under a general treaty clause, *see* T.D. 5778, § 7.867 (Netherlands); T.D. 5569, §§ 7.531, 7.532 (United Kingdom).

141) *Cf.* Canada, Art. XX (1); France, Title II, Art. 9 (1) (a); Norway, Art. XVI; Sweden, Art. XVI (1); *see also* T.D. 5777, § 7.965 (b) (Denmark); T.T. 5897, § 7.1008 (Ireland); T.D. 5778, § 7.867 (b) (Netherlands); T.D. 5957, § 7.608 (New Zealand); T.D. 5867, § 7.308 (Switzerland); T.D. 5569, § 7.531 (United Kingdom).

142) *Cf.* I.R.C. §§ 143, 144; Reg. 118, §§ 39.143-144.

143) *See* treaty regulations cited footnote 140, *supra.*

144) The following special treaty information returns have been issued: Canada — form 1042B; France — form 1042C; Netherlands — form 1042E; Switzerland — form 1042F; United Kingdom — form 1042D.

145) For regulations specifically mentioning the includability of exempt income in the information return, *see* T.D. 5777, § 7.965 (b) (Denmark); T.D. 6030, § 7.708 (Finland); T.D. 5499, § 7.425 (a) (France); T.D. 5778, § 7.867 (b) (Netherlands); T.D. 5957, § 7.608 (New Zealand); T.D. 5956, § 7.107 (Norway); T.D. 5867, § 7.308 (Switzerland); T.D. 5569, § 7.530 (United Kingdom).

146) The withholding regulations under the Code state that a payor corporation should withhold tax on dividends if the shareholder's address is outside of the United States while, in the case of an address in the United States, the payee for withholding tax purposes may be deemed to be a resident; *cf.* Reg. 118, § 39.144-2 (b).

147) All withholding regulations under the treaties so provide; *see* e.g. T.D. 5692, § 7.901 (c) (Denmark); T.D. 5897, § 7.1001 (c) (Ireland); T.D. 5867, § 7.301 (c) (Switzerland); T.D. 5532, § 7.501 (c) (United Kingdom). In some cases the regulations speak of a non-resident alien individual or foreign entity whose address is in a treaty country.

148) *See* Special Letter Ruling of February 11, 1952, containing the Commissioner's answers to a number of questions propounded by the chairman of the Committee of Banking Institutions on Taxation, with respect to withholding and information under the Swiss treaty; 1952-5 CCH Fed. Tax Reporter, BB 6111.

149) *See* Letter Ruling of February 11, 1952, cit. footnote 148, *supra.*

150) Taxpayers claiming treaty exemptions with respect to interest and royalties must file ownership certificates with the withholding agent, setting forth their treaty country residence and the fact that they have no permanent establishment in the United States. Even though the ownership certificate may indicate an address outside of the treaty country, the treaty

withholding regulations uniformly provide that the withholding agent must include in his treaty information return exempt income with respect to which ownership certificates have been filed. Since a taxpayer only obtains the treaty exemption by filling an ownership certificate he will thereby subject himself to treaty information; *see* regulations cit. footnote 147, *supra*.

151) *See* Belgium, Art. XVI; Canada, Art. XXI; France, Title II, Art. 11; Sweden, Art. XVIII; T.D. 5777, § 7.965 (c) (Denmark); T.D. 5778, § 7.867 (c) (Netherlands); T.D. 5569, § 7.532 (United Kingdom).

152) *See* Title II, Art. 11; *see also* the "Principles of Interpretation" annexed to the Supplementary Convention as finally ratified by the Senate, *Report of the Senate Committee on Foreign Relations, on Exec. A, 80th Cong., 1st Sess., and on Exec. G. 80th Cong., 2nd Sess.*, Exhibit I, Par. 5.

153) In cases involving other taxpayers the tax authorities "will give consideration" to requests from the other treaty country; Sweden, Art. XVIII.

154) A number of conventions are more explicit and state that the treaties shall not be construed as imposing upon either government the obligation to supply information which is not procurable under its own legislation or under that of the state making the application; *cf.* Belgium, Art. XVIII (1) (b); France, Title II, Art. 8 (1) (merely mentions information not procurable under the legislation of the requestee state); Greece, Art. XX (1) (b); Netherlands, Art. XXIII (1) (b); Sweden, Art. XIX (2).

155) *Cf.* Australia, Art. XVIII (2); Denmark, Art. XVII; Finland, Art. XVII; Greece, Art. XVIII; Ireland, Art. XX; Netherlands, Art. XXI; New Zealand, Art. XVI; Norway, Art. XV; Switzerland, Art. XVI (1); United Kingdom, Art. XX.

156) Art. XV (2).

157) Title II, Art. 8 (1).

157a) Protocol, Art. 11.

158) *Cf.* Belgium, Art. XVIII (2); Denmark, Art. XIX; Finland, Art. XIX; France, Title II, Art. 8 (2) (refers to information which would "compromise the security" of the requestee state); Greece, Art. XX (2); Netherlands, Art. XXIII (2); Norway, Art. XVIII); Sweden, Art. XIX; Switzerland, Art. XVI (3).

159) *Cf.* Australia, Art. XVIII (3); Belgium, Art. XVIII (2); Denmark, Art. XVII; Finland, Art. XVII; France, Title II, Art. 8 (2); Greece, Art. XVIII; Ireland, Art. XX (1); Netherlands, Art. XXI; New Zealand, Art. XVI; Norway, Art. XV; Sweden, Art. XIX; Switzerland, Art. XVI (1); Union of South Africa, Art. XIV; United Kingdom, Art. XX (1).

160) *See* Philadelphia Co. v. Stimson, 223 U.S. 615, 619 (1911), Bernard v. Carey, 60 F, Supp. 539 (D.C. Ohio 1945); Lord Mfg. Co. v. Collisson, 62 F. Supp. 79 (D.C.W.D. Pa. 1945); Zimmerman v. Wilson, 81 F. 2d 847, 848 (C.A. 3d 1936).

161) Assistance clauses of some kind are contained in the treaties with: Australia, Art. XVI; Belgium, Art. XVII; Denmark, Art. XVIII; Finland, Art. XVIII; France, Title II, Art. 12; Greece, Art. XIX; Netherlands, Art. XXII; New Zealand, Art. XVII; Norway, Art. XVII; Sweden, Art. XVII; Switzerland, Art. XVI (2), Union of South Africa, Art. XV. The conventions with Canada, Ireland and the United Kingdom contain no assistance clauses of any kind.

162) See Recommendations of Senate Foreign Relations Committee, dated August 6, 1951, recommending ratification of the treaties with Greece, Norway and South Africa, subject to the foregoing understanding.

163) New Zealand, Art. XVII. For similar clauses, *see* Belgium, Art. XVII; Finland, Art. XVIII; Switzerland, Art. XVI (2).

164) *See* treaties cit. footnote 161, *supra*.

165) *Cf.* Denmark, Art. XVIII (2), (3); France, Title II, Art. 12 (2), (3); Greece, Art. XIX (2), (3); Netherlands, Art. XXII (2), (3); Norway, Art.

XVII (2), (3); Sweden, Art. XVII; Union of South Africa, Art. XV (2), (3).

166) Title II, Art. 12 (4).

166a) Art. XVII.

167) Belgium, Art. XVIII (1) (a); France, Title II, Art. 8 (2); Greece, Art. XX (1) (a); Netherlands, Art. XXIII (1) (a); Sweden, Art. XIX; Switzerland, Art. XVI (3).

168) *See* memorandum entitled "Collection Assistance Provisions in Income Tax Conventions", submitted on behalf of the National Foreign Trade Council to the Senate Subcommittee conducting hearings on the treaties with Canada, Greece, Ireland, Norway, and South Africa; *Hearings Before Subcommittee on Foreign Relations on Exec. O, FF, 80th Cong., 1st Sess.: Exec. J. 80th Cong., 2nd Sess.: Exec. Q. R. 81st Cong., 1st Sess.: Exec. E. F. K. L. S. T. 81 st Cong., 2nd Sess.*, 15, 25-28.

169) For example, the Code sections dealing with enforcement of tax liens (I.R.C. §§ 3670-3679), and collection by distraint (I.R.C. §§ 3690, et seq.), have reference only to taxes imposed under the Code.

170) *Cf.* Denmark, Art. XVIII (4); France, Title II, Art. 12 (5); Greece, Art. XIX (4); Netherlands, Art. XXII (4); Norway, Art. XVII (4); Sweden, Art. XVII; Union of South Africa, Art. XV (4). Under the treaties with Denmark and the Netherlands the exception does not apply to the extent that the assistance is necessary to ensure that the exemptions or reduced rates granted under the conventions are not anjoyed by persons not entitled thereto. As to Greece, Norway, and South Africa, *see* footnote 162, *supra*.

171) Sweden, Art. XVII.

172) *See* Belgium, Art. XVIII (2); Denmark, Art. XIX; France, Title II, Art. 8 (2); Greece, Art. XX (2); Netherlands, Art. XXIII (2); Norway, Art. XVIII; Sweden, Art. XIX; Switzerland, Art. XVI (3).

173) Australia, Art. XV (1); Belgium, Art. XII (2); Canada, Art. XV; Denmark, Art. XV (a); Finland, Art. XV (2); France, Title I, Art. 14A; Greece, Art. XIV (2); Ireland, Art. XXIII (1); Netherlands, Art. XIX (2); New Zealand, Art. XIII (1); Norway, Art. XIV (1) (a); Sweden, Art. XIV (a); Switzerland, Art. XV (1) (a); Union of South Africa, Art. IV (1); United Kingdom, Art. XIII (1).

174) I.R.C. § 131 (a); Reg. 118, § 39.131 (a) -1.

175) E.g. Australia, Art. I (1) (a) (the "Social Services Contribution"); New Zealand, Art. I (1) (a) ("Social Security Charge"); Netherlands, Art. I (1) (b) (1) (the Property Tax, but not the Capital Accretions Tax); Norway, Art: I (1) (b) (old Age Pension Tax, War Pension Tax, Tax on Bank Deposits, and the Seaman's Tax); Sweden, Art. I (1) (b) (the Property Tax but not including the "Special Property Tax", and the "Fees Tax" paid by artists, entertainers and professional athletes).

176) The tax appropriate to royalties paid by such companies has been held to be unallowable for U. S. credit purposes; The O. K. Tool Co., 4 T.C. 539 (1945). U. S. residents having no permanent establishment in Ireland or the United Kingdom, who are subject to U. S. tax on such British or Irish royalties, are under the treaties exempt from British or Irish taxes thereon. If a permanent establishment exists, the appropriate foreign taxes still cannot be credited since the treaty credit sections refer only to taxes appropriate to dividends.

177) Biddle v. Commissioner 302 U.S. 573 (1938).

178) Art. XIII (1).

179) Art. XIII (1); T.D. 5569, § 7.528.

180) See prior discussion of concept of corporate residence under British and Irish income tax laws.

181) For computation of the "net United Kingdom tax" attributable to a dividend, after allowance for any relief with respect to Dominion taxes, *see* T.D. 5569, § 7.528. The Irish convention enlarges the proportion of the

credit for Irish taxes allowable under I.R.C. § 131, in certain cases, by providing that income derived from United Kingdom sources by an individual resident of Ireland shall be deemed to be income from Irish sources provided it is not subject to United Kingdom income tax.

[182]) I.R.C. § 131 (a) (3).

[183]) As pointed out before, in the case of a number of foreign treaty countries the required reciprocity is supplied by exempting from treaty-country tax income received from U. S. sources by U. S. citizens residing in the foreign country; *see* footnote 18, *supra*.

[184]) Max Freudmann, 10 T.C. 775 (1948) (a treaty with Belgium was not in effect at that time); *see also* T.D. 5206, § 7.35 (Canada), and T.D. 5499, § 7.423 (France), confining the credit to treaty-country citizens residing in the United States.

[185]) I.T. 3749, 1945 C.B. 202; *see also* Reg. 118, §§ 39.131 (a) -2.

[186]) Possibly the French citizen in the ruling quoted in footnote 185, *supra*, might have invoked this clause on the ground that an American citizen is entitled to credit for all foreign income taxes. On the other hand, the reply would presumably be that the taxpayer is not being subjected to higher "taxes". He merely receives a lower credit.

[187]) The treaty with France merely refers to country of citizenship and contains no alternate recourse to the country of residence; footnote 188, *infra*.

[188]) Australia, Art. XVIII; Belgium, Art. IX; Canada, Art. XVI; Denmark, Art. XX; Finland, Art. XX; France, Title II, Art. 14; Greece, Art. XVII; Netherlands, Art. XXIV; New Zealand, Art. XVIII (1); Norway, Art. XIX; Sweden, Art. XX; Switzerland, Art. XVII (1); Union of South Africa, Art. XIII. The treaties with Ireland and the United Kingdom, while reciting the general prohibitions against imposition of more burdensome taxes, contain no provision specifying the method for claiming relief from double taxation.

II

INFLATION AND THE DEPRECIATION OF FIXED ASSETS IN FINLAND

by

EERO SCHREY

Under Finnish income tax legislation an annual depreciation is permissible on buildings, machinery and equipment used in trade or business. The depreciation is calculated on the basis of original cost and the probable economic life of the building or object. The annual depreciation is arrived at by dividing the original cost by the number of years of service of the asset. Once the original cost has been written off in full depreciation on the asset can no longer be charged.

The rule that the sum total of the depreciations charged on an asset must not exceed its original cost is probably incorporated in most income tax laws. The inflation during and after the war has given rise recently to lively discussion of the fairness of this principle. It has been shown that if monetary value has deteriorated depreciation charged on historical values in cost calculations is not correct and will result in a diminution of the capital of the enterprise. From the accounting point of view a part of the profit shown at the balancing of books is fictitious. Since income taxation is assessed on balance sheets the firm thus becomes liable to pay tax not only on the genuine but also on the fictitious part of the profit.

Many countries have amended their tax legislation to make depreciation charges correspond to the deterioration in the value of fixed assets in real terms. The matter was discussed at the 1952 IFA Congress in Brussels. The Congress recommended that the deterioration in monetary value be taken into account in determining the principles governing depreciation policy.

Inflationary development has been very pronounced in Finland. When the economy regained its stability after World War I the value of the markka (= Finnish mark) was only about one-tenth

of its value at the beginning of the war. The following wholesale index numbers for domestic goods reveal still more striking results after World War II (1935 = 100):

1938	114	1947	825	1951	1,809
1944	305	1948	1,090	1952	1,793
1945	438	1949	1,098	1953	1,727
1946	686	1950	1,265		

Whereas the depreciation charged by industrial enterprises in Finland prior to World War II accounted for 3.5—4.0 per cent of the sales turnover per annum, it was during 1947—1952 only 1.2—1.8 per cent.

The drawbacks of the depreciation regulations in force have been voiced continuously, especially by the representatives of industry and commerce in Finland. When Finnish industry was faced with a severe crisis in 1953 because the production costs, tax included, had risen too high in comparison with the world market prices of the goods produced, revision of depreciation policies was suggested as one of the remedial measures. The proposal was one of the few suggestions subsequently really effected.

An addition was incorporated in the depreciation regulations in the autumn of 1953. This concerned taking into account the deterioration in monetary value in the charging of depreciation. If the general price level has been essentially higher in the tax year than during the year when the building or commodity was acquired, the depreciation will be arrived at by multiplying the permitted depreciation according to the regulations by a coefficient agreed upon separately every year. There is no specific obligation to make the coefficients correspond to the price level fluctuations and the government consequently has a certain margin for manipulation with the coefficients.

For taxation in 1953 the coefficients were fixed as follows:

Buildings

Year in which the asset was acquired	Coefficient
1940 or before	4
1941—1942	3.5

1943—1944	3
1945	2.5
1946	2
1947	1.5
1948—1952	1

Other fixed assets

1944 or before	5.5
1945	4
1946	2.5
1947	2
1948—1950	1.5
1951—1952	1

The coefficients for fixed assets other than buildings correspond approximately to the development of the wholesale price index. The lower coefficients for buildings have been arrived at from the argument that neither have the property taxation values of building risen in the same ratio as the price level (Finland is one of the few countries in which corporations also pay property tax). This reasoning, however, is in disagreement with the principle that depreciation must correspond to the actual value deterioration in fixed capital during the year of taxation.

Under the method adopted in Finland the depreciation charged on each asset can be divided into two parts: the regular depreciation calculated in the old manner, and the additional depreciation caused by the price level upswing. Depreciation may be charged on tangible fixed assets until the original cost has been written off through regular depreciation deductions. The total of depreciations charged on an asset may thus exceed the original cost by the sum of the additional depreciations charged.

However, additional depreciation is not a specific deduction to be taken into account in taxation alone, it must also appear on the enterprise's balance sheet. The values of fixed assets, however, need not be increased in the books; they can be handled on the balance sheet in some other way in conformity with accounting practice.

SURVEYS OF TAX LEGISLATION

APERÇUS DE LEGISLATION FISCALE

The Editors of the *Bulletin* have often been asked whether it would be possible to keep the readers informed of alterations in the tax laws of the various countries. Till sofar, annual surveys have been published of the developments in a restricted number of countries, and under the heading "Miscellaneous" short notes have been given about special subjects which were thought to be of general interest.

In the present issue of the *Bulletin* a start is made with a more systematical treatment of tax developments, and it is the intention to give in each following issue a complete survey of alterations in the tax legislation of a number of countries.

In the countries which are not still dealt with, collaborators will be invited to send regularly a similar survey of their own tax developments.

The readers are kindly invited to give their critical remarks, in order that this rubrique is as well done as possible.

Plusieurs lecteurs ont souvent posé la question de savoir s'il serait possible de les tenir au courant des modifications apportées dans les lois fiscales des différents pays. Jusqu'à présent, des aperçus annuels ont été publiés sur le développement de la fiscalité dans un nombre restreint de pays, et dans la rubrique „Faits divers" on a publié de brèves notes concernant quelques sujets spéciaux susceptibles de pouvoir intéresser les lecteurs.

Dans le présent numéro du *Bulletin* on commence par un traitement plus systématique des développements, et on a l'intention de donner, dans chaque numéro qui va suivre, un aperçu complet des modifications apportées dans la législation fiscale de certains pays. En ce qui concerne les pays qui ne figurent pas encore dans cette rubrique on invitera des collaborateurs à fournir régulièrement un pareil aperçu des développements dans leurs pays.

La Rédaction du *Bulletin* fait un pressant appel aux lecteurs en leur demandant de donner leurs remarques et leurs critiques, de sorte que la présente rubrique sera soignée dans toute la mésure du possible.

ALLEMAGNE OCCIDENTALE. *Période du* 1er *décembre* 1953 *au* 1er *avril* 1954.

Généralités.

Verordnung zur Durchführung der §§ 17 bis 19 Steueranpassungsgesetz (Gemeinnützigkeitsverordnung) vom 24 Dez. 1953 (BGB 1953, p. 1592). Cette ordonnance remplace l'annexe I de l'ordonnance portant modification dans la première ordonnance d'exécution de l'impôt sur les sociétés du 16 Oct. 1948 et contient des dispositions concernant les „gemeinnützige, mildtätige und kirchliche Zwecke" au sens des paragraphes 17-19 du Steueranpassungsgezetz pour lesquels il existe un régime fiscal favorable.

Zweite Verordnung zur Durchführung des Gesetzes über den Finanzausgleich unter den Ländern in den Rechnungsjahren 1951 und 1952, du 24 février 1954 (BGB 1954, p. 28).

Impôts directs.

Verordnung zur Änderung und Ergänzung der Verordnung zur Durchführung des Körperschaftsteuergesetzes vom 10 Dez. 1953 (Bundesgesetzblatt = BGB 1953, p. 1553). Parmi les différentes modifications apporteés dans l'Ordonnance d'exécution, nous mentionnons:

a. exemption de l'impôt sur les sociétés de „gemeinnützige Siedlungsunternehmen" et de la „deutsche Genossenschaftskasse";
b. possibilité que le bilan fiscal d'ouverture d'une „Genossenschaft", qui après avoir bénéficié d'une franchise d'impôt, devient imporable, dévie du bilan commercial.
c. indication des paragraphes de l'impôt sur le revenu qui sont applicables à l'impôt sur les sociétés.

Verordnung über den Lohnsteuer-Jahresausgleich vom 24 Dez. 1953 (BGB 1953, p. 1579): il s'agit d'une ordonnance prévue dans le § 39 (6) (5) du Einkommensteuergesetz et qui concerne le calcul de l'impôt sur les salaires dans certains cas.

Après la réforme fiscale de 1953 on a introduit une nouvelle ordonnance d'exécution de l'impôt sur le revenu (Einkommensteuer-Durchführungsverordnung 1953 du 31 mars 1954, BGB 1954, p. 67). Tandis que les principes ainsi que la structure en sont restés les mêmes, elle contient aussi quelques points nouveaux parmi lesquels nous mentionnons les points les plus importants:

a. la situation de la femme mariée en ce qui concerne ses revenus provenant d'un emploi est légèrement favorisée pour les anneés 1953 et 1954.
b. en ce qui concerne les entreprises forestières on a introduit un excercice fiscal de 1er mai jusqu'au 30 avril.
c. un contribuable ayant un revenu inférieur à DM. 4.000 doit remplir une déclaration toutes les 4 annees au lieu de chaque année.

Lastenausgleich.

Fünfte Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz" vom 17. Dez. 1953 (BGB 1953, p. 1551). Cette ordonnance constitue la „Rechtsverordnung" prévue dans le § 268 du Lastenausgleichgesetz et concerne l'évaluation etc. dans les cas où aucune allocation d'entretien ne serait pas attribuée.

La „Sechste Verordnung über Ausgleichleistungen nach dem Lastenausgleichgesetz, du 2.3.1954 (BGB 1954, p. 34) indique ce qu'il faut entendre par „Sparerschaden."

Une ordonnance du 30 mars 1954 (BGB 1954, p. 65) portant modification des première et troisième ordonnances „über Ausgleichleistungen" etc. donne quelques précisions du texte ainsi que quelques dispositions spéciales d'ordre technique.

Taxes de Consommation.

Les règlements d'exécution de la loi relative à la taxe sur les tabacs sont modifiés par ordonnance du 28 décembre 1953 (BGB 1954, p. 3). Il s'agit de quelques modifications de caractère technique.

L'ordonnance du 29 mars 1954 portant modification du § 83 al. 1 de la loi relative à la taxe sur les tabacs (BGB 1954, p. 90) augmente légèrement les exemptions en faveur de petites entreprises.

Douanes.

La loi du 22 décembre 1953 (BGB 1953, p. 1558) porte une modification d'ordre technique dans le poste no. 1107.

Dans le BGB, II, 1954, p. 55 il est publié l'entrée en vigueur de la convention de douanes du 20 mars 1952 entre l'Allemagne et la Belgique.

La 5e ordonnance portant modification du tarif douanier (du 11 mars 1954) par rapport au marché commun de la Communauté Européene du charbon et de l'acier est publiée dans le BGB 1954, p. 37.

Taxe sur le chiffre d'affaires.

Verordnung über die Steuerbefreiung von Umsätzen der Vorratslager in Berlin (West) vom 5.3.1954 (BGB 1954, p. 29). Vu la situation spéciale de Berlin il est souhaitable d'y former des stocks de différentes sortes de marchandises. Les délivrances qui sont nécessaires pour atteindre ce but, seraient assujetties à la taxe sur le chiffre d'affaires sans une exemption spéciale, prévue maintenant dans l'ordonnance susmentionnée, et qui a effet rétroactif jusqu'au 31 juillet 1952.

AUSTRIA *Period from 1st December 1953 till 1st April, 1954.*

General.

Act of December 3, 1953 (Bundesgesetzblatt = BGB 1954, p. 50); modifies the „Finanzausgleichgesetz" of 1953 (repartition of public revenus between the Federation and the Provinces).

Income tax.

The Federal Act of 3rd. December, 1953 (BGB 1954, p.1) constitutes the new income tax Act. This Act provides for a decrease of rates, whereas the allowances for children have been increased, especially as regards the lower income groups. The number of exemptions has been extended, amongst which we mention an exemption for income from overtime work as far as it does not exceed S.30 per week or S. 130 per month.

Trade Tax.

The Federal Act of 3rd. December, 1953 (BGB 1954, p. 35) contains the new text of the Austrian „Gewerbesteuer" which, as in Germany, is composed of a) a tax on income, b) a capital tax, and c) a tax on wages paid. The "Gewerbesteuer" is a municipal tax levied by the central government.

An Act of the same date (BGB 1954, p. 45) contains the provisions in force as per 1.1.1954 relating to the repartition of the revenue of the "Gewerbesteuer" between the municipality, in which the business is established and where, therefore, the tax is levied, and the place where the taxpayer lives and where he benefits from all sorts of social provisions.

Transport tax.

Bij ordinance of 9th December 1953 (BGB. 1954, p. 52) the Minister of Finance has given some executive rules with respect to the "Beförderungssteuergesetz".

Excise duties.

By Federal Act of December 3, 1953 (BGB 1954, p. 50) the special duty on beer of S. 10 per hectoliter, introduced on July 16, 1952, is continued till December 31, 1954. The duty is levied with the purpose of financing investments of the Austrian federal government.

Bundesgesetz vom 3. Dezember 1953 (BGB 1954, p. 50) womit die Überwachungsgebühr für die monopolabgabefreie Branntweinerzeugung zum Haarbedarf erhöht wird.

Customs.

A technical modification in the customs tariff is introduced by Federal Act of December 3, 1953 (BGB 1954, p. 46).

BELGIQUE. *Période du 1er janvier au 1er avril* 1954.

Impôts sur les revenus.

Loi du 18 février 1954, Moniteur du 6 mars: la possibilité de compenser les pertes est portée de 2 à 5 ans (art. 32, al. 2 des lois coordonnées).

Loi du 23 février 1954, Moniteur du 6 mars, portant à éviter l'évasion fiscale par l'intermédiaire de sociétés holding établies à l'étranger et qui y sont soumises à un régime fiscal exorbitant du droit commun. Les sommes payées au titre d'intérêts, de redevances ou de réinunérations de prestations ou de services par un redevable à une telle société holding ne sont admises comme charges professionnelles que lorsque le redevable justifie que ces payements sont réels et sincères et qu'ils ne dépassent par les limites normales.

En outre, ne sont pas opposables à l'Administration, l'acte de vente, de cession ou d'apport d'actions, d'obligations, de créances etc. à une telle société holding, à moins que le contribuable ne prouve avoir reçu une contrevaleur réelle produisant un montant normal de revenus imposables à l'impôt complémentaire personnel. (Modification des articles 26 et 41 des lois coordonnées).

Loi du 17 mars 1954, Moniteur du 31.3.1954 modifiant les lois coordonnées relatives aux impôts sur les revenus en ce qui concerne la régularisation de la situation fiscale des salariés et appointés.

Droits de succession.

Arrêté Royal du 20 Janvier 1954, Moniteur du 21.1.1954, modifiant l'article 5 du Règlement général des droits de succession.

Matières diverses.

Loi du 12 mars 1954 (Mon. du 3.4.1954) modifiant, au profit des provinces et des communes, la loi du 27.12.1938 portant augmentation de la taxe sur les jeux et paris, en ce qui concerne les sommes engagées à l'occasion de pronosties sur matches de football.

Arrêté royal du 18 mars 1954 (Mon. du 28.3.1954) relatif aux sommes versées à valoir sur la taxe professionnelle de l'exercice 1952.

Loi du 20 mars 1954, relative au séquestre et à la réalisation des biens, droits et intérêts des inculpés de crimes ou de délits contre la sûreté de l'Etat et des biens des suspects.

FRANCE. *Période du 20 novembre au 1er Avril* 1954.

Impôts directs et assimilés.

Décret du 31 décembre 1953 modifiant les dispositions de l'article 369 de l'annexe III du Code général des impôts (Journal officiel du 1.1.1954, p. 4). Il ne s'agit ici que d'une modification d'ordre technique de la taxe proportionnelle et du versement forfaitaire.

Le décret du 4 janvier 1954 (J.O. du 13.1.1954, p. 509) fixant les conditions d'application de l'article 13 (§IV) de la loi du 7 février 1953 relatif au régime fiscal des artisans, donne des règles plus favorables, en ce qui concerne l'impôt sur le revenu et la taxe sur le chiffre d'affaires, pour les artisans.

Décret du 24 février 1954 pris pour l'application des articles 24 et 25 de la loi du 25 juillet 1953 portant aménagements fiscaux (J.O. du 25.2.1954, p. 1883). Il s'agit de quelques légères modifications concernant la participation des employeurs à l'effort de construction: amortissement des constructions destinées au logement du personnel et amortissement exceptionnel des actions de parts des sociétés d'habitation à loyer modéré.

Décret du 2 mars 1954 fixant les indices applicables pour l'evaluation fiscale des stocks (J.O. du 3.3.1954, p. 2147).

Taxes sur le chiffre d'affaires.

Voir le décret du 4 janvier 1954 susmentionné.

Droits d'enregistrement.

La Loi de Finances pour l'exercice 1954 (J.O. du 5.1.1954, p. 131) contient quelques modifications de moindre importance en ce qui concerne les taux.

Douanes.

Voir la loi des Finances susmentionnée.

Arrêté du 24 novembre 1953 (J.O. du 3.12.1953, p. 10751) fixant les conditions d'application du chapitre IV du titre V du Code des douanes relatif à l'entrepôt. Cet arrêté concerne les conditions sous lesquelles les dispositions relatives à l'entrepôt sont applicables aux droits d'entrée et de sortie.

Voir aussi sous *Conventions.*

Décret du 23 février 1954 portant modification du décret du 19 octobre 1953 suspendant provisoirement les droits de douane d'importation applicables à certains matériels d'équipement et rétablissant les droits de douane d'importation applicables à certains produits. (J.O. du 25.2.1954, p. 1882).

Décret du 10 mars 1954 portant modification de la liste des produits agricoles originaires des territoires d'outre-mer de l'Union française exonérés, à l'importation, du payement de la taxe à la production. (J.O. du 16.3.1954, p. 2509).

Arrêté du 10 mars 1954 modifiant la liste des produits agricoles légèrement transformés passibles de la taxe à la production au taux réduit. (J.O. du 16.3.1954, p. 2510).

Fraude. fiscale.

Lettre du 17 février 1954 du ministre des finances et des affaires économiques à MM. les ministres et secrétaires d'Etat relative à l'exclusion des marchés publics des personnes condamnées pour infractions à la législation fiscale. (J.O. du 19.2.1954, p. 1677).

Conventions.

Décret du 1er décembre 1953 portant publication de la convention sur la valeur en douane des marchandises, signée à Bruxelles le 15 décembre 1950 (J.O. du 6.12.1953, p. 10880).

Décret du 28 décembre 1953 portant publication d'une convention fiscale et budgétaire et d'une convention tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative, conclues entre la France et la Sarre et signeés à Paris le 20 mai 1953 (J.O. du 31.12.1953, p. 11760).

Loi du 3 mars 1954 autorisant le Président de la République à ratifier la convention signée à Paris le 30.12.1949 entre la France et les Pays-Bas

pour éviter les doubles impositions en matière d'impôts sur les revenus et régler certaines autres questions en matière fiscale et l'avenant à cette convention signé à Paris le 24.7.1952, d'une part, et la convention tendant à éviter les doubles impositions résultant de l'application des impôts extraordinaires sur la fortune et sur l'accroissement de fortune établis en France et aux Pays-Bas, d'autre part. (J.O. du 4.3.1954, p. 2171).

PAYS-BAS. *Période du 1er décembre* 1953 *au 1er avril* 1954.

La législation fiscale néerlandaise a subi quelques modifications importantes dont nous mentionnons ci-après les points les plus remarquables

Impôts directs.

En ce qui concerne les impôts directs, les modifications ont été apportées dans la législation par les lois suivantes:

quatre lois du 24 décembre 1953, Staatsblad = S. 589, 590, 591, 592.
une loi du 27 décembre 1953, S. 598.

Impôts sur le revenu et sur les salaires.

Les bénéfices provenant de spéculation et réalisés par des personnes physiques autrement que dans leur profession, ne sont plus imposables.

La période dans laquelle on peut appliquer la possibilité d'un amortissement accéléré, est prorogée jusqu'au 31 décembre 1957.

Pour certains investissements, lorsqu'ils excèdent un montant de 3.000 florins, et faits après le 31 mars 1953, les entreprises peuvent déduire de leurs bénéfices 4% de l'ensemble des capitaux investis pendant 5 années. La loi contient des dispositions spéciales pour les désinvestissements survenus dans les 10 ans après l'achat d'un certain bien.

La possibilité de compenser les pertes est portée de 4 à 6 ans. On a introduit en même temps la possibilité de compenser une perte avec le bénéfice de l'année précédente (carry-back). Pour de nouvelles entreprises la loi contient une disposition permettant de compenser sans aucune restriction, les pertes subies dans les six premières années après l'établissement de l'entreprise.

En ce qui concerne les bénéfices provenant de la cession ou de la liquidation d'une entreprise, un montant de 5.000 florins est exempt d'impôt.

On a abrogé, à partir de 1953, le taux spécial applicable aux bénéfices industriels et commerciaux, introduit en 1951.

Le régime fiscal des déductions pour enfants à charge a subi de modifications très importantes, surtout en ce qui concerne les enfants qui suivent l'enseignement universitaire etc.

En ce qui concerne les soi-disant charges extraordinaires il existait la situation suivante: Lorsque ces charges avaient une influence considérable sur la capacité contributive du contribuable et qu'ils étaient de caractère extraordinaire par rapport à d'autres contribuables, on pouvait demander au fisc de diminuer le montant dû à titre d'impôt sur le revenu. Pour pouvoir bénéficier de cette possibilité les charges devaient s'élever à 10% du revenu net. Ce pourcentage est maintenant 6, et il est diminué de $^1/_2$% pour chaque enfant à charge.

Les taux sont diminués, et les minima exempts sont augmentés. Ce sont surtout les classes moyennes sui profitent de ces réductions.

Impôt sur les sociétés.

Les mêmes modifications en ce qui concerne le calcul des bénéfices imposables sont applicables à l'impôt sur les sociétés.

En outre, les rémunérations aux administrateurs etc. qui sont frappées de la „commissarissenbelasting," peuvent être portées en déduction du bénéfice imposable comme charge professionnelle.

Commissarissenbelasting.

En ce qui concerne l'impôt spécial aux rémunérations des administrateurs etc., le minimum exempt d'impôt est porté de 100 à 1.000 florins.

Impôt personnel.

Cet impôt est perçu en rapport avec l'usage d'une maison située aux Pays-Bas, et sur la valeur locative, d'une part, sur la valeur du mobilier, d'autre part. L'impôt, pour autant qu'il est perçu sur la valeur locative, est diminué considérablement; cette diminution a partiellement pour but de compenser l'augmentation des loyers à partir du 1er janvier 1954.

Impôt sur la fortune.

A partir du 1er janvier 1955 le système des déductions pour enfants à charge de l'impôt sur le revenu sera applicable à l'impôt sur la fortune.

Taxe sur le chiffre d'affaires.

A partir du 1er Janvier 1954, le charbon et les chaussures sont exemptés de la taxe sur le chiffre d'affaires, à l'exception des chaussures de luxe et du charbon employé dans les entreprises.

Taxes de consommation.

Le droit d'accise sur le sucre est diminué jusqu'à 19 florins par 100 kg.

Chile passes law to attract capital.

The President of Chile has signed a new decree which is designed to attract foreign capital for investment in the development of the country's mineral, agricultural, and forest resources and in industrial expansion. The decree, No. 427, published in the Official Gazette for November 26, 1953, provides a new basis for the entry of foreign capital into the country.

Legislation in this field hitherto has been contained principally in decree No. 2040 of April 10, 1945, decree No. 655 of June 2, 1950, and Law No. 9839 of November 20, 1950.

Under the terms of the new decree, foreign capital, brought into Chile in the form of foreign exchange, raw materials, or equipment, when invested in approved enterprises will enjoy the following guaranties and exemptions:

— The right to reexportation after 5 years, in annual quotas not to exceed 20 per cent per annum of the value of the new investment.

— Right to export all interest and profits earned on the investment, for a period of at least 10 years, and possibly up to 20 years.

— Exemption from all customs duties and charges on capital imported in the form of equipment and machinery.

— At least a 10-year freeze on the status of all applicable taxes.

— Freedom for 10 years or more from price fixing, regulation, and control or freezing affecting industries in which such investments are made, if none are in force at the time of investment.

— The right to reassess capital for tax purposes in accordance with fluctuations in the rate of exchange from year to year.

— Interest or profits earned on such capital, if reinvested in Chile, shall have the rights and exemptions described in the second, fourth and sixth provisions above.

To be granted these exemptions and guaranties, capital brought into Chile will have to be invested in one of the following ways: In export industries which can compete in the international market without State assistance; in production for the domestic market of goods which at present must be imported, also without State assistance; or in industries using at least 80 per cent national raw materials to provide goods for the domestic market at reduced cost to the consumer. The decree creates a Foreign Investments Commission which will supervise these capital imports.

The decree was to take effect upon its publication in the Diario Oficial. Within 60 days after its publication the President of the Republic is to issue the pertinent regulations which the Investments Commission will follow in administering the capital import program.

Source: Foreign Commerce Weekly, December 14, 1953.

Encouragement of foreign investment in Lebanon.

The Lebanese Council of Minister has approved and submitted to Parliament a Decree Law that exempt from income tax for a period of six years all establishments contributing to increases in national production and to improvement in the national economy. In order to benefit from the tax

exemption, new establishments must have capital of at least £L 1 million, and salaries and wages paid to Lebanese employees and workers should reach £L 100,000 per year. Tax exemption will also be granted, under similar conditions, to existing establishments that increase their invested capital by £L 1 million, but for these establishments the exemption will be based on only the amount of the capital increase.

Source: International Financial News Survey, December 11, 1953.

Austria, Switserland sign Tax Pact.

An agreement for the avoidance of double taxation on income, capital, and inheritances was signed by the Austrian and Swiss Governments early in November. The terms of the accord are to be made public in both countries at the beginning of the next parliamentary sessions.

Source: Foreign Commerce Weekly, 28/12 - 1953.

Luxembourg.

L'exposé du nouveau Ministre des Finances.

A la séance de la Chambre des députés du 11 février dernier M. Pierre WERNER, le nouveau Ministre des Finances, a introduit la discussion au sujet du projet de budget 1954 par un exposé qui a été son premier discours parlementaire.

Nous voudrions retenir ici quelques passages de cet exposé:

Réforme fiscale.

Le public se fait des idées très diverses et parfois contradictoires sur le caractère et les modalités de la réforme des contributions directes réclamée depuis des années. C'est pourquoi il est souhaitable que la réforme se précise le plus tôt possible, afin d'éviter les confusions et les malentendus.

Il y a, certes, un motif primordial, d'ordre plutôt psychologique, qui milite en faveur d'une nouvelle législation. C'est que celle qui nous régit actuellement fut introduite par l'occupant.

Le contribuable aura l'impression de donner le dernier coup de grâce au spectre de l'occupation le jour où sa législation fiscale, grevée de l'hypothèque de nos pleurs et peines, sera supprimée.

D'un autre côté, la vie économique et sociale est en constante évolution. Une loi fiscale quelconque tend à ne plus être en concordance avec cette évolution. Des modifications se produisent dans la structure des revenus et des charges des divers groupements sociaux et professionnels.

Il nous faut donc une nouvelle législation, et personnellement, bien que je connaisse les embûches d'une telle entreprise, je m'attacherai de toutes mes forces à la préparer et à la promouvoir.

A propos de l'orientation générale de notre législation fiscale je vous dirai que dans mon idée elle devra s'intégrer dans le cadre d'une politique économique constructive. Elle ne devra pas freiner l'expansion économique, bien au contraire. Je compte proposer des mesures qui favorisent les investissements productifs et d'autres mesures qui rendront la gestion financière des entreprises plus économique.

Au point de vue de la technique fiscale la législation actuelle présente certains aspects qui lui donnent une certaine supériorité vis-à-vis de notre législation d'avant-guerre et d'autres législations moins récentes.

Pour l'impôt général sur le revenu je n'ai qu'à citér les modérations importantes pour charges familiales, la réduction pour charges extraordinaires, les possibilités de report de pertes et, aussi, le régime spécial d'imposition des sociétés de capital. En tant que ces dispositions sont conformes à l'évolution générale du droit fiscal nous les maintiendrons, tout en y

apportant les aménagements qui paraissent souhaitables. Dans le cadre de notre politique économique, sociale et familiale certaines dispositions pourront encore être sensiblement améliorées. La nouvelle législation, qui se fera sous forme d'une véritable codification, devra être moins compliquée. A ce propos, nous pouvons faire du bon travail en dépit du fait que moins de complication signifie souvent moins de justice fiscale.

Mais, diront certains, la réforme fiscale ne sera-t-elle que cela? Ne comporte-t-elle pas de dégrèvement final?

Ce que je puis promettre, c'est que la nouvelle législation sera plus conforme à la justice fiscale et sociale, qu'elle tiendra le plus grand compte des nécessités économiques. Ce que je voudrais pouvoir promettre, comme Ministre des Finances épris comme tous les gouvernants de popularité, c'est que la charge globale soit moins lourde. Je fais des voeux, croyez-moi, pour qu'il en soit ainsi. Mais cela dépend moins de la science du fiscaliste que d'une évolution économique et – last not least — des revendications imposant de nouvelles obligations à l'Etat. Quand on entre dans une nouvelle fonction, on fait des voeux. Je fais des voeux pour qu'il me soit possible d'améliorer le climat fiscal.

Contributions indirectes.

En matière de contributions indirectes le Conseil d'Etat est saisi d'un projet qui tend à exempter de la taxe sur le chiffre d'affaires la vente de certains articles de première nécessité. Pour compenser le déchet résultant de ces exemptions il est prévu d'introduire sur certains autres articles une taxe de luxe. Les modalités et même le principe de ces taxes ont été critiqués. Tout en me réservant de trouver la compensation au déchet en question, je suis disposé à reconsidérer l'ensemble des problèmes soulevés par l'introduction d'une taxe de luxe.

(*Source: L'Echo de l'industrie, Revue luxembourgeoise de la vie économique et sociale, No. 7, du 20 février* 1954, 32*e année*).

The South African Budget.

Tax concessions for individuals and companies have been announced by the South African Minister of Finance, Mr. HAVENGA. The cost to the revenue is estimated at about £ 22 million for a full year.

Under the new proposals, single persons will pay no income tax until their income exceeds £ 301. Tax-free income for a married couple without children is increased from £ 405 to £ 480. A couple with three children will be liable for tax only when the income exceeds £ 919. In the United Kingdom married couples with three children are liable at the lowest reduced rate when the earned income exceeds £ 598.

New machinery in manufacturing process will rate for an initial allowance of 10 per cent, and — an interesting innovation here — companies building houses for employees will receive a tax allowance. The compulsory savings levy is abolished.

Reactions to the Budget have been favourable, although some disappointment has been expressed because the non-resident shareholders tax remains. Mr. Havenga said that the general prosperity of South Africa is likely to continue and inflationary forces have been effectively checked.

(*Source: Taxation Vol. LIII No.* 1382 *April 3rd,* 1954).

Mexico.

The Mexican Government has codified the Income Tax Law of December 1941 and the subsequent amendments thereto, and effected important changes in income taxation by a new law of December 30, 1953, published

in the Official Gazette of December 31, and effective January 1, 1954.

The principal procedural change brought about by the new law is the splitting of the former schedule I, Tax on Business Income, into three schedules: Schedule I — Tax on Commercial Income; schedule II — Tax on Industrial Income; and schedule III — Tax on Income From Agriculture, Cattle Raising, and Fishing. Under these three new schedules, a new method of computing the tax has been introduced, but the tax incidence is almost identical to that which existed previously under the old schedule I.

The principal substantive changes effected by the new law cover income from invested capital (schedule VI under the new law — schedule II under the preceding law). The fixed basic rate on dividends and distributable profits of all Mexican and foreign companies operating in the country has been raised from 10 percent to 15 percent. At the same time the new law permits a deduction against distributable profits of 20 percent — or a greater percentage with the approval of the Ministry of Finance — over and above the 10 percent, which previously was deductible and which continues in effect.

The rate of tax has been increased on the higher brackets of income received as wages, salaries, and other payments derived from the rendering of personal services (schedule IV), but the basic exemption has been increased too.

(*Source: Foreign Commerce Weekly, Vol.* 51, *No.* 7, *February* 15, 1954).

United States of America.

1954 *Tax Revision Bill.*

The most comprehensive tax revision bill in the history of federal taxation — the 1954 Revenue Revision Bill — has been introduced in March (H.R. 8300).

A renumbering of the Code sections is in prospect and many relief proposals for individuals would be incorporated.

The House Committee has already adopted *inter alia* proposals concerning pensions, tax exempt organizations, foreign income, trusts and estates, and estate and gift taxes.

In the next issue of the *Bulletin* we hope to give a succinct survey of the most important proposals.

Conventions.

France — Switzerland.

On December 31, 1953 France and Switzerland have signed two agreements, viz. an agreement for the avoidance of double taxation on income and property, and an agreement to avoid double taxation in respect of death duties.

U.S. Signs Tax Conventions with Greece and Australia.

An estate-tax convention with Australia, signed in Washington on May 14, 1953, was brought into force on January 7, 1954, by exchange of ratifications at Canberra, and income-tax and estate-tax conventions with Greece, concluded in Washington on February 20, 1950, were brought into force by exchange of ratifications in Athens on December 30, 1953.

The estate-tax convention with Greece became effective as of December 30 and the income-tax convention was made retroactive to January 1, 1954. The conventions follow the general pattern of similar tax conventions entered into by the United States with a number of other foreign countries. The arrangement with Australia is designed to eliminate double taxation in connection with the settlement in one country of estates in which nationals

of another country have interests. So far as the United States is concerned it applies only to taxes imposed by the National Government. Under its terms the estate-tax convention is effective only with respect to estates or inheritances in the case of persons dying on or after January 7, 1953.

The income-tax convention with Greece provides for the avoidance of double taxation and the prevention of fiscal evasion with respect to income. The estate-tax convention, like the one with Australia, is designed to eliminate double taxation in connection with the settlement in one country of estates in which nationals of the other country have interests. So far as the United States is concerned, the conventions apply only with respect to Federal taxes.

See also the study of Mr. FRANZ-MARTIN JOSEPH in the present issue, p. 34.

(*Source: Foreign Commerce Weekly January* 25, 1954, *Vol.* 51, *No.* 4).

Belgique — Grande Bretagne.

La convention entre la Belgique et le Royaume Uni en vue d'éviter la double imposition et l'évasion fiscale en ce qui concerne les impôts sur les revenus, signée à Londres le 27 mars 1953, est approuvée en Belgique par la loi du 7 janvier 1954 (Moniteur belge du 20 mars 1954). L'échange des instruments de ratification a eu lieu à Bruxelles le 17 mars 1954.

Western Germany.

Draft bill tax revision.

On 11th March 1954, the Minister of Finance has published in a government statement the final draft bill for the so-called "organical" tax revision. The draft has become less far-reaching than the government originally promised. The term "organical" is not mentioned at all. The proposals mainly contain alterations of the rates without affecting the tax system as such.

In the next issue of the *Bulletin* we reproduce a summary of some reports published with a view to the coming tax reform.

Here the main points of the draft may be briefly summarized as follows:

1. *Einkommensteuer:* the maximum rate will be decreased from 70% to 55%. The new rate will be formed on a purely mathematical basis so that there will be a gradual progression. The minima exempt from tax will be increased. On the other hand certain facilities will be repealed, e.g. the stimulation of house-building, the liberty of valuation for ships (§§ 7c and 7d (2)). The assessment of married persons will have a less favourable regulation.
2. *Körperschaftsteuer:* The rate will be decreased from 60% to 45%. The 30% rate for distributed profits will be maintained for the time being.
3. *Ergänzungsabgabe:* In case the public expenditure should make this necessary, the Federal Government is authorized to levy an additional tax on the income and company profits tax amounting to 2,5% of the rates thereof.
4. *Notopfer Berlin:* This additional levy on the income and company profits tax will not be abolished.
5. *Gewerbesteuer:* The trade tax will be adapted to the modifications in the income tax. The rates will not be reduced.
6. *Erbschaftsteuer:* The rate of the inheritance tax will be reduced and the tax exempt minimum will be increased.
7. *Umsatzsteuer:* The rate for wholesale supplies will be increased from 1% to 1.5%.

It is the intention that the reduction of the rates of income and company profits tax will come into force as per 1st October, 1954.

IV

REVIEWS — COMPTES RENDUS

Dr. F. J. Vogt: *Der Störungsfaktor Steuer.* — Verlag Dr. Otto Schmidt K. G. Köln, 1953, 56 pp.

Dans ce petit livre on énonce beaucoup de grandes vérités. La pression fiscale est insupportable, les lois incompréhensibles, la conception commerciale du commerçant gênée par les impôts, souvent les contribuables ne savent pas où ils en sont arrivés, etc. L'auteur donne beaucoup d'exemples empruntés à la pratique et démontre d'une manière surprenante l'intervention de la législation fiscale allemande dans la vie économique. Il donne clairement des suggestions relatives à la manière dont la législation fiscale peut être remaniée sans causer une refonte totale du droit fiscal. Ce ne sont souvent que des détails, entre autres l'amélioriation des textes, ce qui les rend compréhensibles pour chacun, une plus grande uniformité dans les déterminations fiscales, la diminution du nombre des impôts, etc. En bref: l'inverse du maxime: „Pourquoi faire simplement quelque chose si l'on peut le faire aussi difficilement." Ces principes élémentaires de ce petit livre sont d'importance aussi du point de vue international et c'est pourquoi nous le recommandons vivement.

Jahresbericht des Bundesverbands der Deutschen Industrie. — 1 Mai 1952—30 April 1953 vorgelegt der 4. ordentlichen Mitglieder-Versammlung in Wiesbaden am 19. Mai 1953.

Dans un annuaire sur l'industrie un article sur la fiscalité est très bien placé. Aussi a-t-on réservé une large place aux impôts dans cet annuaire. L'article „Steuern" est divisé en 3 sections, à savoir: I. Finanz- und Steuerpolitische Lage, II. Lastenausgleich et III. Steuerliche Einzelfragen.

Dans I on trait la politique fiscale. II donne une brève discussion du Lastenausgleichgesetz du 1er Septembre 1952 et III est consacré à nombre de problèmes concrets comme par exemple le droit fiscal pénal, l'évaluation de participations et d'autres valeurs mobilières qui figurent à l'actif du bilan, l'amortissement dégressif, la taxe d'entreprise (Gewerbesteuer), la taxe de transmission, des problèmes fiscaux en rapport avec la communauté européenne de l'acier et du charbon, etc.

Prof. Dr. Fritz Neumark: *Aktuelle Budget- und Steuerfragen.* — Institut „Finanzen und Steuern" Bonn am Rhein, Heft 25, 1953, 20 pp.

Ce petit opuscule contient la conférence que le professeur Neumark a faite le 4 Septembre 1952 pour l'assemblée des membres de l'Institut„ Finanzen und Steuern". Le professeur Neumark constatait qu'une réforme fiscale est nécessaire en Allemagne dans le domaine économique et socicial. La répartition des charges doit être telle — ainsi s'exprime le professeur Neumark — qu'elle est proportionnée à la capacité de l'entreprise et des individus et donne un solde utilitaire maximum. Certaines propositions sont exposées plus en détails. On précourse l'utilité des statistiques à cet égard et le professeur Neumark regrette que les recherches dans le domaine statistique-empirique en Allemagne ne soient pas encore si avancées que dans les pays anglo-saxons.

Prof. Dr. OTTMAR BÜHLER: *Steuerrecht, Grundriss in zwei Bänden* I *Algemeines Steuerrecht.* — Betriebswirtschaftlicher Verlag, Dr. Th. Gabler, Wiesbaden, 1951.

The elaborate work (412 pages) treats in the volume recently published the general taxation law. The second volume will be devoted to the separate taxes. Now the "Lastenausgleichgesetz has been enacted, for which the author was waiting, we trust we will soon be able to review this second volume.

It is not possible to give a summary review of the rich contents of this work, which by the scientific treatment of the subject is entitled to great attention also outside Germany. To get an impression of this work it is desirable first to peruse the matter treated.

1. Introduction, entitled "Grundlegung"
2. Material taxation law, comprising: Law of persons (natural persons, enterprises, companies etc.), law of contracts, estate law (with the problem of the value).
3. Formal taxation law (taxation administration, method of work, litigation, collection, control).
4. Penal taxation law.

When the reader examines what material has been embodied in this scheme which is planned so systematically, then the rich contents of this book are apparent.

Very general problems are raised in the Introduction: what is the task of taxation law, what lies the essence of it, what connection exists with economic sciences, especially business economics, the general system of law, what is the juridical method of the taxation law?

Then German law comes more to the fore, the significance of the Reichsabgabenordnung, the historical development since 1871 in the German Reich and in the individual German States, ending in 1950.

Important things are said about fundamental ideas and classification of taxes. Many subjects have been embodied in it, on which the author builds further. The sources of taxation law and the problem of the retrospective effect, the legislation by the Reich and its parts, the operation in spare, which leads to the problem of the double tax levying, all that is treated elaborately. Special attention is demanded for the treatment of interpretation, which in its turn leads to the connection with civil law and the evasion of taxation by the choice of some legal form. The introduction concludes with a consideration about the leading thoughts of the material taxation law.

In the chapter about the law of persons the reader will find besides the common subjects as domicile, spouses, family, representatives, also a detailed consideration of "Treuhandverhältnisse" and kindred subjects as conveyence in surety etc. The elucidation of the fiscal side is of importance also outside Germany. The chapter about taxation of corporations begins with an examination of the conception of business and enterprise and then proceeds from the single enterpriser to the personal capital and other associations.

Cartels and conglomerations of business are also discussed. The phenomenon that enterprises become independent has the attention of the author.

So we can go on. That which the author submits to the reader about taxation liability, origin, contents, extinction with many kindred problems, deserves attention. His consideration about income, profit, proceeds, property, turnover in connection with shifting and the remarks about taxlevying must be mentioned.

The consideration of the problem of the value is also of general significance.

There the reader can find i.a. the "Teilwert", treated in it, a conception which can be useful also elsewhere.

The principal classification of the formal taxation law has been mentioned above.

Concerning the penal taxation law it may be mentioned that material and formal penal law are treated separately, as well as the taxation amnesty.

JAMESHWAR DASS JAIN and PARMESHWAR DASS JAIN: *Tax Appeals, Revision and Reference.* — Law Literature House, 127 7 Ballimaran Delhi, 1951, 444 pp.

Tax consultants, accountants and sometimes the persons assessable themselves are often confronted with the task of appealing against the decisions of the different tax authorities. Sometimes it is omitted owing to insufficient knowledge of the fiscal laws and of the procedure. And if one decides after all to appear before an authority the chance to lose the suit is also great, for the same reasons. Therefore the aim of this work is to show the circumstances, in which one can appeal with the greatest chance of success. Experts and laymen get the disposal by it of a discourse which is brief and yet exhaustive, which has been based upon practical experience and an elaborate study of the "Indian Income Tax Law".

ALFRED AMONN: *Grundsätze der Finanzwissenschaft.* — Zweiter (besonderer) Teil. — A. Francke A. G. Verlag, Bern, 1953, 228 pp.

Who wants to give a survey of the matter and problematic side of the "Finanzwissenschaft" must, according to the author, professor at the University of Bern, surmount two difficulties: the necessary limitation — what are the essential points? — and the inadequacy of the practical experience. The theorist does not know the practice or only partially; the man of practice can not made a complete picture of the theoretical problems. The "Finanzwissenschaft" can not be learned from a book! The author followed the method of beginning with a classification of taxes and discusses after that the different sorts of taxes. First of all the revenue taxes arranged in five sorts concluding with his opinions followed by the taxes of income and property. Thereupon the taxes on increase of value come up for discussion, followed by the taxes on inheritances and donations. Finally the consumptions taxes, circulation taxes and purchase tax. The work (228 pages) concludes with a consideration about public credits (loans) and about the financial relation between State and municipalities etc.

Two qualities of this work are remarkable on closer examination: 1st that it does not give a commentary on the many cantonal and federal taxes existing in Switzerland, but gives a scientific treatment of the different sorts of taxes, in which connection the author has drawn upon the legislations of different countries. 2nd. that with all sorts of taxes the same classification is followed, be it however that this is done more extensively for some taxes than for others. So the conception and essence of the taxes of the group are continually examined; first, thereupon object, subject and foundation are investigated, followed by a discussion of the administrative side, assessment, collection and after that the economic side: the shifting of the tax burden.

Thereupon the author gives his opinion about the taxes belonging to the group and he says something about the development — when it is concerned. So the matter is approached from a very special angle, and can give the reader a new insight into the material. This work must be regarded as a splendid acquisition by everyone who occupies himself with the scientific study of the fiscal law.

Dr. MORITZ CANDRIAN: *Steuerrecht und Familiengesellschaft.* — Buchdruckerei H. R. Sauerländer & Co, Aarau, 1951, 335 pp.

To the principle of the family as a unit in the fiscal law, in Switzerland

elaborate attention has been paid of late in different scientific papers. After Martha Sprüngli's thesis ("Der steuerrechtliche Behandlung der Familie unter besonderer Berücksichtigung des zürcherisches Gesetzgebung") and the article by Professor Dr. Max Imboden: "Die Einheit der Familie im Steuerrecht" (published in the volume of August Egges), this book, original and valuable especially by its design, has now been published. In contrast with the two above-mentioned papers the different aspects are elucidated here from the practical viewpoint in connection with the direct taxes as they are valid in the Federation and the different cantons of Switzerland.

The author comes to the conclusion that, as regards the direct taxes, the legislator considers the family as a unity in three respects: 1st. with the personal tax liability (the head of the family is considered to represent the whole family). 2nd. with the expending of the income (the family must be considered as an economic unity) and 3rd. with the fixation of the taxable income (the incomes of the members of the family are taxed as a whole). Proceeding from these three main points the author has sub-divided his book and to all three points he pays great attention, in which connection he proceeds from the laws ruling in Switzerland. However the treatment of point three has been emphasized comprising as it does about half of the 330 pages book. Further at the end some conclusions and recommendations for the modification of the existing laws follow, which appear to be desirable as the result of the investigations.

ARMAND FOURNIER avec concours de RENÉ BLANCHER: *Le Régime Juridique et fiscal des Sociétés Civiles.* — Chez l'auteur, 164, boulevard Périne Paris, XVIIe, 1953, 368 pp.

Besides the civil aspect in this 350 pages book, a detailed and profound study has been made of the fiscal side of partnerships. As has also appeared from the French legislation, for many years far more attention has been paid to the commercial companies, so that this book will be certainly a welcome addition to the fiscal literature. The author discusses successively in the fiscal part the different taxes in relation to the partnership, namely the "droit d'enregistrement" (registration fees and death duties), the direct taxes and the purchase tax, whilst important problems arise as for instance, the establishment, the winding-up, transfer of shares and many other problems.

This book is by its design very suitable for the use in practice, in connection with which, particularly from the point of view of civil law, we may refer to the forms of different contracts occuring in the index.

INSTITUT BELGE DE FINANCES PUBLIQUES: *Histoire des Finances Publiques en Belgique,* Tome premier — Librairie du Recueil Sirey, Paris; Etablissements Emile Bruylant, Bruxelles, 1950, 663 pp.

It is an elaborate and important work that has been published thanks to the collaboration of "La Fondation Universitaire de Belgique". The first part that has been published now contains as many as 663 pages.

It is remarkable, what is told in the introduction by Max-Léo Gérard president of the International Institute of Public Finances: the day before the German invasion, 9th May 1940, some members of the Institute had assembled to deliberate about the publication of a work on the history of Belgian Public Finances since 1918. In the years that followed this idea did not grow dim, it was even extended to comprise the history since 1830. In the difficult years of occupation many collaborators were busy on it, and now the book is before us. Those collaborators were given the greatest freedom, so that a complete dovetailing could not be attained. The book is

highly interesting because much changed in the years that it covers; the position of the State in economic life, the clashing of ideas about it, the amount and composition of the national income, this and so much more is found in the many papers which this book contains. The first article of the volume treats the public finances "sous l'ancien régime" and has been written by Professor Paul Harsin, professor at the University of Liege. Two dates — so he writes — are very prominent and form a sharp separation between three periods; these are the years 1796 and 1919. 1796: enforcement of the French legislation of the Revolution. 1919: the income tax based upon modern principles.

The first chapter treats the public finances in the lower countries under the Austrians and gives a clear picture of the splitting up in nearly all regards. The administration of the public finances in the greater part of the 18th century is described in detail, not only of the State and the provinces but also of the municipalities. The "Principauté" of Liege showed a difference and is discussed in a separate chapter.

Then comes the period of the "Régime hollandais" treated by Prof. Robert Demoulin, also professor at Liege. One gets an impression of the difficulties which the Association of North and South brought in its train, William I's heavy task, i.a. a consequence of the burden of debts which the North had brought with it. The "Amortisatie-Syndicaat" has remained a long time in the memories of the Belgians, be it without joy!

Then the separation from the Netherlands took place, the period that begins in 1830 and is closed in 1850, the year in which the National Emission Bank was founded. About this period speaks Professor G. Jacquemijns, professor at the University of Brussels. He connects closely the political and economic situation. This situation was difficult, especially the first few years before the signing of the treaties in 1839. Till 1850 these were years of rise and decline, but of . . . perseverance. In three chapters a survey is given of: 1st. the economic development of the country. 2nd. the state of public finances. 3rd. the financial crises of 1839 and 1848. It has been a nice idea to devote a separate contribution to the Ministers of Finance. The Duke Louis de Lichtervelde, member of the Royal Academy of Belgium, took charge of this part. They pass before us in our thoughts, all those Ministers from 1831—1918 and from 1918—1939. Not only their person in all diversity of conviction and character, but we also see the difference in circumstances of the time, in the problems with which they had to cope. Perhaps one gets the clearest picture of the successive phases in social life by considering it in connection with the activities of the different Ministers of Finance.

Henri Matton, first president of the Cour des Comptes, opens a new field with his elaborate consideration of "Les institutions et le régime budgétaire".

The development since 1830 is described and the many problems, often with a fundamental character, are fully considered. Especially in the second chapter "Les traditions" one can find a treasure of data about the budgetary law. The organic laws are considered in the third chapter. The periods of occupation of Belgium 1914—1918 and 1940—1944 were afforded a special treatment.

With this no survey has been given of the rich contents of this article. One finds in it, to mention still some subjects, a description of the many public services which conduct a public financial administration, of the jurisprudence of the Audit Office etc.

After these general considerations which often enter into details one also desires to know something about the budgets themselves. Pierre van der Rest complies with that wish with an exposition of the budgets from 1830—1913. The figures are given of the State revenues of the years 1845, 1860, 1875, 1895, 1912. How modest they are before our modern eyes! About the

tax proceeds more detailed figures are given. Remarkable is the fall of the proceeds of the direct and the rise of those of the indirect taxes:

direct: 1845: 42,4%, 1912: 31,6%
indirect: ,, : 57,6%, ,, : 67,6%.

About the national expenditure similar surveys are given, all supplied with elucidations.

Then the tax system comes up for discussion, introduced by Jean van Houtte: "La formation du système fiscal de la Belgique avant 1914". A description can be found of the French régime (1795—1814), the Dutch (1814—1830) and the Belgian. A separate chapter is devoted to the provincial and municipal taxes. In the summary which concludes this study the great stability is pointed out during the period 1830—1914, a stability that goes together with the financial and monetary situation. The total of the tax yield rose considerably in those years, but changes also took place in the mutual proportion of the most important tax groups: a decline of the percentage yielded by direct taxes against an increase of that of the customs, excise duties and stamp and registration taxes.

This stability, even if it were with some shiftings, was lost in the years after 1914. The description of the period 1914—1940 by Rudolphe Pitman consequently occupied much more space than that of the preceding period. After some general remarks about the period before and that after 1914, an elaborate description follows of the manner income tax came into being, the project Ingenbleek and a setting forth of the principles upon which the law has been based. Then in Title II the state of flux in the tax legislations begins to find expression. The many decrees of amendment are discussed and at the same time many important fiscal problems and the struggle to solve them are displayed before the eyes of the readers. Specially in Title III the development of the principles is elucidated. Important remarks about a number of subjects are met with here, not only about the material law as the principle "ne bis in idem" and about the tariffs, but also about the administrative side. It is not possible to give a complete survey of the subjects discussed. We can only make mention of the treatment of the profit tax in connection with the tax on the surplus values.

The essay about the stamp and registration taxes after 1914 saddens us as it is presumably the last essay of the man who has done so much for the development to a science of the fiscal law in Belgium, Emile Genin. He was not to end this essay; after his death it was finished by Maurice Donnay, director at the Ministery of Finance.

The taxes mentioned here are important in Belgium. The figures of the tax yield for 1913, 1946 and 1947 prove it: registration taxes furnish about half the total of the tax-yield. From the specification it appears that the stamp tax and especially the "taxes assimilées aux timbres" (purchase tax) give by far the greatest contribution. Successively the development is described of the registration law (chapter II), the new Code, the death duties (chapter III), stamp duties (chapter IV), with the new Code, 1947, and finally the taxes assimilées au timbre.

The last essay treats the import duties and excise duties from 1914 till 1940, by J. Crispiels. First of all the customs; not only the different laws, but also the treaties with other countries are discussed. Finally the many excise laws are brought to the notice of the readers.

When surveying the whole the reader realizes the rich contents of this work, the wealth of data worked out in it. These are not only important for Belgium, but for everyone who wants to follow the development of public finances and fiscal law.

J. KEITH BUTHERS et POWELL NILAND: *Effects of Taxation. Inventory Accounting and Policies.* — Harvard University, Boston, 1949.

Dans ce livre les auteurs donnent une description du système l.i.f.o. (last in first out), du point de vue économique et fiscal. L'ouvrage contient des données de grande valeur sur l'application du système et sur l'étendue de cette application qui, jusqu'à 1939, pouvait être presque négligée.

D'ailleurs l'emploi du système n'a été permis dans la législation fiscale qu'à partir de 1938, au profit de quelques industries énumérées spécialement; en 1939, les dispositions législatives furent légèrement étendues.

Après 1939 l'emploi de la méthode augmentait de plus en plus, de sorte qu'en 1941 et 1942 60% des „manufacturing industries" procédaient à l'usage du système, tandis qu'en 1947 38% des 100 „manufacturing corporations" les plus grandes l'employaient.

Les industries qui en font le plus grand usage sont:

	nombre	lifo	%
1. l'industrie de conserves (viande)	5	4	89,4
2. textiles	19	8	45,3
3. cuir	8	4	57,5
4. bois et articles de bois	5	2	39,3
5. papier	14	5	51,6
6. pétrole	32	16	64,5
7. fer et acier	43	8	49,2
8. métaux non-ferreux	18	5	65,3
Moins employé est le système dans les industries de:			
9. produits chimiques	46	8	19,7
10. produits conservés (autres que viande)	49	11	25,2

L.i.f.o. n'est pas appliqué dans l'industrie des meubles, ni par les imprimeurs, ni dans l'industrie de potterie et de verre. L'enquête susmentionnée concernait 475 sociétés dont 85 appliquaient le système l.i.f.o.

La question se pose de savoir quand on peut appliquer le système l.i.f.o.; ici il faut faire, une distinction entre les aspects généraux et fiscaux. L'application du système dépend dans une large mesure de la nature de l'industrie, du rapport entre les prix des matières premières et des produits finis et de la question de savoir comment ce rapport doit rester dans chaque cycle économique. Du point de vue fiscal les auteurs attirent l'attention sur l'effet de l'application. Dans l'année où l'on commence à appliquer la méthode on s'épargnera sans doute de l'impôt. Pourtant il est douteux si cet avantage sera permanent et ne disparaîtra pas à la longue et même pourra se changer en perte. Ceci est causé par le fait que:

„lifo . . . is strictly a cost method. Lifo inventories must be maintained at their original costs until they are liquidated, even though marketprices fall below cost."

L'épargne d'impôts dépend des éléments suivantes:

1. développement du niveau des prix à venir.
2. fluctuations des taux d'impôts.
3. variations dans l'étendue et les montants des produits auxquels lifo est appliqué.
4. stabilité relative des revenus provenant de sources autres que „inventory profits and losses" (bénéfices et pertes d'évaluation).
5. règlements concernant la compensation des pertes.

A la question de savoir s'il est vrai que le balancement de bénéfice et de perte est réellement un grand problème, les auteurs répondent comme suit:

„the present value of the immediate savings presumably would be greater

than that of additional tax payments of equal absolute amount to be made at an indefinite future date".

Quand l'augmentation du prix de revient a une répercussion immédiate dans l'entreprise, on doit en tenir compte en fixant de calcul du profit. Alors il ne s'agit plus du prix de revient des articles vendus mais de celui des articles de remplacement. Il faut tenir compte de ce prix de revient dans le calcul du profit. En fin de compte le problème de l'évaluation peut être réduit à un problème de liquidation, ou à un problème de désinvestissement.

Dans les dispositions de l',,Internal Revenue Code" on ne s'étend pas si longuement sur la méthode de l.i.f.o. Cette méthode est marquée comme ,,elective method":

1. pas de limitation à l'égard des biens, mais on doit mentionner dans la déclaration annuelle à quoi l.i.f.o. est appliqué;
2. l'évaluation doit être faite à une ,,cost basis", sans compter les ,,current market values".

Au début de l'application de la méthode l.i.f.o. le prix de revient doit être déterminé par rapport au prix moyen par unité supposé que toutes les unités datent de la même période. Les biens de l.i.f.o. acquis pendant l'année fiscale peuvent être évalués à la fin à ,,actual cost in order of acquisition". Des difficultés s'élevaient (et s'élèveront) au sujet du moment où l'inventaire de l.i.f.o. doit être entamé quand une pénurie se présente. Dans ce cas les prix de vente sont hauts, les prix de revient sont bas.

Par conséquent on réalise des bénéfices plus élevés au moyen de ce système. Ce désavantage est intensifié encore quand entretemps, comme dans la dernière guerre mondiale aux Etats-Unis, une ,,excess profits tax" fut introduite. C'est pourquoi on a introduit un règlement spécial pour prévenir cette rigueur, règlement fondé sur l'obligation de substituer des stocks entamés involontairement dans les trois années après la fin de la guerre. Le livre contient beaucoup de matières précieuses pour une étude comparée. On a attiré l'attention aussi sur la relation entre la méthode lifo et d'autres méthodes d'évaluation, tandis qu'une analyse de la conception ,,bénéfice" ne fait pas non plus défaut.

E. Cary Brown: *Effects of taxation. Depreciation adjustments for price charges.* — Division of Research, Graduate School of Business Administration, Harvard University, Boston 1952.

Ce sixième volume dans la série d'études, qui ont pour but d'examiner quelle est l'influence de la fiscalité sur la vie économique, s'occupe de la question de savoir comment en rapport avec la détermination de l'amortissement et du revenu industriel on pourrait diminuer ou même faire disparaître la différence entre le prix de revient historique et la valeur de remplacement d'actifs, problème étendu et actuel pour beaucoup d'industries, vu les augmentations de prix dans les dix dernières années. L'auteur s'occupe ensuite des propositions faites en vue de modifier la législation fiscale dans le sens que la loi admette l'amortissement sur la base de la valeur de remplacement: Si des bénéfices apparents résultant des augmentations des prix, sont imposés, de graves dangers en résulteront pour la liquidité, parce que ces bénéfices n'impliquent pas la formation de fonds disponibles. L'auteur traite ce problème pour les biens durables, problème pour lequel aucune solution n'était encore trouvée à l'opposé de l'évaluation des stocks (méthode ,,last-in first-out").

Dr. H. L. Drost: *Oudedags- en gezinsverzorging,* No. 3 van de Fiscale Monografieën. — Uitgave AE. E. Kluwer, Deventer, Djakarta.

Le Docteur *Drost,* directeur adjoint de deux compagnies d'assurances sur la vie, s'intéresse beaucoup aux problèmes fiscaux, auxquels l'assurance

sur la vie fournit matière dans ses formes innombrables. Sa thèse était consacrée à ce sujet ainsi que plusieurs articles de revues. Maintenant comme numéro 3 des „Fiscale Monografieën" (les premiers numéros discutent le profit de liquidation — *M. A. Wisselink* — et des sociétés de famille — *A. van Keulen* —) une étude paraît (118 pages), qui traite les assurances individuelles. D'après la préface les assurances collectives relatives au personnel seront traités dans un prochain volume et notamment par le Dr. J. P. Portielje.

Dans le premier chapitre on parle de l'épargne et de l'investissement et on rappelle au lecteur que cela n'est pas suffisant. On doit voir la possibilité que le gagne-pain principal de la famille peut mourir prématurément. C'est aussi alors la nécessité de couvrir les risques. Tel est le but de l'assurance sur la vie: assurance pendant la vie, et puis assurance en cas de décès.

Après cette introduction le vrai sujet est traité, classé selon les trois périodes qu'on peut distinguer dans l'assurance sur la vie:

1. La constitution des soins (le temps du versement des primes ou du prix d'achat.
2. La constitution achevée (en général le moment où l'assurance commence à courir).
3. Les soins (le temps pendant lequel des paiements ont lieu).

Ces trois périodes donnent lieu, chacune à sa manière, à des problèmes fiscaux. Dans la première période on se demande si et à quel point le paiement des primes diminue le revenu imposable et si la police peut être comprise dans le patrimoine frappé de l'impôt sur la fortune. La deuxième période mène d'abord le lecteur au domaine des droits de succession et de donation, qui, en Hollande, ne font plus partie des droits d'enregistrement. Dans d'autres cas, surtout en ce qui concerne les versements de capital à l'assuré on entre en contact avec l'impôt sur le revenu, où, dans certaines circonstances, l'élément d'intérêt compris dans le montant versé, est imposé.

La troisième période présente des difficultés fiscales à l'assurance de capital aussi bien que de rente.

Après avoir étudié à fond ce livre, on constante le grand nombre de variations et de nuances que comporte la conception actuelle de l'assurance sur la vie et les complications résultant du traitement fiscal de cette matière. L'auteur a réussi, grace à son traitement systématique à en donner un résumé clair.

FR. LOECKX et G. NEYENS: *Eléments de la science des Impôts*, Cours Administratifs, première et deuxième partie. — Ministère des Finances (Belgique), Administration des contributions directes, 1952.

Le Ministère des Finances à Bruxelles a fait publier, dans les volumes susmentionnées (160 et 224 pages) un aperçu objectif des éléments essentiels de la science fiscale. Il est écrit pour ceux qui préparent l'examen du vérificateur ou contrôleur des contributions. Mais pas seulement pour ceux-ci le but est aussi de donner, aux futurs fonctionnaires, une connaissance plus approfondie du caractère de l'impôt et des problèmes importants qui s'y rapportent. Il est nécessaire, pour le prestige du fonctionnaire et pour son "standing" intellectuel, qu'il apprenne à distinguer les problèmes, auxquels il a affaire dans son travail, d'un point de vue plus large qu'il ne pourrait le faire par une étude strictement professionnelle et technique. Ce qui est destiné uniquement aux fonctionnaires subalternes (vérificateurs) est indiqué dans le texte. Les impôts provinciaux et municipaux n'ont pas été traités.

Il est toujours intéressant d'examiner le projet d'une oeuvre qui veut donner un résumé général d'une discipline aussi complexe que celle de la "science des impôts". Le matière est divisé en dix chapitres, dont voici une brève énumération:

1. L'état et ses sources. 2. l'impôt. 3. principes généraux. 4. les conditions auxquelles doit satisfaire l'impôt. 5. la répartition de la charge fiscale. 6. l'effet économique. 7. les buts extra-fiscaux. 8. la technique. 9. le rapport entre l'Etat et ses subdivisions (surtout les municipalités). 10. la double imposition. Chaque chapitre est divisé en plusieurs sections et soussections, de sorte qu'un ensemble très bien ordonné a été réalisé. On se réfère toujours à la doctrine tant nationale qu'étrangère, et à la fin de chaque partie une bibliographie détaillé a été insérée. On peut féliciter le futur agent belge du fisc de ce qu'on lui a donné un résumé si clair et bien ordonné d'un sujet difficilement accessible et plus difficile encore à voir clairement dans son ensemble. On pourrait ajouter que non seulement les futurs fonctionnaires mais aussi d'autres personnes peuvent profiter de ces deux volumes.

Verspreide Geschriften Van Prof. Dr. N. J. Polak, collected by H. T. Go and J. P. KIKKERT, both ec.drs. — Two parts, J. Muusses, Purmerend.

Professor Dr. N. J. Polak who died in 1948 at the age of nearly 61, has done much in the Netherlands for the development of fiscal science. Originally trained for dealing in stocks and shares, he continued his studies and sat for the examinations of the Dutch Society for chartered Accountants (N.I.V.A.). Thereupon during World War I he joined the Governmental Auditing Department then instituted, owing to which he came in closer contact with the fiscal problems. With the general income tax then enforced and especially the tax on war-profit he had his hands full. But yet he had some leisure left for further study. In 1913 when the Dutch Commercial Academy at Rotterdam was founded he registered as a student and obtained his degree there and was appointed professor in said academy. In that function he gave everything he had in the very place as tutor of his students, of the young economists. But side by side with it there exists his voluminous scientific work, his books, reports, speeches, lectures, and articles in periodicals, the latter collected with great care and devotion by two old pupils. They give a picture of the very special contribution that this man, who was removed by the invaders as a professor and was compelled to pass years of dire distress, has given, also for the fiscal science. On the 25th anniversary of his professorship in 1947 the gratitude of many was expressed and scarcely a year later he died.

On perusing the two parts, the reader is struck by the extensive domain on which Prof. Polak moved. The first part contains after an introduction by J. Brands, articles about business economics in which sometimes also the fiscal problem is discussed i.a. in the article of 1930 about bonus shares in connection with taxation.

Part II contains articles about general economic problems, about monetary policy, accountancy etc. and about taxation. General problems always had his interest, i.a. "the general principles for the levying of taxes" (1929), "Industrial life and tax science" (1930), "Form or reality as a guide when levying taxes" (1934) and a study about the taxing of foreigners (1928). About the purchase tax he has written repeatedly. As regards the direct taxes, the profit and the problem of pensions had his special interest. With this collection of widely divergent articles great service has been rendered to science as well as to practical usage.

Procedure and Practice before the Tax Court of the United States. — Commerce Clearing House Inc. New York 1953.

Vu le grand nombre de litiges en matière fiscale soumis à la „Tax Court" il est devenu nécessaire de tenir compte de règles spéciales de procédure. Inversement et par conséquent, si l'on veut gagner son procès, il faut au

moins prendre en considération les règles de la „Tax Court". Le but de l'ouvrage susmentionné est de constituer un guide pratique à ce sujet. Ce livre est à l'usage pour y être d'une utilité pratique.

RONALD STAPLES: *Key to income-tax and sur-tax.* 37th edition. — Taxation Publishing Comp. Ltd. London.

Ce guide pratique, qui donne des réponses directes à beaucoup de questions relatives à l'impôt anglaise sur le revenu, a paru dans la 37e édition où les nouvelles modifications et les diminutions de la „Finance Act 1953" ont été insérées. Aussi bien que dans les années précédentes, ce petit livre rendra service à beaucoup de fiscalistes, et par sa forme succincte et sa classification facile il sera utilement employé à coté des grands manuels.

World Economic Report 1951—53. — United Nations, Dept. of Economic Affairs, New York 1952.

Par intervalles réguliers l'UNO fait paraître des résumés du développement dans le domaine économique. Le rapport susmentionné analyse les développement les plus importants, qui se sont accomplis pendant 1951 et '52 dans l'économie intérieure aussi bien que dans les bilans internationaux de commerce et de payement.

ERLAND GEIJER: *How Swedish Tax Laws affect persons removing into or from Sweden or residing abroad.* 2nd edition. — Svenska Handelsbanken, Stockholm 1951.

The first edition of this brochure has been reviewed in our Bulletin Vol.I p. 312. We merely remark here that this brochure has been brought up-to-date and that the following subjects are discussed in it: forms of tax-levying in Sweden; the liability to taxation; the place of taxation in Sweden; the liability to make a return in Sweden; residence and place of domicile; international double taxation, in which connection the treaties which Sweden has concluded with 19 countries about different fiscal subjects are very briefly discussed; the tax liability of diplomats, the new system of tax-collecting at the source etc. A surveyable pamphlet of 68 pages, which we recommend with pleasure in the attention of our readers.

Should the Excess Profits Tax be re-enacted? — Tax Institute Inc. Princeton N.Y. 1953.

This brochure containing 32 pages occupies itself with the question whether the E.P.T., which if the congress does not decide otherwise, expires on June 30th 1953, has still to be levied during a number of years from corporations. The important revenue from this tax on the one side and the great deficit of the budget for the present fiscal year on the other side plead for a permanency of this tax. Against the tax the objection is raised that it promotes the incurring of high and unnecessary costs and undermines the stimulus for good management. The extension as well as the ending of the E.P.T. will have an important effect on the economic constellation of the country. For a better idea about the problem both sides are submitted in this brochure to an examination. [1])

J. L. VAN HEDEL: *Stamrechten.* — Uitgeversmij. L. J. Veen, Amsterdam, 1953.

When transferring an enterprise or professional practice income tax is levied upon the profit of transfer, which tax often gives rise to difficulties and problems for the transferring party. By making the transfer wholly

[1]) After this review had been written, the E.P.T. was abolished as per January, 1, 1954.

or partially against a life-annuity or other forms of annuity these difficulties are only partially solved, because also the transfer against an annuity is attended with objections of which generally too little account is taken. The author has therefore made it his task in this booklet to throw a light on the different possibilities when transferring against an annuity and to submit the fiscal results to an examination. Many examples explain the whole while also the most important jurisprudence in this field is referred to.

ORESTE ALLOY: *Norme pratiche per l'applicazione della legge sulla perequazione tributaria e sul rilevamento fiscale straordinario.* — La Stampa Commerciale, Via Ciovassino, 3, Milano 1951.

GIOCONDO VERNONI: *La dichiarazione unica dei redditi secondo la legge sulla perequazione tributaria.* Guida pel contribuente. — Ernesto Schiano, Editore, S. Maria C.V. 1951.

The two above mentioned booklets, containing 129 and 140 pages respectively, have relation to the Italian Act of 11th January 1951 No 25 which includes an important reform in the fiscal domain. By this Act a unique declaration of the incomes subject to the direct taxes was prescribed, attended with a fiscal amnesty and an extraordinary fiscal relief.

The law has been divided into 7 titles: norms about the annual notification of the incomes. (art. 1-5); norms which have relation to direct taxes (art. 6-17); Norms about the cashing of the direct taxes (art. 18-21); extraordinary fiscal relief (art. 22-32); norms for the system of certain fiscal situations (art. 33-42); measures which have relation to the local finances (art. 43-45); temporary provisions (art. 46-49).

The booklet of Mr. ALLOY has been written for the layman in the fiscal domain. The author follows briefly the articles of the law while giving brief explanations illustrated with examples. At the end of this brochure has been included the text of the law of 11th January 1951, of the Decreto legislativo luogotenenziale of 24th August 1945, never having come into force before, and containing the instruction to annual declaration. The law from 1951 is founded on this decree and refers to it. An elaborate index facilitates the looking up of commentary and legal provisions.

The booklet of Mr. VERNONI begins with a summary description of the taxes to which the law of 11.1.1951 relates (5 paragraphes, 84 pages). In connexion with it he then gives in a last paragraph a short explanation about the law itself. (20 pages). The reader also finds the text of the law here, as well as the text of the decree of the president of the Republic no.573 of 5-7-1951 by which the text of the decree of 24.8.1945 and the text of the law of 11.1. 1951 have been approved. So this unique text now includes the whole arrangement with regard to the annual declaration.

A short bibliography concludes this booklet.

Deutsche Steuerzeitung, Ausg. A. Industrie-Verlag, Carlheinz Gehlsen GmbH, Konstanz am Bodensee, Schliessfach 43.

The "Deutsche Steuerzeitung", Ausgabe A, 1953, Nr. 16/17 of 15th August —1st September has entirely been devoted to a survey of the German tax system. The editor is Herr Heinrich KLOETER. An excellent survey of the "Kleine Steuerreform" of June 24th, 1953 can be found in Nr. 13/14, of July, 1st and 15th, 1953.

Prof. Dr. M. J. H. SMEETS: *De economische betekenis van de belastingen.* — L. J. Veen's Uitgeversmij, Amsterdam 1951.

Prof. Smeets, who began his career in the Dutch Inland Revenue Service, from where he was already soon called to the Ministry of Finance, resigned

some years ago from the world of officialdom to be able to devote himself entirely to the function of professor at the Catholic University of Economics at Tilburg. The above-mentioned work (112 pages) demonstrates in what direction his interest principally lies. It does not intend — as mentionned in the beginning of the book — to give more than an introduction about the meaning of the taxes in economic process; it merely wants to give what is necessary to encourage a profounder study. Only the revenues of the authorities are discussed; expenditure is only paid attention to as far as such is nesessary to account for the means. There is still a remark in the preface which deserves special notice: "Principally the taxes are considered economically; the economic insight, however often this may fail on account of uncompleteness or vagueness, ought to be the foundation on which the taxes are juridically constructed and ethically tested." The intention of this book can be known best by putting the titles of the chapters side by side: I the revenues of the authorities and the budgetary background of the taxes; II The classification of the taxes; III Some economic effects of the levying and the spending of the tax yield; IV The shifting of the taxes; V The regulating function of the taxes. Here follow a few chapters, taken at random, to characterize the book as a whole.

Cost of a. the civil apparatus.
b. the military ,,
c. interest of debts.
d. payments without a quid pro quo.

Vis-à-vis there is placed the revenues of the authorities from property (public lands), enterprises in different gradations, taxes, fees, taxes with special purposes, "levies" etc. etc.

The exploitation-costs of the authorities, minus the revenue of enterprises, fees etc. are apportioned among the citizens and other people who entertain certain economic interests with the country. This apportioning is made by tax-levying and causes difficulties, because the total sum necessary for taxes is based upon the unknown expenditure to be incurred in the future. Estimates must be drawn up, which especially in periods of a changing wage and price level never can be accurate. This brings the author to important considerations about the tax burden, the progression and to the remark that the greater part of the revenues of the authorities is not based upon a market-price, which gives him occasion for setting the budget-phenomenon beside the market-price-phenomenon. The first chapter concludes with some discussions about the account for the Public revenue and a summary of the history of Taxes.

II. In the second chapter are first mentioned a few figures concerning the Netherlands, which show the sum to be produced by taxes. After that a survey of the taxes levied in the Netherlands can be found, and the various ways in which they can be grouped. The international cooperation is also paid attention to. Finally a characterization is given of the taxation law, "in the Netherlands the most variable part of the law" — not only in the Netherlands, might be added.

III. The third chapter, in which economic effects of the levying and the spending of the tax yield are reviewed, the circulation of the purchasing power is discussed. The tax is observed from the point of view of the individual and from that of the public; various aspects of the circulation are treated; balance of utility; shifting in the private sector. The possibility of the rescission of purchasing power by tax levying is discussed and the possibility of recovery of temporary halfpay purchasing power. In it can be found some remarks about the multiplier, the tax which supercedes creation of money and finally something about the tax burden.

IV. This chapter forms the transition to the chapter about the shifting of the taxes. The taxes can be evaded and dodged; then there is no question

of shifting. Who does accept taxation can try to redress the balance of income and consumption by working hard (tax-compensation), by limiting his consumption or savings or by shifting the tax to other persons. All these sides of the problen, as well as the amortization, are examined. Therewith many subjects as elasticity of demand and supply are, in the nature of things, mentioned. Worthy of special attention is what is said about the shifting of income tax.

V. In the first place the last chapter contains some general remarks about the secondary purposes of taxes — their function is no longer only budgetary. Considerations about cyclical taxing policy, in times of depression and in times of boom, and about structural taxing policy can be read here. A very broad field for study lies open here in which the author appears to be an excellent guide with his summarizing considerations. He concludes his work with the information, that the budgetary function is discarded by a number of authors. The present author does not go so far. To his circumscription in the beginning of his book: "Taxes are performances owing to the authorities according to general norms, determined by them and enforcible, without there being overagainst them apparent contra-performances in the individual case; they serve for the covering of public expenditure" he adds at the end: "On account of their *regulating* function taxes can be made serviceable more or less to the economic and social management of the authorities; such can be attended with a thrusting back of the budgetary function." An elaborate bibliography (international) concludes this important work.

Prof. Dr. OTTMAR BÜHLER: *Steuerrecht der Gesellschaften und Konzerne*, 2. neubearbeitete erwerterte Auflage. — Franz Vahlen, Frankfurt a.M. und Berlin, 1953.

La première édition de cet ouvrage parut en 1951. Elle fut annoncé dans le Bulletin VI (1952) page 113. En 1953 déjà sa seconde édition a paru, ce qui prouve qu'on l'apprécie fort, et avec raison. La nouvelle édition aussi trouvera de l'intérêt, vu surtout les suppléments importants, dont on fera mention plus loin.

L'introduction résume le système fiscal valable pour les différentes formes de sociétés et le développement depuis 1925; le „Kleine Steuerreform" du 8 Mai 1953 est traité dans un supplément. C'est non seulement une description du développement, mais aussi une comparaison de la position fiscale des différentes formes et de la transition d'une forme à l'autre.

Comme dans l'édition précédente la première partie traite le droit fiscal des diverses formes de sociétés, la deuxième traite le droit fiscal des concerns et d'autres combinaisons d'entreprises. Dans la première partie on trouve un nouveau chapitre sur les sociétés et entreprises publiques. La situation fiscale en demande certainement l'attention.

Surtout la deuxième partie a été complété et remaniée. On y a traité non seulement les associations professionnelles comme celles des employeurs, des propriétaires d'immeubles, des médecins, etc. etc., qui sont assujetties en principe maintenant à la „Körperschaftsteuer", sauf les exonérations réduites à certaines limites, mais encore on a donné un exposé à part des formes allemandes du concern dans les années après 1945. Dans des tableaux détaillés avec commentaires on donne une idée claire de la composition des concerns allemands les plus importants. Quelques tableaux qui renvoient à la jurisprudence et un registre alphabétique terminent cet ouvrage de 286 pages.

C. ALBIÑANA G.A QUINTANA (Liquidador de Utilidades y Inspector de los Tributos): *Responsabilidades Patrimoniales Tributarias* — Editorial Revista de Derecho Privado, Caracas 21, Madrid, 1951, 227pp.

Cet ouvrage, ayant pour objet les responsabilités patrimoniales dans le droit fiscal, commence par une étude préliminaire de M. Valle ALONSO, ami de l'auteur et qui a écrit également l'introduction sur le cautionnement des crédits fiscaux.

Puis, l'auteur donne, dans la première partie de son ouvrage, ses idées générales sur la science financière, le droit fiscal, le sujet passif fiscal, pour arriver au thème de son ouvrage, à savoir les responsabilités patrimoniales fiscales.

La deuxième partie comprend un aperçu des obligations fiscales; on en traite p.e.x. la nature juridique et les divers éléments.

On trouve la pièce de résistance du livre, d'ailleurs d'une composition remarquable et claire, dans la dernière partie.

L'auteur applique, après une énumération très détaillée des diverses formes juridiques fiscales de la responsabilité patrimoniale, ces formes au domaine des impôts espagnols.

Tous les impôts sont passés en revue dans leur rapport avec les responsabilités diverses.

L'auteur finit par donner dans une proposition cinq suggestions à réaliser en cas de réforme des lois.

Report on Japanese Taxation by the Shoup Mission, 4 volumes — General Headquarters, Tokio, 1949.

Ces quatre volumes, comprenant à peu près 800 pages en tout, contiennent en langues anglaise et japonnaise, le rapport présenté, par la mission sous la direction du Professor SHOUP, à l'État-Major général allié, qui lui avait demandé son avis sur une réforme du système fiscal japonnais.

Dans les deux premiers volumes on trouve le traitement des mesures recommandées concernant tout le droit fiscal japonnais, tandis que dans les deux derniers volumes on traite des sujets particuliers, comme les finances publiques des communes, l'administration fiscale, etc. On trouve dans cet ouvrage également un bref aperçu du droit fiscal japonnais tel qu'il existe actuellement; en traitant chaque sujet on prend pour base du reste ce droit. Comme le droit fiscal japonnais a été modifié en 1951 à propos du rapport de ce „Shoupmission", cette oeuvre est indispensable pour en avoir une juste compréhension.

BUREAU OF BUSINESS RESEARCH, UNIVERSITY OF KENTUCKY: *Taxation of public utility gross receipts.* — Commonwealth of Kentucky legislative Research Commission, Frankfort, Kentucky, January 1951.

Un bref rapport, 18 pages, d'une enquête sur la taxe sur les biens et les services, et perçue sur les entreprises publiques au Kentucky. On y trouve un aperçu clair et bref du commencement de cette taxe sur le chiffre d'affaires en 1936, de son fonctionnement, de son administration et enfin de ses résultats et de son rendement, illustré par quelques graphiques.

J. PRAKKEN: *De zegelwet* 1917 *in de practijk.* — L. J. Veen, Amsterdam, 1953, 160 pp.

L'auteur du présent compte-rendu ne sait pas quelle est l'opinion sur cet impôt dans les pays où l'on connait un droit de timbre. Pour les Pays-Bas il peut confirmer ce qui a été dit dans l'introduction du petit livre susmentionné: „Beaucoup de personnes regardent cette loi comme un chaos de prescriptions, instructions et exonérations, dans lesquelles seuls les initiés peuvent trouver leur chemin."

Ce petit livre (160 pages) a pour but d'indiquer le chemin au non-initié et cela pour autant qu'il concerne les documents ordinaires, qu'il remet et reçoit dans la vie quotidienne. De ces documents on donne des modèles et

des exemples et on explique de quelle manière le droit de timbre doit être appliqué.

C'est une méthode originale, qui, pour autant qu'on le sait, n'avait pas encore été suivie. On a tenu compte — et cela était nécessaire — d'un ordre systématique des sujets. On trouve alors — pour donner un exemple — 46 numéros consacrés aux quittances etc., subdivisés en 4 catégories. Par exemple: plusieurs quittances sur un seul papier, amortissements d'un emprunt, (différents cas), quittances pour le loyer (différents cas), bons de caisse, bons d'échange, tickets d'essence, remboursement, formulaire de transport, notes de crédit, bons de combustibles, carnets d'épicier, quittance de salaire, etc.

Dr. Günter Schmölders: *Organische Steuerreform, Grundlagen, Vorarbeiten, Gesetzentwürfe.* — Verlag Franz Vahlen GmbH, 1953, 204 pp.

Le système fiscal allemand actuel est toujours fondé sur les bases établies en 1925. Depuis d'innombrables changements y ont été apportés, les tarifs ont été changés et augmentés plusieurs fois, les circonstances sociales sont changées, et ainsi le système fiscal actuel ne corresponde plus aux relations présentes. L'expression pour la réforme fiscale „organique", employée dans le temps de la réforme de Miquel en 1892—'93, est mise plus en avant. Un système fiscal est nécessaire dont les différentes taxes sont en harmonie et sont d'accord quant au but et à l'application. C'est cela précisément qui laisse beaucoup à désirer maintenant. L'auteur mentionne l'impôt sur le revenu, établi dans le but d'arriver à une répartition uniforme de la charge fiscale d'après la capacité contributive et qui se développait de telle manière qu'à coté d'un groupe d'avantagés (agriculture), marchands ayant une comptabilité, indépendants) est venu un groupe de préjudiciés, (salariés, rentiers, etc).

En se basant sur ces considérations et d'autres, l'auteur critique dans les détails l'impôt sur le revenu et sur les sociétés — Körperschaft — et explique comment l'impôt professionel s'égare et critique les taxes sur le chiffre d'affaire et de consommations.

Puis il donne les grands traits d'une réforme fiscale, en y discutant des projets en suspens. Enfin des projets relatifs à un impôt sur le revenu, à un impôt professionnel et à une taxe sur le chiffre d'affaire sont insérés.

Certainement l'Allemagne n'est pas le seul pays où le système fiscal se trouve peu à peu dans une mauvaise situation. C'est pourquoi les considérations détaillées (le livre contient 204 pages) méritent une grande attention dans d'autres pays aussi.

United Nations: *Report on the technical Assistance.* Conference on Comparative Fiscal Administration — Geneva 16—25 July 1951.

Depuis la deuxième guerre mondiale la connaissance et la compréhension des problèmes, avec lesquels les régions sous-développées ont à lutter, se sont accrues à une cadence accélérée. Dans le domaine national aussi bien qu'international l'intérêt pour un prompt développement économique augmente, et de la part de ces régions on ne demande souvent pas en vain une aide technique dans le domaine des finances publiques. Des systèmes fiscaux et budgétaires ont été de nouveau mis à l'étude, tandis qu'en outre on a examiné à quel point la politique financière pourrait servir de moyen pour améliorer et stabiliser la situation économique.

On a tenu une conférence dans le but de pouvoir employer comme guide d'une politique financière des régions sous-développées le matériel compilé et des expériences faites dans différentes études commencées dans ce domaine. L'ouvrage susmentionné s'occupe de cette conférence.

G. A. DE POSADAS BELGRANO: *El impuesto sustitutivo del de herencias a las sociedades anonimas*. Legislación Tributaria Nacional — Organización Medina, Colonia 1800, Montevideo, Uruguay, 1953, 191 pp.

Dans ce livre le professeur de Posadas Belgrano nous donne un exposé succinct et très clair d'un impôt sur le capital réel des sociétés anonymes et sur le capital des sociétés en commandite par actions en ce qui concerne la partie représentée par des actions au porteur. Cet impôt s'appelle en Uruguay, „impuesto sustitutivo del de herencias a las sociedades anónimas".

Il nous raconte dans son livre l'origine de cet impôt: pour éviter la fraude en cas de succession aux biens du testateur, spécialement aux actions des sociétés anonymes et en commandite dont le testateur est le porteur, le législateur a préféré établir un impôt sur les biens de telles sociétés. Il s'agit d'un impôt annuel et non-occasionnel.

Ensuite l'auteur donne dans le deuxième chapitre une détermination de la matière imposable pour conclure dans les chapitres suivants par un aperçu sur la taxation de la valeur du capital imposable, les taxes, le paiement et les sanctions.

L'auteur a tout à fait réussi à ce qu'il se proposait.

FERNANDO RIVERA DE ANDREA: *Tributación de la propriedad urbana en Francia, comparación con la legislación española* — Industrias Graficas Magerit, S.A. Bravo Murillo 122, Madrid 1953, 221 pp.

Ce livre donne dans son premier chapitre un aperçu historique de la contribution foncière en France, comparé à la même contribution en Espagne. Ensuite il s'agit des biens, sujets à la contribution urbaine foncière. Dans ce deuxième chapitre l'auteur nous donne une énumération de ces biens. Ici, également, il fait une comparaison avec la législation espagnole dans cette matière. Dans les chapitres III et IV l'auteur parle des exemptions, qu'il subdivise en exemptions permanentes et temporaires. En comparant la législation espagnole à ce sujet, il constate dans ces deux énumérations très clairement les différences entre les deux législations. Ensuite l'auteur traite dans son livre l'évaluation des propriétés bâties en France et en Espagne. Il nous explique les différentes méthodes d'évaluation que suivent les deux pays. Pour conclure, dans les derniers chapitres le livre nous donne un tableau comparatif du sujet et du calcul de l'impôt ainsi qu'un résumé des réclamations diverses qu'on peut faire. On trouve donc dans cet ouvrage un trésor de matériel comparatif.

INSTITUTO BRASILEIRO DE DIREITO FINANCIERO: (Filiado à I.F.A.). *Discriminação de Rendas*, Publicação No. 1 — Rio de Janeiro Brasil, 1953.

Le professeur Aliomar Baleeiro, professeur à la Faculté de Droit à Bahía a tenu un discours en Avril 1952 sur la discrimination des revenus et la réforme constitutionnelle.

Dans ce discours, publié dans le premier numéro de la publication susmentionnée du groupement brésilien de l'I.F.A., il nous fait voir que le problème de discrimination des revenus ne joue pas de rôle dans les pays, qui n'ont pas une constitution fédérale, comme la France, l'Italie, l'Urugay.

Ensuite il nous donne à grands traits le système brésilien:

L'Union fédérale dispose d'un impôt direct et personnel, c'est-à-dire l'impôt sur le revenu, à coté de quatre impôts réels et indirects.

Les Etats se procurent leurs revenus de trois impôts réels et indirects: les impôts territoriaux, inter-vivos, et causa mortis.

Enfin les communes („municipios") perçoivent trois impôts personnels et directs.

Le professeur nous énumère les avantages de ce système et se pose ensuite la question suivante: est-il nécessaire de procéder à une réforme dans ce

système? Et il conclut que le problème n'est que d'une importance politique, qui dépend des conditions géo-économiques, historiques et sociales de chaque pays. Monsieur Baleeiro conclut son discours en prétendant que d'après lui une réforme constitutionnelle n'est pas autant indispensable au Brésil.

Le discours est suivi des discussions que l'on a faites dans une petite conférence de la table ronde et l'ouvrage se termine par les conclusions générales prises à la fin du débat.

Dans les dernières pages de ce petit livre on trouve un aperçu du congrès national des „municipios" brésiliens tenu en Octobre 1952.

INSTITUT „FINANZEN UND STEUERN": *Finanzausgleich, Beiträge zur Frage des Finanzausgleichs und der Organisation der Finanzverwaltung*, Heft 17 — Bonn a. Rh., 1952, 39 pp.

This booklet (39 pages), which was already mentioned with the announcement of the work by Dr. Hornschu, gives an introduction to the problematic elements of the Finanzausgleich.

First it states in which connection the horizontal and vertical Finanzausgleich are distinguished from each other. The first concerns the order of ranking: Empire, State, municipality, the second public entities, ranking in the same order. A brief summary gives a picture of the development since 1871, the constitutional provisions for the Federal Republic are treated and the horizontal Ausgleich by the Act of 16th March 1951, which tried to remove the great difference between the countries. This Act is critisized, after which a consideration follows in pursuance of art. 107 of this constitution.

As 'Anhang' has been inserted a description of the Finanzverwaltung in the Federal Republic as it was on 1st January, 1952.

Grundwerk zur Steuerrechtsprechung in Karteiform (G.W. — St. R.M.) 4 volumes and register — Verlag Dr. Otto Schmidt KG Köln, 1942 (begun 1949).

Steuerrechtsprechung in Karteiform, 4 volumes — Verlag Dr. Otto Schmidt KG Köln, 1952 (begun 1949).

The president of the Senate of the "Reichsfinanzhof" Herr Mrozek began his well-known collection of juridical decisions in the fiscal domain in 1922 (Mrozek-Kartei).

In connection with the events of the war the author completely stopped this work in 1944, but he recommenced it after the cessation of hostilities (in the book "Steuerrechtsprechung in Karteiform"). By the circumstances of the war many works of the "Mrozek-Kartei" were destroyed. The "Verlag Dr. Otto Schmidt" started to re-collect the most important decisions from the years 1919—1944 and thus the "Grundwerk zur Steuerrechtsprechung in Karteiform" came into existance.

Both works are loose-leaf and grouped taxes by taxes.

Prof. Mr. H. J. HELLEMA: *Enkele beschouwingen over actieve belastingpolitiek* (some considerations about the active tax policy) — G. F. Hummelens Boekhandel Assen, 32 pp., 1949.

The "Vrije Universiteit" of Amsterdam regularly organizes scientific meetings. At the thirty-second, held on the 6th of July 1949, the Professor for tax law at that University held a lecture about the above-mentioned subject. He drew the attention to important changes in the last 25 years in the ideas about the purpose of the levying of taxes. For that purpose he only had to set side by side some definitions of the conception "taxation" of recent years and of 25 years ago.

It has been general knowledge throughout the centuries that taxes can be used, besides for the obtainment of revenue for the State also for realization of secondary purposes. The author gives many examples of former and modern ideas of this.

He ends by putting the question what attitude the Calvinists (as he is one himself) have to assume towards this active fiscal policy. The author sees in principle no reason, why the State should not be permitted to pursue secondary purposes with the tax levying. The ground becomes more dangerous when the tax levying is handled as a means for spreading incomes and property. If one wants to give an opinion, a further analysis is necessary. The author explains this with some examples.

HANS RUCHTI: *Die Abschreibung*. Ihre grundsätzliche Bedeutung als Aufwands-, Ertrags- und Finanzierungsfaktor. — C. E. Poeschkel Verlag Stuttgart, 1953, 243 pp.

A high-class work on business economics about the difficult problem of the writings-off on lasting productive resources. The book has been written for practical use, in which connection however the theoretical aspects have not been thrust into the background. It has become a successful synthesis of theory and practice. Particular attention has been paid to the problem of the intensive financing: the financing of new investments from the writings-off. New aspects are brought forward, which are very interesting, in connection with the present scarcity of risk-bearing capital, and the high tax rates. Fiscal law is briefly touched on by the author.

GERTRUDE G. SCHROEDER: *The growth of major steel companies* 1900—1950. The John Hopkins University Studies in historical and political science. Series LXX, number 2; — The John Hopkins Press, Baltimore, U.S.A., 1952, 244 pp.

Dans les dernières années, l'intérêt de l'économiste s'est concentré sur l'accroissement des grandes entreprises. La cause du développement fantastique de certaines entreprises était le caractère monopolisateur de l'entreprise. L'influence que ces entreprises ont exercée sur la prospérité est démontrée entre autres dans l'excellent ouvrage du professeur défunt SCHUMPETER — Capitalism, Socialism and Democracy. D'autres études ajoutent relativement peu à la science économique. Le présent ouvrage de GERTRUDE G. SCHROEDER qui concerne principalement l'industrie de l'acier aux Etats-Unis, donne du reste des opinions d'une grande valeur, qui sont d'importance pour une considération générale du problème de l'accroissement des entreprises.

Umsatzsteuergesetz vom 1 *September* 1951 *und Durchführungsbestimmungen*. Herausgegeben vom Bundesminister der Finanzen, Bonn. — Buchhändlerischer Vertrieb Erich Schmidt Verlag Berlin W 35, Oktober 1953, 160 pp.

La taxe sur le chiffre d'affaires est une partie très peu systématique de la législation fiscale, surtout dans les pays, où le système de taxation multiple s'applique, comme en Allemagne. La taxe sur le chiffre d'affaires est aussi une des taxes les plus dynamiques et on l'a modifiée à plusieurs reprises. Cette édition est d'une grande valeur, et cela surtout parce que dans un appendice on a reproduit d'autres lois et décisions, qui peuvent être importantes pour l'application de la taxe sur le chiffre d'affaires (Berlin-Hilfegesetz, Verordnung betr. die Besteuerung der entflochtenen Unternehmer der Stahl- und Eisenindustrie, Israel-Abkommen, etc.). En outre dans chaque paragraphe de la loi et des „Durchführungsbestimmungen", on a indiqué les „Aktenplannummers" sous lesquelles les notes par rapport à chaque paragraphe ont été publiées dans le „Umsatzsteuerkartei".

Prof. Dr. P. J. A. ADRIANI, Prof. Dr. B. SCHENDSTOK: *Ontwikkelingsrichting van het moderne belastingrecht.* — Uitgeverij N. Samsom N.V., Alphen a.d. Rijn, 1953, 24 pp.

L'Association néerlandaise pour la science fiscale et le groupement néerlandais de l'I.F.A. ont mis à l'ordre et de concert le sujet susmentionné et ont nommé chacun un rapporteur. Les rapporteurs ont exposé succinctement leurs idées (les deux rapports comprennent 24 pages) et le 10 janvier 1953 leurs rapports ont été traités dans une réunion tenue à Amsterdam.

Le président du groupement de l'I.F.A., M. le Dr. J. A. MONOD DE FROIDEVILLE ouvrait la réunion et souhaitait la bienvenue au député de la Belgique, M. le Professeur SCHREUDER. Puis la réunion fut présidée par M. T. Y. BOLTJES, Président de l'Association pour la science fiscale et membre de la Cour de Cassation des Pays-Bas.

L'intérêt était considérable: six orateurs prirent la parole; MM. les Professeurs SCHENDSTOK et ADRIANI leur ont répondu. Les délibérations parues sous le no. 85 des publications de l'Association pour la science fiscale contiennent 36 pages.

Il n'est pas possible de traiter à fond toutes les questions qui ont été débattues. Nous devons nous borner à quelques idées générales. Le sujet traité dans les rapports n'est pas défini de la même façon par les deux auteurs. C'est M. le Professeur ADRIANI qui s'est chargé spécialement d'investiguer si le développement se dirige vers les prélèvements subjectifs ou objectifs, tandis que M. le Professeur SCHENDSTOK a recherché la direction du développement en général. Il existe une autre différence: le dernier avait fixé son attention spécialement sur les Pays-Bas tandi que le premier avait attiré attention aussi sur le développement à l'étranger.

Cette différence dans l'exposé du sujet indique une différence de point de vue devenue évidente pendant la discussion. Car il paraît qu'il existait une différence d'opinion sur la question de savoir si la distinction entre des impôts subjectifs et objectifs est vraiment d'importance; il y avait de l'incertitude sur le sens des deux conceptions; on alléguait que la distinction n'englobait pas le tout; c'est-à-dire qu'il existe des formes intermédiaires. Finalement on émit des doutes sur l'efficacité de la distinction.

Ainsi on en arrivait à des questions essentielles, comme par exemple le sens des distinctions et des classifications en général, la nécessité de considérer d'une certaine distance les changements continuels dans le droit fiscal, et qui existent dans le monde entier. C'est seulement dans ce cas qu'on peut se faire une juste idée de la présence ou de l'absence d'une direction générale que prend le développement. Cela donna lieu au traitement de nombreux problèmes tels que l'élaboration des conceptions, la territorialité d'impôt et surtout l'influence sur le développement de la conjoncture économique. Le tableau intéressant donné par M. SCHENDSTOK place pour les Pays Bas le rendement des différentes taxes de 1938 et de 1952 l'un en face de l'autre, en ce qui concerne les montants aussi bien que les pourcentages du rendement total des impôts. D'après son groupement: 1938 subjectif 30.01%, 1952 34.35%. Mentionnons comme exemples pour quelques taxes:

	1938	1952
impôt sur le revenu	24.50%	32.77%
taxe de transmission	8.48%	23.67%
accises	15.63%	9.49%
droits d'importation	10.90%	7.40%
droits de succession	5.54%	1.67%

A study of the tax and revenue system of the State of Ohio and its political subdivisions. — State of Ohio department of taxation, 1947, 93 pp.

Cet ouvrage ronéographié résume le système des impôts de l'Ohio de 1930 à 1945; on s'y réfère aux sections de l'Ohio General Code. L'ouvrage a été publié sous la forme d'un rapport adressé par le Commissaire fiscal au gouverneur et à la 97 Assemblée générale, en vertu de la section 1 du projet de loi 503, dans lequel ledit comité était autorisé à faire des recherches en rapport avec les modifications qui devraient être apportées au système fiscal actuel.

FRANK G. CARLSEN, WILL S. MYERS, JAMES W. MARTIN: *Paducah and Western Kentucky Income Labor and retail trade patterns* 1952. — Bureau of business research, College of Commerce, University of Kentucky. The agricultural and industrial Development Board. of Kentucky. Frankfurt, Kentucky, 68 pp.

On donne un aperçu des données relatives au revenu des habitants du Paducah et les régions voisines et de Kentucky de l'ouest ainsi qu'au marché du travail et au commerce de détail. 37 graphiques illustrent le texte.

Dr. HERMANN GÖTZE: *Grundzüge der Bilanzierung*. Betriebswirtschaft und Wirtschaftsrecht. Schrift für Industrie, Handel und Handwerken, Band 2, Dritte verbesserte und ergänzte Auflage, 1952. — Fachverlag Schiele und Schön, Berlin S W 29, 171 pp.

Cet ouvrage traite les problèmes juridiques aussi bien que fiscaux et surtout ceux de l'économie professionnelle. Partant des règles juridiques contenues dans le „Aktiengesetz", les différentes postes du bilan sont examinées. On fait remarquer la place prépondérante de l'évaluation des éléments de fortune quand on compose le bilan. Dans le chapitre V on traite les bilans extraordinaires, comme le D.M./Eröffnungsbilanz. Dans un supplément certains exemples de bilans sont donnés. On y reproduit également le texte de l'impôt sur le revenu, pour autant qu'il a de l'importance, et celui d'un projet pour le changement du § 40 du Code de Commerce concernant l'évaluation de quelques postes du bilan (tel que ce projet fut présenté par l'association allemande pour l'économie professionnelle en 1944).

Dr. HEINRICH STRATHUS: *Internationaler Steuerbelastungsvergleich. Steuer- und Sozialbelastung, Sozialprodukten, Verfügungseinkommen, Investionen, Verbrauch- und Verteidigungsausgaben,* Schriftenreihe der Deutsche Europa-Akademie, Heft 13. — Verlag für Geschichte und Politik, Frankfurt a. Main, 1952, 66 pp.

On examine le revenu national, les rendements fiscaux et les dépenses publiques pendant quelques années et cela dans les pays suivants: E.U.A., Grande Bretagne, France, Italie, Suède, Norvège, Belgique, Pays-Bas et Allemagne occidentale. La troisième partie de l'ouvrage donne une comparaison entre lesdits pays. Conclusion: quant à l'année de compte 1951/1952, les charges en Allemagne occidentale étaient plus élevées qu'aux Etats-Unis.

JAMES W. MARTIN: *Paducah and Mc.Cracken County Revenue Base,* Bureau of Business Research, College of Commerce. — The Agricultural and Industrial Development Board of Kentucky, Frankfurt, Kentucky, 1952, 9 pp.

Ce petit opuscule donne quelques statistiques relatives au revenu national, au rendement total des impôts d'une part et aux rendements des impôts des régions de Paducah, de McCracken de Kentucky de l'autre.

UNITED NATIONS: *Economic Bulletin for Europe,* Second Quarter 1953, Vol. 5, No. 3. — Geneva, November 1953.

Ce Bulletin de l'O.N.U., paraissant 3 fois par an, donne un aperçu de la situation économique en Europe dans cette édition pendant le deuxième trimestre de 1953.

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ENCYCLOPAEDIC PART — PARTIE ENCYCLOPEDIQUE

E = English, F = Français, D = Deutsch, I = Italiano, E = Español
N = Nederlands.

28. *E. Double Domicile.*
F. Double Domicile
D. Doppelter Wohnsitz
I. Doppio domicilio
Es. Doble domicilio
N. Dubbele woonplaats

One person may be held to have a fiscal domicile in more than one place. This may arise in two ways:

1. when the two countries concerned have different concepts of the word "domicile".
2. when the same concept is held by both countries but from all the circumstances each of the countries considers the person domiciled within its boundaries.

In various conventions provisions are made to prevent a double domicile.

Model Conventions London and Mexico.

According to these conventions the authorities of the two contracting countries in case of double domicile, will come to an understanding to determine the domicile.

Convention of the various countries.

Some conventions declare that when a taxpayer has a domicile in both of the two contracting countries, tax shall be levied in each of them in proportion to the periods spent there during the fiscal year, cf. Belgium-Italy (1931); France-Italy (1930); Germany-France (1934); Germany-Austria (1922); Germany-Finland (1935).

Il se peut qu'une personne ait deux ou plusieurs domiciles fiscaux. Un tel domicile double peut se présenter de deux façons, à savoir:

1. Si la notion du domicile est distincte pour les deux pays en question.
2. Si, bien que les notions soient les mêmes, les circonstances ont pour résultat que le contribuable peut être considéré comme ayant un domicile dans chaque pays.

Dans plusieurs conventions on trouve des dispositions ayant pour but d'éliminer la question des doubles domiciles.

Les conventions modèles de Londres et de Mexique.

D'Après ces deux conventions modèles les autorités fiscales des deux pays contractants s'entendront en cas du double domicile, pour fixer le domicile dans l'un des pays en question.

Conventions des divers pays.

Quelques conventions stipulent qu'en cas de double domicile le contribuable en question sera assujetti à l'impôt proportionnellement à la durée de séjour dans chaque Etat au cours de l'année fiscale, voir: Belgique-Italie (1931); France-Italie (1930); Allemagne-France (1934); Allemagne-Autriche (1922); Allemagne-Finlande (1935).

Sometimes it is determined that in case of double domicile tax shall be levied only in the state of which the person concerned is a national, cf. Germany-Hungry (1923). The Netherlands-Switzerland convention and the Germany-Denmark convention (resp. 1951 and 1938) give the same solution as the Model Conventions (see above) viz. that the Authorities will come to an understanding to determine the domicile.

The Germany-Austria Convention (1922) with respect to Death Duties declares that, in case of double domicile, only the State in which the deceased resided for the longer period in the year preceding his death shall levy duties.

The Treaties entered into by the United States with respect to death duties declare that certain property shall be taxed only in the country of domicile, but domicile is to be determined according to the laws in effect in each country. If both countries tax such property because both determine that the decedent is domiciled within their boundaries, then a credit against the tax shall be allowed by each which bears the same proportion to the amount of its tax so attributable or to the amount of the other country's tax attributable to the same property, whichever is less, as the former amount bears to the sum of both amounts.

Quelquefois il est determiné que seulement l'Etat dont la personne a la nationalité a le droit de percevoir l'impôt, voir Allemagne Hongrie (1923).

Les conventions entre les Pays-Bas et la Suisse (1951) et entre l'Allemagne et le Danemark (1938) donnent la même solution que les conventions modèles de Londres et Mexique (voir ci-dessus); les Autoriteés s'en-tendront pour fixer le domicile dans l'un des deux pays.

La convention entre l'Allemagne et l'Autriche (1922) en matière des droits de succession stipule que seulement l'Etat dans lequel le décédé a sejourné le plus longtemps pendant l'année qui a précédé son décès a le droit de percevoir l'impôt.

Les conventions dans lesquelles les Etats-Unis sont partie et concernant les droits de succession, contiennent des dispositions d'après lesquelles certains biens ne seront taxés que dans l'Etat du domicile; cependant le domicile doit être fixé d'après les lois en vigueur dans chaque pays. Lorsque chacun des deux Etats impose tels biens parce que le défunt est considéré par l'un et l'autre Etat comme étant domicilié sur son territoire, chaque Etat accordera sur le montant de son impôt afférent aux biens en question une réduction correspondant à un pourcentage du plus faible des deux impôts prélevés par chacun des Etats pour les mêmes biens, égal au pourcentage que le montant de l'impôt prélevé par lui représente par rapport à la somme des deux impôts.

---

29. *E. Resident*
D.
F. Résidant
I. Residente
Es. Residente
N. Ingezetene

In the tax laws of *Argentina* the word "residente" has no definite meaning, except as contrasted with the situation of non-residence which is called "ausentismo", and which

Dans la legislation fiscale *argentine* le mot „residente" n'a pas une signification determinée, sauf par opposition à la situation de non-residence, qu'on appelle „ausentis-

carries often considerable consequences with it.

Tax payers who are no residents of Argentina are subject to taxes or surclarges "al ausentismo", in addition to the land tax, the income tax and the succession and gift duty.

In *Germany* no equivalent exists. "Resident" can best be rendered by "jemand, der im Inland seinen Wohnsitz hat."

A "resident" in the *United* States or *Great Britain* is a person who has a "residence" but the problem is to determine what is "Residence". The statutes rarely define the word. The word nevertheless frequently occurs in the legislation, but one must look to the decisions of the courts for the principles under which one is held to have, or not to have, residence. Residence means living in a particular locality. It is distinguished from domicile which requires physical presence as an inhabitant and also an intention to make it one's domicile.

Residence and domicile have been interpreted as synonymous for purposes of the death and gift taxes in the United States; residence is something less than domicile for purposes of the income tax.

The word "resident" does not have a definite meaning in the *Netherlands* Tax law. Sometimes it is used to indicate a person who has a residence inside the country. In the Dutch Succession Duty Act the word occurs with the addition that it means everybody who has his domicile inside the country.

In the *Swiss* Tax law a person having a qualified sojourn i.e. a residence entailing taxation without

mo", qui a souvent des conséquences fiscales très importantes.

Les contribuables qui ne sont pas residents en Argentine sont soumis à des impôts ou surcharges „al ausentismo". Comme addition à l'impôt foncier à l'impôt sur le revenu et à l'impôt sur les successions et donations.

En *Allemagne* il n'existe pas d'equivalent. On pourrait traduire le mot „residant" par „jemand der im Inland seinen Wohnsitz hat."

Une personne résidante aux *Etats-Unis* ou en *Grande-Bretagne* est une personne qui a sa „résidence" dans le pays. Toutefois, le problème est de déterminer ce qu'il faut entendre par „résidence." L'expression n'est guère définie dans les lois. Pourtant le mot est fréquemment employé dans les lois, mais il faut voir les décisions judiciaires pour savoir quels sont les principes d'après lesquels on est considéré comme ayant ou non une résidence. On entend par „résidence": l'habitation dans une localité particulière. Il existe une distinction entre résidence et domicile; pour domicile on exige une présence physique comme habitant, et, en outre, une intention d'en faire son domicile. On a interprété résidence et domicile comme étant des synonymes pour autant qu'ils concernent les droits de succession et de donation aux Etats-Unis; en ce qui concerne l'impôt sur le revenu la conception résidence est moins forte que la conception domicile.

Le mot résidant n'a pas de signification déterminée dans la legislation fiscale *néerlandaise* Souvent on l'emploie pour indiquer une personne ayant une résidence dans le pays.

Dans la loi néerlandaise relative aux droits de succession on trouve le mot avec l'addition que l'on entend par résidant chaque personne ayant son domicile dans le pays.

En droit fiscal *suisse*, on considère généralement comme residant celui qui fait un séjour qualifié, c'est a

creating a domicile is generally considered to be a "resident."

This is especially the case: when a person resides for more than 3 months in a dwelling owned by himself or in an apartment rented for a long time and furnished with his own furniture, or in other cases when he sojourns for more than six months.

dire un séjour qui entraine l'imposition sans créer un domicile.

C'est le cas en particulier du séjour de plus de trois mois dans une maison appartenant à l'intéressé ou dans un appartement loué pour une longue durée avec des meubles appartenant à l'intéressé, du séjour de plus de six mois dans les autres cas.

---

30. *E. Non-resident*
F. Non-résidant
D. —
I. Non-residente
Es. No residente; Ausente
N. Niet-ingezetene.

See 29. Resident

Voir 29, Résidant.

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31. *E. Registered Office, Seat.*
F. Siège
D. Sitz.
I. Sede.
Es. Sede social.
N. Zetel.

In the laws of various countries "seat" is taken as a criterion to levy taxes on juridical persons. In other countries "Domicile" is taken as a criterion both for juridical persons and for natural persons. The word "seat" occurs in different meanings:

a. Statutory Seat: the seat mentioned in the articles of association.
b. The place where the central management is situated.
c. The place where the business is conducted.
d. The place according to whose laws the body is incorporated.

All these four concepts can be important, each in itself in a different respect, for tax levying purposes. In some tax laws as well as in some conventions more detailed definitions occur.

In the *Dutch* corporation Tax Decree the concept "seat" is not

Dans différents pays, la législation prend le siège comme critère pour l'assujettissement à l'imposition des personnes morales. Par contre, dans d'autres pays on trouve, comme pour les personnes physiques, le critère du domicile fiscal. Le mot „siège" peut avoir différentes significations:

a. Siège statutaire, donc le lieu mentionné dans les statuts ou l'acte de fondation.
b. le lieu où se trouve la direction centrale.
c. le lieu où l'exploitation de l'entreprise est excercée.
d. le lieu selon le droit duquel la personne morale est fondée.

Ces quatre notions peuvent, chacune sous un rapport différent, être d'importance pour la fiscalité. Dans quelques lois on trouve des définitions complémentaires; il en est de même dans certaines conventions internationales.

L'ordonnance *Néerlandaise* relative à l'impôt sur les sociétés ne

used, but rather attention is given to the place where the undertaking "is established."

This is judged according to circumstances: legal concept c. is mostly accepted. Conception d. is always applicable side by side with it.

parle pas de siège, mais du lieu où „est établie" la personne morale. Cela doit être considéré d'après les circonstances; la jurisprudence le plus souvent admet la conception susmentionnée sous C. A côté de cela la conception sous d. ci-dessus est toujours valable.

The Registration Duty Act (for Duty on subscribed capital) refers to circumstances; as a rule conception b. is accepted.

La loi relative aux droits d'enregistrement renvoie (pour la perception des droits dus pour le capital placé) aux circonstances ce qui d'après la jurisprudence implique la conception b.

In the *Belgian* laws the nature of the seat is often stated more precisely, e.g.: Seat of the business, seat of management, statutory seat. In the *German* law (Steueranpassungsgesetz) the following definition occurs:

"Corporations, associations of persons or foundations have their seat in the meaning of all tax laws in the place which is determined in the articles. When such a provision does not occur in the articles, the seat is deemed to be in the place where the management or the directing of the business is effected."

En *Belgique* la loi précise generalement le genre de siège: siège d'exploitation, siège administratif, siège social.

Dans la loi *allemande* (Steueranpassungsgesetz) on trouve la définition suivante:

„Au sens des lois fiscales une société anonyme, une association de personnes ou une fondation a son siège au lieu fixé dans les statuts. Lorsqu'une telle disposition statulaire manque, le siège est le lieu ou se trouve la direction ou l'administration de l'entreprise."

In the *United States*, the concept "seat" is not used. Rather attention is given to whether or not a corporation is organized or created in the United States or outside the United States. If the corporation is organized or created in the United States it is called a domestic corporation; if organized abroad, then it is known as a foreign corporation. The manner of taxation of a foreign corporation depends on whether it is resident in the United States or non-resident. A foreign corporation is resident within the United States if it is engaged in trade or business within the United States.

Aux *Etats-Unis* la conception „seat" n'est pas employée. On a plutôt prêté attention à la difference qui existe entre une société organiseé, ou créée aux Etats-Unis et une société organisée ou créée hors les Etats-Unis. Si la société est organisée ou créée aux Etats-Unis on l'appelle une „domestic corporation" (société américaine); si elle est organisé à l'étranger, on l'appelle une „foreign corporation" (société étrangère). La façon d'imposer une société étrangère dépend du fait si elle est résidante aux Etats-Unis ou non-résidante. Une société étrangère est résidante aux Etas-Unis si elle exerce des activités commerciales ou industrielles aux Etas-Unis („is engaged in trade or business").

The *Swiss* cantons tax juridical persons either at their statutory seat (Schwytz, Neuchâtel, Fribourg, Zürich, Glaris, Bâle-Campagne) or at

Les cantous *suisses* imposent les personnes morales soit a leur siège statutaire ((Schwytz, Neuchâtel, Fribourg, Zürich, Glaris Bâle-Cam-

the seat of their management (Argovie).

A certain number of cantons tax them either at the first place or at the second (Turgovie, Berne, Obwald, Zoug, Lucerne, Bâle-Ville).

According to the Swiss federal tax law juridical persons are subject to taxes at their statutory seat.

In most of the conventions fiscal domicile of companies. constituting a separate juridical person is considered to be their real centre of management or also their effective headquarters. Cf. the following conventions:

Belgium-France (1931); Belgium-Italy (1931); Belgium-Netherlands (1933); France-Sweden (1936); France-Roumania (1942); France-Saar (1948); France-Netherlands (1949); Germany-Finland (1935); Germany-Roumania (1937); Germany-Denmark (1938); Germany-France (1934); Switzerland-Hungary (1942); Switzerland-France (1937).

Sometimes fiscal domicile of companies is deemed to be: the place where they have their seat: cf. Belgium-Netherlands (1948); Germany-Sweden (1928); Switzerland-Sweden (1948); Switzerland- Germany (1931).

pagne) soit au siège de leur administration (Argovie). Un certains nombre de cantons les imposent soit à l'un soit à l'autre (Turgovie, Berne, Obwald, Zoug, Lucerne, Bâle-Ville).

En droit fiscal fédéral les personnes morales sont assujetties aux impôts à leur siège statutaire.

Dans la plupart des conventions internationales on trouve que le domicile fiscal des sociétés ayant une personnalité juridique distincte de celle de leurs associés, est au lieu du siège de leur direction effective ou bien au lieu de leur siège social effectif. Voir les conventions suivantes:

Belgique-France (1931); Belgique-Italie (1931); Belgique-Pays-Bas (1933); France-Suède (1936); France-Roumanie (1942); France-Sarre (1948); France-Pays-Bas (1949); Allemagne-Finlande (1935) Allemagne-Roumanie (1937); Allemagne-Danemark (1938); Allemagne-France (1934) Suisse-Hongrie (1942); Suisse-France (1937).

Par domicile fiscal des sociétés on entend aussi souvent: le lieu où elles ont leur siège légal. Voir les conventions Belgique-Pays Bas (1948) Allemagne-Suède (1928); Suisse- Suède (1948); Suisse -Allemagne (1931).

---

32. *E. Country of Domicile.*
F. Pays du Domicile.
D. Wohnsitzstaat.
I. Paese del domicilio.
Es. País del domicilio.
N. Domicilie-Land.

The country in which the domicile of the taxpayer is situated according to tax law concepts.

Difficulties will arise when two states have a different conception of the term "domicile" so that they both state justly that the domicile according to their law is in their country (cf. domicile).

Cest le pays où d'après les conceptions fiscales se trouve le domicile d'un contribuable.

Des difficultés surgissent si deux pays ont une notion différente de la conception domicile, de sorte que les deux avec raison prétendent que le domicile, d'après leur propre législation se trouve dans leur pays (Voir: domicile).

33. *E. Debtor Country.*
F. Pays debiteur.
D. Schuldnerland.
I. Paese debitore.
Es. País deudor.
N. Debiteurenland.

The following definitions can be given: the expression is used as a term denoting capital importing countries.

The expression is used as a term denoting countries with a chronic deficit in their balance of payments.

On pourrait donner les définitions suivantes:

Sous cette expression on qualifie les pays importateurs de capitaux.

Sous ce nom on qualifie les pays qui ont un déficit chronique dans leur balance de payements.

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34. *E. Creditor Country.*
F. Pays Crediteur,
D. Gläubigerland.
I. Paese creditore.
Es. País acredor.
N. Crediteurenland.

Capital exporting countries or countries with a chronic surplus in their balance of payments, see above under 33.

Pays exportateurs de capitaux ou qui ont un surplus chronique dans leur balance de payements, voir ci-dessus sous 33.

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35. *E. Permanent establishment*
F. Etablissement Stable.
D. Betriebsstätte.
I. Stabilimento stabile.
Es. Establecimiento permanente.
N. Vaste inrichting.

A foreign enterprise is in many countries often only taxed if it has a permanent establishment in that country. Many countries, too, have internal provisions to prevent double taxation of a resident company, which makes profits abroad by means of a permanent establishment. For this latter case the *Dutch* law gives a description of the concept:

Permanent establishment means a fixed place of business or profession with the aid of which the operations of the business or professions are carried out in whole or in part. The following are deemed to be such: sub-offices, branch-establishments, factories, workshops, buying- and selling-offices, places of storages and

Dans beaucoup de pays, une entreprise étrangère est assujettie à l'imposition si elle possède dans les pays en question un établissement stable. On trouve aussi souvent des règles autonomes tendant à éviter les doubles impositions et visant les cas dans lesquels une entreprise nationale obtient des bénéfices par l'intermédiaire d'un établissement stable dans un autre pays. Pour ce dernier cas, la législation *néerlandaise* donne une définition de la notion établissement stable:

Est considéré comme constituant un établissement stable une installation permanente de l'exploitation ou de la profession, par l'intermédiaire de laquelle les activités en sont exercées, en tout ou en partie, telles que: succursales, fabriques, ateliers, bureaux d'achat ou de vente, magasins et autres établissement commer-

other establishments which have the character of a fixed place of business. Furthermore there are also considered to be as such: the centre of management and the works carried out by an enterprise outside the Netherlands, when the work has lasted more than a year or will probably last more than a year. A permanent establishment or permanent representative is not considered to exist: a) when business relations are carried on only by an absolutely independent representative;
b) when a representative is employed who though permanently employed by an entreprise, is only an intermediary without power to conclude contracts; this also rules, when the intermediary holds a stock of goods of the entreprise for filling urgent orders.
c) when a stock of goods is kept on commission.

Germany.

According to the German law "Betriebsstätte" in the sense of all tax laws is every fixed local establishment or institution which serves the carrying on of a business.

The following are considered as Betriebsstätte:

1. The place where the management is located.
2. branches, workshops, warehouses, buying and selling offices, landing stages, (wharves of shipping-companies) offices and other business premises, which serve the enterpreneur (co-enterpreneur) or his permanent representative (e.g. his managing clerk) for the carrying on of his business.
3. Constructional works provided that the duration of one single constructional operation or more than one such operation in one municipality without interruption exceeds six months or will probably exceed this period.

ciaux ayant le caractère d'un établissement stable d'une entreprise; ensuite sont considérées comme constituant un établissement stable la direction et la gérance d'une entreprise, ainsi que des travaux executés par une entreprise à l'étranger si l'exécution en dure ou probablement durera plus de 12 mois. Ne sont pas considérés comme constituant un établissement stable ou une agence permanente: a). le cas où on entretient des relations commerciales par l'intermédiaire d'un représentant tout à fait indépendant; b). le cas où il y a un représentant qui, bien qu'il travaille continuellement pour l'entreprise, figure exclusivement comme intermédiaire sans avoir le droit de conclure des contrats au nom de l'entreprise, même s'il retient un stock pour livraisons urgentes; c). le cas où l'on retient un stock de marchandises seulement à titre de commission.

Allemagne.

En Allemagne la loi contient une définition de „Betriebsstätte" qui est applicable à toutes les lois fiscales. En voici la traduction française: „Betriebsstätte" est tout établissement et installation fixe et stable servant à l'exploitation professionnelle d'une entreprise.

Sont considérés comme établissements stables:

1. le lieu où se trouve la direction de l'entreprise.
2. succursales, usines, stocks de marchandises, bureaux d'achat et de vente, embarcadères et débarcadères (donc les établissements de sociétés de navigation), bureaux, et d'autres installations professionnelles servant à l'exploitation de l'entreprise de l'entrepreneur (ou co-entrepreneur) ou de son représentant permanent (p.ex. le fondé de pouvoir).
3. Travaux en construction si l'exécution d'un seul travail ou de plusieurs de ces travaux successifs dans la même commune, dépasse une periode de six mois ou probablement dépassera cette periode.

In *Belgium* a permanent establishment according to the law means the seat of the real management, branch establishments, factories, workshops, workhouses, agencies, warehouses, offices, laboratories, buying and selling offices, and all other fixed establishments with a productive character.

Switzerland.

The law of the federation describes as follows: "A permanent establishment of an enterprise is every permanent installation in which an important part of the activity of the enterprise (in quality or in quantity) is exercised.

Especially the following are considered as permanent establishments: the seat of the management, branches, workshops, buying and selling offices, and permanent representatives."
(For Switzerland see also the note at the end of this number).
In the *U.S.A.* the words permanent establishement do not occur in the Tax laws. Corporations organized or created in the United States are taxed on their entire profits wherever they are earned, although a credit against the tax is allowed for certain foreign taxes paid.

Corporations organized or created outside the United States, called foreign corporations, are subject to United States tax as follows: If they are resident foreign corporations, (i.e. engaged in trade or business in the United States) they are taxed on income from sources within the United States; if they are nonresident foreign corporations they are taxed only on fixed or determinable annual or periodical income from sources within the United States.

The United States has entered into several treaties with other countries which limit United States taxation of corporations organized in such countries to corporations having permanent establishments in

En *Belgique* son considérés comme établissements stables: les sièges de direction effective, les succursales, les fabriques, ateliers, usiness, agences, magasins, bureaux, laboratoires, bureaux d'achats et de ventes et tous autres établissements fixes de nature productive.

Suisse.

Un arrêté du Conscil Fédéral donne la definition suivante:

„Est consideré comme établissement stable d'une entreprise toute installation permanente dans laquelle s'exerce une partie notable, en qualité et en quantité, de l'activité de l'entreprise.

Sont réputés tels en particulier le siège de la direction, les succursales, ateliers, comptoirs d'achat et de vente, ainsi que les représentations permanentes."

(Pour la Suisse voir ausi la note à la fin de ce nummëro).

L'expression „permanent establishment" (établissement stable) n'est pas employée dans les lois fiscales des *Etats-Unis*. Les sociétés organisées ou créées aux Etas-Unis sont assujetties à l'impôt en raison de l'ensemble de leurs bénéfices, abstraction faite du lieu d'où ils proviennent; pourtant une réduction est accordée pour certain impôts payés à l'étranger („credit against tax"). Une société étrangère (voir 31 ci-dessus) est assujettie à l'impôt américain comme suit: S'il s'agit d'une société résidante aux Etats-Unis (c'est-à-dire qu'elle est „engaged in trade or business" aux Etats-Unis), l'impôt est perçu sur les bénéfices provenant de sources américaines; par contre, une société nonrésidante ne sera imposable qu'en raison de certains bénéfices annuels on périodiques, déterminés ou déterminables, provenant de sources américaines.

Les Etats Unis sont partie dans plusieurs conventions avec d'autres Etats, conventions par lesquelles le droit des Etats-Unis à percevoir des impôts sur les bénéfices de sociétés étrangères organisées dans l'autre

the United States. However, the definition of permanent establishment appearing in each treaty usually differs slightly from the others. A fixed place of business will constitute a permanent establishment. Agencies are generally included as permanent establishments, while dealings through commission merchants or brokers will not be held to give rise to a permanent establishment. Purchasing offices (even though a fixed place of business) are not considered permanent establishments in most of the treaties.

For a skeleton survey of the definitions of permanent establishment gives in the different treaties concluded between a certain number of countries. See Annex I.

Etat contractant est limité à ces sociétés qui possèdent des établissements stables aux Etats-Unis. Pourtant, en général la conception „établissement stable" dans chaque convention ne diffère guère des autres. Un bien fixe d'affaires constituera un établissement stable. En général une agence sera considérée comme établissement stable, tandis qu'une société traitant des affaires par l'intermédiaire d'un commissionnaire ou courtier ne sera pas considérée comme ayant un établissement stable. Un bureau d'achat (même s'il s'agit d'un lieu fixe d'affaires) n'est pas considéré comme établissement stable non plus.

Pour un tableau synoptique concernant les définitions données dans les conventions différentes conclues entre un certain nombre de pays, voir Annexe I.

Note du professeur P. FOLLIET, *Genève*.

ETABLISSEMENT STABLE

Problème posé:

Un étranger fait transformer en Suisse des marchandises. Y a-t-il établissement si l'étranger:

a) Remet à une entreprise suisse les marchandises pour qu'elle les transforme et les expédie à l'étranger
b) S'il a en Suisse un dépôt pour ses marchandises qu'il remet à une entreprise suisse en vue de les transformer
c) S'il loue en Suisse un dépôt et un atelier dans lequel il fait faire les transformations.

* * *

Les conventions signées par la Suisse définissent l'établissement stable comme „toute installation permanente en laquelle est exercée en totalité ou partie l'activité de l'entreprise".

Cette définition, donnée par les conventions, est précisée par doctrine et jurisprudence.

On considère actuellement qu'il faut quatre conditions pour qu'il puisse y avoir „établissement stable".

A. Il doit s'agir d'une installation.
B. Elle doit faire partie de l'entreprise.
C. Elle doit être permanente.
D. L'activité s'exerçant dans l'installation doit être conforme à l'objet de l'entreprise.

Voyons un peu ces questions en détail:

A

L'installation sera des objets corporels fixes à un lieu déterminé, soit des locaux comportant un certain agencement. Les installations d'ouvriers

travaillant à domicile ne constituent pas des installations de l'employeur. Mais il y a doute si les outils machines sont fournis par l'entreprise. La pratique intercantonale ne considère tout de même pas cela comme installation. La pratique internationale est contradictoire.

B

L'installation doit être entretenue par l'entreprise. La location de locaux suffit. C'est l'opinion admise par le Tribunal fédéral en matière intercantonale, et doit être admise dans les cas régis par les conventions.

C

L'installation doit être utilisée d'une façon durable et ne doit pas être que passagère ou établie en vue de l'exécution d'un ouvrage déterminé, même d'une durée excédant une année (sauf pour la Suède).

D

L'installation doit avoir un rapport direct avec l'activité de l'entreprise, peu importe d'ailleurs le genre d'activité.

Les règles générales définissant l'établissement stable ayant été exposées, considérons maintenant les règles spéciales prévues par les conventions que la Suisse a signées avec divers pays (Allemagne, France, Suède, Hollande, Hongrie). Chacune des conventions, en dehors de la définition énoncée plus haut, contient des énumérations de ce qui doit être considéré comme un établissement stable.

D'après l'ouvrage de Raoul Lenz („Les conventions suisses ou double imposition"). ces énumérations sont définitives en ce qui concerne les établissements qu'elles contiennent. A leur sujet, la question est donc tranchée, ils sont des „établissements stables" et il est inutile de se demander s'ils remplissent les quatre conditions énoncées ci-dessus.

Il nous importe, pour le problème qui nous est posé, d'étudier ce qu'il en est du dépôt de marchandises, particulièrement le dépôt de marchandises semi-ouvrées.

Nous avons déjà constaté lors de l'étude des quatre conditions que le fait de donner du travail à un ouvrier à domicile ne créait pas automatiquement un établissement stable.

En règle générale, les dépôts de marchandises constituent eux un établissement stable. Cependant, il y a des restrictions, entre autre s'il s'agit de dépôt de marchandises en cours de fabrication, auprès d'autres entreprises.

Les conventions allemande, hongroise et suédoise ne considèrent pas comme „établissement stable" le dépôt de marchandises auprès d'une entreprise en vue de leur transformation et réexpédition. Cette même règle résulte aussi, mais d'une façon implicite, de la convention française qui pose la présomption d'établissement stable pour les dépôts que s'ils sont gérés par des représentants non autonomes. Dans les autres cas, on doit étudier si les quatre conditions sont remplies. Or dans le cas de produits transformés par d'autres entreprises, ce n'est pas le cas. Dans la convention allemande, le principe est le même, à l'exception près que si l'entreprise étrangère a, au lieu de dépôt, une installation permanente, dès lors il y a établissement stable. Dans les autres conventions, à défaut d'une telle disposition, on admet qu'il n'y a pas établissement stable si l'installation permanente a trait uniquement aux dépôts des marchandises, il en sera autrement si l'installation permanente sert à d'autres opérations (la fabrication, etc.).

Il faut au surplus que le dépôt ne dure pas plus longtemps que ne l'exige la transformation des marchandises.

Le magasinage auprès d'une maison d'expéditionou dans un entrepôt public ne crée pas d'établissement stable, à moins qu'il ne prenne un caractère durable.

D'après Lenz, les mêmes principes s'appliquent pour la convention avec les U.S.A.

CONCLUSIONS

Sur la base des considérations que nous venons d'étudier, il reste à donner une solution aux questions posées. A la première:

a) Il est incontestable que dans ce cas il n'y a pas d'établissement stable. Non seulement dans le cas des conventions qui, comme nous l'avons vu, ne considèrent pas une telle activité comme établissement stable, mais aussi lorsqu'il n'y a pas de convention, en raison des quatre conditions qui doivent être remplies. En effet, dans le cas qui nous est soumis, la première condition n'est pas remplie puisqu'il n'y a pas d'installation qui puisse faire partie de l'entreprise et être permanente.

A la seconde question:

b) Le dépôt de marchandises en lui-même est considéré comme un établissement stable, excepté s'il est géré par un représentant autonome (excepté également le cas vu plus haut où il y a dépôt auprès d'une entreprise pour transformation de la marchandise). Ainsi, si l'étranger loue un dépôt pour ses marchandises, dépôt qui est géré par un représentant non autonome, il y aura établissement stable. Il en sera ainsi dans le cas des conventions suisses, mais également si l'on applique la règle des quatre conditions qui seront bien remplies dans ce cas.

Il faut toutefois rappeler que s'il s'agit d'un magasinage dans une maison d'expédition ou dans un entrepôt public, il n'y aura pas établissement stable.

A la troisième question:

c) Il y aura dans ce cas incontestablement établissement stable.

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38. *E. Broker.*
F. Courtier.
D. Makler.
I. Intermediario; agente di cambio.
Es. Intermediario; corredor.
N. Makelaar.

A broker according to *Belgian* law is the person, who acts as intermediary in matters of trade and commerce. He does not conclude contracts but brings into contact the two parties concerned.

The broker is, according to *German* as well as to *Dutch* Law he, who as such put on oath, makes it his business to conclude contracts, against payment of a certain wage or commission, by order and in the name of persons with whom he has no permanent relations.

According to *Swiss* law "the brokerage is a contract by which the broker against payment of a fee is charged to indicate to the other party the occasion to conclude a

D'après la loi *belge*, le courtier est celui qui sert d'intermediaire pour les actes de commerce. Le courtier se borne à mettre les parties en présence.

Le courtier, d'après la loi *allemande* ainsi que la loi *néerlandaise* est la personne jurée, dont la profession est de conclure des contracts, en jouissant d'une rétribution que l'on appelle courtage, sur l'ordre et au nom de personnes avec lesquelles il n'est pas en relation régulière.

Suisse.

„Le courtage est un contrat pas lequel le courtier est chargé, moyennant, un salaire, soit d'indiquer à l'autre partie l'occasion de conclure

contract, or to serve as his intermediary in concluding contracts."

In the *United States* a broker is an agent whose business it is to conclude contracts in matters of trade and commerce for a compensation or commission which is called brokerage.

une convention, soit de lui servir d'intermediaire pour la négociation d'un contrat."

Aux *Etats-Unis* un courtier est un agent dont la profession consiste à conclure des contrats en matière commerciale, et contre un rémunération ou une commission que l'on appelle „brokerage."

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39. *E. Commission Merchant, Commission Agent. Factor.*
F. Commissionnaire.
D. Kommisionär.
I. Commissionario.
Es. Comisionista.
N. Commissionnair.

A commission merchant is, according to *Belgian, Dutch* and *German* laws the person who makes it his business to conclude contracts in his own name and against payment of a certain wage or commission, by order and for account of another person.

According to *Swiss* law "the commission agent is the person who undertakes the buying and selling in his own name of movable goods or intangible personal goods for the account of his principal against a commission."

In the *United States* and *Great Britain,* a commission merchant or commission agent (or factor as the person is frequently called especially in the courts) is an agent whose business it is to sell goods consigned to him or put in his possession for a commission.

D'après les lois *allemandes, belges* et *néerlandaises* le commissionnaire est la personne dont la profession est de conclure des contrats en son propre nom pour compte d'un commettant.

D'après la loi *Suisse* le commissionnaire en matière de vente ou d'achat est celui qui se charge d'opérer en son propre nom, mais pour le compte du commettant la vente ou l'achat de choses mobilierès ou de papiers-valeurs, moyennant un droit de commission (provision).

Aux *Etats-Unis* et en *Grande-Bretagne* un „commission merchant" ou „commission agent" (ou „factor" comme il est frequemment appelé surtout devant les tribunaux) est un agent dont la profession consiste à vendre des marchandises en qualité de consignataire.

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40. *E. Agent.*
F. Agent.
D. Handelsvertreter.
I. Agente.
Es. Agente.
N. Agent.

An agent is, according to the laws of most of the countries, he who makes it his business to lend his mediation for the concluding of certain contracts, between someone with whom he has permanent rela-

Un agent d'après les lois dans la plupart des differents pays est celui qui exerce sa profession en agissant comme intermédiaire à la conclusion de certains contrats entre quelqu'un avec lequel il est en relation régulière

tions (the principal) and third persons, or for the concluding of such contracts in the name and for account of the principal.

(le mandant) et des tiers, ou qui intervient à l'occasion de la conclusion de tels contrats au nom et pour le compte du mandant.

41. *E. Branch Establishment.*
F. Succursale.
D. Zweig-Niederlassung.
I. Succursale, Filiale.
Es. Succursal.
N. Filiaal, Bijhuis (Flamand, Flemish).

A branch establishment is an economically independent business which forms part of a greater entity and which is established in some other place than the one in which the real direction is vested, and which has no juridical independence.

According to German and to Swiss law the "Zweig-Niederlassung" must be recorded in the register of business names.

Une succursale est une exploitation économiquement indépendante, mais privée de l'indépendance juridique, qui forme une subdivision d'un tout et qui est établie dans une autre place que celle où réside la véritable gérance.

D'après le droit allemand et le droit suise, une succursale („Zweigniederlassung") doit être inscrite au registre de commerce.

42. *E. Subsidiary Company.*
F. Société Affiliée, Filiale.
D. Tochter-Gesellschaft.
I. Società-figlia.
Es. Sociedad subsidiaria.
N. Dochtermaatschappij.

Often companies own a considerable part (up to 100 %) of the stock of other companies either founded by themselves or already existing. In the tax legislation of various countries combinations thus established are recognised as economic units, Under the name of subsidiary companies are included juridically independent companies which in reality are under the control of one or more other companies, whereas the term "parent company" is used to indicate the controlling companies.

As to the percentage of participation necessary in order that the special legal provisions be applicable this is fixed differently in the various countries.

In the *Netherlands* the term "Moeder- N.V." is not known legally, but what the law calls "an important interest" is taken into account. If

Il arrive souvent que des sociétés paticipent à d'autres sociétés, pour une partie où même totalement sociétés fondées par eux, oui ou non. Un certain nombre de législations considèrent des combinaisons qui ont ainsi pris naissance, comme une unité économique. Sous le nom de société affilié on considère les sociétés juridiquement indépendantes, et qui en réalité se trouvent sous le contrôle d'une ou plusieurs autres sociétés, tandis que sous le nom de société mère on désigne les sociétés participantes.

Quant au pourcentage de participation pour que les dispositions législatives spéciales soient applicables, il est fixé différemment dans les divers pays.

On ne trouve pas le terme „société mère" dans la législation *néerlandaise*. On y tient cependant compte de ce que l'on appelle „intérêt im-

a company from the beginning of the tax year without interruption has had an "important interest" i.e. 25% of the share capital of another (Netherlands or foreign) company, the dividends will not be considered to form part of the receiving company's taxable profit. As regards participations in foreign companies it is required that they must be liable to a tax of a similar nature as the Netherlands company tax.

In *Germany* a similar provision exists but only for participations in resident companies. The word "Schachtelprivileg" is then used.

In *Switserland*, too, provisions are made for the case that juridical persons participate in other enterprises. For the federal „Wehrsteuer" (income and property tax) the following is prescribed: "For limited liability companies, limited partnerships and companies with limited responsability (sociétés à responsabilité limitée), which at the beginning of the taxable period possess more than 20% of the stock or the capital of another company, the tax on the net profits is reduced by the amount which bears the same proportion to the total tax due as the income from the participation bears to the total gross income."

In the *United States* generally the effect of the law is such that corporations pay income tax on only 15 percent of the dividends they receive from other corporations. However, when one corporation owns 95 percent of the stock of one or more other corporations, a single (consolidated) income tax return may be filed by both the parent and the subsidiary companies; a special tax of 2 percent is imposed for the privilege of filing a consolidated return.

In connection with the salestax the relationship parent company — subsidiary-company can be of importance. In *Germany* for instance in case of the supply by a parent-

portant." Dans le cas où une société, à partir du commencement de l'année fiscale, a eu, sans interruption un intérêt important, c'est-à-dire 25% des actions d'une autre société, aussi bien néerlandaise qu'étrangère, les dividendes n'entrent pas en considération pour l'impôt sur les sociétés. Pour les participations aux sociétés étrangères on exige encore que ces dernières doivent être assujetties à un impôt analogue à l'impôt néerlandais sur les sociétés.

En *Allemagne* il existe pareille situation, mais seulement pour les participations dans des sociétés allemandes. On parle de „Schachtelprivileg."

En *Suisse* il existe égalemant des règles concernant la participation de sociétés dans d'autres sociétés. Pour l'impôt pour la défense nationale la loi prescrit: „Pour les sociétés anonymes, les sociétés en commandite par actions et les sociétés à responsabilité limitée qui, au commencement de l'assujettissement possèdent au moins 20% du capital- actions ou du capital social d'une autre société, l'impôt sur le bénéfice net se reduit du montant qui correspond au rapport existant entre le rendement des actions ou parts sociales des sociétés auxquelles la société contribuable participe et le total du rendement brut."

Aux *Etats-Unis*, il résulte généralement de l'application de la loi que les sociétés ne payent l'impôt que sur 15% des dividendes qu'elles reçoivent d'autres sociétés. Cependant, lorsqu'une société possède 95% du capital d'une ou plusieurs autres sociétés, la société mère et ses filiales ont le droit de présenter une seule déclaration dite déclaration consolidée; pour le privilège de présenter une telle déclaration consolidée une taxe speciale de 2% est perçue.

Egalement en ce qui concerne la taxe sur le chiffre d'affaires la relation entre une société-mère et sa filiale peut être d'importance. En *Allemagne* par exemple en cas de

company to its subsidiary company or the supply between two subsidiary companies the price that would have been charged if the other party had been a strange enterpreneur is taken as a criterion.

In Germany the close relationship parent company-subsidiary company gives rise to the following remarks:

In sofar as the parent company or the subsidiary company supply goods to third parties, it always concerns supplies of the entire enterprise formed by the closely linked up mothercompany and subsidiary-company. If for instance a subsidiary--company sells to a third party the goods produced by the parent company, tax exemptions or reductions granted to the wholesale trade cannot be taken into account, because not a trader but a manufacturer has delivered the goods: the subsidiary company as a result of the close relationship merely occupies the position of a branch of the parent-company, which has manufactured the goods.

In international relations the question arises whether a subsidiary company in one country is to be considered as constituting a permanent establishment of a parent company in another country. In many conventions the independence of the subsidiary company in this respect is recognised.

The *Netherlands* law attaches quite another consequence with the possession of the abovementioned "important interest", viz. a non-resident person is deemed to have a permanent establishment in the Netherlands, if during the last 5 years he has had an important interest in a Netherlands company, as far as this interest does not form part of his business assets.

Some conventions contain provisions according to which no account

livraisons de la société-mère à sa filiale, ou inversement, ou bien d'une filiale à une autre de la même société-mère, on prend pour base le prix qui aurait été calculé si la livraison avait eu lieu à un partenaire indépendant.

En Allemagne les relations organiques entre une société-mère et ses filiales donnent lieu aux remarques suivantes:

Pour autant que la société-mère ou la filiale réalisent des chitfres d'affaires avec des tiers, il s'agit dans ces cas toujours de chiffres d'affaires de l'ensemble des entreprises, ensemble fondé sur la base des relations organiques ertre la société-mère et ses filiales. Lorsque donc par exemple une filiale délivre, à un tiers, un article produit par la société-mère, il n'y a pas lieu d'accorder une exemption ou une réduction de la taxe sur le chiffre d'affaires comme à un négociant en gros, parce qu'il faut considérér cette livraison comme étant faite par un fabriquant et non par un négociant. En effet, en vertu des relations organiques la filiale a la position d'une branche d'une établissement de l'entreprise principale, qui a produit l'article en question.

Dans les relations internationales il s'agit de savoir si une société affiliée dans un pays doit être considéré comme établissement stable d'une société-mère établie dans un autre pays. Dans un grand nombre de conventions internationales on reconnaît à ce sujet l'indépendance de la société affiliée.

La loi *néerlandaise* relie une tout autre conséquence à la possession de l'intérêt important sus-mentionné, à savoir: une personne non-domiciliée aux Pays-Bas est considéré comme ayant un établissement stable aux Pays-Bas si durant les 5 dernières années il a eu un intérêt important dans une société néerlandaise et cet intérêt ne fait pas partie du capital de son entreprise.

Dans les conventions on trouve aussi des stipulations d'après les-

is taken of advantages which might result from the circumstance that a company participates in another one; for example, advantages which could be brought about by the fixation of prices, differing from those which would have been made between two independent enterprises.

quelles on ne tient pas compte des avantages qui pourraient resulter du fait qu'une société participe à une autre, avantages par exemple, que procurerait la détermination de prix inférieurs à ceux qui auraient été normalement fixés entre deux entreprises indépendantes l'une de l'autre.

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43. *E.* *Parent company.*
F. *Société mère.*
D. *Mutter-Gesellschaft.*
I. *Società madre.*
Es. *Sociedad matriz.*
N. *Moeder maatschappij.*

See 42 (Subsidiary Company).

Voir 42 (Société Affiliée).

ANNEX I

PERMANENT ESTABLISHMENT

Survey of the definitions given in the treaties of a number of countries.
(The countries are mentioned only once, in alphabetical orders)

		Agency	Agent, having general authority to negotiate and to conclude contracts	Agent, having a stock of merchandise	Branch	Broker	Commission agent	Custodian	Depot	Store	Casual use of storages	Warehouse	Factory
Belgium	France, 1931	+			+	—	—		+			+	+
	Italy, 1931	+			+	—	—		+			+	+
	Netherlands, 1933	+			+	—	—		+			+	+
	United Kingdom, 1953	—	+	+	+	—	—					+	+
	U.S.A., 1948	—	+	+	+	—	—					+	+
France	Italy, 1930												
	Netherlands, 1949		+		+	—	—						+
	Switzerland, 1953				+								+
	United Kingdom, 1950	—	+	+	+	—	—						+
	U.S.A., 1939	+	+	+	+	—	—			+		+	+
Germany	Italy, 1925												
	Switzerland, 1931				+							+	+
Netherlands	Switzerland, 1951				+								+
	United Kingdom, 1948	—	+	+	+	—	—						+
	U.S.A., 1948	—	+	+	+	—	—	—					+
Switzerland	U.S.A., 1951	—	+	+	+	—	—				—	+	+
United Kingdom	U.S.A., 1945	—	+	+	+	—	—	—					+

| | | |

I

THE CONVENTION BETWEEN GREECE AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON THE ESTATES OF DECEASED PERSONS

by

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1. *History of the Convention:* The said Convention entered into in Athens on February 20, 1950, was originally ratified by Greece by Em. Act 1413 of February 23, 1950 (Government Gazette, Part, 1 N° 64/1950).

But in the course of the ratification of the Convention in the United States of America, the American Senate asked that Article IX of the Convention, whereby the Contracting Parties undertook to lend assistance and support to each other in the collection of the taxes which are the subject of the Convention, be deleted.

Accordingly, the Government of the United States requested that an additional Protocol be signed expressing mutual agreement of the two Governments for the deletion of the said Article IX from the original text of the Convention.

The Government of Greece having accepted the deletion of Article IX of the Convention the abovementioned additional protocol was signed in Athens on the 18th July 1953.

This Protocol is considered to be an integral part of the original Convention as signed in Athens on February 20, 1950, and is effective as of the date on which the Government of the United States of America received formal notice of its ratification by the Parliament of the Kingdom of Greece, that is on the day of the exchange of instruments of ratification of the convention and of the Protocol attached thereto, which took place in Athens on

December 30, 1953 (Statement N° 7 by the Ministry of Foreign Affairs Government Gazette N° 357 of 1953).

For the said reason and because, apart from the deletion ot Article IX of the Convention, it was agreed that Articles X and XI shall be applicable accordingly, following the deletion of Article IX and further because Emergency Act N° 1413 of 1950 which initially ratified the Convention was abolished by a later Legislative Decree N°2548 of August 16, 1953 (Government Gazette N° 231, August 27, 1953) 'concerning ratification of the tax Convention between Greece and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and of the complementary Protocol' (Single article, Paragraph 3 thereof),it was deemed advisable to submit again the original Convention with the additional protocol to a legislative ratification, Legislative Decree N° 2734 of November 12, 1953 having been issued to that effect.

2. *Purpose of the Convention:* The purpose of the convention, as stated in its preamble, is on the one hand, the avoidance of double taxation and on the other, the prevention of fiscal evasion with respect to taxes on the estates of deceased persons.

3. *Subject of the Convention:* Subject of the Convention in the case of the United States of America, is the Federal Estate Tax and not the individual State taxes, and in respect of Greece, the tax on inheritances of Act 1641/1919, as subsequently amended and supplemented.

4. *Basis of the Convention:* Basis of the Convention are the laws relating to the taxation of Estates in force in the United States and Greece on the day of its signature.

Any appreciable modification to these laws which would take place subsequently would entail the obligation of the Parties to consult together on the modifications and supplementations to be brought about for the purpose of adapting the provisions of the convention to such changes.

5. *Place of taxation of immovable property:* In this case the Convention establishes the principle universally accepted both by national legislations and by international bipartite agreements according to which immovable property is subject to taxation in the country where it is situated.

6. *Place of taxation of movable property:* As regards this point the Convention reserves the application of the national legislation of either of the contracting parties.

Thus, according to Greek law on the taxation of inheritances (Act 1641/1919, Article 1, paragraphs 1, 2, 3) corporeal movable property passing by inheritance to nationals or aliens will be submitted to tax in Greece if it is situated or is deemed to be situated, according to law, in Greece, or if it is situated abroad and belongs to the estate of a Greek subject or alien domiciled in Greece, especially in the case of money claims against persons resident abroad, of securities, shares, bonds and certificates of any kind of Greek or alien corporations or institutions.

On the other hand, under United States Law (Internal Revenue Code, Chapter 3, Part II, Sect. 811-812, in conjunction with Part III, Section 860-861), Federal Estate tax is imposed in the case of an inherited American citizen or resident of the United States on all his property real or personal, tangible or intangible, wherever situated, with the exception of real property situated outside the United States, and in the case of an inherited person who is not a subject or resident of the United States, on all his property, real or personal, tangible or intangible situated in the United States at the time of his death.

But in the case of a person domiciled in the territory of one of the contracting States, the situs of the movable property of the estate shall be determined exclusively in accordance with the special rules of the convention (Article IV, paragraph 2),

Accordingly,

(a) Ships and aircraft shall be deemed to be situated at the place of documentation or registration of the ship or aircraft.

(b) The goodwill of a business firm or the goodwill attached to the practice of a liberal profession shall be deemed to be situated where the business is carried on or the profession is practiced.

(c) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered.

(d) Copyrights and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable.

(e) Shares in a corporation shall be deemed to be situated at the place under the laws of which such corporation was created or organized.

(f) Bills of exchange, shall be deemed to be situated at the place of the drawee's residence, negotiable promissory notes at the place of residence of the maker, and checks payable to a designated payee, at the place of such payee's residence.

(g) Claims secured by a mortgage on immovable property or on ships shall be deemed to be situated at the place where, in accordance with Convention, the immovable property or the ship is deemed to be situated.

(h) Bonds, bank deposits and claims of any other nature, secured or unsecured shall be deemed to be situated in the State in which the deceased person was domiciled at the time of his death.

(i) Other corporate movable property except as hereinabove prescribed, as well as bank notes, any other kind of money which is legal tender at the place of issuance, and bearer checks, shall be deemed to be situated where they are physically located at the time of the decedent's death.

(j) Any other property not otherwise mentioned hereinafter, shall be deemed to be situated at the place where the decedent was domiciled at the time of his death.

Lastly, the question of the place where the deceased person will be deemed to be domiciled at the time of his death is determined in conformity with the laws of either contracting State.

As a result of the above it is possible to submit movable property, transferred by inheritance or legacy, to estate tax both in Greece and the United States of America.

To avoid double taxation on movable property of an estate either contracting State assumed in article VI of the Convention, the obligation to allow against the estate tax which it would eventually impose in the case of a deceased person, who, at the time of his death, was domiciled in such State, or was a citizen or subject thereof, a credit for the amount of the tax imposed by the other contracting State with respect to property situated in the territory of the latter State.

The Greek Law 1641 of 1919 provides (in article 14, subhead b) that a credit will be allowed against the Greek tax for tax paid or

assessed abroad with respect to movable property situated abroad which will also be submitted to taxation in Greece.

The American Law (Internal Revenue Code, Chapter 3, Section 813 (c) provides likewise for such a credit, generally if the decendent was a citizen of the United States at the time of his death, and on terms of reciprocity, if the decedent was foreign subject at the time of his death.

The Convention by its aforementioned article VI aims at the establishment of such reciprocity and at determining the conditions under which it may be granted.

The provisions of article VI of the Convention concerning the reduction of the tax when the same property is taxed by both contracting States, are directly connected with the determination, in Article IV of the Convention, of the place where individual property is deemed to be situated and which is being taxed by the one and the other State.

That is to say, in deciding which State will allow the credit against its tax for movable property taxed by both States, there will be ascertained where the movable property is situated or deemed to be situated and from such ascertainment will depend which State will be required to allow a credit against the tax for the amount of tax paid to the other State for the same property. Let us, for example, suppose that the decedent was a Greek subject and left money in the United States where he was domiciled. Such property will be taxed by the United States of America because of the fact that it is physically situated in the United States, but it will also be taxed by Greece, on the basis of the last provision of paragraph 3 of Article 1, of Act 1641/1919, as movable property of a Greek subject situated abroad. In that case because of the fact that the property is situated in the United States, a credit, for the tax paid there, will be allowed against the tax in Greece, but the amount of such credit shall not exceed the amount of the tax attributable to the same property in Greece, so however, that in the case of another property situated in Greece, any tax paid in the United States, for movable property situated therein, over and above any tax applicable in Greece, will not reduce the tax applicable on the property situated in Greece. If, per contra, the same decedent, being domiciled in the United States, left

money in Greece, such property will be taxed by Greece under Article 1 of Act 1641 of 1919, but it will also be taxed by the United States by reason of the domicile of the inherited person. In such a case, by reason of the property being situated in Greece, the credit for tax paid in Greece will be allowed by the United States against its tax.

The above are applicable, as regards the credit allowed against the tax, in conjunction with the situs of the property in cases where the decedent, according to the Laws of either State, was domiciled in or subject of both States and there is movable property of his situated or deemed to be situated in one of these States or in both.

But if the deceased person was domiciled in Greece, according to the laws of Greece, and he was also domiciled in the United States of America, according to United States law, and left property consisting of bonds which are deemed to be situated in the State in which the deceased person was domiciled (subhead i of article IV), either State will consider such property as situated in its territory and will tax it. In such a case, in accordance with the last subparagraph of paragraph 1 of Article VI of the Convention, neither the one nor the other State will allow a credit against its tax, as such property, because of the double domicile of the inherited person, is deemed by either State to be situated in its territory.

7. Equal tax treatment. Another substantial provision of the Convention is that of Article V, whereby the principle of equal tax treatment by Contracting States is instituted in respect of property left by persons, who, at the time of their death were subject of or domiciled in one of the contracting States and of property left by persons who were neither subjects of nor domiciled in that State at the time of their death.

In this case, the Greek law on the taxation of inheritances, makes no distinction between estates left by persons having Greek nationality or domiciled permanently in Greece and estates left by persons having alien nationality or domiciled permanently abroad.

Per contra, the law of the United States regarding Estate tax makes such a distinction especially as regards the untaxable

amount of estates. Thus, while in the case of property left by United States citizens or by aliens permanently domiciled in the United States, the untaxable amount of an estate is $ 100.000 as regards the basic Estate tax and $ 60.000 as regards the Additional Estate tax, in the case of property left by aliens who were not permanently domiciled in the United States the amount exempted is restricted to $ 2000 only for both taxes (Internal Revenue Code, Chapt. 3 Sect. 812(a), 935(c) and 861(a)4).

8. *Exchange of information.* Article VIII of the Convention provides that the administrative Authorities of the Contracting States shall lend assistance and support to each other and shall exchange such information (being information which such authorities have at their disposal) as is necessary for the avoidance of double taxation with respect to taxes on the estates of deceased persons and for the precise application of the convention. Such information is characterized as secret and will be disclosed solely to the authorities of each State concerned with the assessment of the Estate tax.

It does not constitute the subject of an exchange the information which would result in a disclosure of a technical secret, or process relating to trade, industry, business or a profession.

The requirement to lend administrative assistance and support to each other in the collection of taxes which are the subject of the Convention does not exist between the Contracting States following the subsequent signature in Athens, on July 18, 1953, of an additional protocol between Greece and the United States of America under which Article IX providing for such assistance and support is deleted and articles X and XI which follow are deemed applicable in accordance with the said deletion of article IX.

9. *Commencement and duration of the effect of the Convention.* The Convention becomes effective on the day of the exchange of instruments of ratification, that is as of December 30, 1953 (vide statement by Ministry of Foreign Affairs, Government Gazette N° 357/1953, Part I) and is applicable on estates, or inheritances, legacies etc. left by persons who dies on that date or after.

The duration of the Convention is primarily five years. After the expiration of the five year period it is converted into a convention of an indefinite duration but may be terminated by either of

the contracting States following a six month prior notice, at least, addressed to the other contracting party, the termination of the convention becoming effective on the first day of January following the expiration of the six month period.

THE REPEATED LEVYING OF SALESTAX AND VERTICAL BUSINESS INTEGRATION [1])

by

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INTRODUCTION

Every legislator, who creates a sales-tax, which proceeds from the system of levying more than once, sooner or later comes into conflict with not-integrated businesses, if particular provisions were not made against this. For it is clear that less sales tax will be levied on a good that is sold only once during its journey from producer to consumer than on a good that frequently changes ownership. A repeated levying has the tendency to affect the conditions of competition between vertically integrated and not-vertically integrated businesses in favour of the former.

The payment of more sales tax by not-integrated businesses is a cost-price-raising factor, by which means the capacity of competition of such businesses is reduced.

A tendency will arise, from purely fiscal motives, to proceed to vertical business integration which might be undesirable in certain cases, from the business economic viewpoint. This phenomenon of integration will particularly be expressed in 2 forms:

1st. Within the manufacturer's phase of the trade-column, i.e. the integrating of different manufacturing phases of a product in a single enterprise (e.g.: malt-house and brewery, spinning and weaving mill, with, if any, a finishing department).

2nd. Integration of several or all phases of the trade-column

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1) By vertical business integration is meant the junction of successive parts of the process of production (if necessary with commercial process) which used to be separated from each other by markets.

i.e. the integrating of the production of an article and the trading in it in one single enterprise (e.g. manufacturers of branded articles who carry out the functions of wholesale-dealers themselves, shoe-manufacturers with their own retail businesses).

In the first case the independent middleman's business experiences no repercussion, in the second case it is aliminated wholly or partially. The first case can also arise with a sales tax levied in the manufacturing phase (Einphasensystem) only, viz if without exception every sale from a manufacturer is taxed. So sales to an other manufacturer too. It is comprehensible that not-integrated enterprises (manufacturers as well as dealers) object to a sales-tax in accordance with the system of levying salestax more than once and urge an alteration of the system.

HISTORICAL EXAMPLES.

History gives many instances of this (i.a. in Canada, France, Belgium, Germany). The Canadian Government was forced to abandon the system of the repeated levying in 1924 and to substitute it by a levying in one phase, the manufacturer's phase, (manufacturer's sales-tax). So the Government complied with the desire of the independent trade.[1]) In order to obviate interference with the conditions of competition within the manufacturer's phase the tax was planned as a single levy on goods and levied at the moment that the goods left the manufacturer's phase, i.e. when they were sold to dealers or consumers. Dealers who regularly supplied goods as raw materials to manufacturers received a licence, by which means they could buy the goods without tax. The intention of this measure was to obviate cumulation of levies with the sale by

It depends on the basis of tax levying wether the same sales-tax burden is attached to every similar good of which the final consumer gets the disposal, side by side with the fact whether the single levy is also purely applied in respect of auxiliary materials. With a tax levied from the real selling price, the burden by the normally higher selling price during the direct sale by a manufacturer to a consumer, will be higher than during the sale to a dealer. So integration is rather prevented than promoted from the fiscal viewpoint! In Great Britain not the selling *price* but in principle the wholesale *value* forms the basis of the Purchase tax, in France they proceed with the taxe à la production from 80% of the selling price in case of a sale to a consumer.

[1]) Already in 1920 a regulation was made to tax sales by manufacturers to retailers or consumers with a higher rate.

the manufacturer of the product made from these raw materials.

So Canada was forced to substitute the system of repeated levying by the system of single levying. France (1925/26) and Belgium (1927) gave an other solution. The sales tax according to the system of repeated levying was substituted for certain goods by a lump sum arrangement, with the result that the goods were affected once, somewhere in the trade-column, by sales-tax, with a higher rate than the normal one, a rate dependent on the number of links that the good normally passed in the trade-column (France: taxes uniques, Belgium: taxes forfaitaires). This "Pauschalierung" of the sales-tax had been taken from the Warenumsatzsteuer enforced in Austria in 1923, which proceeded wholly from this system. The French sales tax (taxe sur le chiffre d'affaires and taxes uniques), resulted in the taxe à la production (1937), a manufacturer's sales tax (Einphasensystem). Till 1949 the Canadian system of levying was generally pursued in order to obviate cumulation of levying within the manufacturer's phase (France also taxed services, by which means the tendency of integration was checked but with little success). After 1949, however, every manufacturer's sale was taxed but the tax on the buying of raw materials and auxiliary materials [1]) could be deducted from the tax due. The manufacturer's sales-tax i.a. in Argentine and the Philippines proceeds as a criterion in this respect from the value added, by which means the same result is attained.

Germany (1934) maintained the system of repeated levying, in which system a regulation had been inserted already since 1918, which determined an extra tax duty for vertically integrated big businesses. Internal supplies were taxed if they exceeded 100,000 Mark a year. This provision was repealed in 1934 and therefore the minister of Finances obtained authorization to take measures, if necessary, to put an end to irregularities between integrated and not-integrated businesses (Zusatzsteuer). The difference between the two provisions lies in the fact that a tax duty was fixed in 1918, while after 1934, such a duty could arise if the government considered it desirable. The provision of 1918 maintained in many

1) By a decree of 30th September 1953 the deduction was supplemented until 50% of the capital goods, in expectation of the establishment of the new French salestax Act (taxe sur la valeur ajoutée).

cases the fiscal disadvantage of competition of not-integrated businesses, while on the other hand internal supplies of goods could be taxed, such supplies never taking place between independent businesses.

PRESENT SITUATION.

The reader should bear in mind that the following explanation is not complete. It merely gives the general lines and avoids difficult technical tax constructions which can only be well understood if the full structure of the tax law is known.

The number of countries that still levy the sales tax in its form of tax according to the system of repeated levying, is now relatively small. It are principally the continental Western European countries (Germany, France, Benelux, Italy and Austria), which have yet not dropped this system.

France.

Side by side with the taxe à la production the taxe d'armement (repeated levying) was created in 1939. This tax changed its name during the German occupation into taxe sur les transactions.

The moderate rate of 1 % of the selling price is increased to 1.80 %, when a vertically integrated business is concerned (art. 286 Code général des impôts).[1]) A vertically integrated enterprise is meant when an entrepreneur sells goods to other entrepreneurs as well as to private persons. Every retail-trade-sale by such an enterprise is taxed by this higher rate, even though in a certain case there should not be any reason for it. To obviate a continually adverse position for the retailers, who sometimes sell goods to other entrepreneurs, an integrated retail- or whole sale-trade is referred to only when the wholesale sales amount to more than a third (the half, law April 10, 1954) of the total sales. This counts for the year preceding the relevant fiscal year. So the higher rate is not co-ordinated with factors on the side of the goods but every entrepreneur who sells goods to individuals as well as to entrepreneurs, is subject to this

1) Horizontally integrated enterprises are subject to the same rate except for the "maison principale". A horizontally integrated enterprise is meant when an entrepreneur possesses 3 (5, law April 10, 1954) or more retail businesses.

rate for the retail trade supplies, no matter whether this sale takes place in one or more enterprises linked up organically. One lump-sum regulation has been made (taxe cumulée sur les laines).

The "taxe locale", the municipal sales tax put into force in 1941 leaves the sales of manufacturers to dealers untaxed. For integrated enterprises the normal rate, amounting to 1.5 or 1.75 % is increased to 2.7 or 3.2 %, subject to the same provisions as for the "taxe sur les transactions". The rate of 1.5 % (1.75 %) is maintained. however, when a manufacturer subject to the "taxe à la production" sells to a consumer even in those cases when the higher rate should be due for the "taxe sur les transactions."

Germany.

§ 8 of the "Umsatzsteuergesetz" authorizes the government "Massnahmen zum Ausgleich der verschiedenen Umsatzsteuerbelastung der einstufigen und der mehrstufigen Unternehmen zu treffen."

The measures taken are manifested in 3 forms.

1st. the taxing of certain internal supplies.

2nd. a more favourable rate for certain supplies of not-integrated enterprises.

3rd. an increase of the normal rate for supplies for manufacturers who do not make use of the independent wholesale-trade and/or wholesale and retail trade.

ad 1. In § 59 Durchführungsbestimmungen Umsatzsteuergesetz the transition of yarns from spinning department to the weaving section in a spinning- and weaving mill is taxed at the normal manufacturer's rate (4 %). Certain subjective exemptions are created however. In that connection § 59 will not be applied to:

a. handspinning mills and handweaving mills.

b. enterprises, of which the total sales in the preceding year do not exceed 120,000 DM.

c. enterprises which are taxed in pursuance of art. II of the Kontrollgesetz Nr. 15 of 11th of February 1946. This article dropped the sales tax privilege for enterprises linked up organically. It stipulated that all transactions concluded between a mother-company and a subsidiary-company or between several subsidiary-companies and the same mother-company are subject to sales-

tax in those cases when they were also salestax assessable if there were two independent enterprises.

ad 2. A textile manufacturer who only works up yarns (e.g. the dressing, bleaching, dyeing, printing and mercerizing) has not to pay 4% salestax but only 1% when selling worked up yarns (§ 61 Durchführungsbestimmungen).

ad 3. The Verordnung zur Änderung und Ergänzung der Durchführungsbestimmungen Umsatzsteuergesetz of 29th June 1951 (modified by Verordnung dated 6th of May 1952) put an extra levy on the manufacturer when he supplied direct to a retailtrade dealer or consumer (Einzelhandel). Over the normal rate of 4% an extra tax of 3% is due, so that the result was in total 7%. §§ 58a and 58b of the Durchführungsbestimmungen give objective and subjective exemptions to this general rule. Objective exemptions. for i.a. certain essential goods, supplies of goods which are normally always sold without employing the independent intermediate trade (water, gas, electricity, foodstuffs and beverages in canteens and hospitals etc), further i.a. photographic requisites, pharmaceutical articles.

Subjective exemptions are given to:

a. handspinning mills and handweaving mills.
b. enterprises which have in their employment not more than 20 workers in the last year.
c. enterprises whose total sales did not exceed 360,000 D.M. in the preceding year.
d. enterprises whose supplies to retail-trade dealers and consumers did not exceed 36,000 D.M. in the preceding year.
e. enterprises which were taxed in accordance with article II of the Kontrollgesetz nr. 15.

The Netherlands.

In order to obviate integration on purely fiscal grounds within the manufacturer's phase, art. 2 (f) of the Decree Sales Tax 1940 stipulates that the disposal of self-made goods (not being raw materials) for trade purposes for the use of the manufacturer's business, as well as the disposal of self-made goods necessary for the rendering of services is taxed. So the disposal of raw materials is not taxed, no more is the rendering of services to oneself. Accord-

ing to the bill of alteration of March 16th 1954 to the draftbill-Salestax Act 1952, it is the intention to tax the disposal of raw materials in the textile industry, shoe-industry, oil- and fatindustry and the stove industry.

This integration levy can only be supplemented by Royal administrative decree.

In order to prevent elimination of the intermediate trade as much as possible a differentiated rate exists for supplies, of manufacturers to dealers and to consumers (4 % resp. 6 %)[1]). In contrast with Germany, this increased rate does not fall on sales to retailers, only to consumers. Amongst other things the supply of gas and electricity is exempted from this higher rate, as well as the sale of certain fruits, pharmaceutical products, photographical requisites, beverages in canteens, etc. A remarkable resemblance can be established with Germany in these objective exemptions. Just as in Germany the sales of wholesale-traders are also taxed in the Netherlands at a lower rate (1 %) [2]) by which means the elimnation is prevented as much as possible.

It depends on the one hand on the gross margin of profit in the wholesale trade, on the other hand on the level of the rate valid for manufacturers whether there would really be an elimination with a higher wholesale-trade percentage. A tendency of re-employment may arise, particularly at high manufacturer's rates, as for instance in the Netherlands for luxury goods (15 %), where the margin of profit for the wholesale-trade is high. Therefore article 24 of the Sales Tax Decree creates the possibility for manufacturers who sell direct to retailers, to disintegrate into a manufacturing and a commercial section, in order to soften down the differences which arise by means of a low levying when sales are effected by the intermediate wholesale-trade, in cases where it is common practice in a certain branch of industry that manufacturers sell to wholesale traders.

As Germany has no luxury rate such a regulation was not necessary there.

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[1]) In the case of semi luxury goods the rate for sales to dealers is 7 %, to consumer 9 %. In the case of luxury goods, however, the rate is always 15 %!

[2]) In the Netherlands, in case of sales to manufacturers and wholesale-traders ½ %.

Luxemburg — Austria.

In both of these territories the German tax legislation is principally valid so that the government is authorized to take measures in order to remove inequalities in respect of the competition conditions between integrated and non-integrated businesses caused by the sales tax. Measures have particularly been taken in the textile industry (Austria).

Italy.

The Italian "imposta generale sull'entrata" (general tax on the revenues) has been designed as a gross income tax in accordance with that existing in the American State of Indiana. By means of a great number of objective exemptions it has become a sort of sales tax in accordance with the system of the repeated levying. Special measures in order to prevent integration on fiscal grounds do not fit in with its character. Enterprises linked up organically, however, are not recognized as one fiscal unit, and tax is due for the supply of goods of manufacturers to their own retail-trades, etc. with as criterion of the levy the wholesale value. Moreóver some "lump sum" regulations have been created in order to prevent cumulation of tax levying (tax una tantum) in which connection the retail-trade phase is often not considered.

Belgium.

The Belgian "taxe de transmission" taxes every transfer of ownership, under an onerous title, of corporal movable goods, except the transfer to private persons. By reason of this objective it is not possible to tax ficticiously internal supplies of integrated enterprises, as is the case in Germany and in the Netherlands. Goods which are sold by a manufacturer direct to a private person have nothing to do with the levying. However, when the manufacturer sells via his own branch establishment, then the transport of the goods to the branch establishment is considered to be the same as the transfer of ownership and is taxed with the taxe de transmission. (art 2 "Code of the taxes assimilées au timbre"). The rate is the same for every taxed sale, i.e. 4.5%, the wholesale-trade is not subject to a lower rate by which means the tendency to elimination is extremely great. In order to prevent this

tendency the "taxes forfaitaires" were instituted on a great number of articles, as was already mentioned above in the historical survey. When this tax is levied on the manufacturer then it covers every later transition of the good until it comes into the hands of the consumer or user. The percentage generally amounts to 9%. The exempted transitions are then generally taxed with the "taxe de facture", amounting 4.5‰. The "taxes forfaitaires" sometimes affect raw materials, sometimes semi-manufactures, sometimes finished products. Seldom is one "taxe forfaitaire" valid for the whole chain, from raw material to finished product.

Roughly speaking a certain similarity can be seen between the measures in Belgium and Italy on the one hand and the measures in Germany, the Netherlands, Luxemburg and Austria on the other hand. France occupies a place of its own.

Conclusion.

Among the many drawbacks which are inherent in a sales tax with the system of the repeated levying, the disturbance of the conditions of competition between the enterprises mutually is one of the most important ones. The problem can only be solved by creating a network of supplementary regulations, of which the application often is attended with many difficulties and makes the sales-tax legislation, which is after all complicated, even more unsurveyable. It is clear, that such a sales-tax system will wreck itself in the end!

It is remarkable that in Western Europe it is just the five so-called "Schuman-countries" that still maintain this system, though not without criticism.[1]) The question is wether co-ordination of the sales-tax systems with maintenance of the system of repeated levying is possible (apart from the budgetary demands on the sales tax in the various countries). In the struggle against fiscal disturbance of the conditions of competition, an important aspect of the co-ordination, only the "Nicht Kumulative Allphasensteuer", the value-added tax can be recommended if one wants to maintain a repeated levying.

1) Compare the pending drafts for a new sales-tax proceeding from the system of the "value added" in France and the "Bericht der Wissenschaftliche Beirat beim Bundesfinanzministerium in Germany" (recommendation "Netto Umsatzsteuer").

LA FRAUDE FISCALE EN ITALIE

par

l'av. GIUSEPPI SPINELLI

Conseiller de la Cour de Cassation

Sommaire.

1) Un examen complet de la fraude fiscale entraînerait l'examen du système fiscal d'un Etat. Inobservation des obligations fiscales et fraude.
2) Etat de la doctrine en matière en Italie et moyens de vérification indirects de l'obligation fiscale; les énonciations dans les actes soumis à la formalité de l'enregistrement, les sentences, les actes des archives publiques, la constatation des valeurs, la présomption, les présuppositions, l'extension des rôles. Les franchises tributaires et les évasions.
3) La déclaration obligatoire des rentes et la déclaration annuelle des revenus de toute nature; le contrôle des déclarations.
4) La police tributaire, ses origines, sa constitution et ses fonctions.
5) La répression des infractions fiscales.
6) Les causes et les remèdes de la fraude fiscale.

Prémisse.

La question de la fraude fiscale n'est plus, désormais, un problème tout à fait moral, il s'agit, plutôt, d'un problème profondément économique, parce que l'extension toujours croissante de la fraude annule une partie considérable des prévisions des entrées tributaires et endommage et déconforte les contribuables honnêtes, qui pourraient être appelés héroiques, parce qu'ils accomplissent ce que le plus grand nombre des contribuables n'accomplit pas, si non *obtorto collo* et sans la spontanéité consciente de l'accomplissement du devoir. D'ici la préoccupation des législateurs de combattre la fraude fiscale, qui est un mal commun à tous les Etats, et la généralité des études à ce propos, qui tendent à établir les causes et les éléments communs à tous les Etats, ceux qui sont particuliers à chaque Etat et les moyens pour les combattre.

1) Un examen complet et approfondi des formes sous lesquelles se présente la fraude fiscale dans un Etat, entraînerait un examen également complet et approfondi des impôts, de tous les impôts à l'égard desquels la fraude peut se vérifier.

Nos systèmes de loi, que d'autre part, je crois égaux à ceux des autres Etats, prennent avant tout en considération l'objet de l'impôt, son champ d'application dans le temps et dans l'espace, les sujets obligés avec les éventuelles exemptions et subjectives et objectives, les taux, les moyens de vérification et d'application, les méthodes et les moyens de perception et de contrôle, en cas de besoin les vigilances, les controverses, les infractions, les sanctions, la compétence tant pour la constatation du tribut que pour la constatation des infractions.

A chaque espèce de tribut, donc, se proportionne la fraude, qui, pour autant qu'il est possible de faire des hypothèses, est prévue dans ses diffé-

rentes formes dans la même loi, qui ne laisse pas, parfois, de distinguer la véritable fraude de la simple inobservance, c'est-à-dire, celle qui est accomplie grâce à des artifices et à des détours pour tromper l'administration publique concernant l'obligation fiscale du sujet (*théorie objective de la fraude*), ou grâce à des actes frauduleusement dirigés pour l'évasion (*théorie subjective*), et celle qui est accomplie seulement avec la volonté de ne pas payer l'impôt (V. à ce propos arrêt Cass. 1ère section pén. 12 janvier 1952, réc. Ghignone, Revue droit fin. et science fin. 1952, II, 361 et dans ce lieu Nuvolone). Un exemple macroscopique des deux hypothèses considérées dans la même loi est donné par les articles 55 et 59 du Texte Unique (T.U.) pour la finance locale du 14 septembre 1931 Nr. 1175, dans la partie relative à l'Impôt de Consommation. Dans l'art. 55 on dit: „On punit quiconque, par des actes *frauduleux*, se soustrait ou cherche à se soustraire au paiement de l'impôt, même par l'abus des exemptions établies dans cet article („capo") et dans la 2e alinéa: „La même peine s'applique lorsque les transports des produits sont frauduleusement dépourvus d'un billet de l'accompagnement . . . de même que la frauduleuse omission etc."; dans l'art. 59, au contraire, on lit: „Pour les infractions prévues dans les art. 55 et 58, *lorsqu'il n'y a pas la condition nécessaire pour la fraude*, au lieu de la peine de la „multa", on applique l'amende, c'est-à-dire que l'hypothèse délictueuse dégrade e hypothèse de contravention.

Dans l'un et dans l'autre cas le contribuable tend à ne pas payer, mais dans le premier cas il veut atteindre son but en trompant, par des actes fraudulaeux, l'administration financière (dans le fait particulier, locale), dans l'autre il se borne à ne pas payer avec l'idée de tenter la fortune.[1])

2) Il y a eu quelqu'un en Italie, qui s'est proposé d'étudier à fond les fraudes fiscales, mais on a suivi la méthode de le faire loi pour loi: D'Angelillo, dans son oevrage „Les fraudes fiscales" a examiné dans un premier volume „les altérations des bilans et l'impôt de richesse mobilière", et dans un second volume „les contrats dans le droit d'enregistrement" [2]); dans le premier il a précisé (voir p. 162) *qu'on doit qualifier comme fraude fiscale* un procédé frauduleux propre au contribuable et qui a pour but de soustraire, aux organes verificateures, une partie de la matière imposable.

Dans ce volume l'auteur, après avoir étudié dans la première partie le revenu de R.M. (dans sa substance, dans sa manière de se produire, dans la vérification etc.), dédie toute la seconde partie à l'examination des moyens par lesquels est dissimulé le revenu imposable (altération de comptabilité, recèlement du mouvement commercial, recèlement du patrimoine, des profits tirés par les ventes des biens patrimoniaux, des frais non déductibles des annuités passives, de pertes) et, après avoir classifié les altérations de comptabilité (révision fiscale, enquête chez les bureaux et les corps) et les conséquences fiscales des altérations, enfin il donne une explication au moyen d'exemples de la matière traitée. La même méthode est suivi par l'auteur dans le second volume, traitant le droit d'enregistrement se rapportant aux contrats; après avoir indiqué en effet, les principes généraux pour l'application du droit d'enregistrement, la taxation des contrats selon leurs effets juridiques et le régime fiscal des contrats innommés et après avoir étudié en résumé chaque contrat (achat-vente, permutation, superficie, emphytéose, usufruit, usage et habitation, division, contrat estimatoire, provision, location et entreprise, c. de travail, c. de transport, adjudication administrative, société, société en participation, syndicats, contrats agraires, commodat et emprunt, dépôt, mandat, donation, assurance, transaction,

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[1]) Pour un ample traitement de la matière, V. „Giuseppe Spinelli: Le Imposte di consumo", Volume 2, Edizione Cedam, Padoue, 1938.

[2]) Tous les deux Ed. Giuffrè, Milan, 1950, 1952.

c. d'adition, etc). les alternatives relatives et le traitement fiscal des mêmes, il étudie quels sont les moyens qui, en rapport à ces contrats, sont employés pour effectuer la fraude et qui commencent de l'emploi du moyen le moins onéreux, et vont peu à peu jusqu'au changement de l'état de fait, aux contrats pour personne à nommer dans le but d'éviter le double transfèrement. Il étudie, aussi les armes dont l'administration fiscale se sert pour découvrir les fraudes, au moyen de la recherche de la vraie nature des contrats et de l'existence des contrats, à l'aide d'autres contrats (art. 62 de la loi de l'enregistrement) [1]), par ce qui résulte des arrêts de la magistrature (art. 72), des archives publiques (art. 134), au moyen du contrôle des valeurs, remontant même au procedé par présomption (art. 13) ou bien le présupposant (p. ex. contrat principal) iuris et de iure d'un autre (p. ex. contrat accessoire de garantie) (art. 52).

D'ANGIOLLILO développe une étude semblable au sujet de l'impôt général sur l'entrée, mais il y a encore une longue voi à parcourir si l'on considère le système tributaire italien — d'ailleurs pas beaucoup différent de celui des autres Etats — qui comprend les impôts directs (terrains, immeubles, richesse mobilière), complémentaire pour le revenu, pendant une certaine période même sur le patrimoine, l'impôt indirect (sur les consommations, sur les affaires) et en outre ceux des impôts du trésor public; en partie autonome.

Naturellement la fraude se rapporte, ainsi que nous venons de le dire, à chaque forme d'impôt en s'imitant le plus que possible en actes, procédés et autres choses de ce genre qui consentent de ne pas payer ou de payer moins; les franchises concédées pour quelques impôts sont les mailles à travers *lesquelles l'évasion* s'effectue plus facilement, évasion parce qu'elle peut se réaliser grâce à des actes de simple omission, ou bien au moyen d'une activité frauduleuse. .

L'administration financière réagit avec des moyens qui vont de plus en plus se proportionner et au moyens des contrôles indirects, dont nous venons de parler, énonciation, par exemple, d'actes et contrats au moyen d'autres actes, extension des rôles à celui qui, bien qu'il ne figure pas dans les rôles, se trouve avec le contribuable en des relations telles à devoir être lui-même sujet passif du rôle, d'où la responsabilité fiscale réelle à côté de la responsabilité personnelle. Les infractions en question sont punies selon ce qui est prévu par les diverses lois tributaires, qui, pour les impôts directs sont disciplinées par le Décret Royal (R.D.) du 17 septembre 1931 Nr. 1608.

3) Ce R.D., voulant réaliser d'abord une participation directe des contribuables à la vérification, presqu'une auto-vérification, préscrit, dans le premier article, *la déclaration des revenus sujets aux impôts directs*, déclaration à se faire — selon la prescription de cette loi — et au moment de la création du revenu, et en cas de variation du revenu; en cas de non déclaration ou d'une déclaration inclomplète, intempestive, frauduleuse on applique les sanctions prévues dans le même décrêt, lesquelles élèvent à délit punissable avec emprisonnement l'hypothèse du contribuable retardaire pendant sic échéances succissives d'impôts directs, qui pour se soustraire au paiement, accomplit sur ses propres biens et sur les biens d'autrui des actes frauduleux, qui rendent en tout ou en partie inefficace l'exécution fiscale sollicitée par le percepteur (art. 31), et à délit punissable avec l'amen-

[1]) Intéressant est le phénomène de l'énonciation, c'est-à-dire la „reception de la part de la finance, d'une convention imposable (acte énoncé) dans un autre acte (acte énoncant); elle est réglée par l'art. 62 de la loi. V. Uckmar: „la loi de l'enregistrement", Vol. II, 423, 425, avec les relatives plaintes de jurisprudence.

de (multa) l'altération des registres de comptabilité ou l'omission, dans les inventaires, de l'inscription d'actifs ou l'inscription de passifs inexistants, ou la création d'écritures et d'autres documents, etc.

Avec le même système et comme prémisse pour arriver à la péréquation tributaire, c'est-à-dire à la répartition proportionnelle de la charge fiscale selon la capacité contributive de chacun, le D. Législatif du 24 août 1945, complété par la loi dite loi VANONI du 11 janvier 1951 N. 25, ainsi que par le T.U. approuvé avec D. Pres. du 5 juillet 1951 N. 573 prescrit la *déclaration unique annuelle*, par laquelle chaque contribuable tous les ans, du 1er janvier jusqu'au 31 mars, doit, sur un formulaire préparé à ce but, indiquer les revenus réalises l'année précédente. Par là on a aboli aussi l'institut de la confirmation par le silence, ce qui était un moyen commode pour les contribuables de ne pas déclarer les augmentations de leurs propres revenus, puisqu'ils comptaient sur le lent mouvement de la machine bureaucratique pour les contrôles tributaires directs. Le contribuable a été ainsi appelé à donner des épreuves de sa loyauté, même par la correction d'omission précédentes. L'administration financière, toutefois, a une large marge de temps pour la vérification des déclarations et avec les contrôles directs, et employant ceux que peut accomplir la police tributaire, qui est l'organe le plus efficace de vérification des impôts et des infractions financières.

4) La constituion de cet organe remonte au R.D. 18 janvier 1923 N. 95 (dans le journal officiel du 1er février 1923 N. 25) qui contenait des mesures pour le Corps de la „R. Guardia di Finanza" avec lequel fut fondé chez le Ministère des Finances un *Bureau technique pour la police tributaire*, dirigé par un officier général dudit Corps subordoné au Commendement Général du Corps (art. 2) et constitué dans la limite numérique d'un dixième de la force organique du Corps, un *contingent de militaires en habit bourgeois*, pour des services spéciaux d'investigation (art. 3).

Par le successif R.D. du 14 juin du même an 1923 N. 1281 (dans le journal off. du 14juin 1923 N. 153), modifié par le R.D. du 31 décembre 1923 N.3170 (dans le journal off. du 15 février 1924 N. 39) qui contient, lui aussi, des mesures pour la „R. Guardia" on précisa que, pour aider le Commandant général, il y a aussi un *Buraeu technique pour la police tributaire et investigatrice* (art. 3), et que *pour les services de polices tributaire et investigatrice*, l'administration avait la faculté d'entretenir, dans la limite numérique d'un dixième de la force organique du Corps et de la relative dépense, *un contingent de militaires* aptes à ce service spécial . . . (art. 29, 1er comma).

La discipline du fonctionnement de ce *Bureau technique* fut donnée avec le D.M. du 29 novembre 1923 N. 58605 (dans le journal Off. du 31 décembre 1923 N. 306) qui détermina aussi les *buts du* Bureau („combattre la fraude fiscale, l'évasion des tributs et en particulier la criminalité contrebandière organisée, par des études et des observations . . .") (art. 1), et qui disciplina la coordination et la coopération des différentes organes, l'union des forces de police, la préparation technique des organes de police (pour lesquels, avec le R.D. du 16 septembre 1923 N. 2114, publié dans le journ. off. du 13 octobre 1925 N. 241, on avait déjà fondé une „Ecole d'application pour la police tributaire", chez le Commandement Général du Corps des Douaniers), la législation fiscale (comme uniformité et homogénéité de direction), la simplification des contrôles de police préventive (art. 2).

Important est le R.D. du 3 janvier 1926 N. 63 (journ. off. du 6 septembre 1926 N. 267) modifié dans l'art. 1 du R.D. L. du 8 juillet 1937 N. 1290 (journ. off. du 6 août N. 181), par lequel furent déterminés les *pouvoirs* des officiers, des sous-officiers et des militaires de troupes appliqués au *service de police tributaire investigatrice* („pouvoirs et droits de recherche, accès, vision, contrôle, demandes d'information qui, par loi, sont du ressort des divers offices financiers, chargés de l'application des tributs directs et

inditrects . . ." avec la possibilité que des charges de contrôle soient faites du côté de la Direction Générale du Trèsor).

Le règlement pour le R.D. du 3 janvier 1926 N. 63 fut dicté par D.M. du 16 juillet 1926 (journ. Off. du 6 septembre 1926 N. 207), qui commença par établir le rapport entre l'action de la P.T.I. et celle qui est propre aux Bureaux des Finances et du Trèsor (art. 123), et qui, ensuite, disciplina l'action de la P.T.I. en rapport à l'application: a) des impôts directs (art.4 a 9): b) des taxes sur les affaires (art. 10 a 20); c) au service des privilèges exclusifs (art. 21 a 23)); d) aux services de la douane et des impôts directs (art. 26), et enfin aux services du Trésor (art. 25).

Le service de la P.T.I. fut réorganisé par le D.M. du 30 novembre 1928, qui perfectionna les tâches de la P.T.I. par rapport à la distribution du service parmi les groupes de brigades volantes et au service des commandements, chez lesquels on prévut outre la possession d'écritures pour l'orientement du service, la formation de fiches qui indiquent les personnages dangereuses pour la sûreté publique.

Les tâches des groupes et de chaque militaire furent confirmées par le R.D. du 6 novembre 1930 N. 1643 (jour.. off. 23 décembre 1930 N. 278), avec lequel on approuva le nouveau règlement de service pour le Corps de la R. Guardia[1]).

Mais la police tributaire eut son fondement essentiel dans la loi fondamentale pour la *répression des infractions des lois tributaires*, du 7 janvier 1929 N. 4 (journ. off. du 14 janvier 1929 N. 11), entrée en vigueur le 1er juillet 1931 (R.D. du 18 juin 1931 N. 806 dans le journ. off. du 30 juin 1931 N. 148) en même temps que les nouveaux codes pénal et de procédure criminelle. C'est le IIe Chap. (art. 30 à 35), qui s'occupe d'elle et qui confère aux officiers et aux agents de la police tributaire les pouvoirs communs aux officiers et aux agents de la police judiciaire, et en outre la *faculté* (aux officiers de la police tributaire), limitativement aux infractions de loi concernant les droits de douane, les privilèges exclusifs des sels et tabacs, les impôts de fabrication sur les spiriteaux, les sucres et les poudres pyriques et aux autres cas, dans lesquels soit expressément établi par les lois spéciales de *procéder à des visites domiciliaires*, en cas de nouvelle ou de soupçon fondé d'infractions des lois financières constituant délit (art. 33).

Pour s'assurer, en outre, de l'accomplissement des prescriptions imposées par les lois et les règlements en matière financière, les officiers et les agents de la police tributaire ont la faculté d'accéder à toute heure dans les locaux publics et dans tous les lieux destinés à l'administration industrielle ou commerciale et d'y exécuter des vérifications et des recherches (art. 35). L'interprétation relative aux limites dans lesquelles on peut faire ces recherches a été discordante, mais ce n'est pas le cas du nous occuper ici de ce problème.[2])

5) Une notice de la loi, dans laquelle est contenue cet article („capo"), et qui fut appelée par le Ministre proposant *préloi pénale financière* est plus intéressante. Par elle on voulut conduire à unité le système pénal substantif et processif en matière tributaire, auquel doivent être conformées et coordonnées les sanctions qui sont contenues dans les lois relatives à chaque tribut et la relative manière d'application; la même nomenclature

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[1]) Les notices sur cet argument sont tirées de: „Notion de droit pénal et processif financier" par Luigi Sechi 3e Ed. Roma Impremerie Nationale 1952.

[2]) Voir à ce propos le commentaire fait par moi à la susdite loi, sub art. 35 dans le III Ed. des „Répressions etc" Ed. Giuffré Milan, 1954. Voir aussi sent. Cass. III Sect. Pén. 3 mars 1953 ric. Steffenino, dans „Le Corti di Bari, Lecci e Potenza, 1953 II, 4, 69.

contenue dans ces lois est différente de l'une à l'autre, et on parle indifféremment de „multa" et de „amenda", de peine pécuniaire, de surtaxe, de sorte que toutes les fois le juge devait commencer par identifier la nature de l'infraction accomplie à cause des différentes conséquences qui pouvaient en dériver. La loi du 7 janvier 1929 N. 4, au contriare, se conforma au code pénal et commença par établir une précise division entre les infractions qui constituent un délit et ceux qui constituent seulement une illicite civile, en distinguant les premiers comme le code, en *délits* (punis avec „multa", ou avec réclusion) et infractions renommées *contraventions* (punies avec amende) et en punissant les autres cas avec une peine pécuniaire, constituant une obligation civile, et par conséquent différents de la peine pécunaire prévue dans le code pénal („multa" ou „ammenda"): un terme différent, sans doute, aurait été préférable, mais cette dénomination était employée ab antiquo. Dans le cas de délits ou de simplie illicite civile on peut ajouter la taxe supplémentaire, qui est à peu près l'intérêt des domages soufferts ou que le trésor public pouvait souffrir à cause de non-payement du tribut; elle-aussi, donc, a un caractère civil. La même loi prévoit l'hypothèse d'une clôture d'un exercice public ou d'un magasin ou d'un établissement commercial ou industriel, celle de pluralité d'infractions de la même règle, de concours de gens dans le délit, de responsabilité des charges d'administration, d'oblation, de conciliation administrative brève, etc., ainsi que l'ultra-activité des lois pénales financières, et les règles particulières pour l'abrogation ou modification (art. 12, 20).

Le titre II s'occupe des règles de prócédure, mais ce qu'il importe de mettre ici en évidence, pour la possibilité d'uue prompte application des sanctions et pénales et civiles, c'est la concession d'un pouvoir juridictionnel à l'Intendant des Finances — ce qui avait déjà fait son apparition avec le R.D. du 25 Marzo 1923 N. 796 — lequel pour les infractions constituant des infractions punissables par la seule amende, peut émettre un arrêté pénal de condamnation contre le trangsgresseur. A celui-ci on reconnaît, néanmoins, le droit de s'appeler devant le Tribunal qui est compétent aussi pour la connaissance de tous les autres délits tributaires (art. 21). Parallèlement au pouvoir juridictionnel, l'Intendant a un pouvoir de sanction de nature administrative, qu'il exerce pour les infractions constituant un illicite civil, à l'aide d'une ordonnance qui est attaquable par recours au Ministre des Finances, lorsque pour l'infraction commise on a établi une amende pécuniaire supérieure à L. 10.000, somme qui devrait être le maximum de l'amende. La décision du Ministre est définitive, mais elle n'empêche pas qu'on puisse s'adresser à l'autorité financière.

A cette loi de caractère général doivent être coordonnées toutes les lois tributaires, ce qui a été fait en grande partie, mais les exceptions ne sont pas rares, outre celles qui ont été prévues spécifiquement (art. 60) relatives aux tributs directs auxquels la police tributaire n'étend pas sa compétence, parce qu'ils sont réglés par les ordonnances et par les règles établis dans les lois et dans les règlements qui les regardent.

Pour ces derniers tributs c'est l'Administration qui exerce directement le contrôle sur l'activité tributaire des citoyens tandis que pour les autres tributs elle l'exerce au moyen de la police tributaire dont l'outillage se perfectionne de plus en plus, au moyen d'une technique plus complète des recherches, pour lesquelles ont une certaine importance les renseignements pris par des tiers même en cas d'affaires qui intéressent directement le tiers.

L'Etat a cherché à induire au paiement de quelques tributs, en déclarant la nullité des actes relatifs, comme par exemple avec le R.D.L. du 27 septembre 1941 N. 1015, par lequel, même pour des raisons différentes, on déclara la nullité des contrats de transfèrement des immeubles non soumis à la formalité de l'enregistrement dans le défait de 20 jours de la date de

leur stipulation: c'est seulement par la loi du 26 janvier 1952 N. 25, qu'on a éliminé une sanction si grave, à cause des remarquables conséquences qui en étaient dérivées dans les rapports entre les parties, surtout en conséquence de la dévalorisation de la monnaie.

6) Même un outillage efficient de constatation, de vigilance et de contrôle ne suffit pas à mettre fin à une lutte qui remonte aux temps anciens, et qu'on peut dire contemporaine à la naissance de n'importe quelle forme d'impôt: la position du fisc et du contribuable est antagoniste par instinct toutes les fois que l'exercice du pouvoir d'imposition est en fonction de vérifications dans lesquelles joue l'*évaluation* qui n'est pas liée à des éléments certains, tels qui sont, au contraire, les revenus fixés des employés surtout des corps publics, qui précisément pour cela paient l'impôt avec des aliquotes inférieures. Dans les autres cas le fisc se garantit contre la fraude par des aliquotes considérables, et le contribuable se défend contre les prétentions du fisc, qui lui semblent excessives, en cherchant à éviter le plus que possible l'impôt.

Dans cette lutte les aspects politiques ne manquent pas, ainsi qu'il est arrivé du temps de l'indépendance italienne, lorsque les italiens se privaient du plaisir de fumer pour ne pas fournir des encaissements au trésor public de l'Etat autrichienhongrois.

Nous sommes ainsi arrivés aux *causes de la fraude fiscale.*

J'ai lu l'étude vraiment claire insérée dans ce *Bulletin* par l'illustre M. le Docteur Camille ROSIER en 5 livraisons chacune desquelles est consacrée à un aspect de la fraude fiscale (aspects généraux et manifestation de la fraude fiscale, causes, mesures aptes à combattre la fraude, moyens pour la découvrir, sanctions). Cette étude est restée incomplète dans sa dernière, partie à cause de la mort prématurée et regrettée d'un si célèbre homme studieux de droit financier. Les *causes* individualisées par cet auteur (divisées en causes techniques et psychologiques) de la fraude fiscale sont communes à tous les pays, car la réaction contre le prélèvement d'une partie de ses propres richesses sous forme de revenu ou de capital est commune à tout le monde. A cette sous-chouche commune s'ajoutent les différentes causes qui agissent plus ou moins profondément, même en rapport avec la mentalité propre à chaque peuple. Le dénominateur toutefois peut être considéré égal, ainsi qu'on note dans les autres écrits, insérés dans le même *Bulletin,* du Docteur Camille SCAILTEUR — Directeur du Département des Finances à Bruxelles sur la Belgique, et du Directeur du *Bullëtin* même, M. le Prof. P. J. A. ADRIANI sur les Pays-Bas.

La loi prévoit les situations de fait et juridiques dans lesquelles l'impôt est dû; le contribuable qui ne veut pas le payer, ou celui qui veut payer de moins s'ingénia de modifier, de déguiser, de modérer ces situations. Il nait ainsi le contraste que l'Administration cherche à vaincre même à travers l'interprétation des contrats, pour en découvrir la véritable essence, les effets vraiment voulus par le contribuable lorsqu'il les effectue, en trouvant la matière imposable là où elle est enoncée insciemment, par nécessité d'un effet juridique voulu et en base à des éléments présomptifs [1]) ainsi que nous venons de dire.

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[1]) Voir à ce propos Sent. Cour d'Appel de Milan du 23 Avril 1953-Finanza-Terragine, en „Mon. Trib." 1953 à la page 219: „L'Administration financière est légitimée au contrôle d'office de l'impôt d'enregistrement d'un contrat, d'entreprise même verbal au moyens des éléments présomptifs (faits, actes, écrits) en sa possession, lesquelles ne changent pas à tous les effets de loi, sans l'épreuve contraire (pas testimoniale) qui pèse sur la partie intéressée". Voir pour référence Conseil d'Etat du 1er mars 1950 N. 105 en Giur. It. 1951, III, 24.

Mais ceux-ci sont les *effets* de la fraude que la loi élimine et non pas les *causes*, qui ne viennent pas étudiées proportionnement par l'Administration pour tâcher de les éviter, ou du moins pour obtenir qu'elles ne gravent excessivement dans l'évasion simple ou frauduleuse; les méthodes de la vérification, dont nous avons déjà parlé, ou l'infliction des sanctions ne suffisent pas à faire cesser la fraude; il ne suffit pas les calculs de ce qu'un nouveau tribut doit rendre, s'il n'a pas, lui-même, un fondement moral outre qu'économique; il ne suffit pas de bonnes-lois, si celles-ci sont suivies par des circulaires qui les contredisent et qui, parfois, à l'illusion d'une reduction d'aliquote, peuvent substituter une réalité bien plus dure, qui fait perdre la confiance dans l'Administration. Des impôts généraux à caractère national et à caractère local gravent plusieurs fois sur le même revenu, déjà frappé d'impôt direct, en sorte que le contribuable, qui a déjà commencé à mentir et à frauder une fois, parce qu'il ne peut éviter même partiellement un impôt, sans éviter l'autre ou les autres. Sans doute la hausse tourbillonnante des frais publics impose l'augmentation des entrées et des contributions; on demande tout à l'Etat: des charges publiques, des travaux pas toujours nécessaires pour soulager le chômage, assainissement de commerces d'utilité publique, interventions de toute espèce dictées même par des nécessités politiques si non électorales.

Le contribuable qui demande, veut toute chose, mais il ne se rend pas raison de l'importance des dépences, il entend parler de mauvaise administration de l'argent public, de gaspillage de celui-ci, de placement anti-économique et ainsi de suite, et il croit à tout ce que les propagandistes des diférents partis lui donnent à boire, surtout dans la période électorale, et il réagit dans la manière qui lui convient davantage en cherchant à payer le moins possible même pour ne pas donner à l'Etat l'argent, qui est ensuite mal administré. Mais surtout le contribuable réagit contre l'inégalité de l'application du tribut; le modeste ouvrier qui, une fois dépassée la partie comptée, paie des tributs modérés, sent que même ceux-là ne sont pas proportionnés à ceux que paie le médecen à 5, 10 mille L. la visite et qui gagne des millions par mois, ou l'heureux avocat aux comptes avides et *replets*, l'un et l'autre toujours modestement taxés à l'aide de toutes formes de recours. Nous ne nous arrêtons pas à parler des tributs qui ont la possibilité d'une application commune, comme par exemple l'impôt de famille, de caractère communai, dont l'application progressive met en doute même des forts patrimoniales. L'Etat tire à la fois des mêmes sources par la complémentiare et grave sur le patrimoine par l'impôt patrimonial même si limité dans le temps, et sur chaque revenu par les impôts directs et indirects. Sans doute même l'imposition des tributs, et dans le choix et dans la mesure ne peut pas répondre à un jugement politique, parce que la politique financière est, elle aussi, une politique de gouvernement mais celle-là est une des causes de la fraude, qui, ainsi qu'on a déjà dit, se proportionne et à la vérification des impôts, pour les violer, et à toute cause d'appauvrissement de ses propres biens.

En Italie on eut un large modèle de la fraude légale, lorsqu'en 1938 on enleva aux juifs le droit de propriété. Par cela il surgit les négoces juridiques les plus inattendus par le passage fictif du droit même à une personne qui n'a pas été frappé des lois raciales, négoces et actes juridiques que j'ai en déjà l'occasion d'examiner, lorsqu'au Gouvernement italien, alors résident à Brindisi, et puis à Salerno on posa le problème de la réintégration des juifs dans les droits leur enlevés auparavant, problème dont s'est occupé successivement la jurisprudence quand on a du substituer le réel au fictif. Aussi récemment en occasion de la loi de la désincorporation de la propriété foncière rurale ne sont pas manqués des exemples ou des tentatives de fraude légale, pour éviter le prélèvement de quote-part de propriété.

Il arrive un peu à cause du caractère politique de certaines lois, un peu à cause de l'inégalité tributaire, que la loi VANONI cherche à réduire au

minimum, si non pas à éliminer du tout, que la morale fiscale moyenne est d'un niveau très bas, et c'est la première cause de la fraude fiscale. Au dehors de quelques faits, qui sont désormais considérés par la conscience publique comme des faits reprochables, tels que les différentes formes de contrebande de marchandises de l'étranger, jugés depuis quelque temps, comme des délits punis, le plus souvent, avec la peine corporelle, les autres fraudes ne sont pas blâmées par l'opinion publique, et l'on considère un fin individu celui qui les accomplit, et un ingénu celui qui ne sait pas les faire, même parce qu'on dit que celui qui est loyal n'est pas cru; et on rappelle à ce propos le cas des premières vérifications accomplies par les fonctionnaires italiens dans l'Italie rédimée par la guerre de 1915-1918, où l'on montra de la non-crédulité à propos des déclarations fiscales faites par les italiens libérés, habitués à un système et à une mentalité différents. Il est, au contraire, juste de reconnaître que, par les moyens dont dispose ajourd'hui l'Administration, en général la constatation correspond à la réalité, même si celle-ci ne s'accorde pas à l'intérêt du contribuable, vers les désidérata desquels l'Administration va à les rencontre, avec les concordats tributaires, dont la nature juridique est très discuté, et dont ce n'est pas le cas de s'occuper ici.

Même nos criminalistes les plus estimés se sont occupés du bas niveau de la morale tributaire et de la nécessité de l'élever. MANZINI, par exemple (Tratt. Dir. pen. I Ed. Vol. I, page 116) en s'occupant de la nécessité de la réforme du droit financier et de tout le système tributaire italien pour le rendre juste et moral, écrit:

> „Du point de vue éthique, il est désidérable que la croissante éducation „nationale morale et politique du peuple, diminuant les fraudes, induise „l'Etat à réduire l'énormité des sanctions financières, puisque, la pré-„supposant, il la sollicite.
>
> „Du point de vue administrative, il serait bien de diminuer le poid „et les ennuis des devoirs financiers des citoyens, pour faciliter l'abandon „de la fraude et la réconciliation éthique avec l'activité fiscale de l'Etat.
>
> „Du point de vue éthique-législative, il est souhaitable qu'avec l'amé-„lioriation du niveau de la culture de notre administration publique cesse „l'empirisme actuel, déréglé et remisible, et que pour les délits de finance „soient accueillis toutes les règles du droit pénal commun. Il est absurde „en effet, de soumettre les infractions les moins graves à un régime plus „sévère et moins garanti que les plus graves."

Mais pour améliorer cette morale fiscale ne suffisent pas les invocations des gens d'étude, si, ainsi qu'on vient de dire, le citoyen n'a pas la précise sensation que chacun est taxé proportionnellement aux revenus dont il jouit, et que l'argent public n'est pas dissipé. Beaucoup de gens, sans doute, ne se rendent pas compte, par exemple, de ce qui coûte le chômage à l'Etat et aux Corps publics les moins importants, et ceux qui protestent le plus sont les chômeurs de profession, et ceux qui trouvent une plus grande convenance économique dans l'état de désoccupation plutôt que dans le travail peu rétribué, et qui préférent les traveaux à régie ou l'oeuvre d'aide-maçon, faite plus ou moins à regret en chantiers créés de l'Etat, au lieu de se dédier à l'étude d'un art ou d'un métier. En Italie la place de la désoccupation, qui absorbe tant d'argent public, que l'Etat puise au moyen des taxes, les contributions et les impôts de plus en plus onéreux, est surtout relative à celle des journaliers et des manoueuvres, tandis que le chômage des travailleurs qualifiés, dont souvent la recherche est vaine, est très modeste. Ainsi que dans les libres professions, que trop, on perd toujours de plus en plus l'habitude de l'action d'apprendre chez les grandes études qui, auparavant, étaient des écoles de savoir outre que de pratique, par l'avidité et un peu par le besoin du gain immédiat, de même dans la classe

ouvrière on néglige l'apprentissage pour réaliser au plus tôt le jour ouvrable, bien que le système des secours familiers donne au chef de la maison une compensation en faveur des enfants qui ont moins de quatorze ans. C'est un problème délicat, et ce n'est pas le cas de l'approfondir ici, puisqu'il nous a suffi de l'indiquer comme une des causes de grosses dépenses pour l'Etat et de l'imposition de tributs pour les satisfaire.

Une autre *cause* suivant l'éthique appréciable de la fraude fiscale est le puisement sans discernement à l'emploi des sommes recouvrées, même quand cela est possible et, je dirais de plus, c'est un devoir, par exemple, récemment les taxes de timbre en matière judiciaire ont été en moyenne à peu près quintuplées. C'est un dommage pour la profession du palais qui se ressent du coût excessif des procès civils, outre que pour les parties, qui ne sont pas toujours en état d'afronter les graves frais que ces procès entraînent et qui parfois sont obligées à subir la violance de la partie adverse, ou à subir un arrêt de prémier grade, qui peut ne pas être juridiquement exact, puisqu'elles n'ont pas les moyens pour tenter les ultérieures voies légales. Or donc de cette considérable augmentation tributaire nulle partie ne résulte destinée, jusqu'à présent, au profit des édifices, du service ou du personne judiciaire s'il est vrai que le budget de l'an 1953-54 du Ministère de la justice a seulement une augmentation de quelques milliards en comparaison de celui de l'an 1952-53. Et cela, tandis que pour hausser si démesurément les taxes de timbre — plus justement appelées maintenant impôts de timbre parce qu'elles ne sont plus la récompense d'un service que l'Etat nous rende, mais un moyen tributaire quelconque pour augmenter les revenus de l'Etat pour les services généraux — on n'a pas voulu imposer une taxe spéciale sur la requête de toutes mesures judiciaires, dont le profit devait et devrait être destiné à proportion du travail accompli par le personnel judiciaire de n'importe quel grade et rôle.

La fraude fiscale est sans doute bien difficile en matière d'impôt sur le timbre par le système même du tribut, mais cela n'empêche pas que le principe soit exact.

C'est par le système d'imposition que le législateur cherche à se défendre contre la fraude fiscale, ou bien par des règles faites exprès, comme celle de l'art. 48 de la loi de l'enregistrement, laquelle vise à endre inopérantes les fraudes fiscales qui au moyen des actes divisifs peuvent être perpétrées facilement, par l'assignation de biens de différente espèce, outre que par la défense à juges et fonctionnaires de l'ordre judiciaire, notaires et fonctionnaires autorisés à rédiger des actes et ainsi de suite, de prendre en considération des documents, qui ne sont pas en règle avec les lois tributaires et de décider sur eux, avec comminatoires de sanctions; mais pas tout se fait jour, et les fraudes se perpètrent surtout lorsque l'intérêt à les perpétrer est économiquement important, et les diverses parties sont d'accord dans la réalisation.

Un sytème proportionné de vigilance constante, générale, avisée, est le plus apte à inviter les fraudes fiscales, surtout pour des impôts particuliers, comme l'impôt général sur les revenus, mais avant que la police tributaire dépêche sa charge formelle et extrinsique grâce à: accès, contrôles, recherches, séquestre de livres et de documents (quand cela est concédé), perquisitions etc., il faut qu'elle se mimétise à son tour, avec les probables fraudeurs pour en pouvoir cueillir plus facilement les caractéristiques, les tendences avant qu'on effectue la fraude et pour faire, si possible, une *oeuvre éducative;* que cel ne semble pas une raillerie c'est justement Rosier qui pose cet élément „Etre Educative" dans la lutte contre la fraude tout en ne se cachant pas que l'affirmation „paraît certaine". Lorsqu'on demande et on vante des frais publics, on néglige d'attirer l'attention proportionnée sur le fait qu'ils ne peuvent être accomplis sans les revenus correspondants et sur les sacrifices qu'ils exigent des contribuables. L'art. 81 de la Constitu-

tion de la République italienne prévoit que nulle dépense ne doit être enregistrée dans le budget de l'Etat, sans pourvoir en même temps à la relative couverture. On ne puet pas dire que cela n'arrive pas, mais ce qui manque c'est la propagande proportionnée sur les moyens de payement et sur le sacrifice tributaire qu'imposent certaines dépenses; ce qui est intéressant même parce que cela porterait à réfléchir sur les dépenses même, sur leur utilité en rapport aux sources tributaires auxquelles il faut recourir, et ainsi de suite.

En tout cas le poids global tributaire des citoyens et celui de chaque tribut ne doit jamais dépasser la limite supportable par le contribuable. Cette limite, sans doute, n'est pas uniforme, parce qu'elle est en fonction de tant d'éléments subjectifs et objectifs, mais on la calcule de moins en rapport au niveau moyen, dont on ne doit pas dépasser un point, après lequel le contribuable normal trouve plus avantageux le risque des dangers de l'évasion, que l'accomplissement de son propre devoir.

Il n'est pas vrai que la *conscience tributaire* manque du tout; tout citoyen sait qu'il doit payer les impôts, lorsque ceux-ci sont onérés à des éléments certains il ne dispute pas, et il paie, sûr que tous les autres qui se trouvent dans sa condition, paieront dans la même mesure et proportion; par ex., l'impôt de consommation sur les matériaux pour construction est en rapport aux mêtres carrés et aux mètres cubes. La volonté de frauder se fait un chemin quand la vérication est à la merci de l'évaluation des bureaux des tributs, auxquels les contribuables opposent leurs propres expertises. Ainsi qu'on vient de dire, cela devient plus hasselant lorsque c'est le même objet tributaire qui, comme matériel d'imposition, est pris en considération par des impôts, dont la vérification est faite par des bureaux divers; voilà pourquoi le même revenu est evalué x en comparaison d'un tribut, y en comparaison d'un autre, et z en comparaison d'un troisième; il est evident que cette différence d'évaluation n'est pas faite pour convaincre le contribuable de la justice tributaire. Logiquement, auparavant, dans notre système tributaire, l'impôt de *famille* était perçu en rapport à la rente constatée par l'*impôt complémentaire;* ensuite l'impôt de famille fut aboli pour éviter la double contribution sur le même revenu, ou mieux sur le même amoncellement de rentes, bien que l'une destinée à la commune et l'autre a l'Etat mais il s'agit d'un brève période parce que bientôt le susdit impòt reparut avec une modification; maintenant sa constatation est du tout indépendant de celle de l'impôt complémentaire. Tout cela porte à une double . . . lutte du contribuable avec le contrôleur communal et avec le contrôleur de l'Etat, et avec la possibilité de deux différents développements de recours, et avec des constations définitives diverses; qui aura frappé juste? et à qui le contribuable aura-t-il fraudé de plus?

„L'italien — dit GUICCIARDINI — donne plus volontiers sa vie que son argent"; mais on peut dire que ce soit . . . une loi internationale, même si suivie en mesure diverse.

Il y a une longue voie à parcourir dans chaque Etat pour que la fraude fiscale soit, sinon éliminée du tout, du moins réduite dans des limites raisonnables; à cela peut contribuer la presse, surtout la presse journalière qui en rapportant des mesures fiscales, doit en indiquer la fondamentale justice, le devoir, je dirais presque l'intérêt d'y obtempérer de la part des citoyens, qui y sont obligés aux termes de la loi. Les règles mêmes doivent être claires, simples, d'interprétation aisée, pas nécessiteuse d'instructions, de circulaires, de „normali", avec lesquelles il semble qu'on résolve des logarithmes pour l'intelligences des mêmes bureaux des finances.

Enfin on ne doit pas considérer comme un titre de mérite pour le fonctionnaire le fait de savoir . . . plumer la poule; un peu de compréhension des bureaux envers les contribuables et aller à la concentre de mille différentes situations de ceux-ci — sans vexations inquisitoriales, qui le plus souvent

tourmentent et exagèrent les petits contribuables et aiguisent l'intelligence pour accomplir des fraudes importantes — pourront valoir à gagner la confiance des contribuables, à les rendre plus prompts à dire la vérité sans crainte d'en être endommagés, trop endommagés!

La sanction pénale de la détention, prévue dans un très récent dessein de loi du gouvernement italien, déjà repoussée à l'occasion de la réforme tributaire „VANONI", ne nous semble pas toujours le plus proportionnée pour vaincre la fraude fiscale: comme d'habitude elle entimiderait les petits contribuables, qui continueraient à etre malmenés par les impôts mais non pas les gros contribuables qui auraient toujours trouver les mailles pour éviter les impôts et la prison.

Israel: a special income tax issue of the Business Diary.

It has indeed been a good idea of the editor of the Business Diary (Israel) to publish a special income tax issue annually. The number of Aug. 19 1954 (vol. XIV) No. 254 gives in a very comprehensive form a great number of very important matters concerning the income tax in Israel.

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA — *Period from 1st April 1954 till 1st July 1954.*

Income tax. Bundesgesetz vom 9. April 1954 über Änderungen auf dem Gebiete der direkten Steuer (Bundesgesetzblatt = BGB 1954, p. 504): alteration in the income tax, u.a. concerning measures for the encouragement of industrialisation; an exemption of income tax, costs of occupation contribution and "Wohnhaus Wiederaufbau" contribution, if the total amount to be paid does not exceed 3120 sh.; new lump sum amounts for deductions for wage-earners.

Customs. Bundesgesetz vom 9.April 1954, über Änderungen des Zolltarifs (2.Novelle zum Zolltarifgesetz) (BGB — 1954 p. 455). This alteration is a forerunner of the general reform of the system of customs duties.

Salestax

Verordnung des Bundesministeriums für Finanzen vom 25. Mai 1954, womit die Liste der von der Ausfuhrvergütung ausgeschlossenen Gegenstände (Ausschlussliste) abgeändert wird (B.G.B. 1954, p. 729).

BELGIQUE — *Période des 1er avril au 1er septembre* 1954.

Impôts sur les revenus. Arrêté royal du 18 mars 1954, relatif aux sommes versées à valoir sur la taxe professionnelle de l'exercise 1952. (Moniteur belge du 28 mars 1954).

Loi du 1 juillet 1954, apportant des aménagements fiscaux destinés à favoriser les investissements productifs (Moniteur belge du 4 juillet 1954). Les bénéfices imposables des exploitations industrielles ou artisonales sont immunisées des impôts cédulaires sur les revenus et de la contribution nationale de crise à concurrence d'un montant égal à 30% de la valeur amortisable des investissements nouveaux en matériel et outillage productifs, effectués en Belgique dans un délai de deux ans prenant cours au 1er juillet 1954.

Taxes assimilées au timbres. Arrêté royal du 1er avril 1954 modifiant le Code et le règlement général sur les taxes assimilées au timbre. (Moniteur belge du 7 avril 1954).

Par quelques Arrêtés Royaux (du 24, 26 et 27 août, Moniteur Belge du 29 août) les taxes assimilées au timbre ont été modifiées.

Arrêté royal du 17 juin 1954 (Moniteur belge du 28 juin 1954) modifiant l'article 312 du règlement général. Par cet arrêté la taxe forfaitaire est réduit à 3%, pour le café pendant la période du 20 juin 1954 au 20 décembre 1954.

Matières diverses. Loi du 12 mars 1954, modifiant, au profit des provinces et des commerces, la loi du 27 décembre 1938 portant augmentation de la taxe sur les jeux et paris, en ce qui concerne les sommes engagées à l'occasion de pronostics sur matches de football. (Moniteur belge du 3 avril 1954).

L'Arrêté Royal du 27 août porte certaines modifications dans la liste des articles qui sont frappés de la taxe de luxe.

FRANCE *Période du 1er avril 1954 au 15 août 1954.*

Impôts directs. Loi du 10 avril 1954 portant Réforme fiscale (Journal Officiel = J.O. 11-4-'54 3482): 1) Allègement de la surtaxe progressive. 2) Majoration du taux de l'impôt sur les sociétés de 34 à 30%.

Tableaux des éléments retenus pour le calcul des bénéfices agricoles forfaitaires imposables au titre de l'année 1953. (J.O. 22-4-'54).

Chiffre d'affaires. Loi du 10 avril 1954 portant réforme fiscale (J.O. 11-4-'54, 3482). Institution de la taxe sur la valeur ajoutée. Voir pour les détails p. 163.

Décret du 26 juin 1954 portant règlement d'administration publique pour l'application de diverses dispositions de la loi du 10 avril 1954 relative à la réforme fiscale (J.O. 27-6-'54).

Décret du 26 juin 1954 portant règlement d'administration publique pour l'application de l'article 6 (§1a) de la loi du 10 avril 1954 et définitivement la notion de dépendance des entreprises (J.O. 27-6-'54).

Décret du 26 juin 1954 fixant les modalités d'application de l'article 15 de la loi du 10 avril 1954 instituant une taxe spéciale unique de 2 p. 100 sur les engrais (J.O. 27-6-'54).

Décret du 26 juin 1954 relatif à l'application des taxes sur le chiffre d'affaires aux marchés de travaux immobiliers en cours au 1er juillet 1954 (J.O. 27-6-'54).

Décret du 26 juin 1954 fixant les modalités de payement de la taxe sur la valeur ajoutée par les entrepreneurs de travaux immobiliers J.O. 27-6-'54).

Décret du 29 juin 1954 fixant les modalités d'application du régime des déductions institué par l'article 8 (§1,2°) de la loi du 10 avril 1954 (J.O. 30-6-'54).

Décret du 29 juin 1954 fixant les catégories de biens qui n'ouvrent pas droit à la déduction prévue à l'article 8 de la loi du 10 avril 1954 J.O. 30-6-'54).

Décret du 29 juin 1954 fixant les conditions d'application des dispositions de l'article 3 de la loi du 10 avril 1954 relatives à l'abattement des trois quarts du bénéfice brut pour l'assiette de la taxe sur la valeur ajoutée applicable à certaines ventes au détail (J.O. 30-6-'54).

Décret du 29 juin 1954 portant aménagement du régime des taxes sur le chiffre d'affaires applicable aux produits alimentaires de large consommation et aux conserves alimentaires de consommation courante (J.O. 30-6-'54).

Les neufs décrets susmentionnés sont des décrets d'application de la loi du 10-4'54 portant réforme fiscale. La plupart des dispositions concerne la taxe sur la valeur ajoutée.

Réduction forfaitaire applicable en matière de taxe sur la valeur ajoutée aux conserves alimentaires de consommation courante. Arrêté du 1er juillet 1954 (J.O. 2-7-'54).

Décret du 13 juillet 1954 relatif à l'application, en matière de taxes sur le chiffres d'affaires et de taxes assimilées, des dispositions de l'article 23 de la loi du 7 février 1953. (J.O. 18-7-'54).

Le décret donne des règles sur le recouvrement des taxes sur le chiffre d'affaires exigibles des personnes, qui changent fréquemment de lieu de séjour.

Dispositions transitoires pour l'application de l'article 22 de la loi du 10 avril 1954 portant réforme fiscale. (J.O. 10-8-'54).

Ce décret concerne la taxe sur la valeur ajoutée sur les conserves alimentaires de large consommation.

Décret du 11 mai 1954 relatif à l'application de l'article 22 de la loi du

10 avril 1954 portant réforme fiscale en ce qui concerne la baisse du matériel agricole (J.O. 21-5-'54, 4763).

Droit d'enregistrement et du timbre. Loi du 10 avril portant réforme fiscale (J.O. 11-4-'54, 3482). Mesures tendant à favoriser la construction de logement.

Décret du 30-4-'54 modifiant le décret du 9 mai 1950 relatif au timbre des contrats de transports publics routiers de voyageurs et de marchandises (J.O. 1-5-'54, 4187).

Douanes. Décret du 16 avril 1954 portant suspension provisoire du droit de douane d'exportation applicable aux ferrailles (J.O. 17-4-'54, nr 3737).

Loi du 15 avril 1954 portant fixation du tarif des droits de douane d'importation (J.O. 22-4-'54, 3840).

Décret du 30 juillet 1954 portant modification du tarif des droits de douane d'importation. (J.O. 31-7-'54).

Ces modifications concernent les alliages de métaux.

Décret du 13 août 1954 portant modification du tarif des droits de douane d'importations, suspension ou retablissement des droits de douane d'importation applicables à certains produits (J.O. 15-8-'54).

Ces produits sont entre autres des appareils et machines à trises, à bonneterie, à tulles etc.

Décret du 24 avril 1954 portant modifications du tarif des douanes d'importation ainsi que réduction ou rétablissement des droits de douane d'importation applicable à certains produits (J.O. 25-4-'54, 4014).

Droit fiscal international. Décret du 17 mai 1954 exonérant des impôts sur les revenus, par réciprocité, les entreprises colombiennes de transport aérien (J.O. 23-5-'54, 4815).

Matières diverses. Décret du 17 avril 1954 portant institution d'une taxe spéciale temporaire de compensation (J.O. 18-4-'54, 3794).

La taxe est instituée en rapport avec la libération des importations en provenance des pays de l'O.E.C.E. Elle a pour but d'atténuer le choc que pourraient créer les disparités entre les prix français et les prix étrangers.

Complément et modification à la liste des produits soumis à la taxe spéciale temporaire de compensation. (J.O. 25-4-'54, 4015).

Modification des arrêtés des 17 et 24 avril 1954 fixant les modalités de perception et les conditions d'application de la taxe spéciale temporaire de compensation. Arrêté du 31 juillet 1954 (J.O. 1-8-'54).

Modification du tableau des produits soumis à la taxe.

Modification du tarif des droits à percevoir dans les chancelleries diplomatiques et consulaires et au ministère des affaires étrangères (Arrêté du 22-5-'54, J.O. 2-6-'54, 5125).

Remboursement des charges fiscales et sociales aux entreprises exportatrices. Arrêté du 16-6-'54 J.O. 17-6-'54).

Modification des listes de marchandises.

Remboursement des charges sociales et fiscales aux entreprises exportatrices. Arrêté du 31 juillet 1954 (J.O. 1-8-'54).

Modification des listes de marchandises.

Modification de l'article 197 de l'annexe IV au Code Général des Impôts. Arrêté du 6 juillet 1954 (J.O. 7-7-'54).

Une modification de la taxe spéciale sur les conventions d'assurances.

Décret du 20 juillet 1954 portant addition à l'état G annexé à la loi du 31 décembre 1953 (tableau des taxes parafiscales dont la perception est autorisée en 1954 (J.O. 28-7-'54).

Plusieures taxes sont ajoutées à la liste des taxes parafiscales.

Perception de la taxe sur les produits forestiers instituée par l'article 34 de la loi du 6 février 1953 et de la taxe sur les mêmes produits destinée au budget annexe des prestations familiales agricoles (J.O. 10-8-'54).

Cours moyen de certaines eaux de vie pendant le deuxième trimestre 1954 et nouveaux taux de la redevance prévue à l'article 384 du Code Générale des impôts. Arrêté du 11 août 1954 (J.O. 13-8-'54).

PAYS BAS *Période du 1er avril au 1er septembre* 1954.

Arrêté ministériel du 9 juin 1954 exécutant la convention entre le Pays Bas et la Suède tendant à éviter la double imposition en matière de l'impôt sur le revenu et sur la fortune.

L'Arrêté Ministériel du 5 août (Nederlandse Staatscourant du 9 août) modifie l'arrêté relatif aux sociétés d'investissement, comme suit:

1) La possibilité d'ajouter les bénéfices provenant de la fluctuations des cours est limitée.

2) Les sociétés d'investissement privées seront, sous quelques conditions exemptées de l'impôt sur les sociétés pour les dividendes provenant de leur participations dans d'autres sociétés.

Un Arrêté Ministériel modifie le septième decrét d'application en limitant la possibilité d'ajouter des bénéfices à une provision spéciale en faveur des sociétés d'assurance.

WESTERN GERMANY *Period from 1st April* 1954 *till 15th August* 1954.

General. Verordnung zur Änderung der Durchführungsverordnung zum Bewertungsgesetz vom 10.April (Bundesgesetzblatt = BGB 1954 p. 83); technical alterations concerning valuation of valuable instruments.

Gesetz über den Erlass von Strafen und Geldbussen und die Niederschlagung von Strafverfahren und Bussgeldverfahren vom 17.Juli 1954.

The much disputed amnesty act has become a reality. No amnesty is given for the Lastenausgleichabgaben.

Lastenausgleich. (equalization of Burdens Law). Siebente Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz vom 14. April 1954 (BGB 1954, p. 109). According to §293 (3) L.A.G. indemnities for domestic goods are not given, when the income on property of the distressed person has reached amounts fined by law. This rule indicates how income and property must be calculated.

Achte Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichsgesetz vom 28. Juni 1954 (B.G.B. 1954 p. 151).

These regulations contain the most important rules and special unsolved questions of the Kreditgewinnabgabe.

Zehnte Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichsgesetz vom 28. Juni 1954 (B.G.B. 1954, p. 161).

In 67 paragraphs these regulations deal with the most important rules for the return of property tax. More than half of the regulations deal with questions connected with the exemptions of §18 L.A.G.

Verordnung über die Behandlung von Grundbesitz in Berlin (West) bei den Lastenausgleichsabgaben vom 28. Juni 1954 (B.G.B. 1954, p. 158).

In certain cases a low value may be assumed.

Income tax. Gesetz zur Änderung des Einkommensteuergesetzes vom 24. April 1954 (BGB 1954, p. 11); technical alteration in the deduction of 'Sonderausgaben' (special expenses) in the Lohnsteuer (wage-tax). Verordnung zur Änderung und Ergänzung der Verordnung zur Durchführung des Körperschaftsteuergesetzes vom 13. April 1954 (BGB 1952-1-95). All kinds of slight alterations.

Property tax. Verordnung zur Änderung der Vermögensteuer. Durchführungsverordnung vom 10. Juni 1954 (BGB 1954 — p. 136). Some alterations have been brought about in the conditions which pension funds,

widow funds and so on have to satisfy to enjoy exemption, while besides an alteration has been brought about in the size of the property under which no declaration need be made.

Sales Tax

Viertes Gesetz zur Änderung des Umsatzsteuergesetzes vom 21. Juli 1954 (B.G.B. 1954, p. 211).

The Federal Government can admit certain processes in the wholesale phase, when this is necessary in order to prevent great disadvantages in the branch of trade. In these cases the sales tax tariff is not 4% (producers tariff), but 1% (wholesale tariff).

Customs. Dreizehnte Verordnung über Zollsatzänderungen vom 25. Mai 1954 (BGB 1954, p. 127) und Vierzehnte Verordnung, über Zollsatzänderungen (BGB 1952 — p. 129).

Sechste Verordnung über Zolltarifänderungen aus Anlass der Errichtung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl vom 31. Juli 1954 (B.G.B. 1954, p. 220).

France.

La loi du 10 avril 1954, portant réforme fiscale, donne les modifications suivantes:

I. LA TAXE SUR LA VALEUR AJOUTÉE.

La taxe à la production est supprimée et il est institué une taxe sur la valeur ajoutée, dont nous avons maintes fois expliqué, le fonctionnement. La nouvelle taxe sera perçue au Taux Normal, de 16,85 % pour les affaires actuellement soumises à la taxe à la production au taux de 15,35 % ainsi que pour les entrepreneurs de travaux.

Le taux de 16,85 % est applicable à compter du 1er juillet 1954. Les assujettis à la taxe sur la valeur ajoutée sont autorisés à déduire du montant de la taxe afférente à leurs opérations le montant de la taxe sur la valeur ajoutée déjà grevé:

— les biens d'investissements acquis ou importés:

— les matières premières et produits entrés complètement ou pour partie de leurs éléments dans la composition d'objets (ou de produits) passibles de la taxe.

— les matières ne constituant pas un outillage qui, normalement et sans entrer dans le produit fini, sont détruites ou perdent leurs qualités spécifiques au cours d'une seule opération de fabrication;

— les objets ou produits vendus à des producteurs ou à l'exportation.

Les prestations de services.

La taxe sur les prestations de services est maintenue au taux de 5,80 %, mais elle pourra être déduite, à partir du 1er janvier 1955, par les assujettis à la taxe sur la valeur ajoutée pour les services entrant dans la fabrication. Simultanément, le taux de la taxe sur la valeur ajoutée sera majoré d'un demi-point.

Le texte adopté apporte une modification à la définition des affaires „faites en France" en ce qui concerne les prestations de services. Ces affaires étaient jusqu'à présent soumises à l'impôt du seul fait que le contrat était signé en France, quel que soit le lieu où la prestation était utilisée. Désormais, l'impôt ne sera dû que si le service est utilisé (ou l'objet loué) ou exploité en France.

La deuxième étappe.

Avant le 31 décembre 1954, le gouvernement devra déposer un projet de loi tendant à:

— supprimer la taxe de transaction;

— étendre aux grossistes la taxe sur la valeur ajoutée:

— fixer définitivement les modalités d'application de la taxe sur la valeur ajoutée aux produits de la pêche et aux produits agricoles destinés à l'alimentation humaine.

En faveur des maisons à succursales.

Le texte voté apporte un certain allégement en ce qui concerne l'imposition des affaires réalisées par les maisons mères et filiales, en ce sens que, lorsque la maison mère vendra concurremment à sa filiale et à des tiers et au même prix, la disposition prévoyant l'imposition sur le prix de vente par la filiale ne jouera plus.

II. ALLÉGEMENT DE LA SURTAXE PROGRESSIVE.

Les revenus des salariés ne seront retenus, pour le calcul de la surtaxe progressive, que pour 90% de leur montant net.

C'est là une déduction de 10% qui vient s'ajouter à la déduction pour frais professionnels.

La même mesure est applicable aux pensions et rentes viagères (90% de leur montant) qui ne bénéficiaient jusqu'à présent d'aucune déduction.

Les primes d'assurances sur la vie pouvaient être déduites jusqu'à un plafond de 40.000 francs augmenté de 10.000 francs par enfant à charge. Ces limites sont portées à 200.000 francs et 40.000 francs par enfant.

L'abattement à la base est porté de 180.000 francs à 220.000 francs par part.

Les sommes appartenant à la catégorie des bénéfices des professions non commerciales (à l'exclusion des charges et offices) et qui donnent lieu à une déclaration obligatoire seront soumises à un versement forfaitaire de 5% à la charge du bénéficiaire.

Ces sommes sont exonérées de la taxe proportionnelle, la surtaxe progressive continuant à être calculées en ce qui touche la part „revenus de la profession" sur le bénéfice net.

Les contribuables auront la faculté d'opter entre les deux régimes lors de la déclaration relative à la taxe proportionnelle.

III. IMPOT SUR LES SOCIÉTÉS.

La taxe proportionnelle perçue sur les bénéfices comptables des sociétés au titre de l'impôt sur les revenus des personnes morales était de 34%. Le taux est maintenant porté à 36%. La commission des Finances avait porté son taux à 36,5%. L'assemblée s'est rangée à l'avis du gouvernement en adoptant le taux de 36%.

(Source: La Vie Française, 2 Avril 1954, page 5)

India.

The Finance Bill 1954.

On February 27th 1954 the minister of Finance introduced the Finance Bill in the House of the People, on which occasion various modifications of the tax laws were proposed.

Because the tariffs for income tax and supertax remain unaltered, proposals are made in the Bill to extend for a 2 years' period some concessions which were to expire on March 31st 1954, this in connection with the report of the Taxation Enquiry Commission still pending.

The following concessions are concerned:

(1) The exemption of foreign profits chargeable on remittance only in the case of a resident person.

(2) the exemption for two years of income from property built before April 1956.

(3) the initial depreciation allowance at the rate of 15% in the case of buildings completed before April 1956.

(4) exemption available under sec 15 C if production is commenced before April 1st 1956.

An exemption has also been proposed in respect of interest payable outside India to a non-resident on a loan issued for public subscription outside India. This exemption is already given in case of executive orders according to notes on clauses attached to the Bill.

Another modification of the Estate Duty Act has been introduced with retroactive effect from October 15th 1953, in two respects:

(1) To determine unambiguously that an estate duty exists on the estate, which passes including the estate which is deemed to pass on a person's death, particularly as a number of clauses refer also to property deemed to pass on death.

(2) The second modification contains a limitation of the exemption given in clauses (f) and (g) of sec. 33 of the Act. At present no Estate Duty is due, according to the Estate Duty Act, on (1) moneys not exceeding Rs 50,000/— payable under one or more policies of insurance effected by the deceased on his life for the purpose of paying estate duty or assigned to the Government for such purpose and (2) money not exceeding Rs 50,000/— deposited with the Government for the purpose of paying estate duty.

By means of this modification it has been made clear that the amount of (1) and (2) together will not exceed Rs 50,000/—.

Finally import duty and excise duty have been modified.

The great tax law modifications must wait until the report of the Taxation Enquiry Commission has been published.

Switserland — Great Britain

At the end of 1953 negotiations begun in London for an agreement on income tax and estate duties beween the two countries. It is expected that the agreement on income tax will be signed during 1954.

Ceylon

Introducing his 1954-1955 Budget, Mr. M. D. H. Jayawardene, the Finance Minister, announced that within the coming year he intended to appoint a commission to review the whole tax system in Ceylon. The commission's findings would probably lead to a reform of the system. The tax changes contained in the Budget proposals are of a minor nature.

(Source: Taxation Vo. LIII No. 1397)

U.S.A.

'54 Revenue Code nearer to enactment.

After the Senate Finance Committee completed its section-by-section consideration of the House-passed Revenue Revision Bill, H.R. 8300, its changes were turned over to the drafting force to put the Committee decisions into legislative language. The Committee then met to review the draft language. The Bill was reported to the Senate for debate on June 18.

When will there be a new Code? The enactment date seems to be as much of a guess as ever. Some say "about July 15". Others say "closer to August". The consensus of opinion, however, is that there will be a new Code enacted this year.

(Source: Code and Regulations, Federal Taxes, Number 71, June 22, 1954).

Great Britain

The Finance Bill

The Finance Bill has now passed its third reading. The Bill, as amended

in Committee, on recommittal and on report, has been published. Following upon the severe criticisms of the possibilities of abuse of the new investment allowances, the provisions of the Second Schedule have been tightened up. A new clause (25) exempts from income tax the emoluments of employees of the International Wheat Council who are not citizens of the United Kingdom and colonies. Another new clause (32) extends the exemption from estate duty for small estates, and reduces the rate for estates not exceeding £ 5,000.

The new scale is to be as follows:

Principal value of estate	Rate per cent of duty
Not exceeding £ 3,000	Nil
Exceeding £3,000 and not exceeding £4,000	1
Exceeding £4,000 and not exceeding £5,000	2

The sub-clause providing for aggregation of life policy money (now clause 33(2)) where the deceased never had an interest, has been considerably modified. Broadly speaking, where there is an identifiable beneficiary, all policies going to that beneficiary are aggregable, but aggregation is not to apply to all policies passing on the death. Where a policy is mortgaged, the mortgage is to be ignored in arriving at the value of the policy.

(Source: The Accountant, Vol. CXXXI No.4152)

Swiss

Effective May 15, the Swiss Ministry of Finance has abolished the 4 percent turnover tax on transactions in monetary gold (gold coins and bar). The tax on transactions in gold with a fineness of less than 9/10, i.e. industrial gold, has been maintained.

((Source: International Financial News, Survey vol. VI — no. 45).

United States — Japan

Two tax conventions between the United States and Japan for the avoidance of double taxation and the prevention of fiscal evasion were signed by the representatives of both governments on April 16, 1954.

One convention relates to taxes on income and the other to taxes on estates, inheritances and gifts.

(Source: Taxes, May 1954, p. 429).

Iraq

Iraq has increased certain income tax exemptions and lowered the tax rate on incomes up to 1,500 Iraqi dinars (US $4,200) under amendment of the income tax law, bij ordinance no. 7 of May 17, retroactive to April 1, 1954.

Tax-exempt income for single persons now is 350 Iraqi dinars instead of 250 (1 Iraqi dinar=US $2.80), while the maximum exemption for a married man with children is 600 dinars. Income tax rates were lowered as follows, with former rates shown in parentheses:

0–150	Iraqi dinars	—	4 per cent	(6)
150–500	,,	,,	— 4 per cent	(9)
501–1,000	,,	,,	— 8 per cent	(12)
1,001–1,200	,,	,,	— 12 per cent	(same)
1,201 –1,500	,,	,,	— 12 per cent	(15)

The new ordinance must be ratified by Parliament. Principal beneficiaries are civil servants and white-collar workers.

(Source: Foreign Commerce Weekly, vol. 51, no. 26)

Denmark

Limited tax changes have been effected in Denmark, but an extensive revision of the intricate system of direct taxation again has been postponed.

Income and capital taxes for the fiscal year April 1, 1954 — March 31, 1955, differ from those of the preceding year principally in that the burden on the lower income groups has been reduced in various ways.

Exempt "taxable" income, that is, actual income less specified deductions, under the State income tax on individuals, has been increased from 2000 crowns to 2,200 crowns per annum, and rates on incomes above the latter figure and below 20,000 crowns have been reduced on a sliding scale. Incomes under 15,200 crowns will be exempt from the supplementary State income tax — formerly this exemption operated under 14,400 crowns of annual income — and small reductions will apply to rates on incomes under 20,000 crowns. Under the current schedule, the intermunicipal equalization fund tax applies on incomes of 3,800 crowns or above for heads of families and of 1,800 crowns or above for others. Last year the tax incidence began at 3,600 crowns and 1,500 crowns, respectively. A small reduction in rates will apply on incomes under 4,000 crowns.

Municipal tax cut.

Similar changes have been made in the municipal income tax on incomes of individuals for the Copenhagen region. Tax exemption, formerly granted on incomes below 1,000 crowns per year, now applies on incomes below 1,500 crowns and rates on incomes below 4,000 crowns have been lowered. Considerable savings will result for taxpayers in lower income brackets. Local assessment authorites in other municipalites have been given authority to make similar reductions, within specified limits, in their individual areas.

Defense taxes, State and intermunicipal equalization capital taxes, the ordinary State income tax and special income taxes on domestic corporations, and other direct taxes remain unchanged.

Source: Foreign Commerce Weekly, Vol. 51 Nr 22)

United-States — Belgium

An estate tax convention between the United States and Belgium was signed May 27, 1954. The convention becomes effective upon the exchange of instruments of ratification and will apply to the estate of persons dying after the exchange. The Senate must ratify the convention.

(Source: Taxes — The Tax Magazine vol. 32, no. 7).

Australia

Partial exemption from income tax on mining profits.

At the Federal Executive Council meeting at Government House recently, Her Majesty approved amending Regulations under the Income Tax and Social Services Contribution Assessment Act. The Income Tax Assessment Act was amended last year to allow an exemption from income tax in respect of one-fifth of profits earned from mining operations for certain metals and minerals to be prescribed by regulation. Dividends paid wholly and exclusively out of such exempt profits are also free from income tax.

The Regulations gazetted today prescribe the following metals and minerals to which the exemption applies:

Ores of the following metals:

Antimony, Arsenic, Beryllium, Bismuth, Columbium, Copper, Lithium, Mercury, Molybdenum, Nickel, Osmiridium, Platinum, Selenium, Strontium, Tantalum, Tellurium, Tin, Tungsten, Vanadium.

Minerals: — Asbestos, Bauxite, Chromite, Emery, Fluorspar, Graphite, Ilmenite, Kyanite, Magnesite, Manganese, Oxides, Mica, Monazite, Pyrite, Quartz Crystals (Piezo-electric quality), Radio-active ores, Rutile, Sillimanite, Vermiculite, Zircon.

A concession of this nature has been granted since 1942. The recent amendments, however, extend to June 30, 1960, the period during which profits from the prescribed metals and minerals will be partially free from income tax. The list now prescribed, which applies as from July 1, 1953, represents an extension of the concession to a wider range of metals and minerals than previously.

(Source: The Taxpayers' Bulletin vol. 23 no. 3)

South Africa's Tax Cut.

The South African budget introduced last month provided for tax concessions totalling £22,000,000 Stg.

Reuter says a wave of optimism swept Johannesburg circles last night.

The Finance Minister (Mr. Havenga) introduced the Budget.

Business circles expected active trading, especially in gold shares, when the market opened.

Mr. Havenga told the House of Assembly in a two-hour speech that the current financial year would prove a "turning point".

He said the Government had checked inflationary forces, and there was no sign of a break in the country's general prosperity.

The new budget raised tax free income of married people without children from £405 Stg. to £480 Stg., and from £275 Stg. to £301 Stg. for single people.

The Budget abolished the Compulsory Savings Fund levy of a basis £6 Stg. for each person, introduced last year.

Mr. Havenga predicted an improvement in South Africa's balance-of-payments position.

He said that in four years new gold and uranium production and savings on imports would ease the position by £400,000,000 Stg. a year, "if not more".

Increased gold and uranium output was expected this year.

Exports of maize and sugar were likely to yield considerably greater amounts of exchange than in recent years.

(Source: The Taxpayers' Bulletin vol. 23. no. 4)

Text of Resolution Adopted by ECOSOC On International Flow of Private Capital

The Economic and Social Council

Recommends that the General Assembly adopt the following resolution:

The General Assembly,

Taking note of the reports (documents E/2531 and E/2546) on the international flow of private capital prepared by the Secretary General pursuant to its resolution 622 C (VII) of 21 December 1952.

Recognizing that the international flow of private investment for productive activities contributes to the raising of living standards by assisting in the development of natural resources, the expansion and diversification of agricultural and industrial production, and the growth of technical skills, and

Recognizing that the flow of private investment has not been commensurate with the needs in those areas where rapid development is essential for economic progress, and

Recognizing that expanding international trade and continued progress

toward wider convertibility of currencies will be conducive to a greater flow of such investment, and

Recognizing the necessity of measures designed to remove the impediments to such a flow and to attract private investment,

Recommends continuing efforts by countries seeking to attract private foreign capital to:

Reexamine wherever necessary domestic policies, legislation, and administrative practices with a view to improving the investment climate; avoid unduly burdensome taxation; avoid discrimination against *foreign* investments; facilitate the import by investors of capital goods, machinery, and component materials neede for new investment; make adequate provision for the remission of earnings and repatriation of capital;

Develop domestic and foreign information services and other means for informing potential foreign investors of business opportunities in their countries and of the relevant laws and regulations governing foreign enterprise;

Consider supplementing their efforts to attract foreign private investment by including in their requests for technical advice and assistance from the United Nations and its specialized agencies as well as from the countries well advanced technically, such matters as:

Economic surveys to determine the sectors most likely to be of interest to private investors and to identify specific opportunities within those sectors;

The preparation of material regarding specific projects in a manner which will command the attention of private investors;

The establishment of channels for the presentation of specific projects to potential investors in capital-exporting countries;

Recommends continuing efforts by countries able to export capital to:

Reexamine whenever necessary domestic policies, legislation, and administrative practices with a view to encouraging the flow of private capital to capital-importing countries;

Ensure to potential investors the availability of the fullest possible information on foreign investment opportunities and on the conditions and outlook for investment in individual foreign countries;

Ensure to capital-importing countries (including firms and individuals therein) the availability of information on the investment desires of firms and individuals in the capital-exporting countries;

Impress on investors the importance of endeavoring to secure local capital participation in their foreign enterprises whenever appropriate and feasible;

Adopt, within the framework of their institutions, measures on taxation that will reduce progressively international double taxation with a view to its final elimination.

Recommends continuing efforts by the capital-exporting and capital-importing countries, where appropriate, to take such other steps as may be feasible and mutually acceptable to stimulate the flow of capital to underdeveloped countries and more especially to:

Negotiate appropriate treaties, agreements, or other arrangements;

Negotiate treaties on double taxation;

Negotiate agreements, if consistent with national laws, providing for the insurability of certain nonbusiness risks;

Recommends further that capital-importing and capital-exporting countries consider the desirability and feasibility of the establishment of investment corporations in individual countries designed to encourage the participation of private investors.

Declares that, in order for new foreign investments to be an effective contribution to the economic development of the underdeveloped countries, it is advisable to take into account, among other things, the situation with

regard to previously established enterprises so as not to affect their normal development, provided this is in harmony with the national interest.

Requests the Secretary General to prepare annually a report on the international flow of private capital and its contribution to economic development, and on the measures taken by governments affecting such flow. In preparing this report account should be taken of the discussions on this subject in the Council and of suggestions which may be communicated by governments for promoting the international flow of private capital.

(Source: Foreign Commerce Weekly Vol. 51 no. 21)

Germany - Denmark

Wiederanwendung der deutsch-dänischen Vereinbarung über die gegenseitige Steuerbefreiung im gegenseitigen Kraftfahrzeugverkehr.

Zwischen der Regierung der Bundesrepublik Deutschland und der Dänischen Regierung ist durch Notenwechsel Einverständnis darüber festgestellt worden, dass die nicht veröffentlichte Vereinbarung vom 1. August 1931 über die gegenseitige Steuerbefreiung im gegenseitig Kraftfahrzeugverkehr im Verhältnis zwischen der Bundesrepublik Deutschland und Dänemark mit Wirkung vom 1. November 1953 gegenseitig wieder angewendet ist.

(Bundesanzeiger nr. 123 vom 1. juli 1954)

Germany - Finland

The convention signed at Helsinki on 25th September 1953
a) for the avoidance of double taxation in the field of direct taxes.
b) for mutual aid in tax cases
has again come into force with retrospective effect from 1st January 1953.

Western Germany - United Kingdom

On August 18 a convention was signed by Germany and the United Kingdom to prevent double taxation on income.

It will retrospectively apply from January 1 1953, for the time being valid until 1957 after which every year an extension will be announced. The texts have not yet been published.

U.S. and Germany enter into Tax Convention

A convention between the United States and the Federal Republic of Germany for the avoidance of double taxation with respect to income was signed by Secretary of State John Foster Dulles and Mr. Albrecht von Kessel, Minister, Charge d'Affaires ad interim of the Federal Republic of Germany, on July 22.

The provisions of the convention follow, in general, the pattern of income-tax conventions entered into by the United States with a number of other countries. The convention is designed to remove an undesirable impediment to international trade and economic development by doing away as far as possible with double taxation on the same income.

As to the United States, the convention applies only to Federal taxes, except for the standard national-treatment provision. The provisions establishing rules for avoidance of double taxation and for administrative cooperation do not apply to imposition of taxes by the States, the District of Columbia, or the Territories or possessions of the United States.

As to the Federal Republic, the convention applies to the income tax, the corporation tax, and the Berlin emergency contribution (Notopfer).

The convention is to be brought into force by the exchange of instruments of ratification and will be effective for taxable years beginning on or after January 1 of the year in which such exchange takes place.

When the convention was signed, notes were exchanged confirming an understanding that, pending the entry into force of the convention, U.S. airline companies operating in the Federal Republic of Germany will be accorded exemption from the German corporation income tax and certain other taxes.

(Source: Foreign Commerce Weekly Vol. 52, no. 6 August 8, 1954)

III

CLAIM OF FOREIGN CREDITOR FOR INCOME TAX IN LIQUIDATION PROCEEDINGS.

Re Delhi Electric Supply and Traction Co., Ltd. ([1954] *Ch.* 131; [1953] 3 *W.L.R.* 1085; [1953] 2 *All E.R.* 1452[1])

A number of interesting points arise for consideration from the judgments of the Court of Appeal in this case. The facts of the case were as follows: The Government of India sought to prove in the voluntary liquidation of a company, which had previously traded in India but had been registered and was being wound up in England, for a sum due in respect of income tax, including capital gains tax which arose out of the sale of the company's undertakings in India. The liquidator rejected the claim, contending that the claim was not a "liability" within the meaning of section 302 of the Companies Act, 1948. The Court of Appeal (Evershed M. R., Jenkins and Morris L.JJ.), in upholding the judgment of Vaisey J., dismissed the Indian Government's claim on the ground that the claim was unenforceable in England, there being the well recognised rule that claims of a foreign State to recover the revenues of the State would not be enforceable in the English courts and, furthermore that there was no valid distinction for this purpose between foreign States and States who are members of the British Commonwealth.

The main fatality to the Indian Government's claim was the rule relating to the unenforceability of a foreign revenue law.

As a final resort, it was argued that the rule did not apply to States within the so-called "Consortio" of the British Commonwealth. This argument was given short shrift by Evershed M.R., who declared[2]) that he could find no basis for the distinction,

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[1]) This note is based on the report at 3 W.L.R. 1085.

[2]) At p. 1105. Similarly Jenkins L.J. (at p. 1109) peremptorily determined the point. See also *Att.-Gen. for Canada v. Schulze & Co.*, 1901, 9 S.L.T. 4 (Ct. of Sess.), a case in which imported goods had been confiscated under the Customs Act where a similar argument was put forward but Lord Stormouth Darling said (at p. 5): "I think (that is) is not maintainable, that in the sense of international law, the mother country and her self-governing colonies stand in different relationship from that which exists between two foreign States. If that relationship is ever to be modified it must be done by reciprocal legislation."

although he conceived that there might be an argument for a relaxation of the rule, but such relaxation must come from the legislature. The court did not appear to canvass the possibilities of avoiding the rigours of the rule in connection with the laws of the States of the British Commonwealth. Distinctions, however infrequently, are made, as for instance by section 75 of the Finance Act, 1925, colonies and dominions trading in the United Kingdom are liable to a trading tax although not liable for their income from investments.

There seems to be no doubt that the States comprised in the Commonwealth are placed in a peculiar position. They are not, *in stricto sensu*, foreign States, inasmuch as they all either owe allegiance to or recognise the existence of a head of the Commonwealth. On the other hand, they are either independent sovereign States or on their way to becoming so. Agreements between the States to allow collection of revenue, however, should not be without the realm of possibility. Such agreements would, in some measure, mitigate the inconveniences at present existing, for example, in the field of international bankruptcy[1]).

The difficulties surrounding the *locus standi* of a Commonwealth country have been experienced of recent years in connection with sovereign immunity. In *Kahan* v. *Federation of Pakistan,*[2]) a preliminary question was raised whether Pakistan, being a member within the British Commonwealth, had the status of an independent sovereign State. The advice of the Secretary of State for Commonwealth Relations was sought on the point. The parties to the action agreed to accept the certificate of the Secretary of State, which stated that "Pakistan is a self-governing country within the British Commonwealth of Nations, sovereign in both external and internal affairs linked with the United Kingdom through a common allegiance to the Crown, but in other respects independent of it. In the view of the Secretary of State, therefore, Pakistan is an independent

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1) See *Theophile v. Sol.-Gen.* (1950) A.C. 186, where a claim of £30,000 tax formed the basis of a bankruptcy petition. It has been strongly contended that in view of the time element in framing a petition on the part of the Revenue authorities, resort had to be made to the second limb of s. 1 (1) (*d*), Bankruptcy Act, 1916, thereby forcing the courts to contort the law in this subject. See Lipstein, "Jurisprudence in Bankruptcy," 12 M.L.R. (1940) 454 *et seq.*

2) (1951) 2 K.B. 1003.

sovereign State."[1]) This case was followed in *Sayce* v. *Ameer Sadiq Mohammed Abbasi* (*Bahawalpur State*[2]). Universal criticism of the rule concerning sovereign immunity[3]) and particularly so in the case of Commonwealth countries would seem to call for legislative action which could no doubt include collection of foreign revenue, at least in relation to Commonwealth countries.

Not the least interesting feature of the *Delhi* case was a last-ditch attempt by counsel for the Indian Government to rely upon a construction of the word "liabilities" in section 302 of the Companies Act, 1948, which would be favourable to his clients. In this connection, it was argued that the tax due was a liability within the meaning of the section and the liquidator was wrong in rejecting the claim. In refusing to accept the contention that the word "liabilities" should include liabilities whether enforceable in the courts of this country or not, the court was content to rely upon the decision of *Re Lorillard*[4]). It is worth noting, initially, that the judgments of the court did not seriously canvass this line of reasoning. This was due no doubt to the omnipotent rule relating to tax claims. As Morris L.J. said in the *Delhi* case[5]): "But apart from any guidance which may be deduced from *Re Lorillard*, to allow the present claim would inevitably, I think, violate the established principle." Despite the apparent inviolability of the rule as to claims for foreign revenue, it is worth considering to what extent *Re Lorillard* supports the rule as propounded by the court.

Evershed M.R. held that *Re Lorillard* was of assistance as indicating that in the administration of any estate, whether it is the property of a company in liquidation or the estate of a deceased person, the question of how it should be administered and, in particular, what liabilities ought to be accepted and discharged, is prima facie a matter to be dealt with by the *lex fori*, that is, by the law of England. This reiterated in substance the words of Warrington L.J. in *Re Lorillard* itself, where he stated[6]): "The

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[1]) See note 2, 1 I.C.L.Q. p. 246, which gives the correct text of the certificate quoted incorrectly elsewhere (1 I.C.L.Q. 103 and 68 L.Q.R. 11).
[2]) (1952) 1 All E.R. 326.
[3]) See 1 I.C.L.Q. 103; 68 L.Q.R. 11, and 15 M.L.R. 220.
[4]) (1922) 2 Ch. 638.
[5]) At p. 1110.
[6]) [1922] Ch. 638 pp. 645-6.

principle is that the administration of the estate of a deceased person is governed entirely by the *lex loci*[1]), and it is only when the administration is over that the law of the domicile comes in." The case was treated throughout as one concerning a solvent estate, although Eve J., in the court of first instance, observed[2]): "I must deal with this, therefore, as an insolvent estate; an insolvent estate to this extent that there is at present no surplus to which the law of the domicile can have any application." The fact of the case were as follows:

> The deceased, who was domiciled in New York, and who had beneficiaries in England, left creditors and assets both in New York and England. A judgment claim for a substantial amount was valid in New York but statute-barred in England. Including the statute-barred debts in the total liabilities the estate was insolvent. The local creditors under the English administration were paid out, leaving a surplus which the New York administrator sought to recover.

Eve J. ordered that two months be allowed in order to give the American creditors time to establish the debts capable of proof against the assets in this country. The Court of Appeal (Lord Sterndale M.R., Warrington and Younger L.JJ.) affirmed the decision of the trial judge, holding that it was a matter of discretion, and it ordered the surplus to be paid to the beneficiaries[3]).

Whether the case is treated as a solvent or insolvent estate, the deciding factor in determining the case was the regard English law pays to the rule of limitations. While the limitation rule remains a procedural question the decision in *Re Lorillard* will remain unchallenged. It may be argued that the question as to the category of the limitation rule involves the process of characterisation. Is the

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1) *By lex loci* is meant *lex fori*, see Cheshire, *Private International Law*, 4th ed., p. 512, note 4.

2) (1922) Ch. 638 at p. 642.

3) The decision has recently undergone severe criticism by Professor Nadelmann, "Insolvent Decedents' Estates", 49 *Michigan Law Review* (1951) 1129 at p. 1149, on the ground that it was an abuse of the court's discretion. The case was also critically discussed in the fourth and fifth editions of Dicey by the late A. Berriedale Keith, Appendix Note 27, "Principal and Ancillary Administration", 936, 4th ed. (1927), 984, 5th ed. (1932). No reference to this criticism nor any new appraisal of the case appears in the recent (6th) edition of Dicey. The case is discussed uncritically at p. 811.

period of limitation an extinguishment of the right or does it merely bar the remedy? The English rule is that any relevant statute of limitation that obtains in the *lex fori* may be pleaded while a corresponding statute of a foreign law even though it belongs to the proper law of the transaction must be disregarded[1]). Dr. Wolff pointed out[2]) that the English rule leads to unjust results, particularly if the English period is longer than that allowed by the foreign law applicable. As *Re Lorillard* exemplifies, even greater injustice may be inflicted in the field of insolvent estates of deceased persons when beneficiaries may be able to succeed to funds as against unsatisfied creditors from abroad whose debts are statute-barred by the *lex fori* of the administration.

It is perhaps not too much to suggest that, on a true analysis, *Re Lorillard* is not as helpful as the Court of Appeal in the *Delhi* case indicated. In view of the minor part played by *Re Lorillard* in arriving at the decision in the *Delhi* case, it would be captious to be critical. It is to be hoped, however, that an opportunity will afford itself for a court to review in detail the decision of *Re Lorillard*.

Source: The International and
Comparative Law Quarterly, vol. 3 part 3.

1) *British Linen Co, v, Drummond* (1830) 10 B. & C. 903; *Harris v. Quine* (1869) L.R. 4 Q.B. 613; *Huber v. Steiner* (1835) 2 Bing. N.C. 202; S. *A. M. de Prayon Trooz, Belgium v. Koppel* (1934) 77 S.J. 800.

2) 2nd ed., s. 219, at pp. 234-5.

IV

REVIEWS — COMPTES RENDUS

Rectification.

On page 103 of Vol VIII no. 1-2 a review of two works published by Verlag Dr. Otto Schmidt was included. Below we give again the complete titles, because printer's errors have crept in:
Grundwerk zu Steuerrechtsprechung in Karteiform (*G. W. StRK*), 4 Volumes and register — Verlag Dr. Otto Schmidt K. G. Köln, 1942 (begun 1949).
Steuerrechtsprechung in Karteiform, 9 Volumes — Verlag Dr. Otto Schmidt K.G. Köln, (begun 1949).

Dr. jur. et rer. pol. Josef Klimsorg: *Was kann ich* 1953/54 *an Steuern sparen?* — Sammlung 'Hilf dir selbst' Nr. 196 Steuerrechtliche Reihe. — Wilhelm Stollfuss Verlag Bonn, 128 pp.

For every assessable person it is extremely useful to know the means to save paying taxes in a perfectly lawful way without resorting to tax evasion or tax dodging.

This little work gives a general survey of the possibilities in Germany after the 'Kleine Steuerreform' of 24th June 1953, so that the assessable person can get acquainted with such possibilities, as may exist. This work is rather simple and is understandable for a layman in the fiscal domain.

Dr. Otto Josef Hoeres: *Betriebsprüfung, Steuerfahndung, Bilanztaktik. Steuerreform* 1953. — Der Steuerzahler, Vereinigte Vertriebe für Wirtschafts- und Steuerliteratur, Freitag im Breisgau, 1953, 128pp.

A good administration is of great importance from the fiscal viewpoint because if the Inland Revenue authorities refuse to recognize the books kept by the business higher taxes may be the result which may even become catastrophic (because for instance the granting of certain facilities is refused). Every enterpreneur should know something about the administration and should not leave everything to the accountants. In this respect this book may prove to be very useful.

Prof. Dr. B. Schendstok: *De vennootschapsbelasting als wetenschappelijk vraagstuk* (the corporation profits tax as scientific problem). Overdruk jaarboek 1952/53 van de Nederlandse Vereniging voor Hoger Onderwijs in de Economische Wetenschappen te Rotterdam.

The President of the Board of the International Bureau of Fiscal Documentation,. Prof. Dr. B. Schendstok, delivered an important speech as 'Rector Magnificus' of the School of Economics at Rotterdam on 9th November 1953 about the tax of the Limited Liability Company.

The idea forming the most important part of this speech is the contrast made by him between the 'real' and the 'apparent' corporation profits taxes. The 'apparent' taxes are those, with which the legislator wished to combine the levying of taxes on the company and on the shareholders to avoid double levying as much as possible; the 'real' are the other taxes. The tax systems of some countries are considered and divided in accordance with this distinction. Thereupon the attention is drawn to a number of

authors, in which connection also the fiscal conception of *profit* comes up for discussion, just as the shifting of taxes levied on the company.

Very important questions come up for consideration in this connection: must the normal return of the own-risk-bearing-capital and the payment to the investors for the taking of risks attached to the investment be reckoned among the assessable profit? What influence has the tax on the prices and everything connected with them? What about the amortization of taxes?

After discussing all these subjects the speaker returns to the apparent and real corporation profits tax. The latter has many possibilities: it can be levied according to profit, sharing out of profit to reservings, to the nett property, to the issued capital and to the untaxed reserves (also the dormant and secret ones). Combinations of these sorts are possible. From the apparent forms of corporation profits tax he mentions those according to the distributed profits. The total profit is only liable in respect of share-holders who control the company alone or with few other persons. An apparent corporation profits tax according to the distributions can be connected with a real one according to profit. The combination of the apparent corporation profits tax according to the distributions with a real one according to the reservings is also possible. Thus there can grow up an entirety of corporation profits tax and income tax.

In this direction goes the preference of the speaker: the fiscal wedge between what is dividend to the share-holder and costs for the company should disappear and in this way the flow of new capital to the limited companies would no longer be checked, as now occurs in many countries.

GUISHING — STENGER: *Kommentar zum Bewertungsgesetz und Vermögensteuergesetz* (à feuillets mobiles). — Verlag Dr. Otto Schmidt KG, Hohenzollernring 78, Köln, 1953.

Dans la série des excellents commentaires fiscaux publiés par le Verlag. Dr. Otto Schmidt le livre susmentionné a paru. Dans quatre livraisons il sera complet. La première livraison contient outre les textes de la loi, des textes des Durchführungsverordnungen etc, un commentaire sur les paragraphes 54-79 Bewertungsgesetz (Betriebsvermögen). Le commentaire est excellent et promet beaucoup pour les livraisons suivantes. C'était une bonne idée de l'auteur de ne pas encore avoir fait de commentaires sur les points pour lesquelles une modification radicale a été promise (i.c. fixation de 'Einheitswert. Grundbesitz', le 1-1'55), mais d'attendre la régularisation définitive.

À notre avis nous pouvons recommander cette excellente édition à tous ceux qui s'intéressent à la matière.

Die Veranlagung zur Körperschaftsteuer für 1952 — Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf (Allemagne), Cecilienallee 36, Prix 4.80 D. M., 1953, 173 pages.

Ce livre contient le texte complet de la „Körperschaftsteuer", „Körperschaftsteuer-Durchführungsverordnung" et „Körperschaftsteuer-Richtlinien' 1951, dans lesquelles on a traité également les „Ergänzungsrichtlinien 1952". Dans l'appendice on trouve entre autres un extrait de la „Steueranpassungsgesetz" et la „Gemeinnützigkeitverordnung".

En liant les paragraphes concernant la Durchführungsverordnung et les directives aux paragraphes de la loi on est arrivé à une très grande clarté. Les dispositions qui ne sont valables que depuis 1953 ont été insérées avec celles qui étaient en vigueur auparavant. Un index détaillé termine cet oeuvre.

Steuerbelastung in der Schweiz.

Charge fiscale en Suisse, élaboré par l'administration fédérale des contri-

butions. Statistiques de la Suisse, 234e fascicule. Publiées par le bureau fédéral de statistique, 1951, 67 pp.

L'Administration fédérale des contributions continue la série des statistiques annuelles concernant la charge fiscale en Suisse. Cette publication renseigne sur les prestations fiscales des personnes physiques et de sociétés anonymes et contient un aperçu de la charge provenant des droits de succession.

Revenue Administration and Policy in Israel. — United Nations Technical Assistance Programme, New York, 1953, Sales number 1953 II H 5.

Ce rapport était composé pour le gouvernement d'Israel, „to advise the government on legislation, administration, and procedure, and to provide assistance in establishing a training programme and a documentation centre". Il résume le système actuel d'Israel et propose des modifications. Dans une annexe on trouve entre autres le discours 1951/1952 du ministre des Finances israélien concernant le budget.

Die kleine Steuerreform, Text des Einkommensgesetzes in der Fassung des Gesetzes zur Änderung steuerliches Vorschriften und zur Sicherung des Haushaltführung vom 24.6.1953 mit neuer Einkommensteuer- und Lohnsteuertabelle, — Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf (Allemagne), Cecilienallee 36, Prix 2.50 D.M., 1953, 110 p.

Le soi-disant „Kleine Steuerreform" a apporté des modifications importantes dans l'impôt sur le revenu. Dans ce livre le nouveau texte complet de l'impôt sur le revenu a été inséré, et les modifications apportées par le „Kleine Steuerreform" sont imprimées en caractères gras, tandis que les dispositions d'autrefois ont été imprimées pour autant que cela est nécessaire. Le livre a été publié comme supplément à la brochure, parue chez le même éditeur et intitulée, „Die Veranlagung zur Einkommensteuer für 1952."

De economische en sociale aspecten van de belastingen. The Economic and Social aspects of Taxes, report of the Economic and Social Study-days under the auspices of the Senate of the Roman Catholic School of Economics at Tilburg on 14 and 15 September 1950. — Drukkerij H. Gianotten, Bredaseweg 57, Tilburg, 1950, 112 pages.

Important papers were read during the above-mentioned study-days. It is a good thing to have recorded all the subjects treated on that occasion in a voluminous report (112 pages) of the lectures and a précis of the discussions. It is not possible to give a brief summary. We shall only try to give an impression of the matters discussed in those study-days.

The first paper was read by the very expert Tilburg professor Prof. Dr. M. J. H. Smeets. He discussed the function of the taxes, particularly their budgetary background. As his starting point he takes the idea, that the taxes have not only a budgetary function, but also a regulating function, and discusses the doctrine which is defended and disputed in Anglo-Saxon literature, that the budgetary function may be considered as having served its purpose. Many problems are treated such as: to tax or to borrow, the Marshall monies, the estimates, the expenditure for military purpose etc. etc.

Dr. H. W. van den Berge treats the juridical aspects and principles of tax-levying and in this connection arrives at the principles of the generality and uniformity of the tax burden. Particular attention is paid to the forming of conceptions in fiscal law. He is also interested in the ethical aspect, as he is in the practice of tax levying.

J. H. A. A. Lasance discusses the industrial economic aspects and pays special attention to the influence on the cost price and the financing.

Prof. Dr. G. W. Groeneveld gives some considerations about the social aspect of taxes, in which connection the State interference, which is proceeding continuously, and the equalization process are discussed.

Prof. Dr. J. Tinbergen deals with general economic aspects of taxes, while the ethical aspects are treated by Prof. Mag. Dr. F. A. Weve O.P. who speaks about the obligations on the side of the citizens: 'he who evades this by unwillingness and false statement, deals improperly in general as a citizen and as a man.' Against this aspect the task of the authorities to practise justice has been set.

ROLF WILHELM FEHLMANN: *Der Gedanke der Steuergerechtigkeit in der neuern Finanzwissenschaft* — Buchdruckerei Fehlmann, Seengen A/G 1952, 109 pp.

This thesis, maintained in the 'Rechts und staatswissenschaftlichen Fakultät'' at Zurich deals with an important subject, which becomes more important as the tax burden increases. The author knows the difficulties of this subject, but he considers it necessary to penatrate into the principles of tax policy, though he knows that it is impossible to find a generally valid and unchangeable justice when levying taxes. He did not seek the philosopher's stone. In the introducing chapter 'Die Aufgabe' the field is explored and the ideas of many authors are mentioned, but not more than is necessary to set against each other the movements and standpoints.

After that the conception 'Steuergerechtigkeit' is treated, first of all from the ethical point of view, then from the viewpoint of the doctrine of Financial Science. The subjective judging of values is considered to be decisive and in that connection many sides of the problem come forward. The encouraging of prosperity is the purpose. When in the third part, the formal side of the problem is treated, many well-known problems can be found: equality, fiscal morality, the technique and also the shifting.

The last chapter deals with the material contents of the principle of justice in tax affairs. A clear survey of the treatment by modern authors of problems with which our predecessors used to struggle can be found.

JEROME HELLERSTEIN: *State and Local Taxation; Cases and Materials.*— Prentice-Hall Inc. New York 1951.

Aux Etats-Unis le droit de lever des impôts revient tant au gouvernement fédéral qu'aux Etats et aux autorités locales. Jusqu'ici dans l'enseignement du droit fiscal des Etats et de ses subdivisions on attachait trop d'importance à la relation avec la constitution fédérale, tandis que trop peu d'attention était réservée aux déterminations législatives des principaux impôts et aux problèmes qui s'y rattachent. Cet ouvrage donne le matériel pour une étude achevée; il contient entre autres les décisions judiciaires les plus importantes par apport aux problèmes principaux d'ordre constitutionnel aussi bien qu'interprétatif, qui se présentent à la levée des impôts par les organes et les subdivisions d'un Etat fédératif. On a attaché surtout de l'importance aux impôts qui sont caractéristiques pour ces organes et subdivisions, c'est-à-dire que moins d'attention a été réservée aux impôts qui sont levés aussi par le gouvernement fédéral, puisque les problèmes qui s'y présentent, montrent une grande ressemblance avec ceux qui jouent un rôle dans la levée des taxes par le gouvernement fédéral. On a consacré deux chapitres à la procédure (la cote, le recouvrement et les moyens judiciaires) en rapport avec les problèmes spéciaux qui se présentent ici.

Dr. RICHARD KAPP: *Das Erbschaftsteuergesetz.* — Industrie- und Handelsverlag Walter Dorn GmbH, Bremen — Horn 1952, 380 pp.

Cet ouvrage, à feuillets mobiles (380 p) contient un commentaire détaillé

des droits de succession en vigueur actuellement en Allemagne. On publie régulièrement, de sorte que le lecteur reste au courant de tous les changements qui surviennent. On y trouve d'abord le texte complet de la loi relative aux droits de succession. Après une brève introduction dans laquelle certains problèmes du droit de succession sont traités en général, l'auteur procède à la propre discussion du droit allemand de succession et de donation. Il le fait article par article, de sorte qu'il traite successivement l'obligation d'impôt (subjectif et objectif), les règles d'évaluation et le droit formel. Quant à l'obligation fiscale subjective il est frappant que le droit allemand de succession revienne à beaucoup d'égards à une taxe à chaque acquisition, quoiqu'on y trouve aussi beaucoup d'éléments des droits de mutation. Nous disons cela parce que le droit allemand est levé sur tout héritage si le testateur était un résident (c'est-à-dire les taux sont appliqués aux portions que les héritiers reçoivent et ils dépendent du degré de parenté), mais la taxe est également due si c'est seulement l'héritier qui était domicilié en Allemagne au moment du décès. Dans ce cas le droit est dû sur toute la portion qu'il reçoit. Finalement il y a encore l'obligation fiscale limitée, lorsque ni le testateur ni l'héritier habitent en Allemagne. Dans ce cas-là la taxe est levée sur certains biens situés en Allemagne.

Dans le quatrième chapitre de l'ouvrage on trouve finalement les arrêtés d'exécution relatifs au droit de succession de sorte qu'avec cet ouvrage on est complètement au courant du droit allemand de succession, ainsi que des modifications récentes.

CARLO DE MEY: *La compétence des directeurs des contributions en matière de réclamations et des cours d'appel en matière de recours fiscaux.* — Ets. Emile Bruylant, Bruxelles 1953.

It is very important for the person assessable that he is enabled to express his objections amply against an assessment which is not correct in his opinion. In Belgium first an objection is lodged with the Director of taxes, after which appeal to the judge is possible. A further step is the lodging of an appeal to the Court of Cassation.

In a couple of judgements, one of 1948 and one of 1950 the Court of Cassation has made an important limitation of the rights of the person assessable. The old conception is put forward most clearly in a conclusion of the Attorney-General in the judgment of the 5th May 1941: 'Le recours du contribuable contre la décision du directeur des contributions directes statuant sur la réclamation, saisit la Cour d'Appel de la question de la débition de l'impôt dans son entier. L'examen de la Cour ne doit pas se limiter aux moyens qui ont été envisagés par le Directeur ou produits devant lui.'

The new idea is as follows: the person assessable can not put forward other elements during the inquiry of his objection or in the Court of Appeal than those which have been implied in the objection.

In this brochure of 16 pages the author analyses very clearly the old and the present conceptions. The jurisprudence which relates to this subject is discussed and with strong arguments he takes exception to the new trend.

Quarterly Bulletin of steel statistics for Europe — U.N. Geneva, December 1952.
Annual Bulletin of transport statistics 1951. — U.N. Geneva 1952.

The above two publications of the United Nations (European Office) give complete figures concerning the steelproduction respectively and the steel-consumption and the transport in Europe. The texts are in the French and the English laguages.

CHARLES A. STAPLES: *A guide to New-Zealand income-tax practice* — Financial publication Ltd. Wellington 1951, 364 p.

This book is not a scientific handbook, but as the title states, a guide intended for the practice. All points, which are important when handling the income-tax Act, are treated briefly but as completely as possible. The different subjects have been treated in alphabetical order and at the end moreover a very elaborate alphabetical register has been added.

R. K. DALAL: *Logic behind the charge of income tax.* — Vakil & Sons Ltd, Printers, Bombay, 1951, 55 p.

This pamphlet of 55 pages contains a lecture by the author, delivered to the conference of chartered accountants at Bombay. A number of important parts of the Income Tax Act are considered critically and verified according to logic. The author points out that the law is often the result of a more or less accidental growth, without the principles upon which the law has been based being reckoned with.

For those, who are not well informed on the Income Tax Act of India, this booklet is moreover important as it surveys a number of important regulations of the law.

SHRI R. BHARGOVA: *Income Tax and supertax ready reckoner* 1951-52. — Federal Law depot, Kashmere gate, Delhi.

This booklet answers, without going further into theoretical problems, the question: how much tax must be paid.
The Finance Act 1951, that contains the tariffs at this moment applicable, has been inserted entirely, with also as a comparison, the Finance Acts of the last 5 years.

R. K. DALAL AND R. P. DALAL: *Indian Excess Profits Tax.* — Bombay 1941.

The 'Indian excess profits tax' was enforced by a decree of 6 April 1940 as a war-tax; also after the war it remained still effective.

This booklet of 114 pages was written, as the preface mentions, to give the layman a comprehensive setting forth of the operation of this law. Consequently the authors refrained from mentioning juridical and technical problems and the different problems are explained with examples. In 1942 a supplement was published in which the amendments of the law which took place up to that date are worked out and also definite subjects have been supplemented.

R. K. DALAL: *Business profits tax and capital gain tax.* — N. M. Tripathi Ltd. Bombay 1948.

In 1947 in the tax system of India two important amendments were enforced: first a business profits tax was instituted and in the second place capital gains became imposable by the Income Tax Act 1947 which had not been the case till that year. Up to that year capital gains were not included in the imposable income, as was defined in the Income Tax Act, a law principally based upon the British Income Tax Law.

This book is devoted to these two taxes. Just as the guide-book about the Indian excess profits tax of which R. K. Dalal was one of the authors, this work is intended in the first place to treat these taxes in a way understandable for everyone. Many examples elucidate this very clear book.

The amendments in the Business profits tax Act which were proposed in 1948, are mentioned by the author at the end, while the Bills embodying the amendments have been inserted as an appendix.

H. HOELEN: *Een studie over de biermarkt en het verbruik van alcoholische dranken.* — J. H. de Bussy, Amsterdam 1952.

As one of the factors that exert an influence on the consumption of beer

the author mentions the excise duty of beer. In chapter III he gives a short consideration of this tax. The unification of excise duty as part of the economic union with Belgium is also discussed briefly.

S. H. NEUMANN: *Das Grunderwerbsteuergesetz.* — Verlag für Rechtswissenschaft vormals Franz Vahlen GmbH Berlin/Frankfurt a.M. 1949, 167 pp.

The Grunderwerbsteuer is an indirect tax which is levied when property and other rights on immovable goods change hands as for example hereditary lease. The law has been inserted completely, while after each article the accessory commentary is found. The alphabetical register facilitates the use of this book.

GUSTAVO ADOLFO NOBILE: *L'Imposta di famiglia e la sua applicazione,* 3e ed. — Jovene, Naples 1954.

Nous avons donné un compte rendu de la 2me édition de cette étude dans ce Bulletin Vol. VI p. 43. Maintenant l'auteur en a élaboré une nouvelle édition dans laquelle il a inséré les modifications survenues depuis 1949.

Dans dix chapitres l'auteur donne un aperçu succinct de l'impôt de famille italien, dans lequel il traite de nombreuse questions d'une façon systématique.

La législation et les circulaires ministérielles dont on trouve les textes reproduits dans une annexe, sont mises à jour, et ainsi l'ouvrage de 156 pages présente une documentation très détaillée sur cet impôt. A la fin de l'ouvrage on a reproduit le tableau des taux pour 1952 dans la Commune de Naples, dans lequel on trouve également la situation pour les années 1953 et 1954.

CHARLES R. LOCKYER: *Kentucky taxes affecting life insurance.* — University of Kentucky, Lexington, Kentucky 1950, 68 p.

This booklet is the result of an examination made on the request of the Kentucky commissioner of revenue, connected with a possible amendment of taxes concerning the life-insurances.

As annexes tables have been inserted to compare the situation in this domain prevailing in other states.

O. SCHWARZ: *Umsatzausgleichsteuer. Kommentar.* — R. v. Decker's Verlag, G. Schenk, Hamburg, Berlin, Bonn 1952, 127 pp.

La taxe allemande à l'importation comme taxe compensatoire de la taxe intérieure sur le chiffre d'affaires, a été introduite en 1932. Avant cette date l'importation était exempte de taxe. Dans la suite les règles sont devenues plus compliquées ainsi que la taxe sur le chiffre d'affaires elle-même. En rapport avec le G.A.T.T. l'impôt est devenu en outre plus actuel.

Le présent ouvrage est un commentaire de la taxe allemande à l'importation, qui est donc levée en même temps que les droits d'entrée. Dans quelques cas les règles différent tout à fait de celles des droits d'entrée. On s'en est occupé spécialement dans ce livre. Il se compose de 4 parties:

1. Introduction.
2. Textes de la loi et un extrait du G.A.T.T. et de la Charte de la Havanne.
3. Explications de la taxe d'importation (Erläuterungen zur Ausgleichsteuerordnung).
4. Restitution de la taxe d'importation à l'exportation (Die Vergütung der Ausgleichsteuer).

Ce livre se termine par une table.

RONALD STAPLES: *Key to Profits Tax.* — Taxation Publishing Co Ltd, London 1953.

Par le traitement des modifications apportées dans la „Profits tax" par la „Finance Act 1952", cette édition est devenue à nouveau un guide indispensable à tous ceux qui s'occupent ou doivent s'occuper de la profits tax et désirent une réponse immédiate à leurs questions. Outre l'insertion du texte de toutes les lois qui se rapportent à la profits tax, beaucoup d'exemples expliquent l'application pratique de la loi.

GERVASIO A. DE POSADES BELGRANO: *El Impuesto alos beneficios extraordinarios.* — Barreira y Ramos S.A., Montevideo, 1951.

Monsieur de Posadas Belgrano a publié un ouvrage très détaillé relatif à l'impôt sur les bénéfices extraordinaires, et il y traite toutes les questions qu'un expert fiscal peut se poser. La première partie de son livre nous donne dès le début un aperçu théorique des lois uruguayennes, qui contiennent des stipulations à ce sujet. La doctrine étrangère et le mobile qui a porté le Pouvoir Exécutif de l'Uruguay à faire une telle loi sont l'objet d'une discussion dans le deuxième chapitre. Le troisième chapitre traite les conséquences économiques de cet impôt, entre autres sur la production et sur l'investissement.

Monsieur Belgrano est d'opinion qu'étant donné le besoin de capitaux étrangères de l'Uruguay les taxes qui vont jusqu'à 80 %, sont trop élevées pour attirer les placements mentionnés ci-dessus.

Ensuite, dans la deuxième partie de son livre l'auteur étudie entre autres la matière imposable, les activités qui sont grevées, la conception du mot fiscal, le bilan fiscal, sans oublier les gains des succursales et filiales des firmes étrangers, établie en Uruguay. Enfin il nous donne dans la troisième partie une étude des normes qui dominent le terrain de l'impôt sur les bénéfices eventuels. Un appendice, contenant le texte des lois et des décrets termine cet ouvrage intéressant.

Probleme der schweizerischen Zolltarif — Revision.

Veröffentlichungen des schweizerischen Instituts für Aussenwirtschafts- une Marktforschung an der Handels-Hochschule St. Gallen. Heft 12, — Polygraphischer Verlag AG, Zürich und St. Gallen, 1951, 152 pp.

This book takes an objective scientific view in respect of the problem of import duties in general and those of Switzerland in particular.

The book contains the following contributions:

Dr. A. Bosshardt — Die Zollpolitik des Schweizerischen Bundesstaates (the policy of the customs of the Swiss Federation.).

Dr. E. Kung — Die volkswirtschaftliche Wirkungsweise der Zölle (the operating of the customs from an economic point of view).

Lic. oec. F. Kneschaurek — Zölle, Kunjunkturpolitik und Autarkie (customs, cyclical policy and autarchy).

Dr. E. Heuss — Zölle und Reallohne (customs and real wages).

Dr. H. Bachmann — Die Einfuhrzölle als Uhrsache des Rückganges von Exportvolumen und Exporterlösen (import duties as the cause of the decline of the export volume and export revenue).

Dr. Ch. La Roche — Zölle als Werkzeug der Einfuhrregulierung bei landwirtschaftlichen Producten. (customs as the instrument regulating the importation of agricultural produce).

Dr. rer. pol. h.c. W. Stucki — Der Zolltarif als Verhandlungswaffe (the customs tariff as the weapon for negotiation).

Prof. Dr. H. Bachmann and Prof. Dr. E Kering — Gewichtszölle oder Wertzölle. (specific or ad valorem duties).

Dr. M. Ihlé — Die fiskalische Funktion der Zölle (the fiscal function of customs).

Dr. E. Heuss — Die Veränderungen der Zollbelastung in der Schweiz mit dem Ausgang des 19. Jahrhunderts (the changes in the customs burden in Switzerland at the end of the 19th century).

Dr. G. A. l'Huillier — La politique douanière en Suisse et dans le monde (the policy of customs in Switzerland and in the world).

The contributions in the German language contain a summary in the French language, the contribution in French contains a summary in German. An interesting book for scientific purposes!

Dr. KARL MOSER: *Allgemeiner Teil des Strafgesetzbuchs unter Berücksichtigung der Steuergesetze.* 2 Auflage. — Hans Rösler Verlag, (13b) Augsburg, Haunstetter Strasse, 1953 (344 pages).

De cet ouvrage, la première édition parut il y a trente ans, sous le titre: „Die allgemeinen Lehren des Strafrechts nach der Rechtsprechung des Reichsgerichts unter besonderer Berücksichtigung der Zoll- und Verbrauchssteuergesetze". La présente édition constitue une refonte parce que l'auteur a eu la bonne idée de tenir compte de toutes les lois fiscales et non seulement des lois relatives aux taxes de consommation et aux droits de douane.

Dans l'application des lois fiscales, les fonctionnaires publics doivent s'occuper souvent des mesures de caractère penal. Il faut donc qu'ils aient une certaine connaissance des principes du droit pénal commun. L'auteur a voulu donner, par son ouvrage, un manuel dans lequel la matière serait traitée d'une façon systématique, et dans lequel on pourrait facilement tracer les relations entre le droit pénal commun et le droit pénal fiscal. C'est pour cette dernière raison que l'auteur a pris comme point de départ la législation fiscale, tout en y appliquant les principes généraux du droit pénal. Ce sont surtout la jurisprudence et la doctrine qu'il a examinées, et auxquelles il a emprunté de nombreux exemples.

L'ouvrage était spécialement destiné aux fonctionnaires de l'Administration fiscale, mais on peut dire qu'il pourra intéresser également les juges, les avocats et, en général, tous ceux qui sont appelés à appliquer les lois fiscales. Les ouvrages et études dans ce domaine étant très rares, on peut recommander cet ouvrage à des juristes d'autres pays aussi, et nous faisons cela avec plaisir.

Pourquoi existe-t-il assez peu d'ouvrages concernant le droit fiscal pénal, comme nous l'avons constaté dans le compte rendu précédent? Nous croyons que la cause en est que cette partie du droit fiscal ne constitue pas un ensemble organique. On a assez écrit sur les fraudes fiscales, et sur les différentes méthodes pour les supprimer. Mais justement parce que les moyens de lutte contre les fraudes sont de nature différente, on ne trouve presque pas d'ouvrages dans lesquels le droit fiscal pénal est systématiquement traité.

En Allemagne, où la Abgaben-Ordnung, une loi contenant les principes applicables à toutes les lois fiscales, contient une trentaine de paragraphes sur le droit fiscal pénal, plusieurs auteurs se sont occupés de la matière dans un ouvrage spécial consacré à ce sujet. Dans le *Bulletin*, Vol. V pages 180 et 182, nous avons déjà donné un compte rendu des ouvrages de MM. HARTUNG et TROEGER. Le nombre d'ouvrages de ce caractère s'est étendu par la publication d'une étude dont voici un bref compte rendu:

Dr. KÖTTER: *Steuerstrafrecht und Steuerstrafverfahren.* — Carl Wurm Verlag, Bahnhofstrasse 8, Straubing, 1952 (110 pages).

Le caractère de cet ouvrage diffère de celui de M. MOSER en ce que l'auteur traite ici le droit fiscal pénal dans son ensemble, et n'y réfère que au droit commun quand cela semble être nécessaire.

D'une façon claire, l'auteur donne un bref aperçu des dispositions de la „Abgabenordnung", et cela pour le droit matériel et le droit formel. Dans une première section le lecteur trouve quelques observations fondamentales sur le droit pénal commun et les relations avec le droit fiscal. Ensuite il traite brièvement le caractère de l'infraction fiscàle (Begriff und Wesen des Steuervergehens). La fraude fiscale (Steuerhinterziehung) est traité dans une troisième section[1]). Dans d'autres sections on trouve entre autres les sujets suivants: — Die Steuergefährdung, terme par lequel la loi entend l'acte du contribuable ou de son représentant qui a pour résultat la mise en danger de la collection de l'impôt ou un avantage fiscal dont le contribuable bénéficierait à tort. La différence entre „Steuergefährdung" et „Steuerhinterziehung" est que dans le premier cas il s'agit d'une sorte de négligence tandis que la fraude présuppose un acte institutionnel, donc un élément subjectif.

— Die Selbstanzeige, c'est-à-dire la réparation du mal par la déclaration volontaire du coupable. L'auteur fait remarquer que le droit commun ne connait pas cette possibilité d'échapper à la punition, et il consacre plusieurs pages aux conséquences, en droit fiscal allémand, de la déclaration volontaire.

— La responsabilité des représentants;
— Le concours;
— La prescription; etc.

La deuxième partie de l'ouvrage concerne le droit formel, donc les règles de procédure criminelle en matière fiscale.

L'ouvrage se termine par un registre alphabétique qui permet de trouver facilement les sujets traités dans cette étude.

En rapport avec les ouvrages susmentionnés nous voudrions attirer l'attention que deux publications suisses, dont l'une traite un problème important du droit fiscal pénal, et l'autre est une étude intéressante sur la fraude fiscale.

Dr. Hermann Brassel: Erfolgsprinzip und Schuldprinzip im Fiskalstrafrecht, dargestellt an den Fiskalgesetzen des Bundes und einiger Kantone. Thèse de doctorat, Zurich. — Juris-Verlag, Basteiplatz 5, Zürich, 1952, (217 pages).

Souvent on trouve dans les règles de droit fiscal pénal le principe qu'un acte est punissable par le seul fait que le résultat en est une infraction des lois fiscales, sans que l'on tient compte du degré de culpabilité de celui qui a commis l'infraction. Tandis qu'en droit pénal commun la sanction d'une infraction est subordonnée généralement à la condition que l'auteur de l'action délictueuse ait la conscience et la volonté de commettre une infraction cele n'en est pas de même en droit fiscal: souvent le législateur se contente à punir un résultat qu'il n'a pas voulu, sans se demander si l'auteur de l'action avait ou non l'intention de contrevenir.

Dans son ouvrage précité, l'auteur fait une recherche au sujet de la question de savoir quelle est la situation précise en droit fiscal, et si les déviations aux principes généraux du droit commun peuvent être justifieés par des raisons propres au droit fiscal. Dans cette recherche l'auteur fait une comparaison entre les réglementations fiscales et les solutions du droit commun. Son point de départ est alors la partie générale du droit pénal.

Après cette brève introduction à son travail, par laquelle nous avons voulu présenter les bases et les buts de cet ouvrage, nous nous bornerons à mentionner quelques sujets traités.

L'ouvrage est divisé en quatre parties, dont chacune est à son tour sub-

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[1]) En ce qui concerne la terminologie allemande en matière de fraude fiscal, voir l'article du Professeur Klein, Bulletin vol. VII, p. 16.

divisée en sections, chapitres ou paragraphes. D'abord on traite le droit fiscal et le droit pénal comme composants du droit fiscal pénal: droit fiscal et devoir fiscal; les bases juridico-éthiques des relations fiscales (entre autres la moralité des contribuables); les moyens coercitifs du droit fiscal. Ensuite deux sections sont consacrées, l'une au droit pénal (criminel), l'autre au droit fiscal pénal.

La deuxième partie traite les éléments constitutifs de la punition: l'élément objectif, donc le résultat, et l'élément subjectif, donc le degré de culpabilité, dont l'auteur donne une définition et dont il examine les différents éléments: responsabilité, imputabilité et formes.

La troisième partie est consacrée aux personnes: auteur et complice.

Dans la quatrième partie enfin, on traite les sanctions mêmes.

Nous croyons que le sujet traité dans cet ouvrage ainsi que sa présentation sont d'une importance considérable et que l'ouvrage permet au lecteur de se rendre compte de bien des principes de notre discipline. Bien qu'il soit basé sur le droit fédéral suisse et sur le droit de quelques cantons importants, son intérêt scientifique est beaucoup plus général, raison pour laquelle l'étude en est recommandée vivrement.

Dr. GUSTAVE LACHENAL: *Les fraudes fiscales vues par un expert fiscal.* — Service d'Edition de la Société suisse des commerçants, Talacker 34, Zürich, 1948. (72 pages).

Après avoir souligné, dans son avant-propos, que la fraude fiscale „ne paye plus" et qu'il faut y renoncer, parce qu'elle est deverme très dangereuse, l'auteur dit que cet ouvrage s'adresse aux contribuables de tous les pays. Et dans sa conclusion à la fin de son étude, il fait l'observation suivante:

„Le fisc a pour mission de trouver les moyens financiers destinés à satisfaire
„aux besoins de l'Etat. Lorsque les besoins de l'Etat sont considérables,
„les prétentions du fisc sont lourdes et certain impôts, peut-on dire,
„deviennent prohibitifs. La tentation est alors grande pour les contribuables
„de chercher à diminuer, sinon à supprimer leurs obligations fiscales.
„Lorsque le fisc est avide, est-il opportun, habile de recouvrir au fraudes
„fiscales pour frustrer brutalement l'Etat de sommes qui devraient légale-
„ment lui revenir? Nous ne cherchons pas à défendre le fisc, tant s'en
„faut, et pourtant, sans hésiter, nous répondons: ne fraudez jamais,
„la fraude ne paye plus.
„Lorsque nous disons: ne fraudez jamais, nous ne disons pas aux contri-
„buables: laissez le fisc agir à sa guise. Bien au contraire, le fisc est avide
„et le contribuable a le droit, nous dirons même le devoir de se défendre
„et de se défendre à fond."

Le plan de cette étude est le suivant: dans une première partie l'auteur traite les fraudes fiscales et il en distingue deux groupes, à savoir les fraudes personnelles et les fraudes commerciales. Les dernières sout, d'après lui, les fraudes sur les recettes, sur les dépenses et sur la réalité du bilan.

La deuxième partie intitulée: la répression des fraudes, comprend les sujets suivants: les droit du fisc; la répression des fraudes personnelles et commerciales; les pouvoirs du fisc.

Tout en dormant des exemples, l'auteur explique pourquoi il ne faut pas frauder, et qu'un expert fiscal digne de ce nom ne pourra jamais y collaborer. Sans donner des arguments d'ordre moral, il démontre que les fraudes fiscales couteront en général plus d'argent que l'on ne pourrait gagner par elles. Cet argument même, bien qu'il soit de caractère purement matériel, ne pourrait-il pas ainsi contribuer à un climat fiscal convenable? Nous le pensons, et c'est pourquoi un tel appel aux contribuables nous semble être très utile.

V

TAXATION IN CONNECTION WITH THE STRUCTURE OF INDONESIAN SOCIETY [1])

by

Prof. Dr. M. SLAMET

I have looked in particular for those matters, which are not immediately apparent to western observers, because they have not sufficient time to study Indonesian language and Indonesian customs.

To begin with, there are, according to linguistic specialists, between two and three *hundred* different languages spoken, in the whole of Indonesia.

The Indonesian revolution has begun to accelerate the development of an Indonesian language as an unique and a national language, but of course such a goal cannot be attained at once.

As regard to private law, the Indonesians themselves are still living under the so called "adatlaw".

Among the Dutch specialists on that subject there is still a controversy about the true character of "adatlaw". Is it judge-made law, like the English common law, or is it something else, i.e. simply non-written or non-codified law?

Dr. FURNIVALL calls it "customary law" which after him is the same as "case law". "And the case", he says, "precedes the law; precedents arising out of economic circumstances determine custom, and custom hardens into law, but the law develops as new economic circumstances arise" (Netherlands India, page 12).

I do not know, whether in the mind of Dr. FURNIVALL the economic events form the only cause of the development of law.

In my mind there are more important things than economic events, which have a great influence on the evolution of law, for instance the adoption of a new religion by the greatest part of the population of a country.

It is however not my purpose to entertain you on that subject.

The "adatlaw" moreover is not a homogeneous entity, but there are some 19 regions where adatlaw is different the one from the other.

As to taxation the most important thing is the position of the individual towards the community, in which he is habitually embedded.

Outside of Java, in particular in the interior of Borneo, there must still exist clans which members have *practically* not any "individual" property.

In that case, taxation in the modern sense of the word, cannot exist. For the consequence of taxation is transfer of property (i.e. money, being the market-value of that property or as Prof. ADRIANI calls it: purchasing power) from the individual, the citizen, to a public body, the state or its constitutional part.

I think it is not a mere conjecture, when I say that there are more regions than the interior of Borneo, where "taxation" has still the form of a "tribute"

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[1]) SUMMARY of a paper read in the PLANNING CLUB, Djakarta on Wednesday evening the 18th of August 1954.

paid by the chief of the territorial or other community to the central government.

In Java the position of the individual towards the village-community is expressed in the two forms of "real estate", or "landed property".

In the Western part of Java, the village-community has ceased to have a grip on the individual.

As far as "landed property" is concerned, the individual may freely dispose of it, as according to western law.

In the centre and the eastern part of the island there is landed property, which is divided periodically among villagers and there is also landed property, which one can freely dispose of.

So in the centre and the eastern part of Java the village community has still some meaning, is still a binding force for the villagers.

As you probably know on the western coast of Sumatra, in the region of Minangkabau, there still exists the matriarchal legal system.

The husband is not the chief of the household, but some authorative brother or uncle of the wife ("mamaq kepala waris").

Of course this fact has an impact on taxation, in particular as far as income-tax is concerned.

Outside their own region however, the people of Minangkabau seem to be able to adapt themselves easily to their new surroundings.

Here in Djakarta, for instance, there are certainly numerous couples of Minangkabau origin, who do not live any more under their matriarchal system, but have adopted the local custom.

In the past there has been a rather famous case of a couple of Minangkabau origin, who has lived for a long time beyond Minangkabau and then returned afterwards in that region.

What kind of law is applicable on husband and wife in that case?

When the husband died, what really happened, who has the charge of the children, the "mamaq kepala waris", or their mother?

And what had to be settled at that moment: there were some big sums to be paid by an oil company to the husband, who had just died. Who had the right to receive the money, the "mamaq" or the widow?

The treasury was a really interested onlooker as to the solution of that problem.

If I remember well the two professors called upon the case decided in favour of the widow on account of the particular circumstances, under which the couple had lived.

There are also regions where the structure of the society is the reverse of that of Minangkabau, for instance in the Batak region, where a complete patriarchal legal system persists.

The consequences of this system as to western conceived tax legislation is however not so apparent as that of the matriarchal system.

Generally speaking western educated economists do not pay attention to these particularities.

They are only interested in the production of goods or of paper money, in the import and export, in investment of capital and so on.

The administrators and those, who intent to bring about a fundamental change in the daily life of the Indonesian man of the street, so as to adapt it to modern world and modern times, have to reckon with them.

Sir Stanford RAFFLES had a completely wrong conception about the "landed property" or as Dr. FURNIVALL calls it "land tenure".

Sir Stanford thought ("Substance of a minute", page 6) that the whole of the territory was the private property of the Indonesian Kings and Lords and whereas the British government, which he represented during the INTER-REGNUM from 1811-1815, had supplanted these Kings and Lords, it was entitled to levy "rent" for the pieces of land hold by the Indonesian farmers.

The Dutch government recognized the grave error in the conception of Sir Stanford, but continued to levy the "landrent" and told only, that it was "tax" on "landed property".

The late professor van VOLLENHOVEN considered the ancient taxes levied by the Kings superior to the "landrent" of Sir Stanford "Ontdekking van het adatrecht", page 23).

It is very recently that the Indonesian government has abolished this "landrent".

Fortunately the Indonesian government has maintained intact the registers concerning that tax, for in the Indonesian world the "landrent" has obtained a significance beyond taxation.

The "landrent" registration has served as a "survey of landed property" and the tax-paper as a documentary evidence of the property itself.

At the start "landrent" was limited to Java and Madura, later on it was extended to Bali and Borneo.

Outside the regions where it was introduced, the Dutch government had maintained more or less the ancient taxes.

For as a matter of fact, taxation was known since times immemorial in Indonesia.

The old-fashioned taxes were in accordance with the particular social structure of every region.

The difficulty arose, when the Dutch government neglected those particularities by introducing a single regulation for the whole archipelago.

The income-tax for instance, was inspired by conceptions of family law known in western law. So deduction for children was limited to legitimate, legitimized and "recognized natural" ("illegitimate") children.

Legally speaking in the region of Minangkabau, there was not any deduction allowed for children, for they are no charge for their fathers, and the uncles (mamaq kepala waris) were not entitled to deduction.

In the practice however there was invented some formula to overcome that difficulty.

In the income tax regulation there was not any provision for those marital situations which according to adatlaw in some circumstances have a particular aspect. In the western part of Java, there are marriages, where not the husband, but the wife is *legally* the chief of the household.

In the village society it is *she*, who has the duty of subvention to the village-budget. In that society it is she who plays a rôle.

Such a legal situation arises when a young, but poor man marries an old, but rich woman. The people of the region call it a "hidden behind the hair-knot" marriage (njalindung kagelung).

As to corporations and associations, there are of course some conceptions rooted in "adatlaw" itself, but these are now generally driven back by the conceptions of the western or codified law.

Generally speaking the western conceived companies and corporations are limited to a very small number of capitalists or would-be capitalists. It will be a grave error to neglect that fact, as it will be a grave error to consider the newly formed trade-unions as more important social forces than those composed of millions and millions small farmers, up to now silently hidden in bamboo-ring-fenced village-communities.

I venture to suppose that the success or the failure of trade-unions depends on the knowledge and the use of those binding forces particular to every region or every group of people.

If you have paid close attention to Indonesian boys on the Dutch passenger-steamers you will have noticed, that all of them are people come from the island of Madura, and so are of course the "mandurs". I think it will be practically impossible for people not of Madurese origins to be engaged on such steamers.

About the difficulties in forming a really working co-operative society I can tell a short story based on personal experience.

Though I am convinced that this kind of association may be the *exact* form in which the economic progress of the Indonesian population may be accelerated and promoted, I must confess that there is a complete lack of comprehension and apprehension with the people who ought to be interested therein.

During my, I may say, experiments, I had met so many obstacles of all kinds, that often I felt discouraged.

Personal antagonisme, personal ambitions, suspicions and so on, and that in a limited community where all seemed favorable to my scheme.

All people concerned, belonged to the rather well-to-do citizens of the region. They all were able to write and to read. They all are accustomed to do some small business, and nevertheless, after some months of untiring endeavours I was obliged to abandon my projects.

As a kind of a compensation or reward for my efforts in that direction, I have had the opportunity to make a kind of a sociological study of the region.

For a long time I was vexed by the question in which way the pilgrimage to Mecca is financed. I thought this voyage must be too expensive for most of the people, who nevertheless have visited the Holy Land.

According to the statistics, for some mysterious reasons Indonesia among the Islamic countries of the world, has always contributed for an important part to the budget of Saoudi-Arabia on account of the great number of pilgrims, who accomplished year after year one of the duties of the Islamic creed.

Still Indonesia is not the most prosperous country of the Islam world. But moved by one or another unknown spiritual force, many Indonesians consider as their dearest duty to make at least one in their lifetime a pilgrimage to Mecca.

As I have said, on occasion of my efforts to bring about a really working co-operative society I had the opportunity to make a casual investigation on that subject in a very restricted region. It was like a revelation to me, to discover how people in the region I was studying, get the means for their pilgrimage.

There is a deep rooted tradition connected with an unshakable good faith which make a kind of financing system working.

In the first place everybody in that region considers it as his primary need to accomplish at least once in his life the Mecca pilgrimage. Nobody there ever contemplates to elude this religious duty.

Moreover, any contribution to the freights of the voyage to the Holy Land of somebody else, in case oneself is not able to perform the pilgrimage, is considered in Islamic circles as a blissful exploit.

And this fact exactly forms the cornerstone of a financing system which defies all kind of logic.

For in the region I am speaking of, everybody is engaged in a curious longterm saving scheme aimed at the pilgrimage.

So when one has something superfluous in his household, may it be a bicycle, or a table, or a cupboard, or a cow, or a horse, he sells this object to a neighbour, occasionnally in need of it, for a certain price, which is not to be paid at once, but is due at the moment when the seller announces his intention to part for Mecca.

It does not matter what time elapses between the date of selling and that of departure, all the outstanding accounts of that kind will be paid in full without any exception.

It will never occur that a buyer is inclined to evade payment. So everybody in the region is able by saving in that way to finance his voyage to the Holy Land.

As a matter of fact there are many people there, whom Fortune has favoured in permitting them to accomplish their religious duty more than once.

It is in the same region that I also had the opportunity to study another sociological phenonmeno, i.e. polygamous marriage.

As all of you know this form of marriage was known and practised long-time before the advent of Islam.

The Islam creed limits only the nominal number of wives to four.

It was also a revelation to me that the custom in this respect in two neighbouring villages can be completely different the one from the other.

In one village polygamous marriage was not practised at all, while in the other it was rather general. In this latter village everybody who is wel-to-do, or desires to be esteemed as such, must have at least two wives, if not three or four.

As to the application of the income-tax regulation, I remember from time past, there were tax-officers, who considered a polygamous marriage as a visible and taxable "sign of wealth" and computed it in the tax-paper.

This very rough way of computing the amount to be paid, i.e. by evaluating the *"visible signs of wealth"* was introduced in the income-tax regulation on account of the great difficulties to make exact calculations as to the masses of small traders and others, who have not any written accounts of their revenus of profits.

"Income" has naturally something to do with "wealth" or "wellbeing", but legally speaking it is something else.

Here we meet an essential difference between the way of thinking of the occidental, say European tax-payer, and the oriental, Arabic, Chinese and Indonesian tax-payer.

The former is very keen about the computation of his tax-paper. For him it is not only a matter of pence but also of principle.

The latter is rather indifferent as to the principle even the pence don't touch him much, as far as they are within certain limits after his own estimation.

Paying tax is for him a kind of natural duty which he will not evade generally, but the tax must be "to his liking".

When the tax-note is rather too high after him, he is prompt to make a petition, in which he does not say more, than that the note is too high and must be wrong.

On the other hand he cannot see, that there are instances according to the tax-regulation, in which he has not to pay any tax at all, for instance when his business is not getting so well and his accounts show a loss. Even in that case he is inclined to pay tax, it does not matter, how much, if the amount is not too high. For he will be considered in his world as a rather wealthy man, who contributes well to the countries budget.

Of course I am not speaking of the small number of very well-informed tax-payers, who year after year send in their tax-declaration in due-form, and fulfill their duties as it becomes loyal citizens.

The masses of tax-payers however, do not have a clear conception of income and do not care about the distinction between "income" and "capital" or "wealth".

So the rough way of computing by considering the "visible signs of wealth" suits admirable to them.

In the mind of the legislator there was of course a clear-cut conception of the function of the different taxes introduced in the country.

In the centre there was the income-tax, with a progressive tariff, based on the doctrine of "contributive capacity".

To flatten the still untouched inegalities between "earned" and „unearned" income, there was introduced the tax on capital (vermogensbelasting), wich

with a rather mild tariff fwas a supplementary charge to the fortunate citizens, who possesses some capital surpassing a certain amount.

It was in the regulation of this tax, that for the first time the legislator has paid fully attention to the pecularities of adatlaw in connection with taxation. Nevertheless it is conceivable, that there are still elements, which according to the conception in certain regions have a money-value, and so are taxable, but must be left out of taxation, because the regulation has not made a provision in this respect.

Besides the tax on capital, there are some other taxes on spending, like the inhabited house-tax (personele belasting), which in fact may be a tax on luxury-goods, like automobiles and so on.

Though as I have said, tax and taxation are known in Indonesia since time immemorial, so that the man in the street knows what they mean, the ancient way of evaluation of taxable objects, of computation and of collecting, is of course out of purpose in our modern times.

As a matter of fact, in some region there still exists a custom to evaluate the tax-paying capacity by measuring the *length of one's shoulders*, this being the measure of the bodily strength, i.e. the capacity of earning money by some manual work.

And indeed in the village-community the bodily disabled are automatically exempt form village-subvention.

In modern society however, bodily strength or weakness does not necessarily corresponds with wealth or poverty.

In Bali there have been for a long time a strong conviction that the celibates and the widowers ought to be exempt from taxes. In all modern tax-regulations however these two categories of unfortunate people have to pay more than the married men. (Van Vollenhoven Adatrecht II page 676).

As to collecting taxes, the Indonesian society has problems of its own.

In olden times, as probably in many other countries in the world, tax or tribute, was a kind of life-insurance premium due to the king or the lord, of whose protection one depended.

To assure the collecting of taxes and tributes, the king or the lord had but to strengthen his military or political power. Not any intricate device or technique was needed.

For a long time there was practised in Indonesia the system of "farming" the taxes to some businessmen, most Chinese.

In modern times the problem is quite different.

Every tax-legislator is inspired more or less by a sense of equity and justice, not only as to the tariffs but also as to the ways of collecting the amounts.

Furthermore experience in Indonesia has taught, that the problem has in every region a particular aspect.

A grave error in the device of collecting, might create a mortal danger for the tax-collector.

When landrent was levied, the collecting was entirely entrusted to the chiefs of the villages.

Legally speaking a chief of an Indonesian village is comparable to a burgomaster or mayor of a small municipality in Holland or any country in Europe, but in reality his function is rather different.

As to landrent he was not simply a collector, but practically the guarantor of the whole village.

It is true that the tax-papers were on the name of the individual villagers or farmers, but it is the chief who is practically responsable towards the central government for the whole amount of the landrent of the village.

So as to collecting, landrent was rather a tribute which the chief of the village had to pay, than a tax due by the individual villagers.

When a chief of a village was to be elected, it was generally not his ability

to handle village matters, but his wealth, his capacity to guarantee the paying landrent to the central government, which was a decisive factor.

In 1934 the legislator has introduced the wage-tax (or payroll tax), especially to meet the difficulties of collecting.

Though the tax is meant to charge the wage-earner, the collecting is laid upon the shoulders of the employer, who is entitled to deduce the tax from the wages he has to pay.

In principle this tax might admirably meet the difficulties of taxing and collecting as regards the masses of small-wage-earners, but in the march of time this tax is developped to a substitute of "income"-tax.

It is true that with the greater part of wage-earners, the wage or the salary is the only revenue or income, but there are many exceptions, even with small wage-earners, for instance the farmers in the villages, who in some season are engaged in their own farm-business and in the other are earning wages in sugar-plantations or other western organized enterprises.

From the point of view of collecting, the "wage-tax" is a great success, for it reliefs the tax-service of many troubles.

In the pre-war income-tax-regulation there was a device of collecting taxes from the masses of small-traders.

They were only allowed to pursue their business, when they had got a card, which was issued when income-tax was paid.

Though the post-war transitory-tax regulation, as far as I can see, does not mention the measure, it seems that the system is still in use.

Mr. Chariman, up to now, I have not mentioned the company tax (vennootschapsbelasting).

In my opinion, apart from the needs of the treasury, there is no place for a company-tax, *if* an income-tax can play *fully* and *practically* its rôle.

The company-tax, as we know it in Indonesia, is for several reasons the most succesful taxe, the legislator has ever introduced.

The regulation is very clearly conceived, the taxable object is generally speaking very well defined, so that the tax-officers have nearly not any difficulty in the application of the regulation.

And what counts most in Indonesia, there is not any trouble as regards the collecting of the tax, for the companies are in general not deficient of money.

Even, generally speaking always, the company directors might have the same interest as the treasury, in making the taxable profit as high as possible, for their bonus is calculated on the base of that profit.

The company-tax, however, has nothing to do with the particular structure of the Indonesian society, i.e. the society of the Indonesians themselves, but is the consequence of the social structure of Indonesia as a whole, that is to say, is connected with the fact that there is in Indonesia, a plural society, composed of three elements: first the Indonesian element, the foreign oriental element and the European element.

The Company-tax now is meant to charge the foreign investment, which originates for the greatest from Europe and especially from Holland.

I have to apologize that I am lacking of exact informations as regard to post-war taxes, in particular to its impact ons social life.

Of the turnover-tax I know only some theoretical problems, which I have already elaborated in a paper published in Rotterdam two years ago.

Last but not least I have to confess that tax and taxation, are, so to speak, my first love, to which I have devoted 25 of my best years, and to which I return now and then by affection and for counsel, but that otherwise I am attracted — as in a polygamous marriage — by my younger favorites, i.e. civil law and international private law.

GREAT BRITAIN

THE BUDGET

This year's Budget is very much a repetition of that which preceded it. Its assumptions, its strategy — even its figures — bear a remarkable likeness to the one which Mr BUTLER introduced a year ago. If the Budget for 1954-55 is compared with the outturn for 1953-54, the resemblance is very close. The ordinary 'above-the-line' surplus for 1953-54 was £94 million. The budgeted surplus for 1954-55 is £10 million. The deficit 'below-the-line' in the fiscal year which has just ended was £391 million. The estimated deficit for 1954-55 is £407 million. These figures, of course, take account of the modest changes in taxation which are now proposed. The CHANCELLOR OF THE EXCHEQUER has apparently decided that his prescription last year for more capital investment coupled with slight, but only slight, encouragements to the consumer to spend, is to be continued with minor modifications this year.

As the new fiscal year opens, the CHANCELLOR knows that his last Budget was virtually a balanced one. From the Exchequer's point of view, therefore, he starts from a position of equilibrium. What factors does he see at work this year on this condition of balance? Three points, in particular, are chosen for emphasis — the high level of Government expenditure, the volume of world trade, and the effect of the current recession in the United States. These are worth examining more closely.

Even in these days of buoyant industrial production and full employment, the economy is committed to a crushing burden of taxation which mere prosperity (and this is one of the lessons of this year's Budget) cannot reduce. On the expenditure side of the national accounts, the combined impact of defence outlay and welfare expenditure greatly reduces the modern Chancellor of the Exchequer's power of manoeuvre. Defence outlay is to be raised this year from £1,365 million to £1,555 million, part of the increase being necessary to offset the decline in American aid. A hint is dropped that the Exchequer's liability on farming subsidies is not limitless and that more about this is to be heard during the year. Provision for the social services is £1,327 million or £63 million more than the corresponding provision in the original estimates at the last Budget. Total expenditure, in short, continues to climb and will go up this year from the actual outlay in 1953-54 of £4,274 million to an estimated £4,523 million.

On world trade prospects, the CHANCELLOR is somewhat reticent. He offers no reasons for supposing that they will improve or worsen, so it may be assumed that the official view is for little change in world trading conditions as a whole. The Government is content to call for restraint in wages and profits distributions and for the need to keep costs down. To prevent British manufacturers bearing an undue burden in financing customers' credit out of their own resources, the Export Credit Guarantee Department is to make freer use of guarantees to the banks for major capital goods exports.

For purposes of the Budget the CHANCELLOR is prepared to accept the 'school' answer on the American recession, namely, that it is mainly an inventory readjustment and that the worst is past. If secondary influences

should develop in the United States, Mr BUTLER thinks that the United States Administration can be relied upon to take satisfactory avoiding action in time.

From these three basic assumptions, come the Budget objectives. The CHANCELLOR expects a sustained demand in the home market, sustained exports, and a movement in stocks to keep pace with a rather higher rate of industrial output than in 1953.

Under these circumstances, there is no call this year for a pronounced policy either of inflation or disinflation. The so-called 'natural' forces are likely, in the official view, to cause a modest increase in activity and it will be only necessary to ride the consumer on a relaxed bridle by letting him spend or save his higher income as he wishes. On the other hand, he is not to be overencouraged by any remissions of taxation.

Last year, total estimated receipts 'above-the-line' were £4,368 million and the CHANCELLOR expects that this year the delayed favourable action of certain changes which he made last year together with the anticipated buoyancy of the economy should raise revenue to £4,537 million with taxation on the 1953-54 basis. He proposes, in fact, to surrender £4 million, this year, in remissions in certain types of tax. The tax changes are dealt with in the second part of this article.

An outline of the expenditure figures 'above-the-line' has already been given. So far as 'below-the-line' estimates are concerned, the main change is in loans to local authorities. In the year 1953-54, local authorities were encouraged to seek finance on the capital market, which they did. This brought about a difference between estimate and outlay of £100 million — the estimate was £400 million compared with an outlay of £299 million. It has been assumed that there will be a similar experience this year and local loans are put at £300 million.

It had not been expected that there would be any noteworthy changes in this year's Budget. The public had been warned in advance that purchase tax would not be changed. The only commodity to suffer a tax increase is chicory, on which the Customs duty has been raised by 5*s* 9*d* *a* cwt.

The decision to institute a tax-free investment allowance will be generally welcome in industry. Most responsible opinion before the Budget was agreed that some greater incentive to invest in new capital equipment was necessary if British industry is to keep its costs down to a competitive level. The only query will be whether the new allowance goes far enough.

The budget and taxation

The changes in taxation announced in the Budget could hardly be less spectacular. In the field of direct taxation they are confined to the closing up of very minor loopholes and to the granting of new concessions, the most important of which is the proposal to replace initial allowances in certain cases by 'investment allowances', which, unlike initial allowances, will not be deducted in arriving at written-down values.

Income Tax Rates

Income tax is imposed for 1954-55 at the standard rate of 9*s* in the £, i.e. at the same rate as for 1953-54. There is to be no change in the reduced rates or in the personal allowances. Surtax rates for 1954-55 are left to be fixed later.

Initial Allowances and Investment Allowances

The long campaign of criticism against the working of initial allowances has at last borne fruit. The point has often been made that these allowances bring no real benefit since they go to reduce the subsequent wear and tear

allowances. Mr BUTLER proposes to meet this criticism by introducing what he calls 'investment allowances' to replace initial allowances in certain cases. Expenditure incurred after April 6th on agricultural buildings, and on buildings and plant used for scientific research, will rank for investment allowance, although these assets do not qualify for initial allowance. In the field hitherto covered by initial allowances there will also be investment allowances, with the exception of private motorcars and second-hand plant and machinery. These will continue to qualify for initial allowance only.

The rate of investment allowance will be 20 per cent on expenditure on new plant and machinery and new mining works, and 10 per cent for new industrial and agricultural buildings. Investment allowances will not be deducted in arriving at the written-down value for wear and tear and other capital allowance purposes; they are intended to be a direct stimulus to the investment of capital in productive assets. Thus the concurrent loss of initial allowance will not be felt, except perhaps in the case of mining works which lose an initial allowance of 40 per cent in return for an investment allowance of only 20 per cent. However, in this extreme case the companies concerned are to have the option of retaining the initial allowance and forgoing the investment allowance.

The proposed legislation on the subject is to contain provisions directed against possible abuse. The cost of the change will be negligible in 1954-55, and £4 million in 1955-56. Thereafter it will rise year by year.

In relation to capital allowances, changes in the treatment of demolition expenditure are foreshadowed by the following resolution passed in Committee of Ways and Means:

> 'That it is expedient to authorize all such charges to income tax as may arise from any change in the way in which demolition costs are to be treated for the purposes of Parts X and XI of the Income Tax Act, 1952.'

Companies in Common Control

Another resolution provides for two changes in the provisions dealing with the capital allowance position where there is a sale of a capital asset between two companies in common control. The first is to forbid the making of an election under paragraph 4 of the Fourteenth Schedule to the Income Tax Act, 1952, if a party to the sale is not resident in the United Kingdom at the time of the sale. On the other hand the schedule is to have full effect notwithstanding the fact that one of the parties is non-resident.

The second part of this resolution is obviously designed to nullify the effect of the decision in *C.I.R.v. Wilsons (Dunblane) Ltd.*[1]) This established that where the sale in question was made at the open market price, paragraphs 3 and 4 of the schedule could not apply. The decision threatens to deprive the CHANCELLOR of an appreciable amount of revenue and accordingly the gap left by the inadequate drafting of the Act is to be closed.

Cessation Provisions on Company Reconstructions

Another gap which is to be somewhat belatedly closed is the avoidance of tax by the device of selling a company's undertaking to a new company formed for the purpose. This device was only effective where there had been a fall in profits, and it was much used by textile companies at the time of the recent recession. Indeed, it is questionable whether the device amounted to tax avoidance at all. Be that as it may, it is now proposed that the cessation and commencement provisions shall not apply where three-quarters or more of the interest in the trade belonged to the same persons before and after the change. It is to be hoped that this new provision

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1) See *The Accountant*, dated March 27th, 1954, at page 348.

will work both ways. It sometimes happens that a reconstruction has to take place without any thought of income tax consequences. Where the profits are rising, instead of falling, such a reconstruction can increase the income tax liability at present. Presumably, where a three-quarters interest is held by the same persons before and after the change, additional assessments will be avoided.

The Millard Tucker Committees

The CHANCELLOR proposes to implement some more of the minor reliefs recommended by the first MILLARD TUCKER Committee but he did not give details. However, one of the resolutions deals with the carrying *back* of losses and allowances against income of previous years.

As regards the second committee, on the tax treatment of retirement benefits, Mr BUTLER said he had not had sufficient time to consider its report. He added that in any event the cost of the proposals would make it impossible for him to implement them in the present circumstances, and he therefore did not propose to make any changes in this respect. This announcement will come as a grievous disappointment to the many self-employed persons and controlling directors who are victims of the present anomalies. Seen in its context of a Budget that lowers the entertainment tax and purports to encourage enterprise, this refusal is particularly deplorable.

Post-war Credit Repayments

The CHANCELLOR has yielded to pressure to increase the rate of repayment of post-war credits, irrespective of need. Where the person originally entitled to the credit dies before becoming entitled to repayment, the persons entitled under his will or on his intestacy will be allowed to claim repayment of the credit at the date when the deceased would have been able to claim, i.e. on what would have been his 65th birthday (60 in the case of a woman) had he survived. The concession will also apply where the deceased was over the qualifying age when he died but had neglected to claim repayment. At the same time the CHANCELLOR urges the recipients under this new dispensation to invest the money unless their need to spend it is 'really urgent'. The cost of the concession will be no less then £19 million in the first year, and £2 million a year thereafter.

Estate Duty and the Controlled Company.

The CHANCELLOR'S review of estate duty anomalies, particularly in relation to controlled companies, which he began last summer, is to result in a number of changes in the Finance Bill.

Although the general principle of valuing a controlling shareholder's holding on the 'assets' basis is to be retained, some concessions are promised. Where shares so valued are sold to an independent purchaser, the estate duty valuation will be brought into line with the sale price. The CHANCELLOR made no mention of the obvious anomaly which arises when a controlling shareholder gives away a small minority holding and dies within five years. The luckless donee may find himself saddled with a liability greater than the value of the shares.

However, in so far as the assets consist of industrial plant, machinery or premises, used for the purposes of a trade, the estate duty rate is to be reduced in their favour by 45 per cent, thus in effect putting them on the same basis as agricultural land. This concession will apply not only to the calculation of shares on the assets basis, but also to the valuation of the assets of a trade carried on by the deceased himself. The relief is estimated to cost £½ million this year and £1½ million in a full year.

It would seem also that the effect of the decision in *Re Duffy* ([1948] 27 A.T.C. 324) is to be nullified. A resolution has been passed dealing with a deduction for taxation falling on a company after the shareholder's death.

Estate Duty and Aggregation

Criticisms of the provisions for aggregation are to be partially met. At present, if a man's own estate exceeds £2,000, all kinds of property which passes or is deemed to pass on his death may fall to be aggregated with it for the purpose of determining the rate of duty payable on his own estate. This may thus be taxed at as much as 80 per cent, which is patently absurd for a small estate. Mr BUTLER proposes to increase the £2,000 limit to £10,000 which, he says will eliminate the great bulk of hardship cases. It still means, however, that a man's family may be limited to a little over £2,000 on his death, which could hardly be described as affluence. The concession is to cost £125,000 this year; £250,000 in a full year.

Insurance Policies

The Committee of Ways and Means passed a laconic resolution in the following terms:

'That new provision ought to be made for charging estate duty on policies of assurance on the life of the deceased.'

In his speech, the CHANCELLOR said he hoped to deal with the doubts and anomalies which have arisen in regard to the treatment of policies of assurance which do not form part of the deceased's own estate. In recent litigation concerning policy moneys the Estate Duty Office has been singularly unsuccessful and it may be that the balance is to be redressed by legislation. It is possible that the decision of the House of Lords in *D'Avigdor-Goldsmid v. C.I.R.* ([1953] 32 A.T.C. 26) will be nullified.

Entertainment Tax

On and after May 30th, 1954, entertainment tax is to be reduced. For 'live' shows, and sports, the reduction is ½*d* for each admission. In the case of cinemas the exemption limit is raised from 8*d* to 9*d* and the reductions in duty above that limit range from ½*d* to 1 ½*d*, depending on the price of the seat.

source: The Accountant vol cxxx no 4138.

WESTERN GERMANY

REPORTS ON THE TAX REFORM

On page 85 of the previous issue of the *Bulletin* we gave a brief summary of the main points of the draft bill for the new tax reform.

By the kind permission of the Editors and Publishers of the German periodical 'Die Wirtschaftsprüfung' we are able to reproduce here a summary of two reports published with a view to the come tax reform. The first summary was published in the issue of 15th February, the second in the issue of 15th March, 1954 of the abovementioned periodical.

Grundgedanken des sog. Troeger-Gutachtens zur Groszen Steuerreform

Unter dem Titel „Diskussionsbeiträge des Arbeitsausschusses für die Grosze Steuerreform" hat der durch Beschlusz des Finanzausschusses des Bundesrates ins Leben gerufene Ausschusz von Sachverständigen der einzelnen Länder seine Vorschläge der Öffentlichkeit übergeben. Wenn auch der Arbeitsausschusz keine offizielle Ländervertretung darstellt, so kann doch mit Rücksicht auf die Auswahl und die Qualifikation der Ausschuszmitglieder davon ausgegangen werden, dasz den Vorschlägen des Ausschusses, soweit sie von der Bundesregierung bzw. vom Bundestag übernommen werden, seitens des Bundesrates kein Widerstand mehr entgegengebracht wird.

Der Ausschusz legt zunächst eine grundsätzliche Linie fest, von der ausgehend er seine Vorschläge zur Änderung der einzelnen Steuern entwickelt. Nach der Ansicht der Ausschusses hat sich das bisherige Steuersystem in seinem Grundaufbau bewährt; so soll die derzeitige Aufteilung des Steueraufkommens etwa je zur Hälfte aus direkten und indirekten Steuern beibehalten werden. Alle Vorschläge über den Abbau der Einkommen- bzw. Körperschaftsteuer unter gleichzeitiger Erhöhung der Umsatzsteuer werden abgelehnt. Das Schwergewicht der Reform wird in Weiterentwicklung der Linie der Kleinen Steuerreform in einer Senkung des Einkommen- (und Körperschaftsteuer-) satzes erblickt, der wirtschaftlich tragbar und nach den Bedürfnissen einer familiengerechten Besteuerung umzugestalten ist. Dafür sollen alle Sondervergünstigungen möglichst abgebaut werden, um gleichzeitig die unbedingt erforderliche Vereinfachung der Steuergesetze zu erreichen.

Im weiteren auf die Einkommensteuer selbst eingehend lehnt der Ausschusz die Einführung einer Betriebssteuer, wie auch die gesonderte Besteuerung des Betriebseinkommens und die Schaffung von Sondertarifen für verschiedene Einkunftsarten ab.

Der steuerfreie Einkommensteil und der Freibetrag für die Ehefrau sollen auf DM 1000.— heraufgesetzt, die Freibeträge für die Kinder erhöht und nach der Kinderzahl gestaffelt werden:

für das 1. und 2. Kind	je	DM	720.—
für das 3. und 4. Kind	je	DM	960.—
für das 5. und jedes weitere Kind	je	DM	1200.—

Ferner soll die Altersgrenze für die Gewährung des Freibetrages bei

Kindern in der Berufsausbildung auf 28 Jahre festgesetzt werden. Der Spitzensatz der Einkommensteuer soll auf etwa 65 v. H. herabgesetzt werden. Bis zu einem Einkommen von etwa DM 8000.— is ein fester Steuersatz von 15 bis 17,5 v. H. zu erheben, dem eine weitere Steuerstufe für Einkommen bis zu DM 12.000.— folgen soll, so dasz die Progression erst bei höheren Einkommen zur vollen Auswirkung kommt. An Sonderbegünstigungen sollen die §§ 7a, 7d Abs. 1, 7 e, 10 a und 34 a EStG, die Abzugsfähigkeit der Vermögensteuer als Sonderausgabe, die Begünstigung der Aufwendungen für mildtätige, kirchliche und religiöse (nicht für wissenschaftliche) Zwecke und das Kapitalmarktförderungsgesetz fortfallen, und zwar schon mit dem Inkrafttreten der Steuerreform. Gleichzeitig sollen unter Fortfall der gleitenden Freibeträge die Höchstbeträge nach § 10 Abs. 2 Ziff. 3 EStG auf je DM 1000.— für den Steuerpflichtigen und seine Ehefrau sowie auf DM 500.— für jedes Kind, für das der Steuerpflichtige Kinderermäszigung erhält erhöht werden.

Hinsichtlich der Gewinnermittlung sollen § 4 Abs. 1 und §5 EStG einander angepaszt werden, um den Unterschied in der Gewinnermittlung von in das Handelsregister eingetragenen und nicht eingetragenen Gewerbetreibenden zu beseitigen. Selbständig Tätige sind nicht mehr verpflichtet, einen Vermögensvergleich vorzunehmen, ein Vorschlag, der mit einer entsprechenden Änderung des § 161 Abs. 1 RAO zu verbinden ist. Zu- oder Abschläge (Korrektivposten) sollen bei der Gewinnermittlung nach § 4 Abs. 3 EStG nicht mehr vorgenommen werden; § 7 EStG soll aber auf Grund besonderer gesetzlicher Bestimmung auch für die Einnahmeüberschuszrechnung gelten.

Während die Wirtschaft bei den Abschreibungen mehr als bisher freie Hand erhalten soll, lehnt der Ausschusz es ab, einer eventuellen Scheingewinnbesteuerung Rechnung zu tragen. Der Geschäftswert bleibt nach wie vor nicht abschreibungsfähig und ebensowenig werden Rückstellungen für unterbliebene oder künftige Instandsetzungen von Wirtschaftsgütern des Anlagevermögens zugelassen. Weiter spricht sich der Ausschusz für eine Beibehaltung des § 4 Abs. 4 EStG in der bisherigen Form aus.

Von den weiter durch den Ausschusz behandelten Einzelfragen zur Einkommensteuer erscheinen noch folgende bemerkenswert: Die Haushaltbesteuerung soll grundsätzlich beibehalten werden mit der Maszgabe, dasz die Lohnsteuer der Ehefrau, die in einem dem Ehemann fremden Betrieb arbeitet, nach Steuerklasse I zu berechnen ist; die Ehefrau soll aber weiterhin die in der Lohnsteuertabelle eingebauten Pauschbeträge für Werbungskosten und Sonderausgaben erhalten. Die Besteuerung nach einem mehrjährigen Durchschnitt und die Einführung eines rückwirkenden Verlustabzuges, bei dem ein gegenwärtiger Verlust durch Verrechnung mit dem Gewinn eines vergangenen Jahres sofort ausgeglichen wird, befürwortet der Ausschusz nicht. Dagegen soll der Verlustabzug mit Wirkung in die Zukunft auf 4 Jahre ausgedehnt werden. Aus Gründen der Systematik soll der Verlustabzug aus § 10 EStG herausgenommen und die zwangsläufigen auszergewöhnlichen Belastungen mit den Sonderausgaben, die begrifflich ebenfalls Kosten der Lebensführung sind, zusammengefaszt werden. Die Anwendung von Steuerbegünstigungen soll in sachlicher Hinsicht grundsätzlich nicht von der Ordnungsmäszigheit der Buchführung abhängig gemacht sein; es erscheint dem Ausschusz genügend, wenn die gesetzlich festzulegenden Voraussetzungen für dei Gewährung derartiger Vergünstigungen vom Steuerpflichtigen im Einzelfall nachgewiesen werden. Die derzeitige Regelung der Gewinnaufteilung bei abweichendem Wirtschaftsjahr wird durch die ursprüngliche Bestimmung des § 2 Abs. 5 EStG 1934 ersetzt, nach welcher der Besteuerung der Gewinn zugrunde zu legen ist, der in dem Wirtschaftsjahr bezogen worden ist, das im Veranlagungszeitraum endet. Die Wiedereinführung eines besonderen Pauschbetrages für Betriebsausgaben bei Einkünften aus selbständiger Arbeit wird abgelehnt.

Für die Lohnsteuer wird als Richtschnur aufgestellt, dasz die Belastung durch sie möglichst genau der Belastung der wirtschaftlich Selbständigen durch die veranlagte Einkommensteuer angepaszt wird mit der Maszgabe, dasz zum Ausgleich der Schlechterstellung der Lohnsteuerpflichtigen ein Betrag von 5 bis 10 v. H. der Einkünfte, höchstens aber DM 1200.— jährlich vom Einkommen abzusetzen ist, der in die Lohnsteuertabelle eingearbeitet wird. Der Pauschbetrag für Werbungskosten soll auf DM 32.50 monatlich erhöht werden, der Pauschbetrag für Sonderausgaben dagegen bleiben.

Um die Wirkung der Einkommensteuerreform nicht abzuschwächen, wird die Einführung neuer Steuern vom Einkommen, wie z. B. einer Bürgersteuer oder Vermögenszuwachssteuer, und die Verlängerung des Notopfers Berlin über den 31. 12. 1954 hinaus abgelehnt.

Die Vorschläge zur Änderung der Körperschaftsteuer, die von der grundsätzlichen Beibehaltung der Doppelbelastung des Gewinns der Körperschaften ausgehen, beschränken sich auf wenige Punkte. Der Steuersatz soll auf 45 bis 50 v. H. herabgesetzt und die Begünstigung für Ausschüttungen ebenso wie die Mindestbesteuerung aufgehoben werden; Aufsichtsratsvergütungen sollen nach wie vor besteuert werden.

Bei der Erbschaftsteuer sollen nur die Freibeträge und Besteuerungsgrenzen erhöht werden, und zwar die Freibeträge für die Steuerklasse I und II um je DM 10 000.—, die Besteuerungsgrenzen für die Steuerklassen III und IV um je DM 1000.— und die Besteuerungsgrenze für die Steuerklasse V um DM 500.—.

Die Mängel des gegenwärtigen Umsatzsteuersystems werden anerkannt, jedoch wird ein Übergang zur Netto-Umsatzsteuer schon im Hinblick auf die nicht zu übersehenden haushaltmäszigen Auswirkungen nicht impfohlen. Ebensowenig befürwortet der Ausschusz aber die Einführung einer Aufwandsteuer oder einer Warenhaussteuer und spricht sich für die Beseitigung der Zusatzsteuer auch in der Textilwirtschaft aus. Was die einzelnen Bestimmungen des Umsatzsteuerrechts angeht, so wird es als möglich angesehen, den ermäszigten Steuersatz für den steuerbegünstigten Groszhandel im Falle dringenden Finanzbedarfs zu erhöhen. Die sozial kalkulierten Lebensmittel- und die landwirtschaftlichen Umsätze (§ 7 abs. 2 UStG) sollen einem einheitlichen Steuersatz von 3 v. H. unterworfen und die zahlreichen Steuerbefreiungen des § 4 UStG einer gründlichen Überprüfung unterzogen werden, ob sie unter den gegenwärtigen Verhältnissen noch wirtschafts- und sozialpolitisch gerechtfertigt sind. Die Wiedereinführung der Organschaft wird befürwortet.

Hinsichtlich der übrigen Verkehrsteuern werden keine Änderungen vorgeschlagen mit Ausnahme der Beförderungsteuer, die ebenso wie die Besteuerung der Kraftfahrzeuge einer grundsätzlichen Neuregelung unterworfen werden soll; als die gerechteste und zweckmäszigste Straszenbenutzungssteuer wird eine Kraftstoffsteuer angesehen. Die Verbrauchsteuern sollen aufgehoben werden mit Ausnahme des Branntweinmonopols, der Bier-, Schaumwein-, Tabak-, Kaffee-, Tee- und Mineralölsteuer, in welche die vorgesehene Kraftstoffsteuer eingegliedert werden soll.

Der Ausschusz schlieszt seine Vorschläge damit ab, dasz er, einem dringenden Erfordernis Rechnung tragend, empfiehlt, die bisherige Praxis umfangreicher Verwaltungserlasse abzubauen. Die zu erwartende Vereinfachung werde einen solchen Abbau erleichtern.

Die wesentlichen Vorschläge der Denkschrift des Instituts „Finanzen und Steuern" zur Steuerreform

Im folgenden sollen die wesentlichen Grundzüge der Denkschrift des Instituts „Finanzen und Steuern" über „Grundlagen und Möglichkeiten

einer organischen Finanz- und Steuerreform" wiedergegeben werden. Die Denkschrift, die im Auftrage der Spitzenorganisationen der gewerblichen Wirtschaft erstellt worden ist, ist in ihrer Konzeption breiter angelegt als das Troeger-Gutachten, indem sie die ihr gestellte Aufgabe dadurch zu lösen sucht, dasz sie von der Gestaltung des öffentlichen Finanzbedarfs und seiner Deckung ausgeht und daran die Folgerungen für eine organische Steuerrefrom knüpft. Diese Aufgabenstellung bedingte weiter, dasz auch Fragen des Finanzausgleichs und die sich aus der Vermögensakkumulation der öffentlichen Hand ergebenden Folgen behandelt wurden, um das Verhältnis von öffentlicher Finanzwirtschaft und privater Wirtschaft in seinem gesamten untrennbaren Zusammenhang darzustellen.

Die Behandlung der finanzpolitischen Grundlagen und Möglichkeiten — so entscheidend diese Probleme für die Gesamtbeurteilung auch sind — würde aber über den Rahmen dieser Abhandlung, die sich nur mit den Vorschlägen zur eigentlichen Steuerreform befassen soll, hinausgehen. Im folgenden sollen daher nur diese in ihren Grundzügen ohne Anspruch auf eine erschöpfende Wiedergabe dargestellt werden.

Die Denkschrift geht in ihren Vorschlägen zur Steuerreform zunächst auf die Abgabenordnung als das Grundgesetz des formellen Steuerrechts ein und fordert insbesondere die Sicherstellung der Unabhängigkeit der Finanzgerichte und einen verstärkten Schutz des Bankgeheimnisses. Das Schwergewicht der Untersuchung liegt auf der künftigen Gestaltung der Einkommensteuer, zumal im Gegensatz zu dem Gutachten des wissenschaftlichen Beirats an der Allphasen-Umsatzsteuer in der bisherigen Form festgehalten werden soll. Der Progressions-Höchstsatz soll 50 v. H. und der Plafond, der bei DM 200 000.— einsetzen soll, 50 v. H. nicht übersteigen. Die Einkünfte der Ehefrau aus Land- und Forstwirtschaft, Gewerbebetrieb und selbständiger Arbeit sollen von der Zusammenveranlagung ausgenommen werden. Bei der Gewinnermittlung wird eine stärkere Berücksichtigung betriebswirtschaftlicher Gesichtspunkte gefordert. So soll das Verbot der Abzugsfähigkeit der sonstigen Personensteuern aufgehoben und § 4 Abs. 4 Satz 2 EStG wieder beseitigt werden. Die Bildung von Rückstellungen soll betriebswirtschaftlichen Grundsätzen angepaszt und den Unternehmen die Bildung einer steuerfreien Rücklage für Ersatzbeschaffungen von etwa 5 v. H. der Buchwerte für das abnutzbare Anlagevermögen gestattet werden. Die Anpassung der Abschreibungssätze an die tatsächlichen Wiederbeschaffungskosten wird befürwortet. Auch sollen für aktivierte Geschäftswerte laufende Absetzungen für Abnutzung, wie sie das Aktienrecht vorschreibt, zugelassen werden und die degressive Abschreibung ohne Rücksicht auf den Zeitpunkt der Anschaffung und die Zeit der betriebsgewöhnlichen Nutzungsdauer zulässig sein. Zur Verhinderung der Scheingewinnbesteuerung werden gesetzliche Masznahmen gefordert. Weiter wird empfohlen, die Gewinnermittlung bei vom Kalenderjahr abweichenden Wirtschaftsjahren nach der früheren Regelung vorzunehmen, nach der die Ergebnisse der einzelnen Wirtschaftsjahre in dem Kalenderjahr besteuert wurden, in dem das jeweilige Wirtschaftsjahr geendet hat. Der Verlustvortrag soll auf 6 Jahre ausgedehnt und ein rückwärtiger Ausgleich für einen Zeitraum von zwei Jahren gestattet werden. Die weiteren Vorschläge zur Einkommensteuer befassen sich vornehmlich mit Übergangsmasznahmen für die Zeit bis zum Inkrafttreten der Tarifsenkung und sind daher für eine grundsätzliche Betrachtung ohne Interesse.

Entsprechend dem Einkommensteuerplafond wird eine Senkung des Körperschafsteuertarifs auf 40 v.H. für nötig gehalten, jedoch nur unter der Voraussetzung, dasz die Doppelbelastung nich aufrechterhalten wird; andernfalls soll der Körperschaftsteuertarif auf 30 v.H. herabgesetzt werden.

Hinsichtlich der Erbschafsteuer wird die Frage aufgeworfen, ob nicht angesichts ihres relativ geringen Aufkommens wenigstens vorübergehend

auf ihre Erhebung verzichtet werden kann. Sollte eine derartige Regelung nicht durchführbar erscheinen, so soll eine Ablösung der Erbschaftsteuer bereits zu Lebzeiten des Vermögenseigentümers und der Abschlusz von Erbschaftsteuerversicherungen im Sinne des § 18 a ErbStG auch in den Fällen. zugelassen werden, in denen die mutmaszlichen Erben nicht den Steuerklassen I und II angehören.

Die Hebesätze der Gewerbesteuer werden als übersetzt angesehen, da sie zu einer untragbaren Sonderbelastung der privaten Wirtschaft geführt haben. Auch soll die Lohnsummensteuer aus Gründen der Vereinfachung aufgehoben werden. Auf dem Gebiet der Verkehrsteuern spricht sich die Denkschrift für den Wegfall der Gesellschaftsteuer und der Wertpapiersteuer aus, da sie den Kapitalmarkt behindern. Die Beförderungsteuer, die ihrem Wesen nach eine Sonderform der Umsatzsteuer darstellt, soll unter Zugrundelegung des allgemeinen Tarifs der Umsatzsteuer in diese eingebaut werden. Das derzeitige komplizierte Verbrauchsteuersystem mit seinen zahlreichen Ausnahmeregelungen wird als verfehlt angesehen und eine organische Neugestaltung des Verbrauchsteuerrechts unter Fortfall der Finanzmonopole befürwortet.

Der Lastenausgleichsgesetzgebung wird der Vorwurf gemacht, dasz sie nicht erschöpfend mit dem geltenden Steuersystem abgestimmt ist und so dazu führt, dasz viele Unternehmen nicht in der Lage sind, den Lastenausgleich dem Willen des Gesetzgebers entsprechend aus dem Ertrag zu leisten. Durch die Nichtabzugsfähigkeit von zwei Drittel der Vermögensabgabe werde die Gesamtbelastung in untragbarer Weise erhöht. Andererseits würde durch die zu fordernden Erleichterungen beim Ausmasz der Abzugsfähigkeit der Vermögensabgabe das Lastenausgleichsaufkommen nicht geschmälert. Abschlieszend wird angeregt zu prüfen, ob und inwieweit das Vermögen der öffentlichen Hand den Zwecken des Lastenausgleichs dienstbar gemacht werden kann.

ENTWURF EINES GESETZES ZUR NEUORDNUNG VON STEUERN

(DeutscherBundestag, Drucksache 481, 29 April 1954)

A. Allgemeines

I.

Das vorliegende Gesetz zur Neuordnung von Steuern bildet den vorläufigen Abschlusz einer Entwicklung des deutschen Steuerrechts, die sich in der Zeit nach dem zweiten Weltkrieg angebahnt hat. Der Wirtschaftsrat des Vereinigten Wirtschaftsgebiets und nach ihm die Bundesregierung haben, insbesondere seit der Währungsreform, die Politik verfolgt, durch Abbau der durch die Kontrollratsgesetze eingeführten überhöhten Tarife, vor allem auf dem Gebiet der direkten Steuern, eine Normalisierung der Steuern herbeizuführen. In den Jahren 1948 und 1949 scheiterte ein wirksamer stufenweiser Abbau des überhöhten Einkommensteuertarifs an dem Widerspruch der Alliierten. Um die Wirtschaft nicht unter der Steuerlast zusammenbrechen zu lassen, wurde seinerzeit eine Reihe von Sondervergünstigungen eingeführt, die die Eigenfinanzierung und bestimmte Sparvorgänge, die Anlage von Geld im Wohnungs- und Schiffbau usw. förderten. Diese Masznahmen haben in Verbindung met dem den Bedürfnissen der Unternehmer Rechnung tragenden Gesetz zur DM-Eröffnungsbilanz wesentlich zu dem Wiederaufbau der deutschen Wirtschaft beigetragen. Dabei stand die Eigenfinanzierung im Vordergrund. Die Bundesregierung behielt jedoch stets das Ziel einer allgemeinen Herabsetzung des Einkommensteuertarifs unter gleichzeitigem abbau von Vergünstigungen im Auge. Dem entsprach die Einkommensteuertarifsenkung des Jahres 1950, die auch bei der plötz-

lichen Erhöhung des Finanzbedarfs nach der Koreakrise und der dadurch erzwungenen Erhöhung der Umsatzsteuer und Körperschaftsteuer im Jahre 1951 beibehalten wurde.

Das Gesetz zur Änderung steuerlicher Vorschriften und zur Sicherung der Haushaltsführung vom 24. Juni 1953 (Bundesgesetzbl. I S. 413), das unter dem Namen der „Kleinen Steuerreform" bekannt ist, tat einen weiteren groszen Schritt durch erneute Herabsetzung des Einkommensteuertarifs unter gleichzeitigem schrittweisen Abbau von Vergünstigungen. Der Körperschafsteuersatz von 60 vom Hundert wurde dadurch wirksam gesenkt, dasz auf berücksichtigungsfähige Gewinnausschüttungen von den Kapitalgesellschaften nur noch 30 vom Hundert Körperschaftsteuer zu zahlen war.

Schon unmittelbar nach Verabschiedung der „Kleinen Steuerreform" wurden von der Bundesregierung, insbesondere auch im Bundesfinanzministerium die Erörterungen und Vorbereitungen für eine weitere gröszere Steuerreform weitergeführt. Dies wurde auch aus Kreisen der Wirtschaft bald wieder dringend gefordert, da sich — während das Sozialprodukt nicht mehr in gleichem Tempo stieg — der Druck des Lastenausgleichs sowie die sich infolge der Durchführung der Einkommensteuer- und Vermögensteuerveranlagungen für die zurückliegenden Jahre ergebenden Steuernachforderungen immer stärker auszuwirken begannen.

II.

Als geeigneter Zeitpunkt für eine grundlegende Reform bot sich der neuen Bundesregierung der 1. Januar 1955, d. h. der Termin an, bis zu dem das Gesetz zur engültigen Regelung der Verteilung des Steueraufkommens zwischen Bund und Ländern nach Artikel 107 des Grundgesetzes verkündet werden muszte. Es was klar, dasz vor einer solchen endgültigen Regelung über den künftigen Aufbau des Steuersystems, jedenfalls in den Grundzügen, Klarheit bestehen muszte. — Auszerdem laufen am 31. Dezember 1954 eine Anzahl wichtiger steuerlicher Vergünstigungen aus. Eine erneute Tarifsenkung zu diesem Zeitpunkt konnte die Aufrechterhaltung dieser wichtigen und notwendigen Masznahme sehr erleichtern.

Die Bundesregierung hat sich entschlossen, mit dem vorliegenden Gesetz trotz des damit verbundenen haushaltsmäszigen Risikos im Interesse des Fortgangs der Wirtschaftsbelebung und der Normalisierung der Steuern vom Einkommen den schon angekündigten Schritt der Steuerreform für den 1. Januar 1955 zu gehen. Das Gesetz zur Neuordnung von Steuern steht mit einer Anzahl gleichzeitig von der Bundesregierung vorgelegter Gesetze zur Verteilung des Steueraufkommens nach Artikel 107 des Grundgesetzes in engem Zusammenhang. Auch die in Vorbereitung befindlichen Gesetze zur Durchführung eines Ausgleichs der Familienlasten und über die Neuordnung der Wohnungswirtschaft sind in diese Verbindung mit einzubeziehen.

Die Bundesregierung hat sich darüber hinaus einem in der Öffentlichkeit dringend geäuszerten Wunsch entsprechend entschlossen den Termin für das Inkrafttreten der neuen Tarife des Einkommen- und Körperschaftsteuergesetzes bereits auf den 1. Oktober 1954 festzusetzen. Die Bundesregierung geht hierbei davon aus, dasz sämtliche Gesetze bis zum 1. August 1954 verkündet werden können, da nach den Erfahrungen ein Zeitraum von zwei Monaten nach der Verkündung der Gesetze für die Vorbereitungsarbeiten, insbesondere bei der Lohnsteuer, erforderlich ist. Die sämtlichen Gesetzentwürfe stellen eine Einheit dar und können voneinander nicht getrennt werden. Die Bundesregierung ist sich bewuszt, dasz durch diese Vorverlegung des Termins auf den 1. Oktober 1954 sich gewisse Widersprüche ergeben, da der in anderen Gesetzen für den 31. Dezember 1954 vorgesehene Wegfall der Begünstigungen nicht auf denselben Zeitpunkt vorverlegt werden kann und die Ausarbeitung eines Mischtarifs für die

Einkommen- und Körperschaftsteuer für den Veranlagungszeitraum 1954 erforderlich wird, ohne dasz der Tarif des Gesetzes aus dem Jahr 1953 überhaupt zur Anwendung kommt. Aus dem zeitlichen Auseinanderfallen von Wegfall der Begünstigungen und Einführung des Tarifs ergeben sich unvermeidbare psychologische und haushaltsmäszige Schwierigkeiten. Die Bundesregierung hofft, dasz noch Wege gefunden werden, um diese Schwierigkeiten zu mildern.

III.

Das Gesetz zur Neuordnung von Steuern wird diejenigen Kreise enttäuschen, die von einer groszen Steuerreform — aus idealen oder aus egoistischen Gründen — eine grundlegende Änderung des deutschen Steuersystems oder wenigstens einzelner Institutionen desselben erwartet haben. Das Gesetz folgt in seiner Tendenz, das bestehende Steuersystem in wesentlichen aufrechtzuerhalten und nur Verzerrungen zu beseitigen, den an den Finanzausschusz des Bundesrates gerichteten „Diskussionsbeiträgen" des Arbeitsausschusses für die grosze Steuerreform und — soweit die Steuern vom Einkommen und Vermögen in Betracht kommen — auch dem Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen zur organischen Steuerreform. Beide Gutachten haben schon die „Kleine Steuerreform" maszgebend beeinfluszt und waren für die Vorbereitung des Gesetzentwurfs von höchstem Wert.

Das Gesetz zur Neuordnung von Steuern ist insbesondere nicht den von einzelnen Experten empfohlenen Weg gegangen, im deutschen Steuersystem das Schwergewicht von den direkten auf die indirekten Steuern etwa dadurch zu verlagern, dasz die Tarife bei den Steuern vom Einkommen halbiert, bei der Umsatzsteuer aber verdoppelt werden (vgl. z. B. Ritschl, Gutachten zur Groszen Steuerreform). Die Bundesregierung glaubt, dasz eine solche Verlagerung, die übrigens auch nach der Auffassung ihrer Verfechter nicht im Rahmen einer kumulativen Umsatszteuer, sondern nur bei Einführung einer Nettoumsatzsteuer zu verwirklichen wäre, einen nicht übersehbaren einflusz auf das Preisgefüge und allgemeine Veränderungen der Steuerbelastung zu ungunsten der Bezieher kleiner Einkommen herbeiführen würde. Sie ist der Auffassung, dasz in Deutschland das Aufkommen aus den nach der Leistungsfähigkeit bemessenen Steuern vom Einkommen und Vermögen nach Möglichkeit auch in Zukunft einen etwa die Hälfte betragenden Anteil des gesamten Steueraufkommens von Bund, Ländern und Gemeinden ausmachen sollte. Dabei soll jedoch versucht werden, bei den Steuern vom Einkommen statt der jetzigen überhöhten die optimale Belastung zu finden. Das vorliegende Gesetz soll auf diesem Wege den entscheidenden Schritt darstellen.

Das Gesetz zur Neuordnung von Steuern ist auch nicht dem Vorschlag gefolgt, die Körperschaftsteuer, die Einkommensteuer auf Betriebsgewinne und vielleicht auch die Gewerbesteuer durch eine Betriebsteuer abzulösen. Die Betriebsteuer, die übrigens auch in Kreisen der Wirtschaft kaum noch befürwortet wird, würde bei den Einzelfirmen und Personengesellschaften eine den rechtlichen und tatsächlichen Verhältnissen kaum entsprechende Trennung zwischen Betrieb und Person unterstellen und fördern. Für kleinere Gewerbebetriebe und für die Landwirtschaft wie auch für freie Berufe wäre die Betriebsteuer mit dem ihr entsprechenden einheitlichen Tarifsatz kaum durchführbar. Sie würde auszerdem starke Unterschiede in der Behandlung der verschiedenen Einkunftsarten hervorrufen. Aus den gleichen Gründen ist der Gesetzentwurf auch der Theorie nicht gefolgt, die zwischen der Besteuerung von Gewinn und Einkommen einen grundsätzlichen Unterschied machen will. — Ebenso wenig hat er den Gedanken aufgenommen, die im Betrieb verbleibenden Gewinne einem geringeren Steuersatz zu unterwerfen und bei den übrigen Steuerpflichtigen bestimmte

festgelegte Sparbeträge entsprechend zu behandeln (vgl. Eventualvorschlag des Wissenschaftlichen Beirats in seinem Gutachten für den Fall der Unmöglichkeit einer durchgreifenden Tarifreform). Eine gerechte und umfassende Lösung läszt sich auf dieser Grundlage besonders bei kleineren Einkünften nicht finden. Die Überwachung und evtl. Nachversteuerung derartiger Vergünstigungen erfordern im übrigen wie gerade die Erfahrungen der letzten Jahre gezeigt haben, eine grosze und dabei vielfach unwirksame Verwaltungsarbeit.

Auch einer Anzahl weiterer neuartiger Vorschläge, das Verhältnis der Besteuerung von Kapitalgesellschaften und Personengesellschaften neu zu ordnen, ist der Gesetzentwurf nicht gefolgt; er sieht vielmehr in einer Anpassung der Steuersätze die beste Möglichkeit, der nun einmal bestehenden Verschiedenheit von natürlichen und juristischen Personen Rechnung zu tragen.

Der Entwurf hat nach eingehender Prüfung auch den Plänen zur Einführung einer Sollertragsteuer, durch die das Erwerbsstreben angereizt werden sollte, nicht folgen können. Die Hauptschwierigkeit besteht hier darin, bei der Differenziertheit der gewerblichen Wirtschaft in Deutschland gerechte und gleichmäszige Maszstäbe für einen Sollertrag aufzustellen. Ebenso wenig erscheinen Vorschläge zur Begünstigung von Gewinnsteigerungen durchführbar, da es sich bei diesen um zufällige Verschiebungen handeln kann, die in vielen Fällen eine erhöhte Leistung nich darstellen. Als bestes Mittel für eine Stärkung des Leistungswillens sieht der Entwurf eine Herabsetzung der Tarife auf ein erträgliches Masz an.

Die Bundesregierung hat auch den Vorschlag des Wissenschaftlichen Beirats auf Einführung der „Nettoumsatzsteuer" nicht aufgenommen. Sie geht wie die „Diskussionsbeiträge" davon aus, dasz ein grundlegender Systemwechsel bei der Umsatzsteuer mit den damit verbundenen Kostenumlagerungen jedenfalls nicht gleichzeitig mit einer weittragenden Änderung der Einkommensteuer vertretbar ist. Vor Einführung einer Nettoumsatzsteuer, die, wie der Beirat fordert, mit einer Differenzierung der Belastung verbunden sein soll, wären sehr eingehende Erhebungen und Berechnungen erforderlich, die sich zweifellos auf mehrere Jahre erstrecken müszten. Auch von seiten der Wirtschaft wird die baldige Einführung der Nettoumsatzsteuer nicht befürwortet.

Die Neueinführung einer Einwohnersteuer, wie sie insbesondere von seiten der Gemeinden gefordert wird, ist gleichfalls nicht Gegenstand des Gesetzentwurfs (vgl. hierzu Begründung zum Entwurf eines Gesetzes zur Änderung und Ergänzung der Finanzverfassung [Finanzverfassungsgesetz]).

IV.

Der vorliegende Gesetzentwurf beschränkt sich hiernach darauf, die im Rahmen des bestehenden Steuersystems am dringendsten notwendigen Mąsznahmen zu treffen. Es besteht Übereinstimmung zwischen Wirtschaft, Wissenschaft und Verwaltung darüber, dasz die Normalisierung der Steuern vom Einkommen, die trotz der vorangegangenen Steuersenkungen noch nicht voll erreicht worden ist, den wesentlichen Inhalt einer gröszeren Steuerreform bilden müsse. Dementsprechend enthält das Gesetz Vorschriften zur Änderung des Einkommensteuergesetzes, insbesondere neue Einkommensteuer- und Lohnsteuertabellen (Abschnitt I), Vorschriften zur Änderung des Körperschaftsteuergesetzes (Abschnitt II) und die entsprechenden Anpassungsvorschriften für das Wohnungsbauprämiengesetz (Abschnitt III) und das Gewerbesteuergesetz (Abschnitt IV). Schlieszlich ist eine weitere Senkung der Erbschaftsteuer (Abschnitt V) in den Gesetzentwurf eingefügt. Dazu tritt noch die Änderung der Abgabenordnung (Abschnitt VI). Gleichzeitig mit dem vorliegenden Gesetz und im Zusammenhang mit ihm und

auch mit den Gesetzen zu Artikel 107 des Grundgesetzes legt die Bundesregierung vor:

1. eine Erneuerung des Gesetzes zur Erhebung einer Abgabe „Notopfer Berlin". das mit einigen Verbesserungen, aber ohne Änderung des Tarifs, weitergeführt werden soll,
2. ein Gesetz über eine Ergänzungsabgabe zur Einkommensteuer und zur Körperschaftsteuer,
3. ein Viertes Gesetz zur Änderung des Umsatzsteuergesetzes; die schränkt einige Vergünstigungen im Rahmen des bestehenden Umsatzsteuerrechts in der Annahme ein, dasz ein solcher Schritt gleichzeitig mit der vorgesehenen Entlastung auf dem Gebiet der Steuern vom Einkommen möglich und geboten ist.

Das Gesetzgebungswerk berührt nicht den Lastenausgleich, dessen Verabschiedung durch den Bundestag am 10. Juli 1952 eine nicht lange zurückliegende politische Entscheidung darstellt, ebenso wenig die Vermögensteuer, die bis zum Jahr 1957 — jedenfalls zum Teil — in den Lastenausgleichsfonds fliesZt. In den Entwürfen nicht behandelt sind auch die verschiedenen Fragen der Verkehr- und Verbrachsteuern, die in dem Gutachten des Wissenschaftlichen Beirats und in den „Diskussionsbeiträgen" erörtert worden sind. In dem Entwurf eines „Verkehrsfinanzgesetzes" sind gewisse Änderungen der Kraftfahrzeugsteuer, der Beförderungsteuer und der Mineralölsteuer vorgeschlagen worden. Die Bundesregierung ist der Auffassung, dasz sonstige Fragen auf dem Gebiet der Verkehrsteuern wie auch auf dem Gebiet der Verbrauchsteuern einstweilen zurückgestellt werden sollten.

Es besteht im übrigen die Möglichkeit, Fragen dieser Art in einem zweiten gröszeren Steuergesetz zu lösen, das zum 1. Januar 1956 zu erwarten ist und in dessen Mittelpunkt eine wesentliche Änderung der Vorschriften des Bewertungsgesetzes zur Grundstücks- und land- und forstwirtschaftlichen Bewertung stehen wird; dieses Gesetz wird die Grundlage der auf den 1. Januar 1956 vorgesehenen Hauptfeststellung der Einheitswerte des Grundbesitzes bilden.

V.

Den Schwerpunkt des Gesetzes zur Neuordnung von Steuern bildet, wie schon dargelegt, die vorgeschlagene Tarifreform für die Einkommen- und Körperschaftsteuer sowie für die Erbschaftsteuer. Damit werden im wesentlichen folgende sozialethische, wirtschaftliche und verwaltungsmäszige Ziele weiter verfolgt, die schon der „Kleinen Steuerreform" zugrunde lagen und die auch durch die zwischenzeitliche Entwicklung keineswegs überholt sind.

1. Erhöhte Gleichmäszigkeit der Besteuerung.

Sie ist die selbstverständliche Folge einer allgemeinen Tarifsenkung gegenüber individuellen Steuerbegünstigungen mit Subventionscharakter, die in erster Linie einzelnen besonders geschickten oder zahlungskräftigen Personen zugute kommen.

2. Zumutbarkeit der Steuerbelastung.

Diesem Gesichtspunkt wird vor allem durch Anpassung der Freibeträge an die Auffassung, was als Mindesteinkommen zu betrachten ist, und durch einen gleichmäszigen Aufbau der Belastungsprogression bei der Einkommensteuer und Erbschaftsteuer Rechnung getragen.

3. Günstige Auswirkungen auf das wirtschaftliche Verhalten des einzelnen.

Hierbei spielen besonders die Gesichtspunkte einer Wiederbelebung des wirtschaftlichen Prinzips und einer Steigerung der Funktionsfähigkeit der Marktwirtschaft, einer Besserung der Steuermoral und einer Minderung unwirtschaftlicher Betriebsausgaben eine Rolle.

4. Günstige Auswirkungen auf die Volkswirtschaft.

Diese ergeben sich als Folge der günstigen privatwirtschaftlichen Auswirkungen und des Volumens der beabsichtigten Steuerentlastung, die zumindest in der Tendenz zur weiteren Erhöhung des Sozialprodukts beitragen.

5. Vereinfachung der Steuerverwaltung.

Diese wird insbesondere als Folge des Fortfalls der Steuervergünstigungen eintreten; daraus wird sich eine gleichmäszigere und zeitnähere Veranlagung der Steuerpflichtigen ergeben.

The Association of Certified and Corporate Accountants

GOLDEN JUBILEE

November 30th — December 2nd 1954

Celebrations to mark the golden jubilee of The Association of Certified and Corporate Accountants — the third largest accountancy body recognized by statute in the U.K. — will be held in London during the period November 30th December 2nd next.

GREAT BRITAIN

EXTRA-STATUTORY CONCESSIONS [1])

In operation at 31st December 1952.

The Ninety-sixth Report of the Board of Inland Revenue contains the following extra-statutory concessions in operation at December 31st, 1952, in addition to those published in the Board's Ninety-thirds [2], Ninety-fourth and Ninety-fifth Reports [3]).

The Board of Inland Revenue states that the concessions are of general application, but it must be borne in mind that in a particular case there may be special circumstances which will require to be taken into account in considering the application of the concession.

INCOME TAX

Interest paid in full by a trader to a building society.

Where, for the puposes of his trade, profession or vocation, a person pays annual interest in full to a building society which has entered into the special arrangements under Section 445 of the Income Tax Act, 1952, but his income is not sufficient to enable relief to be given under that section in respect of the whole of the interest, the amount in respect of which relief cannot be given is treated for the purpose of carry-forward relief as if it been assessed under Section 170 of the Income Tax Act, 1952.

ESTATE DUTY

Interest on Estate Duty on the proceeds of sale of timber.

Section 9 of the Finance Act, 1912, fixed the rate of interest on estate duty on the proceeds of sale of timber at 3 per cent. In practice, interest is charged at 2 per cent, which is the current rate of interest on estate duty generally.

EXTRA-STATUTORY CONCESSIONS WHICH HAVE CEASED TO OPERATE DURING THE YEAR ENDED DECEMBER 31ST, 1952.

INCOME TAX

Stolen machinery or plant: balancing allowances.

Paragraph 1, Part 1, Sixth Schedule, Finance Act, 1952, amends the provisions of the law specifying the events giving rise to balancing allowances and balancing charges. As a result balancing allowances may now be claimed in appropriate cases in respect of the loss of machinery or plant by theft.

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[1]) Reproduced with the permission of the Comptroller of Her Brittannic Majesty's Stationary Office.

[2]) See *Bulletin V*, 3, p. 189.

[3]) See *Bulletin VII*, 6, p. 359.

Building societies.

Section 23 of the Finance Act, 1951 (Section 445 of the Income Tax Act, 1952), which came into operation on April 6th, 1952, gives legal force to the building society arrangement.

PROFITS TAX

Directors' remuneration from director-controlled companies.

Sub-paragraph (4) of the new Paragraph 11, Fourth Schedule Finance-Act 1937, introduced by Section 34 of the Finance Act 1952, has taken the place of this concession.

GREAT BRITAIN

REPORT OF THE COMMITTEE ON THE TAXATION TREATMENT OF PROVISIONS FOR RETIREMENT

On August 30th, 1950 Sir Stafford Cripps, Minister of finances at that time, appointed a committee with the instruction to examine the existing legislation in the domain of pension funds and other similar regulations, and to notice what modifications should be desirable in this legislation.

Presently a 159 pages report has been drafted by the comittee. In short the following propositions are made by the committee:

I. *Life Assurance Relief.*

The present basis of relief should continue unchanged except that (a) relief should be withdrawn for the future from payments which will qualify for expenses relief and from premiums on deferred annuity contracts taken out before 23rd June, 1916, and (b) the one-sixth upper limit should be modified as recommended in Chapter 6 of the Report of the Committee on the Taxation treatment of provisions for retirement.

II. *Future Retirement Benefit Schemes for Employees.*

(i) All future schemes should be submitted to the Board for approval.

(ii) The recommendations regarding the conditions of approval and the treatment to be accorded to future approved schemes have been summarised in paragraph 229 of the report.

(iii) Employees should be immune from tax on contributions or notional contributions by their employers to schemes satisfying all the conditions of approval except that requiring contributions to be effectively alienated.

(iv) Employees should be immune from tax on contributions by their employers to provident funds, if the contributions for each employee do not exceed 10 per cent of his remuneration or £100 a year, whichever is less, and do not exceed £1,000 in aggregate throughout his service.

(v) Staff assurance schemes paying lump sums should be treated similarly.

(vi) Employers' contributions to unapproved schemes should be allowed as trading expenses, either in the year of payment or spread forward, but employees' contributions should not qualify for expenses relief and investment income should not be exempt.

(vii) Employees should be taxed on the amount of their employer's contributions or national contributions to unapproved schemes.

(viii) The consequences of failure to secure approval of a scheme should be made known widely to employers and employees.

(ix) Ex gratia pensions, other than those paid purely on compassionate grounds, should be taxed, whether paid by the former employer (or his successor) or by some other person.

(x) Ex gratia lump sums not exceeding £1,000 should be exempt. Those between £1,000 and £4,000 should be exempt to the extent of £1,000. Of those over £4,000, one-quarter, or one-quarter of the capital value of the maximum contractual benefit that would have been approvable, whichever is less, with an overriding limit of £10,000 should be exempt. Successive benefits should be aggregated for the purpose of the £10,000 limit, and abuse of the £1,000 limit by frequent changes of employment should be prevented. Any excess over the exemption limit, up to the capital value of the maximum approvable benefit, should be taxed by a top-slicing method. Any excess over the capital value of the maximum approvable benefit should be taxed as additional remuneration for the last complete year of service.

(xi) Legacies to employees should not be taxed.

(xii) Ex gratia lump sums to the dependants of deceased employees should be exempt up to £1,000 or twice the amount of the deceased employee's final remuneration, whichever is greater with an overriding limit of £10,000, less any benefits already received if the employee had retired before he died. Any excess should be taxed by a top-slicing method.

(xiii) The Board should be consulted before statutory schemes are set up by public general Act of Parliament. Schemes set up by private Act should require approval.

(xiv) Employee's contributions to statutory schemes, whether compulsory or not, and whether made to secure retirement benefits or benefits for widows and orphans, should rank for expenses relief.

(xv) Employee's non-annual contributions to statutory schemes should rank for expenses relief. The aggregate amount on which relief is given in any year should not exceed 15 per cent. of the employee's remuneration and any excess should be carried forward to subsequent years.

(xvi) Lump sum death benefits from statutory schemes, to the extent that they exceed the tax-free limit recommended for non-statutory schemes should be converted into pensions or taxed at the standard rate.

(xvii) Lump sum payments to newly engaged employees should be taxed as income of the year of receipt.

(xviii) Lump sum payments for the surrender of future pension rights should be taxed as income of the year of receipt, except to the extent that the build-up has been taxed as a result of the disapproval of the scheme.

III. *Existing Retirement Benefit Schemes.*

(i) Existing members of existing schemes should have an option to remain as they are or to become subject to the new treatment. New members of existing schemes should all be subject to the new treatment.

(ii) Existing members who opt for the new treatment and who subsequently receive a refund of their contributions should be taxed according to the new treatment on so much of the refund as exceeds the refund to which they would have been entitled immediately before the change. The latter part should be subjected to the old treatment.

IV. *Self-employed Persons, Controlling and Other Directors, and Non-Provided-For Employees.*

(i) Schemes for individuals in these classes, and group schemes should require approval by the Board. Approval should be automatic where certain conditions are fulfilled, and discretionary where they are not all fulfilled.

(ii) Schemes should provide for retirement at a selected age between 65 and 70 (60 and 65 for women), but the Board should have power to fix lower ages for particular occupations.

(iii) Contributions to approved schemes should attract full income tax

and surtax relief if they are within the limits summarized in paragraph 419 of the report.

(iv) The Board should have power to waive wholly or partly the scaling down of the percentage rate of contribution on self employed persons' and controlling directors' earnings over £5,000, with a right of appeal to the Board of Referees.

(v) The limit of one-sixth of total income applicable to life assurance relief should be increased by one-quarter of the permissible percentage of earnings for premiums on temporary life assurance policies providing a lump sum on death before the attainment of a stated age, if that age is not more than the chosen retirement age.

(vi) Any excess of a contribution over the allowable limit should be carried forward and allowed in the first subsequent year in which the limit is not reached.

(vii) Where earnings are found to have been under-assessed, additional relief for the year concerned should be allowed if the appropriate additional contribution is paid within six months after the additional assessment has become final.

(viii) Subject to these two exeptions, relief for any year should be confined to contributions paid in that year.

(ix) Earnings, in relation to the self-employed, should comprise earned income as defined for income tax purposes, excluding income from woodlands not assessed under Schedule D, and excluding income derived from the mere owning of land or investments, but including income derived by a dealer in investments from the investments he holds, and including an inventor's income from patent rights.

(x) Profits should be computed in accordance with the Rules of Cases I and II of Schedule D, but with modifications regarding interest and other payments made under deduction of tax, capital allowances, and losses.

(xi) Earnings, in the case of directors and employees, should be the remuneration assessable under Schedule E for the year concerned.

(xii) Relief in Schedule E cases should be confined to contributions paid in the year of claim, but subject to modifications similar to those applicable to the self-employed where the assessable remuneration is not finally determined until after the end of the year.

(xiii) Remuneration of controlling directors of investment companies (as defined for surtax) should not rank as earnings for this purpose.

(xiv) Married women should be dealt with separately from their husbands, as though they were unmarried.

(xv) Income from the investment of contributions should be exempt.

(xvi) Contributions to a fund should not be permitted to exceed the maximum qualifying for relief, and any surplus shown to have arisen in a fund should be used, as far as possible, to increase annuity rates.

(xvii) Apart from the temporary life assurance for a lump sum if death occurs before the chosen retirement age, benefits must be non-assignable life annuities, non-commutable except as indicated in (xxi) below. Provisions for the refund of contributions on death or incapacity before the retirement age, and for the conversion of the annuity wholly or partly into a life annuity for a surviving widow or dependent children, should be optional.

(xviii) Benefits should not be payable before the attainment of the chosen retirement age except on earlier incapacity or death.

(xix) Where incapacity is proved, surrender of the annuity for a lump sum or an immediate lesser annuity should be permitted. Arrangements for the payment in such a case of a larger annuity than the actuarial equivalent of the surrender value should be permitted if the total premium is within the permissible limits.

(xx) The refund of contributions in other circumstances should be prohibited.

(xxi) Commutation for a tax-free lump sum of up to one-quarter of the annuity, or so much as would produce a lump sum of £1,000, whichever is the greater, but with an upper limit of so much as would produce £10,000, should be permitted.

(xxii) The £1,000 and £10,000 limits should apply to the aggregate of all lump sum benefits an individual may receive.

(xxiii) Annuities received under approved schemes should be taxed in full.

(xxiv) Where the capital value of the balance of an annuity, after the permitted commutation, is under £5000, that balance should also be commutable, subject to the taxation of the resulting lump sum by a top-slicing method.

(xxv) Any excess over the permissible tax-free lump sum which may be taken in lump sum form in a case of incapacity should be taxed by a top-slicing method.

(xxvi) Where the lump sum received exceeds the tax-free limit in any other case, the excess should be taxed without spreading, unless within three months it is converted into a non-assignable, non-commutable, and fully taxable, annuity.

(xxvii) Refunds payable on death before the retirement age should be converted into non-assignable annuities for the widow or children, if any, except that £1,000, or one-quarter of the refund, whichever is the greater, but not more than £10,000, should be permitted to be retained as a tax-free lump sum. If there is no widow or child, the refund should be taxed at the standard rate.

(xxviii) Annuities under approved schemes should be treated as earned income.

(xxix) Lumps sums received under temporary life assurance policies should be free of tax.

(xxx) Assets distribuable on the winding-up of an approved fund should be used to acquire appropriate annuities for the members.

V. *Employees with existing but inadequate retirement benefits.*

The treatment recommended for non-provided-for employees should be applied, with these modifications:

(a) the permissible percentage should be computed on the remuneration plus the estimated annual cost to the employer of regular annual contributions which would secure the benefit he is in fact providing, and

(b) the maximum relief should be the permissible percentage, as above, less the estimated cost to the employer (as added to the actual remuneration in (a)) and the employee's own contribution to the employer's scheme.

VI. *Changes of Occupation.*

(i) An employee becoming self-employed or a director should be permitted, without tax liability, to pay into a scheme relating to the new occupation any sum withdrawable from his former employer's scheme.

(ii) If an employee who was formerly self-employed or a director receives an ex gratia lump sum retirement benefit from his employer, any lump sum benefit from any scheme he has belonged to should be taken into account in determining the exempt part of the ex gratia lump sum.

(iii) An approved fund for employees should be permitted to pay a member's actuarial interest to an approved fund or scheme for self-employed persons which he has joined, without any tax liability, and to receive in respect of a new member any sum he has withdrawn from an approved fund or scheme he has left.

VII. *Purchased Annuities.*

(I) The part of each periodical payment representing the estimated capital content should be exempted from tax. The similar treatment already accorded to annuities-certain should be made statutory.

(ii) The capital content in each year's payments should be computed by dividing the actual sum paid as purchase money, whether by a single premium or a series of premiums, by the average expectation of life at the age when the annuity commences.

(iii) The investment income of the annuity funds of life assurance companies should be exempted from tax. All tax deducted from annuities paid should be paid over to the Revenue. The profits of the annuity business should be computed on ordinary Schedule D lines, bringing in investment income gross, deducting annuities gross, and excluding management expenses.

(iv) Surpluses in an annuity fund should not be permitted to accumulate improperly.

(v) The interest content of a lump sum paid out of the annuity fund under an unapproved pension scheme should be taxed.

(vi) Cash bonuses on deferred annuity contracts should be taxed.

(vii) Any profit arising to an annuity fund from a change in the basis of valuation resulting from the change in the method of computing the the profits should be taxed.

(viii) The current year's annuity profits, not those of the preceding year, should be deducted from the management expenses of the company.

(ix) The interest content of the surrender value of an annuity should be taxed.

(x) Existing annuities should be taxed on the new basis in future if the annuitant establishes that his annuity is a purchased annuity.

(xi) Life assurance relief for premiums on deferred annuity contracts effected before 23rd June 1916, should be withdrawn.

Source: Report of the committee on the taxation treatment of provisions for retirement
London - Her Majesty's Stationery Office — Cmd 9063

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GREAT BRITAIN

THE SECOND REPORT OF THE ROYAL COMMISSION ON THE TAXATION OF PROFITS AND INCOME.

The second report of the Royal Commission on the taxation of Profits and Income has been published.

In this report the following recommendations are made:

1) A specific minimum relief should be introduced for the purpose of affording a graduated exemption limit in favour of the smallest incomes.

2) In combination with this there should be a reduction of the amount of the special personal allowance granted to a married woman in respect of her earnings.

3) In order to counteract the tendency of the present tax structure to overrate, in the middle and upper income ranges, the taxable capacity of the family man as compared with that of the taxpayer without dependants —

(a) the child allowance should, within fixed limits, vary with the size of the taxpayer's income, according to the scale —

Not over £850	£85
Over £850 but not over £1,000	10 per cent. of income
Over £1,000	£100 plus 6 per cent. of the excess of the income over £1,000, but subject to a maximum of £160

(b) the starting point for surtax (now uniformly £2,000) should vary with the taxpayer's family circumstances, becoming £1,500 for a single man and £2,000 for a married man without children, increased by £160 for each child in respect of whom the taxpayer is entitled to receive child allowance.

4) The child allowance should be extended subject to a tapering provision instead of ceasing abruptly when the child's own income exceeds an arbitrary figure.

5) The title to child allowance of an adoptive parent who maintains it should not be defeated by the claim of the natural parent if the latter makes no contribution to the cost of its maintenance: and where both contribute to the cost the allowance should be appontioned.

6) The conditions governing relief in respect of a child over 16 undergoing apprenticeship should be simplified and brought into line with those applicable to the case of full-time education.

7) Child allowance (and not dependent relative allowance) should be granted where a child over 16 and under 21 is or becomes incapacitated.

8) Dependent relative allowance should be available without proof of incapacity where the mother of the taxpayer (or of his wife) has been deserted by her husband.

9) The title to housekeeper allowance of a widow or widower who requires assistance in looking after a young child should not depend upon employment of a housekeeper who is resident with the claimant.

10) Suitable provision should be made to regulate cases where a taxpayer is ostensibly entitled to allowances for the same person in two different capacities, or where two different taxpayers each have a claim for an allowance in respect of the same person.

11) Grave incapacity (comparable to the 100 per cent. disability recognised in the administration of war pensions) should give rise to a claim for a tax allowance, which should be at least £100. This would supersede the anomalous and limited relief that is now available in those cases where an incapacitated taxpayer has an unmarried daughter to look after him.

12) The housekeeper allowance now granted solely on account of the taxpayer's widowed status and without reference to the care of young children should be abolished.

13) The upper limit of earned income relief should be raised from £2,025 to £2,500 and the relief should be extended at half the full rate to the slice of income between £2,500 and £3,000: a further extension should be conceded (subject to the surrender of the net marriage allowance) where both spouses have earned incomes.

Source: The Royal commission on the taxation of profits and income— second report — London Her Majesty's Stationery Office no Cmd 9105.

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THE BILL H.R. 8300 TO REVISE THE INTERNAL REVENUE LAWS OF THE UNITED STATES (EXTRACT) [1])

The Revision of 1954 is the first comprehensive revision of the internal-revenue laws since before the turn of the century and the enactment of the income tax.

This revision includes a rearrangement of the provisions to place them in more logical sequence, the deletion of obsolete material and an attempt to express the internal-revenue laws in a more understandable manner.

In addition to the rearrangement the committee has made many substantive changes. The purpose of these changes has been to remove inequities, to end harassment of the taxpayer and to reduce tax barriers to future expansion of production and employment. The following revision is proposed:

I. Tax on Individuals and Corporations.

A. *Combination of normal tax and sur-tax.*

B. Head of family.

A head of family is entitled to full income splitting benefits.

C. Corporate income-tax rate.

The committee's bill extends the present 52% rate (30% normal tax rate) for 1 year.

II. Credits against tax.

A. *Dividends received by individuals.*

The committee has reduced double taxation of corporate dividends by adopting two related provisions: one affords complete relief from the double tax on small amounts of dividend income. An individual may exclude from his gross income up to $ 50 of dividend income received from a domestic corporation during a taxable year ending after July 31, 1954 and before Augustus 1, 1955. In subsequent taxable years he may exclude up to $ 100 of the dividend income he receives.

In addition, the other provision provides relief by making available a dividend-received credit for part of the corporate tax paid on the dividends in excess of the amount excluded. This is a credit against tax equal to 5% of dividend income above the exclusion received after July 31, 1954, and before August 1, 1955, and 10% of dividend income above the exclusion received after July 31, 1955.

The amount of the credit is limited to 2% of taxable income in 1954, 7% in 1955 and 10% in subsequent years.

B. *Retirement income credit.*

Under the bill an individual who is 65 years of age is granted a credit against his tax liability equivalent to the tax, at the first bracket rate, on the amount of his retirement income up to $ 1,200. Retirement income is defined to include pensions and annuities, interest and dividends.

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[1]) House Report no 1337.

III. Deductions in arriving at adjusted Gross Income.

A. *Transportation Expenses.*

The bill permits employees to deduct business transportation expenses in arriving at adjusted gross income even though the expenses are not incurred in travel away from home or not reimbursed by the employer.

B. *Business expenses of outside salesman.*

This bill treats outside salesman in effect like self-employed persons with respect to these expenses, permitting their deduction of expenses in arriving at adjusted gross income even though the salesman use the standard deduction.

IV. Special Inclusions in Gross Income.

A. *Alimony and separate maintenance payments.*

The bill extends the tax treatment under present law to periodic payments made by a husband to his wife under a written separation agreement even though they are not separated under a court decree if they are living apart and have not filed a joint return for the taxable year.

B. *Annuities.*

The bill has adopted a provision which spreads the tax-free portion of the annuity income evenly over the annuitant's lifetime. In the usual case the excluston will equal the amount the annuitant paid for the annuity, divided by his life expectancy at the time the payments begin. This exclusion is to remain the same even though he outlives this life expectancy. Under this rule the company providing the annuity will be able to supply the annuitant with a statement indicating that for the rest of his life a stated amount of his annuity income will be excluded annually from his income subject to tax.

Any refund paid to a beneficiary at the death of an annuitant is to be excempt from tax.

C. *Amounts which are not annuity payments, but received under annuity or endowment contracts.*

The committee's bill makes two changes in the present treatment. First, proceeds other than annuity payments which do not constitute a complete discharge of the carrier's obligation under the annuity contract (for example, dividends as contrasted with amounts received from the surrender of the contract) are to be taxed in full without any exclusions, if received on or after the date the annuity payments begin.

A second change made by the committee gives relief where such proceeds are received in a lump sum in one year. In such cases, the tax on the lump sum proceeds cannot exceed the tax which would be payable if such proceeds had been received in three equal installments: one in the year of receipt, and the other two in the two preceding years.

D. *Prizes and awards.*

The committee's bill includes in income subject to tax all prizes and awards except those made in recognition of past achievements of a religious, charitable, scientific, educational, artistic, literary, or civic nature, where the recipient was selected without any action on his part and is not required to render substantial future services.

E. *Discharge of indebtedness.*

With respect to discharge of indebtedness the bill provides that all discharges shall be included in income of the debtor unless they fall within specified categories where income is deemed not to accrue. The specified exemptions include full payment of the debt in cash plus transactions where the creditor and debtor have dealt with each other on the basis of business or personal factors going beyond the mere debtor creditor relationship and thus have consummated a transaction of essentially a capital nature. Such cases are deemed to include:

(1) Transactions having the character of a gift to the taxpayer;
(2) Transactions having the character of a contribution to the capital of the taxpayer;
(3) Transactions effected as an adjustment of the purchase price of property acquired in connection with the assumption of the indebtedness discharged; or
(4) Any other transaction in which the discharge is attributable to the existence between the parties of a relationship other than that of debtor-creditor.

These enumerated exceptions are to be inoperative where the indebtedness discharged is an accrued item which the debtor has deducted on his income tax return and from which he has received a tax benefit (and the creditor has not accrued his claim as income). In such cases, the debtor will be required to include as income the amounts deducted for tax purposes but never paid out or counted as income by his creditor.

Even though income is deemed to accrue to the debtor from discharge of indebtedness, provision is made under certain circumstances for the exclusion of this income from the debtor's gross income. If the indebtedness was incurred by a corporation, or an individual in connection with property used in his trade or business, the debtor may exclude all or part of the income arising from discharge of the indebtedness if he applies the amount so excluded to reduce the basis of any property held during any portion of the taxable year in which the discharge occurred. This privilege will not be available, however, in cases where the debtor discharged a debt representing an accrued liability taken as a deduction on his tax return and for which he received a tax benefit.

The provision relating to income arising from discharge of indebtedness by railroad corporations occurring by reason of a bankruptcy or receivership proceeding has been extended for 1 year, to December 31, 1955 .

V. Exclusions from gross income.

A. *Employer death benefits.*

The committee's bill extends the exclusion under present law to death benefits whether or not paid under a contract. The bill also extends the exclusion to apply to distributions under a qualified employee's profit-sharing plan, whether or not the employee had a nonforfeitable right to the amount while living, where the distributions are made by reason of the death of the employee and made within 1 taxable year after the decedent's death.

The $ 5,000 limit on the exclusion under present law applies to payments with respect to any other employer. This limitation can be avoided by arranging to have two or more employers each pay $ 5,000 of death benefits. The committee's bill removes this avoidance device by limiting this exclusion to $ 5,000 with respect to the death of any employee.

B. *Interest element in life-insurance proceeds.*

The bill provides that the interest element in life insurance proceeds

accruing after the death of the insured is to be included in the income of any beneficiaries, except that an exclusion of up to $ 500 a year is provided for the widow of a decedent and an exclusion of up to $ 250 a year is to be provided for each other beneficiary who is a child or lineal descendent or ancestor of the decendent.

C. *Payments for injury and sickness.*

The committee's bill grants the same tax treatment as the present law to sickness and accident benefits financed by employers whether paid under insured and noninsured plans. Such benefits are

(1) entirely excluded from tax if received as compensation for personal injury or sickness and
(2) excluded up to $ 100 a week (minus benefits under nonqualified plans) if received as compensation for loss of wages. Benefits received under employer-financed plans are taxed in full if they do not meet the qualifying tests described below.

For the benefits to qualify, plans must be for the exclusive benefit of employees and meet tests designed to prevent discrimination as to coverage, contributions, and benefits which are generally similar to those to be used to qualify pension plans. In addition, employees must have an enforceable right to benefits. Moreover, the exclusion will not apply during a waiting period before benefits, which compensate for loss of wages, begin.

D. *Rental value of parsonages.*

The committee has removed the discrimination in existing law by providing that the present exclusion is to apply to rental allowances paid to ministers to the extent used by them to rent or provide a home.

E. *Income taxes paid by lessee corporation.*

Under many long-term leases, the lessee contracts to pay a fixed income to the lessor corporation (or its stockholders) without reduction for income taxes assessed on the rental payment.

Under present law the lessor is deemed to derive additional taxable taxable income from the income tax paid on its behalf by the lessee. The lessee, in turn, is required to pay a tax on such income to the lessor, and so on. This tax on a tax is pyramided to the point where the income tax liability of the lessee is greatly in excess of the initial tax on the rental. Altough the lessee is entitled to deduct such tax payments in computing its own income tax liability, under some conditions the taxable income of the lessee is not sufficiently large to absorb this deduction, with the result that no tax benefit is realized.

Under the committee's bill, the income tax liability payable by the lessee on such rental income is to be excluded from the lessor's gross income and denied as a deduction to the lessee. This applies only to leases entered into before January 1, 1954, where both lessee and lessor are corporations.

F. *Combat pay of members of the Armed Forces.*

Present law provides an exclusion from gross income for members of the Armed Forces serving in combat zones or hospitalized as the result of wounds, disease, or injury incurred while serving in a combat zone. Under present law this exclusion is available only for service in a combat zone between June 24, 1950, and January 1, 1955.

The committee believes that this exclusion should be available for any period in which persons are generally subject to induction into the armed

services under the Universal Military Training and Service Act. For that reason the committee's bill provides that this exclusion is to be available, with respect to service in a combat zone after June 24, 1950, during an 'induction period'.

G. *Scholarships and fellowship grants.*

The bill provides that amounts received as scholarships or fellowships are excludable from gross income, but the exclusion is not to apply to
(1) amounts received as payment for research or teaching services, and
(2) in the case of individuals who are not candidates for degrees, amounts received as grants which in effect represent a continuing salary during a period while the recipient is on leave from his regular job.

Amounts received to cover expenses for travel, research, clerical help, or equipment which are incident to the scholarship or fellowship grant are to be excluded to the extent that they are expended by the recipient for these purposes.

The provision excludes from tax all grants to students at educational institutions which are made without requirement that the recipient render teaching or research services to the institution. The exclusion covers, in addition to money received, the value of services and accomodations contributed, such as room, board, and laundry. Such grants generally are of small amount and are usually received by individuals who would have little or no tax liability in any case.

In the case of individuals who are not candidates for degrees, the bill provides a specific standard to be used in determining whether the grant is in effect a salary payment. In the case of such individuals, the grant is excluded only if the annual amount (excluding amounts received and expended to cover incidental expenses) plus any compensation received from the recipient's previous employer is less than 75 % of the recipient's salary in the year preceding the grant.

H. *Contributions to the capital of a corporation.*

The committee's bill provides that in the case of a corporation, gross income is not to include any contribution to the capital of the taxpayer.

I. *Meals and lodging.*

Under present law meals and lodging have been held to be taxable to the employee unless they were furnished for the convenience of the employer.

Under the committee's provision these meals and lodging are to be excluded from the employee's income if they are furnished at the place of employment and the employee is required to accept them at the place of employment as a condition of his employment.

J. *Subsistence payments to State police officers.*

The committee's bill provides an exclusion from gross income not to exceed $ 5 a day, for subsistence allowances paid to officers of a public department of a State, Territory, the District of Columbia or a possession.

VI. Personal Exemptions.

A. *Earnings test for dependent.*

Under existing law a $ 600 exemption may be taken for a dependent only if he has gross income of less than $ 600. The committee's bill provides that the $ 600 earnings limit for dependents is not to be applicable if the dependent is the taxpayer's child and is under the age of 19 or is a student.

The term 'student' is defined as an individual who is a full-time student at an educational institution during 5 months of the year. An 'educational institution' is one which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

B. *Definition of dependent.*

Under existing law a dependent is defined as an individual over half of whose support is received from the taxpayer and one who bears 1 of 8 specified relationships to the taxpayer.

The bill modifies the support test in two respects. It provides that in the case of children of the taxpayer who are students, any scholarships they receive for study at an educational institution are to be ignored in applying the support test.

Another problem is presented in connection with the support test where two or more persons supply the support of another individual but no one can claim the dependency exemption because of the failure of any one to supply more than one-half of the support. Under the bill a group of contributors may annually designate one of their number to claim the dependency exemption where no one in the group contributed more than half of the dependent's support if all of the tests with respect to the dependency exemption (except the support test) are met by each member of the group; the person designated to receive the dependency exemption has contributed more than 10 percent of the dependent's support; and all other members of the group who have contributed more than 10 percent of the support have agreed in a written statement that they will not claim the exemption for that year.

This bill provides that a taxpayer may claim as a dependent an individual over half of whose support he supplies, irrespective of the relationship of such individual to the taxpayer, if the individual has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household. The bill also provides a dependency exemption for cousins of the taxpayer, whom he supports, who are receiving institutional care (required by reason of a physical or mental disability) but prior to being placed in the institution were members of the same household as the taxpayer.

VII. Itemized deductions for individuals and corporations.

A. *Business expenses not to include charitable gifts above limitation.*

At the present time corporations are allowed a deduction for charitable contributions up to a limit of 5 percent of their income otherwise subject to tax. In addition, they are allowed to take as business-expense deductions contributions to charitable and other organizations where the institution is to render a service commensurate to the contribution. However, where no service is rendered, a business-expense deduction may not be taken for amounts not allowable as charitable contributions only because they are in excess of the 5 percent limitation. However, in the case of individuals, there has been some question as to whether or not a business-expense deduction can be claimed for gifts (for which no service is to be rendered) which are in excess of the percentage limitation applicable to individuals.

The committee's bill makes it clear that the rule presently applicable to corporations is also to be applicable in the case of individuals.

B. *Interest.*

Although interest payments are deductible under present law, administration practice has denied any deduction for carrying charges on installment purchases unless the interest element is stated separately.

The committee's bill permits the deduction of these carrying charges on installment purchases as interest, but limits the deduction in these cases to 6 percent of the average unpaid balance due under the installment contract during the taxable year.

C. *Apportionment of taxes on real property between buyer and seller.*

The committee's bill provides that the purchaser and the seller of real property are to each claim a deduction for that part of the real property tax which is proportionate to the number of months in the property tax year during which he held the property. This provision applies whether or not the parties to the sale actually apportion the tax. A special rule extends the benefit of this provision to cash basis taxpayers.

D. *Theft losses.*

The committee has adopted a provision which provides that theft losses can be deducted in the year in which the taxpayer discovers the loss, and only in that year.

E. *Losses on securities in affiliated corporation.*

The committee has amended the provision under present law to permit ordinary loss treatment if the subsidiary company derives 90 percent or more of its 'gross receipts' from non-investment-type income. However, in the case of the sale of stock only gains are to be included for this purpose. The committee has also reduced the 95 percent ownership requirement to 80 percent to conform this provision with the change the committee has made in the general affiliation requirement for consolidated returns.

F. *Bad debts.*

The committee permits the taxpayer to deduct as a business bad debt an obligation which becomes worthless, whether or not it is directly related to the trade or business at that time, if it was a bona fide business asset at the time it was created or acquired.

G. *Depreciation.*

The committee's bill provides for a liberalization of depreciation with respect to both the estimate of useful life of property and the method of allocating the depreciable cost over the years of service.

The bill specifies that depreciation allowances computed under any one of the following methods are to be considered reasonable for new property acquired or constructed after December 31, 1953:

(1) The straight-line method allowable under present law.

(2) The declining-balance method, using a rate not in excess of twice the straight-line rate. Under this method a uniform percentage is applied to the unrecovered basis of the property. Since the basis of a particular property is constantly reduced by prior depreciation, the percentage is applied to a constantly declining balance.

(3) Any other method consistently applied so long as the accumulated depreciation allowances for a property at the end of each year do not exceed the allowances which would have resulted from the use of the declining-balance method described above. Alternative methods which would be considered reasonable would include those based on units of production or a combination of straight-line rates.

The liberalized depreciation methods provided in the bill are to apply to all types of tangible depreciable assets, including farm equipment, machinery, and buildings, rental housing, and industrial and commercial

buildings as well as machinery and equipment. They are limited, however, to property new in use and therefore never before subject to depreciation allowances. In the case of property constructed by the taxpayer, the methods apply to construction completed after December 31, 1953, but only to that portion of cost incurred subsequent to that date. In the case of property acquired by the taxpayer after December 31, 1953, the liberalized depreciation methods apply only to new property.

The committee's bill also contains provisions for removing sources of irritation and fruitless controversy in administering depreciation policy. It provides that where the taxpayer and the Internal Revenue Service have agreed in writing to a rate of depreciation to be applied to a particular property or to a group account, that rate will continue to be appropriate for tax purposes until such time as evidence is produced which was not taken into consideration when the agreement was made.

The bill also provides that the Internal Revenue Service may not disturb a depreciation rate used by a taxpayer so long as the useful life determined by the Internal Revenue Service to be correct does not differ by more than 10 percent from the useful life used by the taxpayer.

H. *Charitable and similar contributions.*

The committee's bill raises the charitable contribution limit for individuals from 20 percent to 30 percent, but this extra 10 percent is to be allowable only with respect to contributions to religious orders, educational institutions, hospitals and churches, conventions of churches. The term 'educational institutions' is defined as an organization which normally maintains a regular organized body of students in attendance at the places where its educational activities are carried on. This extra 10 percent deduction for charitable contributions is to be available with respect to any contributions to the specified types of organizations, even though contributions to other organizations account for the full amount allowable under the regular 20 percent limitation.

At present a taxpayer (either corporate or individual) who has made the maximum allowable charitable contribution, if he subsequently carries back a net operating loss to that year, finds his allowable charitable contributions have been reduced by this downward adjustment in his income. The committee adopted a provision which will ignore the net operating loss carryback in applying the percentage limitations.

At present the 20 percent limitation on charitable contributions does not apply where the combination of the taxpayer's charitable contributions and income tax in the current year and in each of the past 10 years equal 90 percent or more of his taxable income. The committee considered this unduly strict and the bill, therefore, provides that this 90 percent test needs to be met in only 9 out of the last 10 years.

The committee has also liberalized the tax benefits available to charitable contributions under other provisions of the new code. The charitable contribution limitation applicable to deductions of trusts having unrelated business income is raised from 15 percent to 20 percent to conform with the general limit provided for individuals.

The committee has also provided that the income of an irrevocable trust will not be taxed to the grantor if the trust was established for the benefit of a religious organization educational organization, or hospital and the income or property of the trust would not revert to the grantor within a period of 2 years.

I. *Amortization of premium on callable bonds.*

The committee's bill provides that the premium on callable bonds may

be amortized to the nearest call date only if such date is more than 3 years from the date of original issue of the securities. This provision will apply only to bonds issued after January 22 1951, and acquired after January 22, 1954.

J. *Net operation loss deduction.*

Under present law a net operating loss may be offset against net income of other years by means of a 1-year carryback and 5-year carryforward. The committee has extended the period for the carryback to 2 years. This, in combination with the 5-year carryforward, provides a total span of 8 years for absorbing a loss.

Under the bill the reductions in the net operating loss deduction for tax-exempt interest are eliminated. The other adjustments are continued for items of the loss year but not for items in the income year to which the loss is first carried. In the event the loss is not fully absorbed in this first year, however, these adjustments will continue to reduce the balance of the loss carried to a subsequent year. The committee permits taxpayers other than corporations who sell a business or certain business assets to include as part of the net operating loss for the year any loss sustained on the sale of business assets.

K. *Research and experimental expenditures.*

To eliminate uncertainty and to encourage taxpayers to carry on research and experimentation the committee's bill provides that these expenditures, incurred subsequent to December 31, 1953, may, at the option of the taxpayer, be treated as deductible expenses. It also provides that a taxpayer may elect to capitalize such expenditures and if no other means of amortization is provided, may write them off over a period of not less than 60 months, beginning with the month in which benefits are first realized.

These option do not apply to expenditures for land or for depreciable property used in experimentation work. Also excluded are exploration expenditures incurred for minerals, oil, or gas which are presently provided for under other provisions.

L. *Soil and water conservation expenditures.*

The committee has adopted a provision which permits farmers to elect to expense, rather than capitalize, expenditures for soil and water conservation, including the expenditures for the prevention of land erosion. The deductions for soil and water expenditures for any 1 year are limited, however, to 25 percent of the gross income derived from farming. In any year in which actual expenditures of this type are more than the maximum deduction permitted, the excess of these expenditures may be carried over to the following year and will be considered the first expenditures made in that year. If the carry-over plus similar expenditures actually made in the second year exceed the maximum allowable deduction, the balance of soil and water conservation expenditures may be carried over to subsequent years to be deducted subject to the annual limit of 25 percent of gross income from farming. The deduction for soil and water conservation expenditures is also limited to land which, prior to or at the same time as the expenditures for soil and water conservation are made, was or is used in farming.

Taxpayers must decide whether they are going to expense soil and water conservation expenditures in the first year after 1953 in which they have such expenditures, and must continue this policy with respect to subsequent similar expenditures unless they receive permission from the Secretary or his delegate to make a change. Expenditures for soil and water conservation mean expenditures for treatment or moving of earth.

VIII. Special itemized deductions for individuals or corporations.

A. *Expenses for production of income.*

A new provision added by the committee allows a deduction for expenses connected with determination, collection, or refund of any tax liability.

B. *Medical, dental and similar expenses.*

The committee's bill allows medical expenses in excess of 3 percent of adjusted gross income to be deducted, instead of only those in excess of 5 percent; outlays for drugs and medicines may be included in 'medical expenses' only to the extent they exceed 1 percent of adjusted gross income; and the maximum limitations are raised from $ 1,250 to $ 2,500 per exemption, and the overall limit per return is raised from $2,500 to $5,000, or in the case of a joint return from $ 5,000 to $ 10,000. For a head of the family the overall limitation is raised from $ 2,500 to $ 10,000.

A new provision has been added to allow the expenses of a last illness to be deducted on the final return of a decedent even if paid after death. A new definition of 'medical expenses' is provided which incorporates regulations under present law and also provides for the deduction of transportation expenses for travel prescribed for health, but not the ordinary living expenses incurred during such a trip.

C. *Child-care expenses.*

The committee's bill provides a new deduction for child-care expenses paid by a working widow, widower, or divorced person, or a working mother whose husband is incapacitated. The child must be below the age of 10 (or 16 if the child is physically or mentally unable to attend a regular school). The deduction is limited to actual expenses, but it may not exceed $ 600. The expenses must be for the purposes of permitting the taxpayer to follow a gainful employment. Expenses paid to a person who is a dependent of the taxpayer may not be deducted. An individual deducting these expenses may not use the standard deduction.

D. *Taxes and interest paid to cooperative housing corporations.*

Tenant-stockholders in a cooperative apartment corporation are presently allowed the same deduction for property taxed and interest available to a homeowner. The bill extends this treatment to stockholder-tenants in a cooperative development of homes.

E. *Corporate organization expenditures.*

The committee bill provides that a corporation may elect to amortize organizational expenses over a period of not less than 60 months, beginning with the month in which the corporation is first active in business. This treatment will conform tax accounting more closely with general business accounting for these costs.

This provision is not applicable to the professional fees and other expenses incurred in connection with stock issues or transfers of corporate assets in reorganization. As is now the generally accepted practice, these expenses are to be charged directly to the capital paid in to the corporation as a result of the transaction.

IX. Items not deductible.

A. *Certain amounts paid in connection with insurance contracts.*

Under existing law, no interest deduction is allowed in the case of indebtedness incurred, or continued, to purchase a single-premium life-insurance

or endowment contract. In addition, if substantially all the premiums on a life-insurance or endowment contract are paid within 4 years from the date the contract is purchased, it is treated as a single premium contract and the same rule applies.

Existing law does not extend the denial of the interest deduction to indebtedness incurred to purchase single-premium annuity contracts. It has come to the committee's attention that a few insurance companies have promoted a plan for selling annuity contracts based on the tax advantage derived from omission of annuities from the treatment accorded single-premium life-insurance or endowment contracts. The annuity is sold for a nominal cash payment with a loan to cover the balance of the single-premium cost of the annuity. Interest on the loan (which may be a non-recourse loan) is then taken as a deduction annually by the purchaser with a resulting tax saving that reduces the real interest cost below the increment in value produced by the annuity.

The committee's bill will deny an interest deduction in such cases but only as to annuities purchased after March 1, 1954. In the case of life-insurance contracts, a method has been devised to avoid the limitation on the interest deduction for indebtedness on single-premium contracts. The purchaser borrows an amount approximating the single-premium cost of the policy, but, instead of purchasing the policy outright, deposits the borrowed funds with the insurance company for payment of future premiums on the policy.

The committee's bill will prevent this type of avoidance by providing that if an amount is deposited with an insurer for payment of a substantial number of future premiums on the policy, the contract will be treated as a single-premium contract. No interest deduction will be allowed on the indebtedness incurred, or continued, to purchase or carry such a contract.

B. *Disallowance of losses, expenses, and interest between related taxpayers.*

The committee bill tightens present law by expanding the concept of related taxpayers to include (1) a fiduciary dealing with a beneficiary of any other trust created by the same grantor; (2) a fiduciary dealing with a corporation controlled by the grantor or the trust; and (3) an exempt organization controlled by a person or his family.

Dealings between these parties are no less subject to abuse than those covered by present law.

Where losses on the disposition of property are disallowed, present law makes no provision for an adjustment of gain when such property is subsequently sold to outsiders.

The committee bill remedies this defect by recognizing gain to the original transferee only to the extent that it exceeds the amount of loss not previously allowable to the transferor.

C. *Acquisitions made to evade or avoid income tax.*

A provision added by the committee has the effect of throwing on the corporation the burden of proving that there was no purpose of evasion or avoidance in cases where the consideration paid in acquiring control of another corporation, or corporation property, is substantially disproportionate to the sum of the adjusted basis of the property and the tax benefits not otherwise available. This provision will apply to cases where the tax basis of the property acquired for depreciation and other purposes, together with the tax value of other tax benefits, such as operating loss carryovers, is substantially greater than the amount paid for the property.

D. *Hobby losses.*

Under present law, if losses from a trade or business exceed $50,000

a year for 5 consecutive years, only $ 50,000 of the annual loss may be offset against income from other sources and the portion of annual loss above $ 50,000 is disallowed. This is to prevent the deduction as business losses of expenditures on hobbies, such as racing stables and recreational farms. However, the present provision may penalize certain bona fide business enterprises, such as farms suffering from drought, mining businesses with large development costs, and businesses incurring casualty and abandonment losses.

To avoid such results, the committee's bill removes from the application of this provision losses and expenses incurred by farmers because of drought, casualty and abandonment losses, and expenditures which may, at the taxpayer's option, either be capitalized or deducted when incurred. Deductions for these items are to be omitted in computing the amount of the taxpayer's loss for purposes of determining whether he has a loss in excess of $ 50,000. Moreover, these deductions are to be allowed even if the taxpayer's losses exceed $ 50,000 a year for 5 consecutive years.

E. *Rental payments to governmental units for use of manufacturing facilities.*

The committee has added a new provision to the code which disallows deductions to private business for rental payments made to State or local governmental units for the use of property acquired by the governmental unit by the issuance of industrial development revenue bonds after January 21, 1954. Industrial development revenue bonds are those issued to finance the acquisition of a real-estate improvement which is to be used to any substantial extent by private business for manufacturing purposes and which do not pledge the full faith and credit of the issuing authority for the payment of principal and interest.

X. Corporate distributions and adjustments.

The committee's bill represents a complete structural overhaul of existing law in this area. The committee's bill has had three basic objectives. First, it has endeavored to make existing law more certain by redrafting existing provisions so as to clarify their meaning, and by supplying statutory provisions where none now exist. Second, the committee's bill is designed to provide for nonrecognition of gain or loss in cases which involve a mere rearrangement of the corporate structure or other shifts in the form of the corporate enterprise which do not involve any distribution of corporate assets to shareholders. These provisions, like those in existing law, are designed to insure that the full tax will be imposed through the operation of the basis provisions when there is such a realization. Third, the committee's bill is designed to make impossible a number of tax avoidance devices which exist under the present statute and have received the sanction of court decisions.

A. *Corporate distributions.*

(1) *Distributions of stock, stock rights, and securities.* The committee's policy is implemented by allowing the distribution, or exchange, of equity interests in a corporation to the greatest extent possible. As long as a shareholder's interest remains in corporate solution, there is no appropriate occasion for the imposition of a tax. Accordingly the general rule is that no tax is imposed upon the distribution of stock rights and stock dividends or upon exchanges of stock pursuant to readjustments of the corporate structure without regard to whether or not a particular shareholder's proportionate interest in the continuing business has varied. In addition, stock of a subsidiary if distributed will be subject to the same rules although its

subsequent disposition may give rise to ordinary income in accordance with the rules later described.

The committee has provided a rule to eliminate the necessity under present law of making negligible basis allocations between stock and stock rights issued on such stock. Under this rule the basis of the rights will be zero unless the taxpayer elects to allocate or unless the value of the right is 15 percent or more of the value of the stock at the time of distribution, in which event the allocation must be made.

Consistent with this policy with respect to tax-free stock distributions, a rule is adopted by the committee also to allow securities to be exchanged for other securities whether in a recapitalization or other readjustment of the corporate structure. Accordingly, the committee has followed and expanded the principles expressed in the decision in Commisioner v. Neustadt's Trust (131 F. 2d 528) so that under the bill no gain or los is recognized with respect to any exchanges of securities by a security holder. However, where securities are received by a shareholder in a greater principal amount than the securities surrendered, if any, tax-avoidance possibilities require that a tax shall be imposed to the extent of the differences in principal amounts as if there had been a property distribution.

(2) *Redemptions of stock*. The Committee's bill sets forth definite conditions under which stock may be redeemed at capital-gain rates. In general, these include redemptions to pay death-taxes, complete liquidations, partial liquidations (defined to insure a definite corporate contraction), and redemptions by a shareholder holding less than 1 percent of the common stock. In addition, the committee has defined when a substantially disproportionate redemption of a shareholder's stock will qualify so as not to be taxable as a dividend; namely, that a particular shareholder's holdings of participating stock after the distribution be less than 80 percent of his holdings before the distribution.

A distribution in complete redemption of a shareholder's stock will also result in capital gain. To prevent evasion of the complete redemption test a shareholder is considered as owning stock held by members of his immediate family, or by partnerships, corporations and trusts which he controls. At the present time a possible opportunity for tax avoidance results where redemptions are effected in the case of family-owned corporations. To prevent tax avoidance, but at the same time to provide definite rules for the guidance of taxpayers, the committee has provided precise standards whereby under specific circumstances, a shareholder may be considered as owning stock held by members of his immediate family (or by partnerships, corporations, or trusts which he controls).

The rules of family ownership will not apply if the shareholder completely terminates his interest in the corporation and does not reacquire, other than by bequest or inheritance, an interest (other than an interest as a creditor), for a period of 10 years thereafter. However, such a shareholder may not have made or received a gift of stock of the corporation, to or from his wife, for example, wthin 10 years prior to the distribution. If any interest is reacquired by a shareholder within the prohibited period, an additional tax may be recovered as if the original distribution had been a dividend. Thus, modified, the family attribution rules will be applied to insure a bona fide severance of a particular shareholder's interest in an enterprise without applying where there is no purpose of tax avoidance.

In order to eliminate the use of the 'preferred stock bailout', the committee proposes to impose a tax at the corporate level at the time any such dividend stock is redeemed within 10 years from its date of issuance. This tax would amount to 85 percent of the amount paid out in redemption of nonparticipating stock. The committee's bill imposes the tax at the corporate, rather than at the shareholder, level since it is less complex to administer such

a tax by a check on the corporate books than to attempt to trace sales of stock.

The committee has retained and broadened existing provisions of law insuring that stock of certain corporations may be retained to pay death taxes free of any dividend liability. This treatment furthers the committee's policy of preventing the forced sale of family-held businesses to large corporate enterprises solely because of the combined impact of estate and income taxes. Experience since enactment of the existing provisions has proven that hardship may still exist because of the unduly restrictive nature of the operations of this provision.

Accordingly, the application of this provision has been broadened to allow stock to be redeemed where it not only constitutes 35 percent of the value of the gross estate but also if it constitutes 50 percent of the value of the net estate. Thus, the marital deduction allowed for estate tax purposes will not preclude the availability of this special redemption provision.

The provision has also been broadened by (1) including funeral and administrating expenses as one of the purposes for which stock may be redeemed, (2) extending the time for redemption to 60 days after a decision of the Tax Court concerning the estate tax liability has become final, and (3) allowing stock of two or more corporations to be redeemed if certain tests are met.

While the committee has retained the provision of existing law which prevents tax avoidance where a subsidiary corporation purchases stock in its parent from the shareholders of the parent, there has come to the attention of your committee an area of possible tax avoidance by the use of substantially the same device. This involves sales of stock between corporations owned by the same interests. Thus, an individual owning all of the stock of two corporations may sell stock of one to the other. Under these circumstances, the committee has provided that where the effect of the sale is in reality the distribution of a dividend, such sale will be taxed as such.

(3) *Current distributions to shareholders and effect on earnings and profit.* The bill incorporates in the statute a rule derived from the Supreme Court Decision in General Utilities & Operating Co v. Helvering (296 U.S. 200) that a corporation does not realize gain by reason of a distribution of its property even though the value of the property distributed may exceed its cost to the corporation. Two exceptions are made to this general rule, however, in order to preclude the use of avoidance devices under existing law. The first of these concerns distributions of LIFO inventory. In such cases, the amount of tax temporarily deferred under the LIFO method of accounting will be paid by the corporation if the inventory is distributed in kind to shareholders. The second exception imposes a tax where property distributed is subject to a liability in excess of its cost to the corporation.

Under the committee's bill, the adjustments to the earnings and profits of the distributing corporation to be made where there is a distribution of property will, for the first time be set forth in the statute. Under the bill, the adjustment will be the cost to the corporation of the property distributed. If, however, the corporation distributed inventory assets, its earnings and profits will be increased by the excess of the fair market value of their cost and then decreased on distribution by the value of the inventory. While the net effect is to reduce the earnings and profits of the corporation by its investment in the inventory, this provision insures that the shareholder will always pay a tax on the value of the inventory thus preventing an avoidance device existing under present law.

While the committee has retained the rules of existing law relating to the effect on earnings and profits where there are tax-free distributions and where there are distributions out of increase in value of property accrued before March 1, 1913, an additional rule has also been supplied in order to determine the manner in which earnings and profits shall be allocated

where there is a partial liquidation, a corporate separation, or a redemption.

B. *Liquidations.*

(1) *General rules.* The committee's liquidation rules conform to its policy of not imposing a tax until there has been an economic realization of gain. Accordingly, unrealized appreciation in the value of property received upon the liquidation of a corporation will not be taxed to the shareholder or the corporation. At the same time, if the value of any property received in the liquidation is less than the shareholder's cost of his stock in the corporation, a deduction for a capital loss will be allowed to the shareholder. Moreover, under the bill, a shareholder will in general be permitted to receive the purchase price for his stock as his basis for the assets distributed to him in liquidation irrespective of the asset's cost to the corporation.

(2) *Collapsible corporations.* A new approach has been adopted for the tax treatment of corporations which manufacture property and are immediately liquidated in order that the imposition of a tax at the corporate level may be avoided. Since the tax avoided is ordinarily a tax at the rates applicable to ordinary income, the committee will preserve this tax at either the corporate or shareholder level. In order to accomplish this result, inventory assets (defined to include certain depreciable business property and rights to future income) which have appreciated in value will retain the basis in the hands of the distributee which such assets had in the hands of the liquidating corporation.

(3) *Court holding company.* — The committee's bill eliminates questions arising as a result of the necessity of determining whether a corporation in process of liquidating made a sale of assets or wether the shareholder receiving the assets made the sale. Compare Commisioner v. Court Holding Company (324 U.S. 331), with U.S. v. Cumberland Public Service Company (338 U.S. 451). This last decision indicates that if the distributee actually makes the sale after receipt of the property then there will be no tax on the sale at the corporate level. In order to eliminate questions resulting only from formalities, the committee has provided that if a corporation in process of liquidation sells assets there will be no tax at the corporate level, but any gain realized will be taxed to the distributee-shareholder, as ordinary income or capital gain depending on the character of the asset sold.

C. *Corporate reorganizations, acquisitions, separations and insolvency reorganizations.*

The committee has revised existing law in conformity with its objective of making it sufficiently definite to permit taxpayers to ascertain in advance the tax consequences of their actions. The committee's bill is designed to insure that the same tax consequences result from the different types of transactions which are available to accomplish substantially the same result. This correlation is important not only because it promotes clarity and certainty in the law but also because it insures that taxpayers cannot, by choosing the type of transaction, in effect choose the type of tax for which they are liable.

The committee's bill makes a distinction in the requirements applicable to the determination of whether gain or loss shall be recognized between transactions involving only publicly held corporations on the one hand and closely held corporations on the other. The only new requirement is that shares of the corporation being merged into or consolidated with such other corporation be exchanged for shares in the surviving corporation

in a number not less than that required by existing law to approve the transaction. Under the bill, a corporation will be considered to be publicly held unless 10 or fewer shareholders own more than 50 percent of its stock, ownership being determined with the application of the family attribution rules.

In the case of transactions involving corporations, other than publicly held corporations, mere compliance with corporation statutes providing for mergers or consolidations will not be sufficient to effect nonrecognition of gain or loss. The committee's bill imposes statutory safeguards in the case of such corporations, the most important of which are that the transferor corporation must liquidate in the case of corporate acquisitions of property and that, in the case of both corporate acquisitions of property and corporate acquisitions of stock, the shareholders of the transferor corporation must receive at least 20 percent of the participating stock of the acquiring corporation.

The committee's bill continues existing law by permitting a corporation to distribute, without immediate tax, stock of a newly created subsidiary, and changes existing law by according the same treatment to distributions of stock of an existing subsidiary. The bill further changes existing law by permitting the distribution to be made to the shareholders of the parent non pro rata to their holdings of stock of the parent. Existing law is also changed in that such distribution is permitted without immediate tax even though the subsidiary is an inactive corporation which receives all of its income from investments. However, a new and effective safeguard to preclude the transformation of ordinary income into capital gains is contained in the requirement of the committee's bill that any disposition of such stock (within 10 years of its receipt) by the shareholder or his donee or any distribution with respect to such stock (including a liquidation of the corporation) will give rise to ordinary income consequences. The one exception to this rule is where the stock is redeemed to pay death taxes.

The committee's bill retains the substance of the basis provisions of existing law except that the basis provisions relating to the corporate acquisitions of stock have been correlated with those relating to corporate acquisitions of property. The committee's bill contains additional safeguards against tax avoidance not found in existing law. It imposes a tax when property subject to liability in excess of its basis is transferred to a controlled corporation. It also contains a specific provision designed to make impossible the withdrawal of corporate earnings at capital-gains rates through the device of liquidating the corporation and reincorporating the business assets, a device which has been sanctioned by certain courts under existing law.

The committee's bill continues existing law with respect to insolvency reorganizations.

D. *Carryovers to successor corporations.*

The bill provides for the carryover of about 16 specific tax attributes or items from one corporation to another in certain tax-free reorganizations. Under this provision, a corporation which acquires substantially all the property of another corporation in a tax-free transfer is to take into its accounts certain specified items of the distributor or transferor corporation. The principal items are loss carryovers, earnings and profits, and certain elections, such as those relating to LIFO inventory accounting and those relating to the use of the special declining balance depreciation method. No provision is made for the apportionment of such items in the case of split-ups, spin-offs, or other divisive reorganizations.

E. *Special limitation on net operating loss carryover.*

The committee added a provision designed to limit undue tax benefits

of this character by restricting the amount of net operating loss carryover which may be deducted where 50 percent or more of the participating interest in a corporation was acquired by new owners. In such cases the net operating loss carryover to the current and subsequent taxable years is to be reduced by the percentage of new ownership acquired either by purchase or by decrease in the participating stock outstanding. This provision does not apply to publicly held corporations.

This special limitation on net operating loss carryovers provides an objective standard governing the availability of a major tax benefit which has been abused through trafficking in corporations with operating loss carryovers, the tax benefits of which are exploited by persons other than those who incurred the loss. It treats a business which experiences a substantial change in its ownership, to the extent of such change, as a new entity for such tax purposes.

to be continued.

INTERNATIONAL CHAMBER OF COMMERCE

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EXECUTIVE COMMITTEE

51st Session, 2nd July 1954

DOUBLE TAXATION IN EUROPE

Resolution
adopted by the Executive Committee of the
I.C.C.

In the interest of the development of intra-European trade and investments, to which double taxation remains a serious obstacle and in view of the close bonds uniting the countries of the O.E.E.C. and a fortiori the "Six", the International Chambre of Commerce urges the Council of the O.E.E.C. to recommend all O.E.E.C. Governments:

a) to conclude as rapidly possible with all other O.E.E.C. Governments bilateral treaties for the avoidance of double taxation based on the Model Bilateral Convention for the Prevention of the Double Taxation of Income and Property of the League of Nations (London Draft);

b) to adopt at the same time the only fully effective method of eliminating double taxation, namely to take unilateral measures by national legislation such as those recommended by the I.C.C. in its resolutions and reports on double taxation.

The I.C.C. believes it would be desirable for the O.E.E.C. to undertake an investigation of the possibility of concluding a multilateral convention on double taxation between the O.E.E.C. countries. It believes that, should a multilateral convention prove to be practicable, it would have the great advantage of securing uniformity of principle and practice in double taxation matters over a large area of world trade. The I.C.C. would gladly cooperate with the O.E.E.C. in any investigation of this kind.

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DICTIONNAIRE DE DROIT FISCAL

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* See commentary in Section III — Voir commentaire dans Section III.

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ITALIANO

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*) 61 Ministro delle finanze
*) 62 Inspettore delle imposte
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* See commentary in Section III — Voir commentaire dans Section III.

ESPAÑOL

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*) 61 Ministro de Hacienda
*) 62 Inspector
*) 63 Jefe de delegación
*) 64 Cobrador fiscal

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*) 60 Appel, cassatie
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* See commentary in Section III — Voir commentaire dans Section III.

SECTION III

ENCYCLOPAEDIC PART — PARTIE ENCYCLOPEDIQUE

E = English, F = Français, D = Deutsch, I = Italiano, E = Español
N = Nederlands.

44. *E. Return.*
F. Déclaration.
D. Steuererklärung.
I. Dichiarazione.
Es. Declaración; declaración jurada.
N. Aangifte.

Netherlands.

Several taxes are levied after a return has been made.

The character of this declaration may be different.

Three categories are to be distinguished:

1. the declaration is for the purpose of informing the officials that a taxdebt has arisen or may have arisen or in the future may arise. The amount of the debt is then fixed afterwards by the officials alone or in cooperation with the debtor.

Examples:

Before holding a public sale of movable property the Tax Authorities have to be informed of this event: there is a possibility that a tax debt will arise.

In the legislation concerning customs and excise similar provisions are made.

2. The declaration contains data enabling the tax official to fix the tax debt; said official being bound to the declaration.

An example can be found in the Succession Duty Act. Here the official has in hand the checking of the data afterwards and he may take legal proceedings in case of a declaration which proves to be too low.

Pays-Bas.

Différents impôts sont perçus après la déclaration préalable du contribuable. Le caractère de telles déclarations peut être différent d'après le cas. On peut distinguer trois categories de déclarations:

1. La déclaration sert à informer le fonctionnaire qu'une obligation fiscale existe, qu'elle peut exister, ou bien qu'elle existera dans l'avenir. Le montant de l'obligation fiscale est ensuite fixé, ou bien par le fonctionnaire seul, ou en coopération avec le contribuable.

Exemples.

Avant de tenir une vente publique de biens meubles il faut en informer le fisc, car il est possible qu'un impôt devienne exigible. On peut trouver pareilles règles dans la législation concernant les droits d'entrée et les taxes de consommation (accises).

2. La déclaration contient des données destinées à fixer l'obligation fiscale, tandis que le fonctionnaire doit s'en tenir à la déclaration. On peut en trouver un exemple dans le droit de succession. Le contrôle ultérieure revient au fonctionnaire, qui peut entamer des poursuites en cas de déclaration insuffisante.

3. The declaration contains data enabling the official to fix the tax debt, but said official is not bound to accept the declaration and may fix the assessment at his own discretion.

Examples i.a. in the Income Tax, Profits Tax, Property Tax. Here the tax debtor has in hand the checking of the assessment afterwards.

Argentina.

In Argentina law the return, which is generally called 'declaración jurada' is not only intended to give the Authorities the necessary data to fix the tax debt, but also entails the obligation for the person concerned to pay the tax resulting from his return immediately without intervention of the official. The Authorities have the right to verify and modify the result by means of a 'determinación de oficio' until the term for prescription has run out (5 or 10 years), if the return is inadequate, inexact of incorrect.

Germany.

The 'Steuererklärung' as a formal return of data which are important for tax matters, and any other similar declaration, is by nature a statement of facts and not a declaration of will. The 'Reichsfinanzhof' calls it a statement to the Authorities of juridical data which serve as one of the bases, and indeed a very important one, to fix the tax debt.

U.S.A.

Nearly all taxes (the principal exception is local property taxes) are determined in the first instance on the basis of returns filed by the taxpayer. The taxpayer usually pays the tax as calculated by him at the time he files the return. In only a few instances is payment deferred until the tax officials notify the taxpayer of the amount due.

3. La déclaration contient des données destinées à fixer l'obligation fiscale mais maintenant le fonctionnaire peut en fixer le montant d'aprés sa propre idée. On en trouve des exemples dans les impôts sur le revenu, sur la fortune et sur les sociétés. Dans ce cas c'est le contribuable qui contrôle.

Argentine.

Dans la législation fiscale argentine, la déclaration, qu'on appelle en général, „declaración jurada", ne sert pas seulement pour dénoncer à l'autorité fiscale les données nécessaires pour fixer l'obligation fiscale, mais aussi bien oblige immédiatement le contribuable à payer l'impôt qui résulte de sa déclaration, sans aucune intervention du fonctionnaire. L'autorité fiscale a le pouvoir de verifier et modifier ce resultat avec une „determinación de oficio" (voir 45) lorsque la déclaration est insuffisante, inexacte or fausse, jusqu'au terme de la prés-cription (5 ou 10 années) .

Allemagne.

La déclaration fiscale comme déclaration formelle de circonstances et relations d'importance en matière fiscale est comme toute autre déclaration avec un contenu similaire, par sa nature une déclaration de faits et exceptionnellement l'expression d'une volonté. Le „Reichsfinanzhof" parle d'une information faite aux autorités fiscales, formée par des renseignements de valeur juridique et qui est destinée à devenir une des bases, d'ailleurs très importante, pour la détermination de l'impôt dû.

Etats Unis.

Presque tous les impôts (l'exception générale concerne les impôts locaux sur la fortune) sont déterminés en première instance sur la base des „returns" du contribuable. Celui-ci en général, paye son impôt d'après son propre calcul fait au moment où il remplit sa déclaration. C'est seulement en quelques cas que le payement est différé jusqu'au

moment où les autorités informent le contribuable du montant dû par lui.

---

45. *E. Assessment.*
F. Imposition, Cotisation, Taxation.
D. Veranlagung.
I. Accertamento.
Es. Determinación del impuesto.
N. Aanslag.

The assessment is the work of the official by which the tax debt is fixed or ascertained. This difference is connected with the distinction made between material and formal tax debt.

In the *Netherlands* provisional and definitive assessments are distinguished. The provisional assessment is for the purpose of enabling the debtor to pay approximately the amount due at short notice while afterwards the definitive assessment follows.

C'est l'action exercée par le fonctionnaire et par laquelle il constate l'obligation ou en fixe le montant. La nuance se rapporte à la distinction que l'on fait entre l'obligation fiscale formelle et matérielle.

Aux *Pays-Bas* on fait une autre distinction, à savoir celle qui existe entre l'établissement provisoire et définitif. Le but du premier est de faire payer par le contribuable à peu près le montant dû. Plus tard suit la fixation définitive de ce montant.

Argentina.

In Argentine law the 'determinación', only occurs in cases, when the taxpayer did not file a return or when his return was inadequate, inexact or incorrect. The 'determinación' can be made according to the books if they have been regularly kept by the taxpayer. If this is not the case the 'determinación' is made on a estimated basis, which is called 'estimación de oficio' (see no. 44).

Argentine.

Dans la legislation argentine la „determinación", en général ne se fait que dans les cas où les contribuables eux mêmes n'ont pas déclaré où ont déclaré d'une façon insuffisante, inexacte ou fausse ses obligations. La „determinación" peut être faite sur une base certaine lorsque le fisc est en condition de connaître à travers des livres de commerce, regulièrement tenus par le contribuable, la matière imposable; dans le cas contraire, la „determinación" est faite sur une base présomptive, qu'on appelle „estimación de oficio". (voir no. 44).

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46. *E.*
F. Taxation provisoire.
D.
I. Accertamento provisorio.
Es.
N. Voorlopige aanslag.

— See nr. 45. — Voir no. 45.

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47. *E.*
F. Taxation définitive.
D.
I. Accertamento definitivo.
Es.
N. Definitieve aanslag.

— See nr. 45. — Voir no. 45.

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48. *E.*
F. Taxation d'office.
D. Schätzung.
I. Accertamento d'ufficio
Es. Determinación dè oficio.
N. Ambtshalve aanslag.

Argentina.
See nr. 45.

Argentina.
Voir no. 45.

Germany.

In the tax law 'Schätzung' means the estimating of the basis of the assessment by means of consideration of the probabilities in case no other data are avaibable. So the 'Schätzung' is a special manner of determining the basis, for example the property, the turnover, the value. This is especially the case when a 'Totalschätzung' takes place, namely when in default of any usable data, by means of comparison with other similar businesses an estimate is made. The procedure of the 'Schätzung' is provided for in §217 of the 'Abgabenordnung'.

A distinction can be made between
1. Estimate of the total ('Gesamtschätzung) is only permitted in case of considerable deficiencies (for instance in the books).
2. Partial estimate ('Teilschätzung') is an estimate of a part of the necessary data to complete the incomplete basis already existing.

Allemagne.

„Schätzung" au sens fiscal veut dire la détermination approximative par voie de considérations de probabilité, des bases d'impostition, et cela seulement au cas que l'on ne dispose pas d'autres donnéés spéciales. La „Schätzung" constitue donc une façon particulière de la determination des bases, p. ex. fortune, chiffre d'affaires, valeurs etc. Cette méthode s'applique tout spécialement en cas d'une estimation d'un ensemble, quand on procède à une estimation par voie de comparaison avec des entreprises etc. de nature similaire, vu que d'autres données manquent. La méthode d'estimation est réglée au § 217 de la „Abgabenordunng".

On peut distinguer deux formes d'estimation:
1. Estimation de la totalité („Gesamtschätzung"). Elle n'est permisse qu'en cas d'insuffisances considérables p. ex. dans la comptabilité.
2. Estimation par parcelles („Teilschätzung"). Elle est une estimation supplémentaire d'un certain montant partiel pour compléter une base d'imposition incomplète qui existe déjà.

U.S.A.
No equivalent exists.

Etats Unis.
Il n'existe pas une expression equivalente.

Netherlands.

This assessment is made when the authorities themselves have the necessary data at their disposal or when the debtor refuses or fails to give the necessary cooperation. An example of the first case can be found in the Dutch Land-Tax.

Pays Bas.

On se sert de la taxation d'office quand l'Administration elle-même dispose des données nécessaires quand le contribuable refuse ou manque de donner sa collaboration. On trouve un exemple du premier cas dans l'impôt foncier néerlandais.

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49. *E. Notice of assessment, notice of tax, tax bill.*
F. Avertissement extrait de rôle.
D. Steuerbescheide, Feststellungsbescheide, Steuermessbescheide.
I. Notifica d'imposta, Notifica di accertamento.
Es. Liquidación del impuesto.
N. Aanslagbiljet.

Germany.

Steuerbescheide are decisions by which a tax is claimed in first instance. A distinction must be made between:

1. formal 'Steuerbescheide', which have to be in writing and which must contain the amount of the tax due.

2. 'Steuerbescheide', which need no form. They can be given in writing or even orally.

Feststellungsbescheide are decisions by which the bases of taxation are fixed in particular ('Einheitswertteschеide', 'Fortschreibungsbescheide' etc).

Steuermessbescheide are decisions by which the coefficients necessary to calculate the tax are fixed (Land tax, Entreprise tax).

Allemagne.

Steuerbescheide sont des avis par lesquels on demande, pour la première fois, le payement d'un impôt.

On fait une distinction entre:

1. avis formels, pour lesquels une écriture est indispensable, et qui indiquent le montant de l'impôt à payer; et

2. avis non formels. Ces derniers peuvent être donné par écriture ou même oralement.

Feststellungbescheide sont des actes par lesquelles les bases d'imposition sont fixées en particulier („Einheitswertbescheide", „Fortschreibungsbescheide" etc).

Steuermessbescheide sont des actes par lesquelles les coéfficients pour calculer l'impôt sont fixés (impôt foncier, impôt commercial).

U.S.A.

Notice of assessment would apply most frequently in State and Local finance (rather than Federal finance) In the alternative, it might be called 'notice of tax', 'tax bill'.

Etats Unis.

„Notice of assessment" est employé surtout dans le droit financier des Etats et des Communes. Dans le droit de la Fédération on employe les mots „notice of tax"et „tax bill".

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50. *E. Assessment list, Assessment roll.*
F. Rôle.
D. Steuerlisten, Steuerrollen.
I. Ruolo d'imposta.
Es. Padrón del impuesto, Catastro, Guia de contribuyentes.
N. Kohier.

Argentina.

The 'padrones' and 'guías de contribuyentes' do not exist in Argentina present day tax law except in a few cases especially in matters of land tax.

Germany.

'Steuerrollen' (or 'Steuerlisten') are official registers of assessable persons and tax debts.

Netherlands.

The 'Kohier' is the official document in which the assessment is made and also by which the assessing authority gives instruction to the collecting authority to collect from the tax debtors the amounts mentioned in it.

U.S.A.

The phrase 'assessment list' appears occasionally in Federal taxes particularly with reference to lists of persons against whom deficiency assessments have been made for income tax purposes. But most frequently it appears as 'assessment rolls' in which case it refers to lists of property subject to State or local property taxes.

Argentine.

Les „padrones" ou „guías de contribuyentes" n'existent dans la legislation argentine actuelle que dans très peu de cas, surtout en matière d'impôt foncier.

Allemagne.

„Steuerrollen" (ou „Steuerlisten") sont des registres officiels des contribuables et des dettes fiscales.

Pays-Bas.

Le Rôle est l'acte administratif dans lequel le montant de l'impôt est déterminé et par lequel l'inspecteur donne l'ordre au percenteur de recouvrer du contribuable le montant indiqué.

Etats Unis.

On trouve l'expression „assessment list" de temps en temps en ce qui concerne les impôts fédéraux. Tout particulièrement elle s'applique à des listes de personnes auxquelles on a envoyé des avis correctifs en rapport avec l'impôt sur le revenu. Mais le plus souvent on trouve l'expression „assessment rolls" et qui se réfèrent à des listes de propriétés assujetties aux impôts d'Etat et communaux sur la fortune.

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51. *E. Collection.*
F. Perception.
D. Steuererhebung.
I. Riscossione.
Es. Percepción.
N. Inning.

See for the methods of collection nos. 52, 53, 54.

Pour les différentes façons dont cela est affectué, voir les nos. 52, 53, 54.

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52. *E. Payment.*
F. Payement.
D. Bezahlung.
I. Pagamento.
Es. Pago.
N. Betaling.

The payment is the act of debtor by which the debt is satisfied or

Le payement est l'acte par lequel le debiteur éteint ou diminue sa dette.

diminished. As a rule the payment is made in money, but sometimes other methods are possible, e.g. by means of public bonds or as in ancient times in goods.

En général le payement est effectué en espèces, mais parfois on peut payer d'une autre manière p. ex. en nature (surtout dans la passé) ou en donnant en payement des obligations de la dette publique etc.

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53. *E. Witholding (deduction) at the source.*
F. Retenue à la source.
D. Steuerabzug.
I. Ritenuta.
Es. Retención.
N. Inhouding aan de bron.

This is a method of collection by which the person who makes a payment to the debtor is bound to retain a certain amount of tax and to pay it over to the authorities.

Méthode de perception par laquelle celui qui verse un certain revenu au contribuable est tenu de retenir un montant d'impôt déterminé et de la verser au fisc.

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54. *E. Stamp.*
F. Timbre.
D. Stempel.
I. Bollo.
Es. Sello, Papel sellado.
N. Zegel.

Stamps are used as a method of collection. Stamp Duties are not special taxes, they only have the purpose to create an easy way to collect taxes i.a. by means of payment in advance: the amount flows into the exchequer before the tax debt has arisen.

Egalement une méthode de perception. Le droit de timbre n'est donc pas au fond une sorte d'impôt, mais il sert à assurer une perception facile, à savoir par un payement anticipé: le montant afflue au Trésor avant qu'une obligation fiscale soit née.

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55. *E.*
F. Recouvrement.
D. Beitreibung.
I. Esazione.
Es. Recaudación.
N. Invordering.

This expression comprises all the measures which are at the disposal of the officials, charged with the collection of the taxes.

In English no equivalent exists.

Par cette expression on entend l'ensemble des mesures administratives et qui sont mises à la disposition du fonctionnaire chargé de la perception pour assurer que le montant dû afflue au Trésor.

En Anglais on ne connaît pas un équivalent.

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56. *E. Additional Assessment.*
F. Rappel de droits.
D. Nach-Veranlagung.
I. Accertamento suppletivo.
Es. Determinación adicional, Determinación suplementaria.
N. Navordering.

Argentina.

In Argentine law the 'determinación' can only be modified when new facts become known, especially in cases of death duties. As regards income tax, excess profits tax etc. the 'determinación' can only be modified in cases of error or fraud. The case law of the supreme Court has indeed limited the possibility to modify the 'determinación' when the error is due to the officials themselves.

Argentine.

Dans la législation fiscale argentine la „determinación" ne peut être modifiée que dans le cas où des faits nouveaux sont connus spécialement en matière d'impôt sur les successions. Dans le domaine des impôts périodiques sur le revenue, sur les bénéfices extraordinaires, etc. la „determinación" ne peut être modifiée que dans le cas d'erreur ou de fraude. La jurisprudence de la Cour Suprême a d'ailleurs beaucoup restreint la faculté de modifier la „determinación" lorsque l'erreur est imputable à l'administration elle même.

Germany.

In Germany 'Nachveranlagung' is only known ir respect of the property tax.

Allemagne.

En Allemagne on ne connait la „Nachveranlagung" qu'en ce qui concerne l'impôt sur la fortune.

Netherlands.

When it appears that the tax debt is higher than has been officially recorded, it is in some cases possible to recover the difference without any requirements being fulfilled (e.g. succession Duty) In other cases this is only possible when some conditions are complied with (e.g. a new fact occurs). Then in the Netherlands the word 'navordering' (additional assessment) is used.

Pays Bas.

S'il appert que l'obligation est plus élevée qu'elle n'avait été fixée officiellement, il est possible dans certains cas que la différence soit recouvré sans plus (droit de succession) Dans d'autres cas une telle procédure n'est possible que dans certaines circonstances déterminées (si par ex. un nouveau fait se présente). Dans ces cas on parle de „navordering" (imposition supplémentaire).

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57. *E.*
F. Réclamation.
D.
I. Reclamo istanza.
Es. Disconformidad, Reclamo.
N. Bezwaarschrift.

Argentina.

In the procedure of the 'determinación' the taxpayer can show his 'disconformidad' before the final decision, but only in cases of facts,

Argentine.

Dans le procédure de „determinación" le contribuable peut manifester sa „disconformidad" avant de la décision definitive, mais seulement

not in cases of law. This remedy is not an appeal but only a measure of defence.

See also no. 58.

Netherlands.

If the taxpayer wishes to protest against an assessment he can apply to the assessing official, by means of a document called 'bezwaarschrift'

U.S.A.

There is no special word or phrase for this situation. The particular procedure varies depending on the particular tax and which jurisdiction (Federal Government, State or local government) imposes it. Under the Federal income tax procedure, a taxpayer indicates his objection to a deficiency assessment by filing a protest and requesting a bearing (See also note under no. 59).

pour des raisons de fait et non de droit. Ce moyen n'est pas un recours mais seulement une mesure de défense. Voir ainsi no. 58.

Pays Bas.

Si l'on veut faire des objections relatives au montant mentionné dans le feuille d'impôt dans certains cas on peut faire appel à l'inspecteur au moyen d'une objection écrite („bezwaarschrift").

Etats Unis.

Il n'existe pas de mot ou expression spéciale pour cette situation. La procédure particulière varie d'après l'impôt et d'après l'autorité qui l'établit (gouvernement fédéral ou d'Etat etc.). En ce qui concerne de contentieux en matière de l'impôt fédéral sur le revenu un contribuable fait connaitre ses objections contre un „assessment" qu'il juge incorrecte en présentant sa protestation et en demandant d'être oui. (voir aussi la note sous no 59).

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58. *E. Petition, Notice of appeal.*
F. Requête.
D.
I. Domanda di revisione.
Es. Recurso de reconsideración, Recurso de apelación.
N. Verzoekschrift.

Argentina.

In the Argentine law an appeal to the judge in tax cases is generally only possible after an appeal to the Revenue Authorities has been made. Its purpose is always a restitution of taxes already paid ('Solve et repete').

An appeal against the 'determinación' is possible to the Revenue Authorities and is called: appeal of 'reconsideración'; in the federal law this appeal is only allowed if the 'determinación' is made on estimated basis; in the law of the provinces on the other hand a more general appeal is possible. After the decision appeal is possible to the judge.

Argentine.

Dans la législation argentine la demande judiciaire en matière fiscale doit être précédée, en général, par les recours administratifs. Elle a toujours comme but le remboursement des impôts payés („solve et repete").

Comme recours contre la „determinación" de l'autorité fiscale le contribuable peut entamer un recours de „reconsideración" devant l'administration fiscale; dans la législation argentine fédérale ce recours existe seulement lorsque la „determinación" a été faite sur une base présomptive; dans le droit des provinces au contraire le recours est plus général. Contre la décision on peut entamer la demande judiciaire.

Germany.

See no. 60.

Netherlands.

This is a document by means of which an applicant is made to competent court of law.

U.S.A.

See no. 59.

Allemagne.

Voir no 60.

Pays Bas.

C'est une demande écrite par laquelle, et dans certains cas, on fait appel à l'une ou l'autre instance judiciaire.

Etats Unis.

Voir no. 59.

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59. *E. General Commissioners, Special Commissioners, House of Lords.*
F. Conseil d'Etat, Cour de Cassation, Conseil de Préfecture, Cour d'Appel, Tribunal de première instance, Juge de paix.
D. Finanzamt, Finanzgericht, Bundesfinanzhof.
I. Commissioni Tributarie, Commissioni centrale delle imposte dirette e indirette, Tribunali, Corte d'Appello, Corte di cassazione.
Es. Dirección General Impositiva, Dirección General de Rentas, Cámara Fiscal de Apelación, Juez Nacional, Cámara Nacional de Apelaciones, Suprema Corte de Justicia.
N. Arrondissementsrechtbank, Raad van Beroep, Hof, Hoge Raad, Tariefcommissie, Gedeputeerde Staten.

Argentina.

In the federal tax law the 'Dirección General Impositiva', the Revenue Authorities, decide in first instance in tax cases. Against their decisions appeal to the judge is possible in three instances: 'Juez Nacional', 'Cámara Nacional de Apelaciones' and 'Corte Suprema de Justicia de la Nación'. In the law of the provinces, the Authority in first instance is the 'Dirección General de Rentas' in second instance the Governor decides or in the Province of Buenos Aires, the 'Cámara fiscal de Apelación'. Against these decisions appeal to the judge is possible in casu the Supreme Court of the Province.

Belgium.

The 'juges de paix' and the 'tribunaux de première instance' are competent in certain cases.

The competence of the 'cours d'appel' has a special character as regards direct taxes: they decide in first and last instance in tax cases.

The 'Cour de Cassation' has in tax matters the same task as in other matters: to ensure the uniform-

Argentine.

Dans la législation fédérale argentine c'est la „Dirección General Impositiva", l'autorité administrative qui décide en première instance les questions fiscales. Contre ses décissions est ouverte aux contribuables la voie judiciaire, qui connait trois instances: „Juez Nacional", „Cámara Nacional de Apelaciones" et „Corte Suprema de Justicia de la Nación" Dans la législation des provinces l'autorité de première instance est la „Dirección General de Rentas"; en deuxième instance décide le Gouverneur, ou, dans la Province de Buenos Aires la „Cámara Fiscal de Apelación". Contre ces décisions la voie judiciaire est ouverte devant la Cour Suprême de la Province.

Belgique.

Les juges de paix et les tribunaux de première instance sont compétents dans certains cas.

La compétence des cours d'appel a un caractère spécial en ce qui concerne les impôts directs, en ce sens qu'elles prennent connaissance en premier et dernier ressort de la contestation qui a surgi entre le contribuable et le fisc.

ity in the interpretation of the law.

The competence of the 'Conseil d'Etat' in tax matters is still uncertain. In principle the Conseil d'Etat is not competent in cases in which the normal courts are competent. Indeed it is normal that the Conseil d'Etat declares itself incompetent when other courts are competent. However, certain cases may arise where the court or the tribunal declare themselves incompetent, and where the competence of the Conseil d'Etat is called in. Up till now the solutions of these exceptional cases have been badly formulated.

La Cour de Cassation remplit en matière fiscal la mission qui lui est dévolue dans toutes les autres affaires, à savoir assurer l'unité d'interprétation de la loi.

La compétence du Conseil d'Etat en matière fiscal est encore imprécise. En principe le Conseil d'Etat n'est pas compétent a l'égard des affaires pour lesquelles les jurisdictions ordinaires sont compétentes. Il en résulte que le Conseil d'Etat se déclare incompétent en matière fiscale étant donné que les jurisdictions ordinaires sont en principe compétentes. Il reste toutefois un certain nombre de cas où les cours et tribunaux se déclarent incompétents et où l'on invoque la compétence du Conseil d'Etat. Jusqu'à présent les solutions de ces cas exceptionnels sont encore mal précisées.

Germany.

The 'Finanzamt' is a lower local authority of the Finance Department ('Finanzverwaltung'), charged with the collection of the federal taxes and a part of the local taxes. It performs any duties especially assigned to it. In first instance the 'Finanzamt' gives decisions after 'Einsprüche' in the procedure of 'Berufung' (see no. 60).

Allemagne.

Le „Finanzamt" est une autorité locale inférieure du Service Financier („Finanzverwaltung"), chargée du recouvrement des impôts fédéraux aussi que partie des impôts locaux. Il exécute les charges qui lui sont spécialement imposés. En première instance le „Finanzamt" donne des décisions sur des appels dans la procédure de „Berufung" (voir no. 60).

The 'Finanzgericht' is the court which decides in second instance. It is a court that gives judgement especially after appeal against decisions of the 'Finanzamt'.

Le „Finanzgericht" est l'autorité judiciaire de deuxième instance.

Il s'agit d'une cour fiscale décidant tout spécialement sur des appels contre les décisions du „Finanzamt".

The 'Bundesfinanzhof' is the supreme court in the fiscal domain. It is competent for all taxes of which the administration is in hands of the 'Finanzämtern', 'Hauptzoll ämtern', or 'Oberfinanzdirektionen'.

Le „Bundesfinanzhof" est la Cour Suprême dans la domaine du contentieux fiscal. Il est compétent pour tous les impôts, taxes etc. dont l'administration est entre les mains des „Finanzämtern" „Hauptzollämtern" ou „Oberfinanzdirektionen"

Netherlands.

Not for all taxes have the same courts judicial jurisdiction.

Pays Bas.

Il existe différentes instances judiciaires chargées de décider d'après les differents impôts.

Raad van Beroep.

This College has jurisdiction in

Raad van Beroep.

Ce tribunal décide en prémière

first instance in cases concerning most of the direct taxes, the principal of which are Income tax, Property tax, Tax on salaries and Corporation Tax..

Appeal to the court of cassation (Hoge Raad) is possible.

Tariefcommissie.

For the salestax, customs and excise the 'Tariefcommissie' has jurisdiction in first and last instance.

(*Arrondissements*) *Rechtbank.*

For succession, registration and stamp duties this court of civil judicature is competent.

Hof. Appeal of sentences of the 'Rechtbank' is possible at the court of appeal.

Hoge Raad. Appeal to this court of cassation is possible from sentences of the 'Hof' and 'Raad van Beroep'.

Gedeputeerde Staten.

In first and last instance Gedeputeerde Staten (a governing body of the provinces) decide in matters regarding the land-tax.

U.S.A.

See the following note of our collaborator for the U.S.A. Mr Raymond E. Manning, Washington D.C.

instance dans des différents cas relatif à la plupart des impôts directs et dont les principaux sont Impôt sur le revenu, Impôt sur la fortune, Impôt sur les salaires, Impôt sur les sociétés. On peut aller en cassation après jugement (Hoge Raad).

Tariefcommissie.

En ce qui concerne la taxe sur le chiffre d'affaires, les droits d'importation et d'exportation et les accises ce tribunal décide en première et dernière instance.

(*Arrondissements*) *Rechtbank.*

Pour les droits de succession, d'enregistrement et de timbre c'est le tribunal ordinaire civil qui est compétent. Contre les décisions du „Rechtbank" on peut faire appel auprès la cour d'appel (*Hof*). Contre les décisions de la cour d'appel, du „Raad van Beroep" et du tribunal civil (Rechtbank) on peut aller en cassation. (*Hoge Raad*).

Gedeputeerde Staten.

Ce conseil provincial décide en première et dernière instance en ce qui concerne l'impôt foncier.

Etats Unis.

Voir la note ci-dessous de notre collaborateur américaine Mr Raymond E. Manning, Washington. D.C.

SUMMARY OF FEDERAL TAX ADMINISTRATIVE . ORGANIZATION AND TAX COLLECTION PROCEDURES

There have been many organizational changes in the administration and collection of Federal taxes during the last several years. Because of this, it may be helpful to you to have a brief review of the organization.

The chief fiscal office of the United States is the Treasury Department. The Department is headed by the Secretary of the Treasury. He roughly corresponds to the Chancellor of the Exchequer in other countries.

The tax collection function is centered in the Internal Revenue Service. This was formerly known as the Bureau of Internal Revenue. It is a part of the Treasury Department. The head of the Internal Revenue Service is called the Commissioner of Internal Revenue.

Most of the tax collections are handled regionally. There are 9 Internal Revenue Regions, each headed by a Regional Commissioner of Internal Revenue.

The Regional Commissioner is in charge of all field activities in his region. Within the regions there are a total of 64 districts each headed by a District Director of Internal Revenue.

Under the present organization, taxpayers file their returns with the District Director of Internal Revenue. Almost all Federal taxes are determined in the first instance on the basis of returns filed by the taxpayer. The taxpayer pays the tax as calculated by him at the time he files the return.

As soon as practical after returns are filed, they are examined. If further processing is needed they will be referred to Internal Revenue Agents attached to the District Director's office. Questions and explanations may be handled by correspondence, by personal appearance of the taxpayer in the local office, or by an examination of the books and records of the taxpayer at his place of business if this is needed.

If the examining agent decides that a return is incorrect, the taxpayer will be given an opportunity to agree to proposed adjustments.

If the taxpayer disagrees, he may request an informal conference with other employees in the District Director's office. At this conference the taxpayer is given an opportunity to explain disputed items with the hope of arriving at a settlement. If no agreement is reached at this conference, a preliminary notice (called a '30-day letter') is sent to the taxpayer advising him of the deficiency proposed to be levied. Within the 30 days he has the right to appeal to the Appellate Division in the Regional Commissioner's Office. After the Appellate Division has come to its conclusion, it returns the case to the District Director. If there has been no agreement the taxpayer is sent a notice (called a '90-day letter') of the deficiency claimed to be due.

The taxpayer has 90 days within which to file a petition with the Tax Court to seek a redetermination of the tax due. The taxpayer is called the 'petitioner,' and the Commissioner of Internal Revenue is named as the 'respondent'. The burden is on the taxpayer to prove that the findings of the tax officials are in error. The court may approve the sum determined by the tax officials, conclude that no deficiency is due, find that there has been an overpayment, or order the tax to be recomputed. The taxpayer or the tax official may appeal from the decision of the Tax Court.

Appeals from the Tax Court are to one of the eleven Circuit Courts of Appeals. These are courts which hear appeals on all subjects (not tax cases alone). From decisions of the Circuit Court of Appeals, either the taxpayer or the tax official may file a petition for a writ of certiorari asking the Supreme Court to review the decision. The granting of this petition is in the discretion of the Supreme Court and is usually given only in cases involving important points of law.

The great advantage of following the above procedure is that the taxpayer does not have to pay the deficiency alleged to be due until the final court decision. But this procdure is not the only one available to the taxpayer. He can in the alternative pay the tax and then either:

(1) *sue the United States in the Court of Claims in Washington, or*

(2) *sue the Director of Internal Revenue (or in certain cases the United States) who received the tax in a U. S. District Court. No appeal is allowed from a decision of the Court of Claims except by petition of certiorari to the Supreme Court. Appeal is allowed from decisions of the District Court to the Circuit Court of Appeals. Upon petition, the Supreme Court may (if it chooses) review the decision of a Circuit Court of Appeals.*

When a tax is due but not paid, the Government may collect the tax by distraint or by suit. When collection is by distraint, the Government seizes and sells property of the taxpayer. Both real and personal property are subject to distraint and sale. Distrained property may be redeemed by the taxpayer by paying the amount of the taxes due plus certain charges. When the Government seeks to collect taxes by suit, it commences a proceeding in a U.S. District Court. Legal proceedings by suit will not ordinarily be instituted until after the remedy by distraint is exhausted. Either the taxpayer or the Government may appeal from a decision of the District Court to one of the Circuit Courts of Appeal. Upon petition, the Supreme Court may (if it chooses) review the decision of a Circuit Court of Appeals.

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60. *E. Appeal.*
F. Appel, Cassation.
D. Einspruch, Berufung.
I. Ricorso in cassazione.
Es. Apelación.
N. Appel, cassatie.

Argentina.

See no. 59.

Germany.

Einspruch; a legal remedy in first instance.

Berufung: a remedy (second instance) against decisions of 'Finanzämter' concerning 'Besitz und Verkehrssteuern'.

Netherlands.

See no. 59.

U.S.A.

See no. 59.

Argentinie.

Voir no. 59.

Allemagne.

Einspruch: moyen de recours en première instance.

Berufung: moyen de recours (deuxième instance) contre les décisions des „Finanzämter" en matière des „Besitz und Verkehrsteuern".

Pays Bas.

Voir no. 59.

Etats Unis.

Voir no. 59.

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61. *E. Chancellor of the Exchequer, Secretary of the Treasury (U.S.A.).*
F. Ministre des Finances.
D. Bundesfinanzminister.
I. Ministro delle finanze.
Es. Ministro de hacienda.
N. Minister van Financién.

The highest administrative authority in the fiscal domain.

U.S.A.

The Secretary of the Treasury is the highest administrative authority concerned with the collection of taxes. However, for most practical purposes, actual administration is vested in the Commissioner of Internal Revenue.

La plus haute autorité administrative dans le domaine fiscal.

Etats Unis.

The „Secretary of the Treasury" est l'autorité administrative la plus haute. Toutefois, pour des raisons pratiques, l'administration réelle est auprès du „Commissioner of Internal Revenue".

62. *E. Inspector of Taxes.*
F. Inspecteur.
D. Finanzamtsvorsteher.
I. Ispettore delle imposte.
Es. Inspector.
N. Inspecteur.

Argentina.

The 'inspectores' are not empowered to fix the tax debt; this is always done by the 'Dirección General Impositiva' or the 'Dirección General de Rentas', by the Director himself or by a delegated functionnary.

Argentine.

Les „inspectores" n'ont pas le pouvoir de fixer les impôts; c'est toujours la „Dirección General Impositiva" ou la „Dirección General de Rentas", par le directeur lui même ou un functionnaire délégué.

Germany.

See no. 59, Finanzamt.

Allemagne.

Voir no. 59. Finanzamt.

Netherlands.

The Inspector is the person who fixes the assessment.

Pays Bas.

Le fonctionnaire qui établit l'impôt dû.

U.S.A.

In the U.S.A. most of the work involved in the assessment and collection of taxes is done in the office of the District Directors of Internal Revenue.

Etats Unis.

La plus grand partie du travail concernant la fixation et la perception des impôts est faite au Bureau du „District Directors of Internal Revenue".

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63. *E. District Director of Internal Revenue.*
F. Directeur départemental.
D. Oberfinanzpräsident.
I. Direttore dell'ufficio delle imposte.
Es. Jefe de delegación,
N. Directeur.

Argentina. U.S.A.

See no. 62.

Argentine, Etats Unis.

Voir no. 62.

Netherlands.

The 'Directeur' is the official who is charged with the management of the revenue department in a certain district.

Pays Bas.

Le Directeur est le fonctionnaire chargé de la direction du Service fiscal dans un certain ressort.

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64. *E. Collector of Taxes.*
F. Receveur.
D. Finanzamt.
I. Esattore.
Es. Cobrador fiscal.
N. Ontvanger.

Argentina.

The collection of taxes is effected by the State Banks.

Argentine.

La perception des impôts en Argentine est faite pas les banques d'Etat.

Netherlands.

The Tax-collector is the official charged with the collection.

Germany.

See no. 59.

U.S.A.

See no. 62.

Pays Bas.

Le fonctionnaire chargé de la perception.

Allemagne.

Voir no. 59.

Etats Unis.

Voir no. 62.

I

DIE STEUERAUFSICHT IN DER BUNDESREPUBLIK DEUTSCHLAND

von

Regierungsrat Dr. Herbert Ahrens
Referent für Steuerfahndung bei der Oberfinanzdirektion Kiel.

Die *Evasion Fiscale*[1]) wird in der Bundesrepublik Deutschland wirksam bekämpft durch eine weitgehende Steueraufsicht. Den Ansatzpunkt für eine derartige Einrichtung brachte die Reichsabgabenordnung (RAO) von 1919 mit. Es handelte sich zunächst um eine Reihe unabhängiger Kontrollbefugnisse, die aber doch schon einen Nachschaudienst im Interesse der Umsatzsteuer ermöglichten. Die nach der Währungsstabilisierung im Jahre 1924 einsetzende Kapitalnot auch für die öffentlichen Kassen erforderte eine Ausdehnung der Steueraufsicht. 1925 wurde die RAO dahin erweitert, dasz alle Groszbetriebe mindestens alle 3 Jahre einmal einer ordentlichen Betriebsprüfung zu unterwerfen seien[2]). Im gleichen Jahre wurde die Betriebsprüfung bei allen Steuerpflichtigen für zulässig erklärt, die nach den Steuergesetzen Bücher zu führen und Aufzeichnungen zu machen haben[3]). 1930 wurden die Buchführungspflichten wesentlich erweitert, so dasz nunmehr die Betriebsprüfung bei allen Betrieben zulässig wurde, für die nach dem Ermessen der Finanzbehörde eine Steuerpflicht in Betracht kam. Entsprechend wurde der Betriebsprüfungsdienst seit den zwanziger Jahren fortlaufend organisatorisch verbessert und die Zahl der Betriebsprüfer vergröszert. Der 2. Weltkrieg und die Nachkriegsjahre brachten einen Rückschlag, der aber seit der Währungsreform im Jahre 1948 weitgehend wieder aufgeholt worden ist.

Die Betriebsprüfung wird ausgeübt von Beamten aus dem

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[1]) umfassend dargestellt von Klein, Die Evasion Fiscale in der Bundesrepublik Deutschland, Bulletin Vol VII Nr. 1 1953 S.16 ff.
[2]) Gesetz v.18.8.25 — Reichsgesetzbl. I S. 241.
[3]) Verordnung v. 9.11.25 — Reichssteuerbl. 1925 S. 209.

gehobenen, aber auch aus dem höheren Dienst und durch Angestellte der entsprechenden Vergütungsgruppen. Sie gehören überwiegend den Finanzämtern an. Bei den Mittelinstanzen (Oberfinanzdirektionen) sind Groszbetriebsprüfer zusammengefaszt, die die bedeutenderen Betriebe prüfen. Die Prüfung der Betriebe erfolgt nach Prüfungsplänen, die eine regelmässige Prüfung jedenfalls der Grosz- und Mittelbetriebe im Laufe mehrerer Jahre gewährleisten. Liegen besondere Umstände vor, kann auch auszer der Reihe geprüft werden.

Aufgabe der Betriegsprüfung ist es, alle Verhältnisse nachzuprüfen, die für die Besteuerung oder für das Strafverfahren von Bedeutung sein können (§ 162 Abs. 10 RAO und § 1 der VO v. 9.11.25) und zwar auch solche Umstände, die sich zugunsten der Steuerpflichtigen auswirken. Die Betriebsprüfung, die fast ausschlieszlich in den Räumen der zu prüfenden Betriebe erfolgt, wird in der Regel dem Steuerpflichtigen vorher angekündigt. Der Stpfl. hat einen geeigneten Raum und die erforderlichen Hilfsmittel zur Verfügung zu stellen (§ 194 AO). Der Prüfer hat das Recht, die Geschäftsräume in den üblichen Geschäftsstunden zu betreten (§ 195 AO). Er wird sich vorerst durch eine Betriebsbesichtigung einen Überblick über den Betrieb verschaffen (§ 193 RAO). Seine wichtigste Aufgabe ist jedoch die Prüfung der Geschäftsbücher und der dazu gehörigen Unterlagen (§§ 162, Abs. 9). Der Steuerpflichtige hat ihm zu diesem Zweck Aufzeichnungen, Bücher und Geschäftspapiere sowie Urkunden, die für die Festsetzung der Steuer von Bedeutung sind, vorzulegen (§ 171 Abs. 2 AO) und ihm Einsicht in Behältnisse mit Wertsachen zu geben (§ 173 Abs. 2 RAO). Der Prüfer kann auch von dritten Personen und von Behörden, Verbänden usw. Auskünfte einholen (§ 175 RAO). Auch diese Personen haben dazu Urkunden und Schriftstücke einschlieszlich der einschlagenden Stellen ihrer Geschäftsbücher vorzulegen. Sie haben auszerdem Wertsachen vorzulegen, die sie für den Steuerpflichtigen verwahren und Einsicht in verschlossene Behältnisse zu geben, die sie dem Steuerpflichtigen überlassen haben (§ 183). Schlieszlich kann der Prüfer veranlassen, dasz die Richtigkeit der Auskünfte von dem Steuerpflichtigen durch Abgabe einer eidesstattlichen Erklärung und von den Auskunftspersonen durch Eid bekräftigt wird (§ § 174, 182). Die eidesstattliche Erklärung wird vor dem Vorsteher des

Finanzamts und der Eid entweder vor diesem oder vor dem zuständigen Amtsrichter abgegeben. Eidesstattliche Versicherungen und eidliche Bekräftigungen sollen nur gefordert werden, wenn andere Mittel zur Erforschung der Wahrheit nicht vorhanden sind (§ 209 RAO). Die Einholung eines Gutachtens ist statthaft (§ 186 RAO). Der Aufklärungspflicht des Steuerfpflichtigen entspricht ein Aufklärungsrecht. Der Steuerpflichtige hat weitgehend ein Recht darauf, dasz sich das Finanzamt die Aufklärung von ihm selbst geben läszt. Andere Personen sollen erst dann zu einer Auskunft oder zur Vorlage von Büchern angehalten werden, wenn die Verhandlungen mit dem Steuerpflichtigen nicht zum Ziel führen oder keinen Erfolg versprechen. Nur wenn es erforderlich ist, um die Wahrheit zu ermitteln oder wenn Gefahr im Verzug liegt, soll verlangt werden, dasz der Steurpflichtige oder ein Dritter Wertsachen vorlegt oder den Inhalt von Behältnissen oder eines verschlossenen Depots nachweist (§ 209). Auch auf die Bestellung eines Sachverständigen kann der Steuerpflichtige Einflusz bringen (§ 206). Die Finanzämter können alle Masznahmen durch Geldstrafen, Ausführung auf Kosten der Pflichtigen und unmittelbar erzwingen (§ 202). Gegen Verfügungen des Finanzamts steht dem Pflichtigen die Beschwerde an das Finanzgericht und weiter die Rechtsbeschwerde an den Bundesfinanzhof zu.

Der Prüfer beschränkt sich nicht auf die formelle Prüfung der Bucheintragungen. Die materielle Richtigkeit und Vollständigkeit der Eintragungen wird durch verschiedene Mittel überwacht. Von Bedeutung sind die Kontrollmitteilungen, die bei der Prüfung anderer Betriebe anfallen oder von bestimmten Behörden und Personen erstellt werden müssen. Die jährlichen Ergebnisse des Betriebes werden miteinander und mit den Ergebnissen anderer Betriebe verglichen. Auch werden wirtschaftliche Kontrollrechnungen und Vermögenszuwachsrechnungen und andere Kontrollen durchgeführt.

Nach Beendigung der Prüfung werden die strittigen Punkte meistens mit dem Steuerpflichtigen durchgesprochen. Der Prüfer fertigt einen Prüfungsbericht, der dem Pflichtigen zur Stellungnahme zugeleitet wird. Alsdann setzt das Finanzamt die Steuern im Wege der Veranlagung fest. Auch wenn die bisherige Veranlagung bereits rechtskräftig war, kann eine erneute Veranlagung

(Berichtigungsveranlagung) durchgeführt werden, wenn die Verjährungsfrist noch nicht abgelaufen ist und der Prüfer neue Tatsachen oder Beweismittel erbracht hat, die eine höhere Veranlagung rechtfertigen (§ 222 AO).

Der Betriebsprüfer hat auch alle Verhältnisse nachzuprüfen, die für ein Strafverfahren von Bedeutung sein können. Auszerdem hat er — wie alle Angehörigen der Finanzverwaltung — die Steuervergehen zu erforschen und alle keinen Aufschub gestattenden Anordnungen zu treffen, um die Verdunkelung zu verhüten (§ 440 AO). Dazu stehen ihm unter Umständen strafprozessuale Befugnisse, wie die zur Beschlagnahme oder sogar vorläufigen Festnahme zu (§§ 430, 439 AO). Es zeigte sich aber bald, dasz die Tätigkeit der Betriebsprüfung zur Aufdeckung von Steuervergehen nicht ausreicht. Einmal vertrug sich die scharfe strafprozessuale Aufklärung schlecht mit der Verpflichtung, steuerlich Tatbestände möglichst im Einvernehmen mit dem Pflichtigen festzustellen. Zum anderen erforderte die fortschreitende Raffinesse der Hinterziehungsmethoden besondere Mittel und Kenntnisse, deren Entwicklung zu einem besonderen Dienstzweig führte. Nach vereinzelten Vorläufern wurde 1929 der Steuerauszendienst geschaffen, der in erster Linie wirtschaftliche Vorgänge, die zu Steuervergehen führen konnten, zu beobachten hatte. 1930 wurde es als Aufgabe der Steueraufsicht herausgestellt, darüber zu wachen, dasz Steuereinnahmen nicht verkürzt werden und nicht verkürzt worden sind (§ 201)[1]). Es wurde dies eine Vorschrift, die auch ohne begründeten Anlasz Ermittlungen zur Aufdeckung unbekannter Steuerfälle ermöglichte [2]). Aus dem Steuerauszendienst mit seinen beschränkten Aufgaben zur Beschaffung von Kontrollmaterial entwickelte sich der moderne Steuerfahndungsdienst, der einmal zur Erfassung der verkürzten Steuern als Organ der Steueraufsicht und andererseits zur Aufdeckung von Steuervergehen als „Kriminalpolizei" der Finanzverwaltung fungiert. Besonders nach der Währungsreform im Jahre 1948 wurde der Steuerfahndungsdienst stark ausgebaut und zwar auf der Ebene der Finanzämter und der Oberfinanzdirektionen. Die Beamten des Fahndungsdienstes gehören über-

[1]) Notverordnung vom 1.12.1930 — RGBI. I S. 517-604
[2]) RFH-Gutachten und Entscheidungen Bd. 30 S. 233, Bd. 39 S. 228, Bd. 42 S. 284; BFH BStBl. 1952 Teil III S. 27 ff.

wiegend dem gehobenen, aber auch dem höheren Dienst an. Sie sind im Betriebsprüfungswesen ebenso erfahren wie in der Ausübung kriminalistischer Methoden. Sie werden tätig entweder auf Anzeigen hin oder nach eigenen Vorermittlungen, wenn der Verdacht eines Steuervergehens besteht.

Die Fahndungsbeamten haben zunächst die Befugnisse der Betriebsprüfer, insbesondere also das Recht, die Geschäftsräume des Pflichtigen zu betreten, seine Geschäftsbücher und Unterlagen zu prüfen, den Steuerpflichtigen und seine Angestellten zu hören, Auskünfte und Einsicht in die Bücher von Dritten, auch zur Aufdeckung unbekannter Steuerfälle, zu verlangen. Allerdings gebiete es die Stellung des Steuerpflichtigen als Beschuldigten, dasz insoweit keine Zwangsmittel gegen ihn angewandt werden. Darüber hinaus haben die Steuerfahndungsbeamten die sehr einschneidenden Befugnisse der Kriminalbeamten. Besonders die Durchsuchung der Geschäfts- und Wohnräume hat sich als sehr wirksames Mittel zur Aufdeckung von versteckten Beweismitteln erwiesen. Die Durchsuchung erfolgt auf Grund eines Beschlusses des zuständigen Amtsrichters, wenn der Verdacht eines Steuervergehens vorliegt und zu vermuten ist, dasz die Durchsuchung zur Auffindung von Beweismitteln oder zur Ergreifung der Person des Beschuldigten führen wird. Ist Gefahr im Verzuge, können die Steuerfahndungsbeamten als Hilfsbeamte der Staatsanwaltschaft die Durchsuchung selbst anordnen (§§ 436 AO, 102, 105 StPO). Bei dritten Personen sind Durchsuchungen nur zulässig, wenn Tatsachen vorliegen, aus denen zu schliessen ist, dasz die gesuchte Person, Spur oder Sache sich in den durchsuchenden räumen befindet (§ 103 StPO).

Die Finanzämter können Gegenstände, welche als Beweismittel für die Durchsuchung von Bedeutung sein können oder der Einziehung unterliegen, beschlagnahmen. Bei Gefahr im Verzuge können die Fahndungsbeamten die Beschlagnahme selbst anordnen. Es musz in diesem Fall binnen 3 Tagen die Bestätigung des Finanzamts nachgesucht werden (§ 430 AO).

Die Verhaftung des Beschuldigten erfolgt durch amtsrichterlichen Haftbefehl, wenn auszer dringendem Tatverdacht Verdunkelungsgefahr oder Fluchtverdacht vorliegt (§ 112 StPO). Die Steuerfahndungsbeamten sind zur vorläufigen Festnahme befugt, wenn auszer den sonstigen Voraussetzungen Gefahr im Verzuge vorliegt

(§§ 439 AO, 127 Abs. 2 StPO). In diesem Fall erfolgt die Nachprüfung der Haftgründe spätestens am Tage nach der Festnahme durch den zuständigen Amtsrichter. Die Befugnisse zur Beschlagnahme und zur vorläufigen Festnahme obliegen übrigens jedem Finanzbeamten. In der Praxis werden sie aber ausschlieszlich von Fahndungsbeamten ausgeübt.

Die Instrumente der Steueraufsicht, die Betriebsprüfung und die Steuerfahndung haben sich infolge ihrer Sachkenntnis und ihrer weitgehenden Befugnisse als auszerordentlich wirksames Mittel zur Bekämpfung der Evasion Fiscale erwiesen. Neben den sichtbaren Ermittlungsergebnissen an Mehrsteuern und Strafen ist die vorbeugende und verhütende Wirkung von nicht zu unterschätzender Bedeutung. Betriebsprüfung und Steuerfahndung sind aus dem System der Steuerermittlung und der Verfolgung von Steuervergehen in der Bundesrepublik Deutschland nicht mehr wegzudenken.

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA *Period from 1st July till 15th September* 1954.

General.

Bundesgesetz vom 7. Juli 1954, betreffend die Aufhebung der Besatzungskostenbeiträge und betreffend die Erhebung eines Beitrages vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleichs (Bundesgesetzblatt 1954, p. 793).

On December 31st, 1954 the contribution to the occupation expenses will be abrogated. From January 1st, 1955 a new tax with the above mentioned special purposes will be levied. The rate will amount to 18% of the income tax to be paid, both for natural and juridical persons.

Bundesgesetz vom 6. Juli 1954, womit das Finanzausgleichsgesetz 1953 abgeändert wird (2. Finanzausgleichsnovelle 1954) (BGB 1954, p. 788).

Bundesgesetz vom 7. Juli 1954 über die Aufstellung von Schillingeröffnungsbilanzen und über die Umstellung (Schillingeröffnungsbilanzengesetz) (BGB 1954, p. 861).

From 1st. January 1955 or financial year 1954/55 a schilling opening balance sheet can be drawn up according to the provisions of this Act.

Income Tax

Kundmachung des Bundesministeriums für Finanzen vom 19. August betreffend die Aufhebung der Verordnung des Bundesministeriums für Finanzen vom 5. September 1947 über die steuerliche Behandlung der kurzlebigen Wirtschaftsgüter durch den Verfassungsgerichtshof (BGB 1954, p. 1032).

Enterprise tax

Bundesgesetz vom 7. Juli 1954 über Änderungen auf dem Gebiete der Gewerbesteuer (Gewerbesteueränderungsgesetz 1954) (BGB 1954, p. 872).

In connection with the „Schillingseröffnungsbilanzgesetz" the „Steuermasszahl" for capital, which amounts to 2‰, has been reduced to 1‰ for enterprises utilizing this Act.

Property tax

Bundesgesetz vom 7. Juli 1954 betreffend die Vorschriften über die Besteuerung des Vermögens (Vermögensteuergesetz 1954) (BGB 1954, p. 872).

Death Duties

Bundesgesetz vom 7. Juli 1954 womit das Bundesgesetz vom 27. Mai 1952 über Änderungen und Ergänzungen des Grunderwerbsteuergesetzes und des Erbschaftsteuergesetzes abgeändert wird (BGB 1954, p. 877).

Motor Vehicle Tax

Bundesgesetz vom 30. Juni 1954, womit einige Bestimmungen des Kraft-

fahrzeugsteuergesetzes 1952 geändert werden (Kraftfahrzeugsteuernovelle 1954) (BGB 1954, p. 841).

Verordnung des Bundesministeriums für Finanzen vom 8. September 1954 zur Durchführung des Kraftfahrzeugsteuergesetzes (Kraftfahrzeugsteuer-Durchführungsverordnung 1954) (BGB 1954, p. 1033).

Insurance Tax

Bundesgesetz vom 30. Juni 1954, womit das Versicherungssteuergesetz 1953 geändert wird (Versicherungssteuernovelle 1954) (BGB 1954 p. 842).

Bundesgesetz vom 6. Juli 1954, womit Bestimmungen zur Förderung der Vertragsversicherung und über die Abänderung des Einkommensteuergesetzes 1953 sowie des Versicherungssteuergesetzes 1953 getroffen werden (Versicherungsförderungsgesetz) (BGB 1954, p. 843).

BELGIUM *Period from 1st September till 1st November* 1954.

Sales tax

By a Royal Decree of 16th September 1954 (Moniteur Belge 22nd September 1954) an alteration has been made in the list of goods on which the 'taxe de transmission' at the import has been raised. (R.D. 11th March and 29th April, Moniteur Belge 14th March, 1st April and 1st May 1953).

International tax law

By an exchange of letters of 15th and 23rd June 1954, published in the 'Moniteur Belge' of 7th October 1954, an agreement has been concluded between Belgium and Greece with respect to mutual tax relief with respect to profits realised by ocean shipping companies and airline companies.

FRANCE *Période du* 15 *août au* 15 *novembre* 1954.

Généralités

Loi du 14 août 1954, relative à diverses dispositions d'ordre fiscal (J.O. 17-8-'54, 2893).

Les principales dispositions sont:

1. Mesures pour faciliter l'installation de jeunes agricultures.
2. Pour la surtaxe progressive les signes extérieures de richesse joueront un rôle important.
3. Les dispositions concernant le contrôle fiscal sont étendues à tous les impôts et taxes contenus dans le code.
4. Des dispositions sont prises en faveur de certains détenteurs de valeurs mobilières étrangères, qui n'ont pas pu percevoir en temps normal leur revenu entre le 1er Juin 1940 et le 31 Décembre 1951.

Décret du 14 septembre 1954 portant aménagement du régime fiscal des fusions de sociétés et des opérations assimilées (J.O. 19-9 '54, 8969).

Décret du 14 septembre 1954 relatif au régime fiscal des échanges effectués en vue du remembrement des mines concédées ou amodiées (J.O. 21-10-'54, 9005).

Conventions

Loi du 26 août 1954 autorisant le Président de la République à ratifier la convention signée à Paris le 22 septembre 1953, entre la France et la Norvège, pour éviter les doubles impositions et établir des règles d'assistance administrative réciproque en matière d'impôts sur le revenu et sur la fortune (J.O. 27-8-'54, 8307).

Décret du 23 août 1954 portant publication des conventions franco-néerlandaises, signées à Paris le 30 décembre 1949, et tendant à éviter les doubles impositions (J.O. 28-8-'54), 8340).

Impôts Directs

Décret du 2 septembre 1954 fixant les conditions de contributions dues par les entreprises produisant certaines substances minérales solides, d'une provision pour réconstitution des gisements ainsi que le régime fiscal de cette provision (J.O. 10-9-'54, 8728).

Décret du 2 septembre 1954 suspendant l'application de la surtaxe progressive aux personnes de nationalité française domicilieés en Belgique et n'ayant pas de résidence habituelle en France (J.O. 11-9-'54 8776).

Impôts indirects

Conditions d'application de la majoration de la taxe intérieure prévue à l'article 5 de la loi du 31 août 1954 aux stocks d'essence déclarés pour la consommation intérieure avant la date d'entrée en vigueur de cette majoration (J.O. 28-9-'54, 9161).

Conditions d'application de l'article 5 (§ 2) de la loi du 31 août 1954 (J.O. 28-9-'54, 9162).

Un arrêté concernant la surtaxe exceptionnelle sur le supercarburant.

Taxes sur le chiffre d'affaires

Décret du 14 septembre 1954 portant exonérations de la taxe sur les transactions applicable à certains échanges entre fabricants (J.O. 19-9-'54, 8968).

Douanes

Liste des marchandises importées en franchise des droits de douane dans les conditions prévues à l'article 189 du code des douanes, et qui bénéficient de l'exonération de la taxe sur la valeur ajoutée (Arrêté du 17 avril 1954, J.O. 19-8-'54, 7977).

Conditions d'application des articles 175 et 180 du code des douanes. Arrêté du 1er août 1954 (J.O. 9-9-'54, 8628).

Décret du 14 septembre 1954 suspendant la perception de la taxe de statistique et de contrôle douanier sur les importations et exportations (J.O. 18-9-'54, 8950).

Décret du 25 septembre 1954 portant rétablissement des droits de douane d'importation applicables à certains produits (J.O. 26-9-'54, 9127).

Arrêté du 25 septembre 1954 portant modification des arrêtés des 17, 24 avril et 31 juillet 1954 fixant les modalités de perception et les conditions d'application de la taxe spéciale temporaire de compensation (J.O. 26-9-'54, 9128).

Décret du 30 septembre 1954 portant réduction provisoire, du droit de douane d'importation applicable aux oranges (J.O. 4/5-10-'54, 9326).

Arrêté du 19 octobre 1954 portant modification des arrêtés des 17, 24 Avril, 31 Juillet et 25 Septembre 1954 fixant les modalités de perception et les conditions d'application de la taxe spéciale temporaire de compensation (J.O. 20-10-'54, 9855).

Décret du 26 octobre 1954 portant suspension des droits de douane d'importation applicables aux mécaniques et claviers de pianos (J.O. 27-10-'54, 10161).

Décret du 26 octobre 1954 portant suspension et rétablissement des droits de douane d'importation applicables à certains produits (J.O. 27-1 0-'54, 10161).

Décret du 26 octobre 1954 portant approbation partielle d'une demande de dérogation au tarif douanier métropolitain applicable dans le département de la Guyane (J.O. 27-10-'54, 10160).

NETHERLANDS *Period from 1st September till 1st November* 1954.

International tax law

In the 'Tractatenblad' nrs. 160 and 161 (published on 26th October 1954) two conventions have been published concluded between the Netherlands

and Finland on 29th March 1954 at Helsinki, concerning the prevention of double taxation and mutual administrative assistance in the domain of income and property tax and death duties.

WESTERN GERMANY *Period from 15th August till 1st November 1954*

Income Tax

Verordnung über die Gewährung eines Pauschbetrags für Betriebsausgaben bei Einkünften aus freier Berufstätigkeit vom 22.10.1954 (Bundesgesetzblatt = BGB 1954, p. 291). If the exact amount of trading expenses cannot be proved, a lump sum equivalent to 5 % of income, maximum 1200 DM per year, can be taken into account.

Lastenausgleich (Equalization of burdens law).

8 und 9. Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz vom 22.10.1954 (BGB 1954, p. 285-287).

Sales tax

Dritte Verordnung über Änderung der Ausgleichsteuerordnung vom 22.10.1954 (BGB 1954, p. 291); alterations in the list of the determination of value of some articles.

Excises

Zweites Gesetz zur Ergänzung des Zuckergesetzes vom 9.8.54 (BGB 1954 p. 255).

Taxation in Cyprus.

Income tax, which was first introduced in Cyprus in 1941, yielded over £ 3 million in the financial year of 1953, according to a report published by the Stationery Office.

The following facts and figures are among those recorded in the report.

Total revenue was nearly £ 9,600,000, principally made up of income tax of £ 3,360,000, customs £ 3,213,000, and excise £ 1,225,000. Ordinary expenditure for the year totalled £ 8,700,000.

No tax is payable on personal incomes which do not exceed £ 300 per annum.

Source: Taxation LIII-1404.

Great Britain.

The next budget.

Speeches by the Chancellor of the Exchequer and the Financial Secretary to the Treasury during the closing weeks of the parliamentary session gave some clue as to the policy which may be followed in the next Budget. Soon after the interim report of the Royal Commission on Taxation on income tax allowances was published, Mr. Butler advanced the view that the State may have to give further economic aid to the family and he hinted that the proposals of the Royal Commission might represent the appropriate way for the State to act. Foremost among the Commission's proposals were a higher exemption limit; higher children's allowances, varying with income; and lower wife's earned income allowance.

In a later speech at Felsted School, Mr. Butler said that parents of children at public schools had to pay taxes and school fees as well, and that this had not escaped the notice of the Chancellor.

During the closing stages of the Finance Bill debates, Mr. Reginald Mauding, Economic Secretary to the Treasury, said that the Government felt that when there was money available for tax relief, people with children were among those with the first claim.

Although these several hints have been dropped by Ministers concerning increased tax reliefs for the family man, the Chancellor has so far given no indication of his attitude to the recommendation of the Royal Commission on Taxation regarding the wife's earned income allowance. The Royal Commission recommended that the wife's special personal allowance set against her own earnings should be reduced and they linked this to their proposal for the introduction of a specific exemption limit.

At present the married woman in employment receives the same personal allowance and reduced-rate reliefs as the single woman worker, and there would obviously be serious political difficulties in increasing the tax burden of the married woman worker. The Royal Commission gave some striking examples of the anomalies caused by the present system. Thus, a married couple, consisting of a husband earning £ 1,200 a year and a wife with no income, pay £ 248 a year in tax. On the other hand a married couple

consisting of a husband and wife each earning £ 600 a year pay only £ 136 13s 4d a year in tax. Yet an unmarried person earning £ 600 a year pays £ 83 16s 8d in tax, so that the tax taken from two such persons is £ 167 13s 4d. Therefore the married couple of two earners is in this case treated more favourably than two single persons.

As, however, the next Budget may be the last one to be introduced by the Government prior to the next General Election, the Chancellor may feel that for political reasons it would be desirable to postpone any overhaul of the present basis for the wife's earned income allowance.

Source: Taxation LIII-1404.

Ireland.

Introducing the 1954 budget the Irish minister of Finance has announced that the personal allowance for married men will be increased from £ 200 to £ 300 and from £ 100 to £ 150 for single persons. The widow and widower's allowance will be raised from £ 135 to £ 175 and the children allowance will be £ 85 for each child. Before the allowance was £ 80 for the first two children and £ 63 for each successive child.

The income tax rate remains unchanged.

Source : Taxation LIII no. 1386

Australia, New Zealand.

Between the tax authorities of Australia and New Zealand discussions are being held to examine how double tax levying on the inhabitants of the two countries can be prevented.

Australia.

Commonwealth Committee on Taxation.

The following statement was made on 25 March 1954 by the Treasurer, Sir Arthur Fadden: —

"The Gommonwealth Committee on Taxation, appointed by the present Government immediately upon its assumption of office in 1949, has held its final meeting. At the conclusion of the meeting, which occupied three days, the Committee went out of existence.

"The Committee was appointed in pursuance of the promise made during the election campaign that the Government would take early action to overhaul, rationalise and simplify the taxation laws of Australia.

"The Committee was originally constituted under the chairmanship of Mr. E. S. Spooner, with Dr. Hannan and Messrs. S. B. Holder, J. A. L. Gunn, R. S. Turner and J. W. Hughes as members. Upon the death of Dr. Hannan in 1950, his place was taken by Mr. Gordon Wallace, Q. C. When Mr. Spooner died in 1952, Mr S. B. Holder became acting chairman, a position he has occupied ever since.

"Within the Committee's wide terms of reference, many varied and complex taxation questions were referred to it for its consideration. The Committee visited each capital city and received written and oral evidence from many representative bodies and individuals. Several members of the Committee took the opportunity while overseas on normal business matters to enquire into the taxation systems of the countries visited so as to better equip themselves to deal with Australian problems submitted to the Committee.

"The Committee presented reports on many different phases of Australian taxation. The majority of these reports have already been tabled in Parliament; the remainder are still under consideration.

"The Committee's reports have been of the utmost value to the Govern-

ment. Many of the major simplifications already affected in the taxation laws have had their origin in recommendations of the Committee.

"I desire to pay a tribute to members of the Committee. Each brought to the Committee's deliberations not only the expert knowledge of his own particular profession, but a wide general knowledge of commercial and industrial practices. The Committee unfailingly founded its recommendations on its conception of what would be best in the common interest and the thanks of the community are due to it for its efforts."

Source: The Australian Accountant Vol. 24 no. 6

Southern Rhodesia Budget.

Mr. Hatty, the Minister of the Treasury of Southern Rhodesia, presented his budget on July 29th.

He said (according to The Times) that it was essential to impose the full surcharges permitted under the constitution of the Central African Federation. The surcharge on companies would be at 1s 3d in the £; that on personal incomes would be 20 per cent on the next basic federal tax, including both income tax and super tax. The total company rate represented a reduction of 3d in the £.

For deaths occurring after September 1st, 1954, the rates of estate duty were to be lowered to the same level as those in the Union of South Africa. By this means it was hoped to maintain an increase in the level of investment from outside sources in Southern Rhodesia. The concession would cost an estimated amount of £ 60,000. There was to be an increase of 1d on petrol and of 50 per cent on road licence fees for diesel vehicles. Annual driving licences, costing £ 1 were to be instituted, and the cost of licences for dogs would go up from 5s to 10s.

A betting tax was to be imposed as from October 1st. A fee of £ 10 would be payable by a bookmaker for each race meeting, and all winnings, whether by bookmakers or the public, would be taxed at 6 ¼ per cent. Liquor licences were to be substantially increased. The licence for a bar would cost £ 300 instead of £ 100 and a new bottle stores would have to pay a fee of £ 1,000. The Minister announced the findings of the commission appointed to apportion the public debt (£ 161 million) of the three territories among the four Governments of the Federation. As a result of the commission's findings, £ 87 million, or 65 per cent of Southern Rhodesia's total public debt, would be taken over by the Federal Government.

Source: The Accountant Vol CXXXI no. 4155.

Surtax in Guernsey.

It was announced in Guernsey last week that surtax in the island, which produces about £ 85,000 annually, is to be abolished ' as soon as possible'.

Source: Taxation LIII-1401.

Great Britian.

The Finance Act, 1954, was the first on a list of forty-four Acts which received the Royal Assent on Friday, July 30th.

Source: Taxation LIII-1400.

III

TAX DECISION OF THE SUPREME COURT OF INDIA

TERRITORIALITY OF INCOME

Posting of cheques in Delhi held amounted to payment in Delhi.

Where the assessee, a non-resident company supplied goods in Delhi to the Government of India and price therefore was paid by cheques drawn on the Reserve Bank of India Bombay and the cheques used to be received by the assessee outside the taxable territories, it was held that as the cheques were posted in Delhi, the payment was received by the assessee in Delhi.

Judgment.

The Judgment of the Court was delivered by

Das, J.—This appeal arises out of proceedings for the assessment to income-tax of the respondent Messrs-Ogale Glass Works Ltd., (hereinafter referred to as "the assessee") for the five assessment years 1941-42 to 1945-46.

The assessee is a Limited Liability Company incorporated and carrying on business in Aundh which in those days was an Indian State outside British India. It was accordingly a non-resident company for the purposes of the Indian Income tax Act.

The assessee manufactures lanterns and other glasswares at its works in Aundh State. In the relevant accounting years the assessee secured some contracts for the supply of lanterns and other glasswares to the Government of India. The price of the goods supplied under the contracts were paid by cheques drawn on the Reserve Bank of India, Bombay. The cheques used to be received by the assessee in Aundh and cashed through its bank at Bombay as hereinafter stated.

The assessee being a non-resident company its liability to British Indian income-tax depended upon its receipt of income within British India. In the course of proceedings for the assessment of the assessee to income-tax for the five years mentioned above, the assessee contended that its profits on the sales accrued and were received in the Aundh State where it received payment by the receipt of the cheques. The Income-tax Officer and, on appeal, the Appellate Assistant Commissioner held that the assessee received income, profits or gains in British India inasmuch as the cheques were drawn on a bank in Bombay and had been cashed in Bombay and accordingly taxed the assessee under Section 4 (1)(a) of the Indian Income-tax Act. On appeal by the assessee the Income-tax Appellate Tribunal upheld the assessment.

Being aggrieved by the order of the Tribunal the assessee applied for a reference of the case to the High Court for the determination of the question of law which arose out of the Tribunal's Order and the Tribunal agreeing that a question of law did arise out of its order referred the following question to the High Court along with a statement of the case:

> "whether on the facts of the case, income, profits and gains in respect of sales made to the Government of India was received in British India within the meaning of Section 4 (1)(a) of the Act".

At the hearing of the reference by the High Court learned advocate for the assessee contended, *inter alia*, that the cheques were received by the assessee in full satisfaction of the debt due to it by the Government of India and that the debt of the Government of India had been discharged by the acceptance of the cheques by the assessee in Aundh. The High Court felt that in order to determine this contention it would be necessary for the Tribunal to find certain further facts and accordingly the High Court remanded the reference back to the Tribunal with a request to submit a Supplementary Statement of the case on the lines indicated in the order dated the 15th September, 1949. The Tribunal submitted a Supplementary Statement of the case on the 8th June, 1951.

In the Supplementary Statement of the case reference is made to clause 15 of the conditions of the contract governing supplies made by the assessee to the Government of India. The system of payment under that clause was that 90% of the price of each consignment would be paid on proof of despatch of the stores from a Railway Station or port in India after inspection and the balance of 10% would be paid on receipt of the consignment in good condition. That clause also provided:

"Unless otherwise agreed between the parties, payment for the delivery of the Stores will be made on submission of bills in the prescribed form in accordance with instructions given in the Acceptance of Tender by cheque on a Government Treasury in India or on a branch of the Reserve Bank of India or the Imperial Bank of India transacting Government business".

The assessee used to submit bills in prescribed form and on the form used to write:

"Kindly remit the amount by a cheque in our favour on any bank in Bombay".

After the submission of the bills the assessee used to receive from the Government cheques drawn on the Bombay branch of the Reserve Bank of India along with a memo stating:

"The undersigned has the honour to forward herewith cheque No. dated in payment of the bills noted below:—

Then followed a tabular statement setting out the number, date and amount of the cheques. On the top of the memo there was a direction that it—

"be immediately returned to the Controller of Supply Accounts with the acknowledgement form on the reverse duly signed and stamped when necessary."

The acknowledgement form was thus expressed:

"The undersigned has the honour to acknowledge cheque No. dated for Rs. in payment of the bills noted in the first column on the reverse".

After receipt of the cheques the assessee used to endorse it in favour of Aundh Bank Ltd., Ogalewadi Branch which in its turn used to endorse them in favour of the Bombay Provincial Co-operative Bank Ltd., Bombay. The last named bank cleared the cheques through the Clearing House in Bombay. The Supplementary Statement of the case further records that the Aundh Bank Ltd., used to credit the assessee's account on the very day the cheques were received from the assessee with the amount of the cheque less the collection charges and that the assessee used to credit the account of the Supply Department and make corresponding debits to the Bank's account and the bank charges account. A case was sought to be made by the learned advocate for the assessee before the Tribunal that the cheques

used to be discounted by the Aundh Bank Ltd., presumably implying thereby that the assessee actually got payment in cash in Aundh. This case was repelled by the Tribunal which held that the bank only allowed the assessee to draw money on the security of the cheques but dit not discount them. Our attention has been drawn to the following passage in paragraph 8 of the Supplementary Statement of the case:

> "By merely issuing a cheque to the assessee no payment as such was made by the Government. The payment was only made when the Government's account in the books of the bank was debited"

Paragraph 9 of the Supplementary Statement of the case thus summarises the Tribunal's findings:

> "9. On the above facts our findings are:
> (1) Under the agreement with the Government of India the assessee had undertaken to receive the payment by cheque drawn on a bank in India.
> (2) The assessee company made a specific request to the Government to make payment of the sale proceeds by cheque drawn on a bank in Bombay.
> (3) When the assessee received the cheque, it did not receive the sale proceeds; it received the sale proceeds subject to the encashment of the cheque.
> (4) The assessee's bankers allowed the assessee to draw money against the security of the cheque on the very day the cheque was sent for collection to the bank.
> (5) The assessee's bankers realised the payment of the cheque from the Reserve Bank of India, Bombay, as agents of the assessee. For rendering this service the bank charged the usual commission charged for collecting an outstation cheque.
> (6) The sale proceeds were received in Bombay.
> (7) The cheque was encashed on behalf of the assessee at Bombay.
> (8) The profits on the sales made to the Government of India were received by the assessee in cash in Bombay".

The Supplementary Statement of the case concludes with the remark that both parties agreed to the correctness of the facts.

The main argument advanced before us, as before the High Court, by the learned Advocate for the assessee is that the assessee received payment for the goods supplied by it when it received the cheques at Aundh. In other words the assessee accepted the cheques in full satisfaction and in discharge of its claim against the Government under the contracts. The conclusion pressed upon us is that as the cheques were received at Aundh the payment was received there and consequently the assessee which is a non-resident company did not receive any income, profits or gains in British India within the meaning of Section 4 (1) (a) of the Indian Income-tax Act and the referred question should be answered in the negative.

The contention put forward by the Revenue is two-fold. In the first place it is urged that the question whether the assessee accepted the cheques unconditionally and in full satisfaction of its claims under the contracts is concluded by the Tribunal's findings of facts. This contention is not wholly without force. The passage from paragraph 8 of the Supplementary Statement of the case and sub-paragraphs 3, 6 and 8 of paragraph 9 to tend to suggest that in the view of the Tribunal no payment was made by the Government by merely issuing the cheques, that when the assessee received the cheques it did not receive the sale proceeds, that it received the sale proceeds subject to the encashment of the cheques, that the bank collected the cheques in Bombay as the agent of the assessee and that the sale proceeds were, therefore, received in cash in Bombay. But in view

of the language used in the Supplementary Statement of the case there is ample scope for the view that the portions referred to above do not amount to findings of fact by the Tribunal but, on the contrary, are only inferences drawn by it from facts found by it. Indeed the High Court was of the opinion that the Tribunal had not in terms come to a finding of fact that the assessee accepted the cheques in complete discharge of its claim for the price of goods supplied by it but on a consideration of the facts actually found by the Tribunal the High Court came to the conclusion that the necessary inference to be drawn from those facts was that there was an arrangement between the assessee and the Government from which it could be said that the acceptance by the assessee of the cheques from the Government resulted in an unconditional discharge of the debt. In the circumstances we have to examine the fact found by the Tribunal which have a bearing on this point.

The assessee contends that on the facts found by the Tribunal it must be held that it received the cheques in full and unconditional discharge of its claims for the price of goods sold and delivered by it to the Government and not conditionally subject to realisation. That a sum of money may be received in more ways than one cannot be doubted. It may be received by the transfer of coins or currency notes or a negotiable instrument which represents and produces cash and is treated as such by businessmen. (See per Lord Lindley in *Gresham Life Assurance Society v. Bishop*. L.R. (1902) Appeal Cases 287 at page 296). Reference in this connection may also be made to the decisions in *Commissioner of Income Tax v. Kameshwar Singh*, (1933) 1 I.T.R. 107, *Raghunandan Prasad v. Commissioner of Income Tax*, 60 I.A. 133; (1933) 1 I.T.R. 113 and *Commissioner of Income Tax v. Maheswari Saran Singh*, (1951) 19 I. T. R. 83. Learned Solicitor-General does not dispute this proposition but he argues that, in the absence of any agreement, express or implied, to the contrary, a payment by a negotiable instrument is always understood to be conditional. He refers us to Benjamin on Sale, 8th Edition, p. 787 in support of the proposition that the intention to take a bill in absolute payment for goods sold must be clearly shown, and not deduced from ambiguous expressions, such as that the bill was taken "in payment" for the goods (*Stedman v. Gooch*, (1793) I Esp. 5 and *Maillard v. Duke of Argyle*, (1843) 6 M. & G. 40) or "in discharge" (*Kemp v. Watt*, (1846) 15 M. & W. 672) or "in settlement" of the price (*Re. Rower and Haslam*, L. R. (1893) 2 Q. B. 286). In addition to the above English cases referred to in Benjamin on Sale the learned Solicitor-General also relies on the case of *Palaniappa Chetty v. Arunachalam Chetty* (1911) 21 M. L. J. 432 where it was held by the Madras High Court that the execution of a formal receipt for the amount covered by the bill of exchange. or hundi was not sufficient to rebut the general presumption that the delivery of a bill of exchange or a hundi for a debt operated only as a conditional discharge of the debt. He insists that on the facts of this case there is nothing from which an agreement may be implied that the cheques were given and received unconditionally in full discharge of the original contractual liability of the Government for the price of the goods supplied by the assessee. Sri Kolah, on the other hand, relied on the following facts in answer to the contentions of the learned Sollicitor-General:

(i) that there was an arrangement by the contract itself, for payment by cheque (clause 15),
(ii) that in the bills submitted by him the assessee expressly asked for payment by cheque,
(iii) that the Government sent cheques in payment of the bills,
(iv) that on receipt of the cheques the assessee returned the acknowledgement form duly singed and stamped as a formal receipt,

(v) that the drawer of the cheques was the Government of India and the drawee was the Reserve Bank of India for whose solvency there could be no apprehension at all in the mind of the assessee.

Sri Kolah contends that the cumulative effect of these facts is clearly enough to establish that the cheques were received unconditionally as payment. Learned Sollicitor-General points out that the assessee's request to pay the amount of the bills by cheques carries the matter no further, for the undertaking to pay by cheque was already there. The point of the request was that the cheques should be issued on some Bank in Bombay. The insistence on a stamped receipt in advance of payment was, says the Solicitor-General, in keeping with the usual practice of Government departments. Therefore, we have in this case, according to the learned Sollicitor-General, nothing more than a term in the contract for payment by cheques and the status of the drawer and drawee of the cheques. These two circumstances, so submits the Solicitor-General, are not sufficient to establish the fact of the acceptance of the cheques as unconditional discharge. He contends that, in the absence of an express agreement, it is only when the creditor elects to take a bill or cheque having it in his power to obtain payment in cash, that is to say, takes a bill or cheque by choice or preference instead of cash that an agreement may be implied that he took it as an unconditional and absolute payment of the debt. (*Robinson v. Henry Reid*, (1829) 9 B. & C. 449 and *Anderson v. Hillies*, (1852) 21 L. J. C. P. (N.S.) 150). Such cases must be rare, for the creditor is not ordinarily likely to give up the advantage of having a double remedy, namely one on the bill or cheque and the other, on dishonour of the bill or cheque, on the original cause of action. He points out that in this case there is no finding of any special agreement in this behalf and, therefore, submits the learned Solicitor-General, the assessee must be taken to have received the cheques conditionally, i.e. subject to realisation. The learned Solicitor-General concludes that, in the circumstances, no payment was received by the mere receipt of the cheques and that payment was received only when the cheques were cashed in Bombay and that such receipts in Bombay became immediately assessable to British Indian Tax under Section 4 (1)(a). The High Court repelled this line of argument and held that the assessee received payment on the dates the cheques were delivered to it. We find ourselves substantially in agreement with this conclusion. It is to be remembered that there are four modes in which a contract may be discharged, namely (1) by agreement, (2) by performance, (3) by being excused by law from performing it and (4) by breach. In this case Clause 15 of the contract provides how the payment of the price is to be made. In short the contract itself, by that clause, prescribes the manner and the time for performance by the Government of its part of the contract and as the Government made the payments in the prescribed manner, i.e. by cheques, it fulfilled its engagement and such payment would under Section 50 of the Indian Contract Act, operate as a discharge of the contract. It should also be remembered that the assessee sent his formal stamped receipts only after the receipt of the cheques and not along with the bills submitted by it. Therefore, the receipts cannot be regarded as having been sent in advance. The status of the drawer and the drawee of the cheques is also a material consideration. Finally there is no suggestion that any of the cheques was dishonoured on presentation. We, therefore, agree with Sri Kolah that the several facts relied on by him and alluded to above, taken cumulatively, must lead us to the conclusion that the cheques were received in complete discharge of the claim for the price of the goods.

Learned Solicitor-General, however, contends, on the authority of the decision in *Kodarmal v. Sagormal* (1907) 9 Bombay L.R. 903 at p. 911 that

the request by the creditor to sent a cheque does not imply any variation of the rule that payment by a negotiable instrument is conditional on its being honoured on presentation within due time. Even if we accept his contention that the facts referred to above are not sufficient to raise the implication that the cheques were accepted as payment and even if the sending of the cheques in terms of clause 15 or at the special request of the assessee dit not operate as an unconditional discharge of the Government's liability even then the assessee's position will be no better. When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand. (*Stedman v. Gooch* (1793) 1 Esp. 5). It is said in Benjamin on Sale, 8th Edition, p. 788:—

> "The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition, i.e. non-payment at maturity".

In Byles on Bills, 20th Edition, p. 23 the position is summarised pithily as follows:

> "A cheque, unless dishonoured, is payment."

To the same effect are the passages to be found in Hart on Banking, 4th Edition, Volume I, p. 342. In *Felix Hadley & Co. v. Hadley*, L.R. (1898) 2Ch.D. 680, Byrne, J. expressed the same idea in the following passage in his Judgment at p. 682:

> "In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question".

The following observations of Lord Maugham in *Rhokana Corporation v. Inland Revenue Commissioners*, L. R. (1938) A.C. 380 at p. 399, are also apposite:

> "Apart from the express terms of Section 33 sub-section 1, a similar conclusion might be founded on the well known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted."

In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely dishonour by nonpayment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques

On the footing, then, that the assessee received payment as soon as the cheques were delivered to it the question still remains as to when and where the assessee received such payment. The answer is obvious, says the assessee. namely that it received payment in Aundh where the cheques were delivered

to it. The learned Solicitor-General however, contests that argument. According to him the cheques were delivered to the assessee as soon as they were posted. The rejoinder of the assessee is two-fold. In the first place it is said that this is an entirely new question of law which was never raised or argued before the Tribunal and was not dealt with by it and, therefore, cannot be said to arise out of the Tribunal's order and consequently the Court has no jurisdiction, while exercising its advisory jurisdiction under Section 66 of the Indian Income Tax Act, to permit such a new question of law to be raised at this stage. Learned Counsel for the assessee relies on the cases of *Commissioner of Excess Profits Tax, West Bengal v. Jeewanlal Ltd.*, (1951) 20 I. T. R. 39 at p. 47, *Chainrup Sampatram v.* C.I.T., *West Bengal*, (1951) 20 I.T.R. 484 at pp. 493, 496, *Allahabad Bank Ltd. v.* C.I.T., *West Bengal*, (1952) 21 I.T.R. 169, *Mohanlal Hiralal v.* C.I.T. C.P. & *Berar*, (1952) 22 I.T.R. 441 and *Hira Mills Ltd., Cawnpore v. Income Tax Officer, Cawnpore*, (1946) 14 I.T.R. 417 while the learned Solicitor-General refers us to the decisions in *Mandanlal Dharnidharka v. Commissioner of Income Tax, Bombay City*, (1948) 16 I.T.R. 227 at p. 232 and *Commissioner of Income Tax, Delhi v. Punjab National Bank Ltd.*, (1952) 21 I.T.R. 526. In the view we have taken it is not necessary for us, on this occasion to express any opinion on the larger question as to the scope, meaning and import of the words "any question of law arising out of" the Tribunal's order on the interpretation of which there exists a wide divergence of judicial opinion. It should be noted that this is not a case where the Tribunal having refused to refer a question of law an application was made to the High Court to exercise its jurisdiction under subsection (2) of Section 66. Here the Tribunal in exercise of its powers under sub-section (1) of that section did refer a question of law to the High Court. Nobody at any time contended and even now it is not suggested before us that the question of law referred to the High Court did not arise out of the Tribunal's order or had not been properly referred to the High Court. A question of law arising out of its order having thus been properly referred by the Tribunal under sub-section (1) the High Court had to deal with and answer it in exercise of its jurisdiction under sub-section (5). In support of its contention that the question should be answered in the affirmative the Revenue advanced the argument, based on certain facts, that the cheques had been accepted only conditionally and, therefore, there was no payment until the cheques had been cashed and the cheques having been cashed in Bombay the payment must be regarded as having been received in Bombay. That argument did not find favour with the High Court and that being the position the Revenue sought to raise before the High Court, as it does before us, an alternative argument, also based on facts, that the cheques having, at the request of the assessee, been posted at Delhi, the mere posting of the cheques in such circumstances operated as payment in Delhi. Here no new question of law is sought to be raised. The question of law still is, whether on the facts of this case, income, profits and gains in respect of sales made to the Government of India was received in British India within the meaning of Section 4 (1) (a) of the Act. The argument is that as the cheques were posted at Delhi at the request of the assessee, payment was received by it in British India. It is said that although the language in which the question has been framed is wide enough to include this branch of the argument, the question should, nevertheless, be read as circumscribed by the facts on which the Tribunal's decision was made and should not be regarded as at large. This suggestion means that the question must be read as limited only to those facts on which alone reliance was placed in support of the argument actually advanced before the Tribunal and on which the Tribunal's decision was founded leaving out all other facts appearing on the record and even referred to in the Tribunal's order and the statements of the case. There is no warrant

for such suggestion. The language of the question clearly indicates that the question of law has to be determined "on the facts of this case". To accede to the contention of the assessee, will involve the undue cutting down of the scope of the question by altering its language. Seeing that the High Court permitted this argument to be advanced before them we are not prepared to shut it out.

Sri Kolah then contends that the requisite facts, on which this branch of the argument may be based, are not to be found in the order of the Tribunal and the statements of the case and, therefore, this argument should not be entertained. There would have been considerable force in this contention if the facts necessary to support the new argument advanced by the Revenue were not on the record. But such is not the case here as will be presently shown. The High Court conceded that if the assessee had requested the Government to send the cheques by post then it would have made the post office its agent and in that event the posing of the cheques by the Government at Delhi would have been delivery of the cheques to the assessee in Delhi. The High Court, however, held that there was no finding by the Tribunal that in point of fact the assessee had ever requested the Government to send the cheques by post and that that being the position it could not be said that the cheques had been delivered to the assessee in Delhi. In our opinion, for reasons to be presently stated, this part of the decision of the High Court cannot be supported on facts and its conclusion cannot be sustained in law.

Turning to the order of the Tribunal we find the following passages:

> "All payments for the goods supplied were made by cheques drawn by the Government department at Delhi on the Reserve Bank of India Bombay Branch. The cheques were received by the assessee Company in its office in Aundh State.

The finding of fact recorded in the first statement of the case also comprises the following (*inter alia*):

> "These cheques were received by the assessee company at its office in Aundh State by post".

The finding of fact in paragraph 3 of the Supplementary Statement of the case is thus recorded:

> "3. The assessee company used to submit the bills and on the form of the bill it used to write "Kindly remit the amount by a cheque in our favour on any bank in Bombay".

The question for our consideration is as to what, on the legal principles laid down in judicial decisions, these finding of fact amount to.

In *Norman V. Rickets*, (1886) 3 T.L.R. 182 the creditor carrying on business as milliner in Bond Street wrote to one of the customers who resided in Suffolk saying "the favour of a cheque within a week will oblige". The customer upon such request sent a cheque for the amount by post. The cheque was stolen in the transit and was paid by the bank to the thief. It will be noted that there was no express request to send the cheque by post, but neverthelees it was held that the sending of the cheque by post was payment. On appeal the Court of appeal upheld the trial Court and observed:

> "An express request to send through the post was not necessary. If what the plaintiffs said amounted to a request to send the cheque by the post, then there was payment. To answer that question the existing circumstances must be looked at. A milliner in London wrote to a lady in Suffolk asking for a cheque. Did that letter reasonably lead the lady

to suppose, and did she suppose that she might send the cheque by post? She could not suppose that she was to send a messenger with it or come up to London herself. The only reasonable and proper meaning to be attached to it, whatever Madame Phillipe might have intended was that she was to send the cheque by post. She, therefore, reasonably believed that she was invited to send her cheque by post, and she did what she was asked to do. Consequently what she did amounted to payment".

In *Thairlwal v. The Great Northern Railway Co.*, L. R. (1910) 2 K. B. 509, the directors by their report recommended (a) the declaration of dividend at certain rates, and (b) the despatch of dividend warrants by post. At the half yearly general meeting the shareholders passed a resolution that dividends be declared at certain altered rates but said nothing about sending the same by post. Dividend warrants were sent to a stock-holder by post but it was lost in the post. Bray J. held that in the circumstances there was a request by the stock-holder to the company to pay the amount due to him by means of warrant sent by post. The case of *Badische Anilin Und Soda Fabrik v. Basle Chemical Works*, L. R. (1898) A.C. 200 was concerned with a Swiss seller who was asked to send the goods by post to England which he did. The goods were manufactured according to an invention protected by an English Patent. The question was as to who brought the goods to England so as to be liable to an action for infringement. It was held that the Post Office was the agent of the English buyer and therefore, the Swiss seller could not be sued. After stating that the seller had sent the goods in pursuance of the order from the buyer to a particular named carrier namely the post office which is after all only a carrier of parcels like any other carrier, Lord Halsbury at p. 204 said:

> "It is not necessary that the carrier should have been named. If, according to the ordinary course of delivery, the carrier would be the person who would receive it, that would be just a good, for the purpose of the argument, as if the carrier had been actually named; but we have not to consider that question here, because the carrier is named. Then, for what reason am I to depart from the well-known and recognised principle of law that, under these circumstances, when goods are delivered by the order of the buyer to a named carrier, from that moment the goods vest in the buyer?"

The decision in *Comber v. Leyland*, L. R. (1898) A.C. 524 is very important for our purpose in that it explains the meaning and implication of the word "remit" which is the word used by the assessee when it requested the Government Department to "remit" the amount by cheque. There was in that case no express reference to the post office at all. Said Lord Herschell, at p. 530:

> "I cannot doubt that the word "remit" there means this and nothing beyond this—that the bank post bills, when obtained in favour of the plaintiffs, should be sent in the ordinary course and the ordinary manner in which such documents are sent by Commercial men, namely, by mail, and that as soon as that had been done all obligation and all liability of the defendant ceased. I think it is impossible on these words to maintain that there was an obligation and a liability incumbent upon him until those bank post bills had reached the hands of the plaintiffs in England".

In *Mitchell Henry v. Norwich Union Life, Insurance Society Ltd.*, L.R. (1918) 2 K.B. 67, the defendants sent a written notice to the plaintiff stating that the sum of £ 48-5-8d which would shortly become due should be paid at their office and asking the plaintiff "when remitting" to return the notice. There was no express request to send the amount by post. Bailhache J. held that by the use of the word "remitting" the defendants had

impliedly authorised the plaintiff to pay them by sending the money through the post in the ordinary way in which money was remitted by post, but that it was not usual to send so large a sum in Treasury notes by post. Apart from the impropriety of sending a large amount in Treasury notes by post, this case does support the view that the request by the creditor "to remit" the amount due, without more, is tantamount to a request to send the amount by post. This decision was upheld by the Court of Appeal. On the other hand if there be no express or implied request by the creditor to send the amount by post the mere posting of hundi duly endorsed in favour of the addressee does not operate as delivery of the hundi to the adressee so as to pass the title in the hundi to the addressee, for the post office in such circumstances does not become the agent of the addressee. The case of *Thorappa v. Umedmalji* (1923) 26 Bombay L.R. 604 is an instance on this point. In the case of *ex parte Cote*, L.R. (1873) 9 Ch. App. 27 also there was no request by the addressee to send the bills by post. The result of the various judicial decisions are summarised in Benjamin on Sale, 8th Edition, pp. 769-771 and in Chamber's Bills of Exchange, 12th Edition, pp. 51-52.

A good deal of stress is laid by Shri Kolah on what he says is the basic difference between the postal regulations in England and those in India and he insists that the English decisions laying down the effect of sending cheques by post should not be rigidly followed here. He points out that in England the sender of the cheques has no right to reclaim the same after it is posted, and that, accordingly, immediately upon the posting of the cheques the post office becomes irrevocably the agent of the addressee and that, therefore, the delivery of the cheque to the post office is, in English Law, delivery to the addressee. But that, Shri Kolah maintains, is not the position under the Indian Post Office Act, 1898. We have been taken through the different sections of that Act and the rules made thereunder and Sri Kolah contends that under the Indian law the sender has the right to reclaim the letter until it is actually delivered to the addressee and, therefore, until that time the post office remains the agent of the sender and consequently the posting of a cheque cannot in India be regarded as delivery of the cheque to the addressee. We may however, point out that this right of the sender, on which so much stress and importance are laid by the learned Advocate, is by no means an absolute right, for it is left entirely to the authorities to decide whether a letter once posted should be returned to the sender. This very narrow and qualified right can hardly be regarded as bringing about a position so different from that prevailing in England as to make the English decisions wholly inapplicable. It may also be mentioned that in spite of such contention the English decisions have been adopted by the Courts in India, e.g. *Thorappa v. Umedmalji* (supra) and *the Indian Cotton Company Ltd. v. Hari Poonjoo*, I.L.R. (1937) Bombay 763. It is, however, not necessary to pursue this line of reasoning any further for the principles underlying the English decisions are clearly consonant with the provisions of the Indian Law. There can be no doubt that as between the sender and the addressee it is the request of the addressee that the cheque be sent by post that makes the post office the agent of the addressee. After such request the addressee cannot be heard to say that the post office was not his agent and, therefore, the loss of the cheque in transit must fail on the sender on the specious plea that the sender having the very limited right to reclaim the cheque under the Post Office Act, 1898, the Post Office was his agent, when in fact there was no such reclamation. Of course if there be no such request, express or implied, then the delivery of the letter or the cheque to the post office is delivery to the agent of the sender himself. Apart from this principle of agency there is another principle which makes the delivery of the cheque to the post office

at the request of the addressee a delivery to him and that is that by posting the cheque in pursuance of the request of the creditor the debtor performs his obligation in the manner prescribed and sanctioned by the creditor and thereby discharges the contract by such performance (see Section 50 of the Indian Contract Act and illustration (d) thereto).

Sri Kolah points out that when the Indian Contract Act, 1872, was passed, the Indian Post Office Act. 1866, was in force. He has taken us through the relevant provisions of that old Act and he points out that those provisions were quite different from those of the present Act. According to him illustration (d) to Section 50 of the Indian Contract Act must, after the passing of the Act of 1898, be taken to have become inappropriate, obsolete and incorrect. We do not think that there is any basic difference between the two Acts in respect of the matter under discussion. It does not appear to us that the Act of 1898 enlarges the right of the sender to reclaim the postal article to such an extent as to nullify illustration (d) or otherwise to effect the well known general principle that a contractual obligation is discharged by the performance of the engagement or promise in the manner prescribed or sanctioned by the promises.

Applying the above principles to the facts found by the Tribunal the position appears to be this. The engagement of the Government was to make payment by cheques. The cheques were drawn in Delhi and received by the assessee in Aundh by post. According to the course of business usage in general to which, as part of the surrounding circumstances, attention has to be paid under the authorities cited above, the parties must have intended that the cheques should be sent by post which is the usual and normal agency for transmission of such articles and according to the Tribunal's findings they were in fact received by the assessee by post. Apart from the implication of an agreement arising from such business usage the assessee expressly requested the Government to "remit" the amounts of the bills by cheques. This, on the authorities cited above, clearly amounted in effect to an express request by the assessee to send the cheques by post. The Government did act according to such request and posted the cheques in Delhi. It can scarcely be suggested with any semblance of reasonable plausibility that cheques drawn in Delhi and actually received by post in Aundh would in the normal course of business be posted in some place outside British India. This posting in Delhi, in law amounted to payment in Delhi. In this view of the matter the referred question should, with respect, have been answered by the High Court in the affirmative. We therefore, allow the appeal and answer the question accordingly. In view of the fact that the appellant has failed in the main argument but has succeeded on a new one we think no order should be made as to costs except that each party should bear and pay his or its own costs before us as well as before the High Court.

(C.I.T. Bombay South Vs, Ogale Glass Work Ltd. — Civil Appeal No. 19 of 1953 decided on 19.4.54).

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IV

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REVIEWS — COMPTES RENDUS

Livres anciens de Droit d'origine étrangère imprimés aux Pays-Bas Bibliothèque de l'Université d'Amsterdam. 1953.

The book of 65 pages contains an enumeration, together with a short description of juridical books which were printed in the Netherlands in the 17th and 18th centuries. In this connection two groups of works can be distinguished: laws, "coutumes", and juridical decisions of foreign origin and commentaries of foreign authors. The work is a considerable contribution to a great need, which still exists, in the domain of bibliographies concerning this period. From the nature of things the authors have scarcely paid attention to the fiscal law, the work concerns for the main part the Roman law, the canonical law, natural law, commercial law and the notariate. Most of the works enumerated appear to come from France and Germany.

Dr. jur. W. KUNTZE & W. HATNIK: *Das gesamte Einkommensteuerrecht* II (1948, 1949, 1950, 1951, 1952, 1953). — Verlagshaus Christian Wolff, Flensburg und Hamburg, 1953, 845 pp.

A voluminous book, with a very surveyable classification of the valid texts of the income tax, with "Durchführungsverordnungen", directives as well as ordinances since the reorganisation of the currency from 21st June 1948. All the texts, including those which were enforced by the "Kleine Steuerreform" of 24th June 1953, collected in one volume!

The book has been meant for practice and will no doubt find its way to fiscal experts, accountants, lawyers and fiscal administrations. It is intended to publish a supplement in 1954, in which the Durchführungsverordnungen 1953, "Richtlinien 1953" and the Jurisprudence up to spring 1954 will be printed.

Reference to this book has been facilitated by means of an alphabetical index prepared with care, a register with dates concerning the judgments and a register concerning the "Richtlinien".

R. BLANCHER: *La situation fiscale des associations en participation.*—Recueil Sirey, 1953.

With this pamphlet (36 pages) Professor R. BLANCHER again added an important work to the many publications with which he has enriched already the fiscal literature. In this brochure he deals with the application of the different fiscal laws to the "association en participation", a special form of partnership, mentioned in the "Code de Commerce" at the side of other forms of commercial corporations.

The author treats here the application of three groups of taxes to these "associations", namely the "droit d'enregistrement", the direct tax and the purchase taxes. The author pays necessary attention also to the so important changing of this special form of partnership into other forms of participation.

La nuova legge sulla imposta di bollo 1953, *con indice analitico delle voci in tariffa*. Quaderno Nr. 5. — Unione Industriale della Provincia di Cuneo, 1953.

In 1862 the first Italian stamp duty was instituted, under the name of "tassa cartolare" (droit de consommation du papier). Later on it was called "tassa di bollo", stamp duty, such in accordance with the extension of its object. Now, as the scope of this tax is very general, the Italian legislator has officially instituted the name "imposta di bollo", stamp duty, by the Presidential decree of 25th June 1953, No. 492.

This decree forms the subject of this publication. Though the character of the tax has not been changed in principle, so many modifications have been made, that there is reason to devote a separate brochure to it. Now the matter, which had become very unsurveyable by the numbers of modifications and supplements with the passing of years, has been classified systematically. In eight pages a survey is given of the most important modifications, furthermore the text of the "Décret Présidentiel" of 25th June 1953 has been included, and finally in 40 pages a great number of tables follow, in which the tariffs have been included for all sorts of deeds. Thus this publication has become a very handy vademecum for those who have something to do with the Italian stamp duty.

RENE GOFFIN: *La taxe de transmission dans l'industrie des fabrications métalliques*. — Fabrimétal, 21 rue des Drapiers, Bruxelles.

As the title proves already, the purchase tax is treated in this book as far as it is of importance for the metallurgical industry. All that is important for the metallurgical industry in the code, the general enactments and the regulations, ministerial decisions, directives of the revenue authorities, jurisprudence and science, has been collected in this work.

The book has been divided into 7 parts: la taxe forfaitaire (forfeiture tax), la taxe de luxe (luxury tax), les ventes et achats par intermédiaires (the purchase and sales through intermediaries), les exportations, les importations, les contrats d'entreprise d'ouvrage (contracts for work), le régime des navires et bateaux (the system of ships and boats).

Besides a very elaborate and clear index and alphabetical list have been inserted at the end with about 1500 products, in which connection the author refers to the pages in this book, to indicate where determinations, concerning these products, have been dealt with. Later modifications in Acts etc. will be worked out in supplements, so that it will at all times contain all the regulations that are valid.

S. NUSSBAUM: *La convention entre les Etats-Unis et la Belgique pour éviter la double imposition et prévenir l'évasion fiscale en matière d'impôts sur les revenus*. Extrait des Annales de Sciences Economiques appliquées. — Institut des sciences économiques appliquées, 2 rue des Doyens, Louvain.

In 1948 a convention was signed by Belgium and the United States for the sake of obviating double taxation. In 1952 a treaty was signed again, in which connection the treaty of 1948 was modified in some respects. One of those points concerned the tax on dividends. Dividends received by an inhabitant of Belgium from the United States were originally to be taxed in the United States with the with-holding tax of 30%. In most of the other treaties concluded by the United States this percentage has been fixed at maximum 15%. In the contract of 1952 it has been determined for Belgium in the same way.

This important convention was discussed by Mr. Nussbaum in the Annales de Sciences Economiques Appliquées, of which discussion this brochure is an off-print. The important subjects are briefly discussed, and one gets a clear impression of the effects of this convention.

Dr. WALTER A. SCHUTZ: *Einmalige Wertzugänge in der Einkommenbesteuerung.* — Polygraphischer Verlag A.G. Zürich, 1953.

It is an important subject that has been treated elaborately and systematically in this Zürcher thesis (216 pages), to wit, to what extent are extraordinary revenues, in which the periodicity is lacking, subject to income tax? Some, as for example enhancement of value have been treated frequently in the literature, but a systematical treatment of the whole has been lacking in Switzerland up to now. The study has been limited to the Swiss cantonal and "Eidgenössische" taxes, but the problems which present themselves deserve the attention also in other countries. Exactly in a period, when the fiscal legislation is liable to continual changes almost everywhere, such a research can be valuable.

The author classified his work in a succinct general part and a detailed special part.

The theory of sources made by Fuisting, who considered as a source all that can give lasting revenues and so supported the principle of periodicity, has been disrupted, because more and more revenues happened to become subject to income tax. It often occurs in the technical sense of the law that many accruals to the property are made taxable income by express decisions, which enumeration is closed by a general formula. Often what cannot be considered as taxable income is mentioned by name. That is then either exempted or subject to a special tax, for instance death, or gift duty.

The author only examines the "einmalige Wertzugänge". This lack of periodicity can have a material cause (after the providing of the revenue the source dissappears for ever), or a formal cause, (cumulation of periodical revenues). Extension of the conception "income" beyond the theory of sources has been considered by the author a requirement of justice to wit in order to stimulate the generality and similarity of tax levying. There are technical difficulties, the fiscal policy also produces objections, but the requirements of justice may not yield to them. The question remains to know if these revenues must be classified in the general income tax (the progression!) or if separate levying would be desirable.

It is not possible to follow precisely the author. Some general indications will be sufficient. First of all the material part. The first subject that occupies the author is the enhancement of value. He mentions the different manners in which enhancement of value can be taxed, but he limits himself to discussing the enhanced tax value which is realized. This brings him into contact with many problems. After that he deals with the profit from lotteries etc., which in the Swiss cantons are either brought under the income or are taxed separately (according to different methods).

The third part: the treasure-trove, finder's wage, etc. the author does not want to tax as income. The end of the material part is formed by the advantages obtained, thanks to the free will of third parties as: inheritance, gifts, life insurance, foundations, voluntarily rewarded labour etc.

On the contrary the formal revenues without periodicity originate according to the author from a source; the lack of periodicity is in the nature of the accrual. In this part the author deals with: bonuses, supplementary earning, gratuities, etc. The author has collected under a separate chapter: liquidation profit, some business profits as profit of reconstruction, indemnifications etc. Further revenues, which arise only once, to which the author has paid particular attention.

From the above-mentioned review one can conclude sufficiently how many subjects are brought forward. The treatment concerns only the Swiss law, but the analysis of the many relations deserves the attention also outside the Swiss boundaries.

Dr. ULRICH SAHM: *Der Schumannplan.* Vertrag über die Gründung der Europäischen Gemeinschaft für Kohle und Stahl. — Verlag Kommentator, GmbH, Frankfurt am Main, 1951, 300 pp.

This work, written in May 1951, is the first edition of the text concerning the convention of the European Coal and Steel Community, concluded on the 18th of April 1951. Preceded by a general survey about the convention this work gives the texts in the German and the French language. A very detailed register in the German language has been added to the book, owing to which this work is of great value.

Dr. HANS LANG and MAX KRÄMER: *Steuerliche Ausfuhrförderung.* — Ernst Gerdes Verlag, Preetz in Holstein, 1953, 432 pp.

In the West European countries it has come into general use to stimulate the export by fiscal measures, except in Belgium and England. The measures in the German Federal Republic are much-embracing and radical, especially in the field of the "Einkommen, Körperschaftsteuer" and "Umsatzsteuer". The legal regulations, originally comprised in the Act of the 28th of June 1951, were greatly changed by the Act of the 6th of August and the term of the facilities was extended till 31st of December 1955.

To this work which was ended in September 1953, these modifications have been added, while also the former regulations are mentioned. It contains all the important determinations about the measures of stimulation of the export in the domain of the income and purchase tax, and, where this was necessary, has been furnished with a commentary.

This book is adapted to practical use.

E. P. PLAGNOL: *Les Impôts.* — Chez l'auteur, 6, Rue Eastman, Paris (13e), Octobre 1952.

In this excellent book (461 pages) the most important French taxes are treated in order. Therefore it fills a great need, as rather elaborate up-to-date commentaries about French taxation law are scarce. Very remarkable is the treatment of two subjects which are often treated in a stepmotherly fashion in this sort of works: registration fees and purchase tax. Both subjects fill about two thirds of this book. We have however been struck by the fact that the author has scarcely made mention of death duties (in France part of the "enregistrement"). Much attention has also been paid to the direct taxes, while at the end some dozens of pages are devoted to subjects as law of procedure, collection and other formal problems.

Altogether we can call it a good manual for the whole French fiscal law, especially as the author inserted also the recent reforms.

In spite of all these good qualities we must say that we regret not to find an alphabetical register as in most French works. This would facilitate looking up certain problems.

ANTOLIN JIMENEZ: *Codigo fiscal de la Federación. Ley del impuesto sobre la renta. Impuesto sobre herencias y legados y sobre donaciones. Ley general del timbre. Leyes de alcoholes.* — Editor A. Jimenez, Apartado Postal 2584, Mexico D.F.

The author has done important work by collecting and publishing the whole Mexican legislation in these five loose-leaf volumes. In the first above-mentioned part the general laws have been embodied, in the following parts those concerning the different taxes existing in Mexico. The edition contains also decisions and regulations so that one is really wholly equipped when one possesses these volumes published in a handy size.

WILHELM CONRAD: *Von der Soforthilfe zum Lastenausgleich.* — Verlag Otto Schwartz & Co, Göttingen, 1951, 334 pp.

This book deals with the legislation and the measures resulting from it, taken in connection with the relief of material needs caused by the war and the apportionment — as fairly as possible — of the burdens which have arisen.

The book consists of two parts: the treatment of the Soforthilfegesetz, the 1949 Act and of the Bill 'Lastenausgleich', which was enacted on the 14th of August 1952.

The book derives its great value, especially from the first part. It deals in detail with the Soforthilfegesetz, which gave a temporary arrangement and was the precursor of the 'Lastenausgleich' Act, the organization charged with the execution of the law, the sources (extraordinary taxes) from which the revenues resulted and finally to what purpose the various means have been applied, viz. house building, technical training of the youth, furniture etc.

The second less elaborate part deals with the Bill 'Lastenausgleich', enacted in August 1952. Also in this connection we find a fiscal part at the side of a social and economic-political part. At the end of this very clear and surveyable book of this eminently expert author (he was vice-president of the governing body of the Soforthilfe) the complete directives published in connection with the Soforthilfegesetz are found.

W. E. HINDERMAN and E. GYGAX: *Leitfaden für Gesellschaftsübertragungen.* — Verlag Organisator, AG, Zürich, 1953, 288 pp.

This 288 page book treats the so important problem of the change into some other form and the transference of a business in accordance with Swiss law. The book considers the problem from two sides and so it has two parts: one about civil law and one about tax law. Dr. Hindesmann is the author of the first and Dr. Gygax of the second part. A very elaborate index makes it possible to find quickly the problem which one is studying, for instance change into a limited company or limited partnership, mergers, transference by death and many others. The tax part deals elaborately with the different tax problems of these changes so that it is sure that the fiscal literature has been enriched with this very practical book.

Dr. jur. ERNST VON DER THUSEN: *Steuerinstruktionen zur Kapitalbildung, Versicherung und Versorgung.* — Konradin-Verlag Robert Kohlhammer, Stuttgart, 48 pp.

The searching and striving for security, the care for the future, that is the thought which links up the parts of this issue. This security not only concerns the person and his family, also the group of employees of a certain enterprise, even the whole community.

The tax system acts as a check on this striving in many respects, but leaves open also many possibilities. Therefore it is not sufficient to fix one's eyes upon possible revisions of the tax legislation, but it is necessary to examine what possibilities the existing legislation gives. Often they are not ready to hand and therefore we must acclaim the fact that the author has brought succinctly (every booklet contains 48 pp.) the problems in this domain under the attention of those interested. Four booklets have been published, of which number 3 is sold out.

Heft 1: Reg. Rat. J. THEIS und Dr. E. v. d. THÜSEN, Steuerbegunstigte Gestaltungsformen der Kapitalbildung und des Risikoschutzes durch Lebens- und Unfallversicherung.

The life-insurance in its function of bearing the risks and as an organ of creation of capital is discussed for income tax (for the period of payment.

out as well as payment of premium), for property tax and death duty).

Heft II: Rechtsanwalt Dr. jur. HERMANN KLAR und Versicherungsmathematiker KURT SCHLÖSSER: Wirtschaftlichkeitsfaktoren der Versicherung von Betriebsangehörigen und leitenden Angestellten, der Gesellschaften und Betriebsinhaber) not only sets forth problems from the point of view of insurance and taxation, but it also contains indications for practical application. The authors paid attention to all those concerned, also to partners, in view of their resignation or death, accident insurance, etc.

Heft IV: Dr. Jur. CARL GEORG BAIER: Steuererleichterte Kapitalbildung und Vermögenserhaltung. The author deals with the facilities, resulting from the system of income tax, from economic and social political causes, while at the end the author pays attention to death duties.

E. P. BORUTTAU: *Grundriss der Kapitalverkehrsteuer*, Band 14 Buchreihe Finanz und Steuern. — Fachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co Stuttgart, 1950, 116 pp.

The 'Kapitalverkehrsteuer' is one of the most difficult subjects of German fiscal law. Mr. BORUTTAU, however, has succeeded in treating the three taxes systematically, taxes which together form the Kapitalverkehrsteuer.

Although closely reasoned, the book has been written clearly and is of inestimable practical value, thanks to the great experience the author obtained as a judge of the Ober Finanzgerichtshof and as chairman of the Finanzamt Börse in Berlin.

Any corporation which has interests in Germany has something to do with the Kapitalverkehrsteuer.

At the foundation, at least if the corporation is established in Germany, Gesellschaftssteuer has to be paid on the S-capital. The same holds good for later enhancement of own capital.

A bond issue results in levying of the Wertspapiersteuer. The Börsenumsatzsteuer is imposed when existing shares, bonds, etc. are sold. Contrary to what one would suppose the levying of the tax is not affected by the fact whether this sale has been effected on a Stock Exchange or not.

It may be useful to point out here that share issues of a foreign corporation without an independent branch in Germany are not subject to the Gesellschaftsteuer but to the Wertpapiersteuer.

The book consists of 4 chapters. Chapter 1 discusses the basic principles of the Kapitalverkehrsteuer and gives a justification of the levying of the tax.

The three successive chapters deal with the technics of the Gesellschaftsteuer, Wertpapiersteuer and Börsenumsatzsteuer.

BLÜMICH-KLEIN-STEINBRING: *Körperschaftsteuergesetz*, 2. Auflage. — Verlag Franz Vahlen GmbH, Berlin und Frankfurt a. M. Deutschland, 1952, 847 pp.

In 1939 the first edition of this book was published, revised by Dr. Blümich. Dr. Blümich died and Dr. O. Klein, 'Regierungsdirektor in der Finanzverwaltung der Hansestadt Hamburg' and Dipl. Kfm. W. Steinbring continued his work. Owing to the changes in German legislation in and after the War a renewal of this well-known manual was very necessary, and the expectations which one had, have not been disappointed. The authors elaborately treat the significance of the law texts and based on case law valuable conclusions have been drawn. The special arrangements concerning the D.M. opening balance sheet etc. have been worked up in this book.

To everyone who wants to have a manual in the demoin of German Körperschaftsteuer' we can recommend this book with confidence.

NEIL F. PHILLIPS: *U.S. Taxation of Foreign Entities.* — The Carswell Company, Ltd, Toronto, Ontario, Canada, 1952.

Dans cet ouvrage l'auteur traite l'imposition aux Etats-Unis, des soi-disant étrangers de passage et des sociétés étrangères. Aux Etats-Unis l'impôt est levé suivant trois principes. Le premier principe, le principe de nationalité, sert de point de départ pour l'imposition des citoyens américains. Ceux-ci sont assujettis à l'impôt pour l'ensemble de leurs revenus, qu'ils proviennent de sources nationales ou étrangères. que les intéressés aient ou non leur domicile aux Etats-Unis. Le deuxième principe, celui du domicile, s'applique aux étrangers (personnes physiques ou personnes morales) qui résident perpétuellement aux Etats-Unis ou, s'il s'agit de personnes morales, qui y exploitent une entreprise. Le troisième principe enfin, que l'on pourrait appeler le principe de l'origine, s'applique au cas où une personne physique ou morale de nationalité étrangère aurait des sources de revenu aux Etats-Unis, sans y avoir ni leur domicile ni une exploitation. Contrairement au premier groupe d'étrangers qui, comme les citoyens américains, sont imposables pour leur revenu global, les soi-disant "non-residents" ne sont imposables que pour la partie du revenu, qui provient de sources américaines.

Quoique ces dispositions applicables à ce dernier groupe se trouvent en premier lieu dans l'Internal Revenue Code, on devra pourtant examiner exactement les différents traités qui ont été conclus quand il s'agit de répondre à la question de savoir si l'impôt sera perçu dans un cas spécial. Les traités fiscaux qui étaient conclus de plus en plus dans les quinze dernières années, ont en effet souvent modifié les dispositions de l'Internal Revenue Code. Aussi, dans son exposé, l'auteur prend comme point de départ ces deux sources de droit. Outre un index détaillé deux appendices terminent cet ouvrage. Le premier appendice concerne les modèles des formules de déclaration, le deuxième contient un extrait des réponses, faites à des questions relatives à l'imposition des étrangers et posées par l'O.N.U.

Lectures on taxation of business enterprise, delivered at the Summer Institute on International and Comparative Law. — University of Michigan Press, Ann Arbor, Michigan, 1952. Price $ 6.00.

Les problèmes concernant l'imposition des enterprises s'étendent à un grand domaine. A une époque comme la nôtre qui est caractérisée par des budgets élevés et qui montre la nécessité d'une augmentation continuelle des revenus de l'Etat, les considérations économiques et les problèmes politiques jouent un rôle encore plus grand qu'en temps normal. En choisissant, en 1951, le sujet susmentionné, le Summer Institute n'a pas voulu se borner à traiter des questions purement légales.

Quelque 25 experts ont, chacun de son coté, traité un certain aspect du sujet. Pour rendre ces conférences accessibles à un plus nombreux public, le Summer Institute s'est décidé à les publier, après les avoir classées systématiquement en cinq chapitres.

HANYA ITO: *Essays in Public Finance,* Economïc Series No. 3; — The Science Council of Japan, Division of Economics & Commerce, Tokyo, Japan, March 1954, 112 pp.

This booklet contains four essays on various subjects of public finance, three in English and one in German.

Chapter I deals with the basic idea of fiscal science. Prof. Hanya Ito believes fiscal science primarily to be the science of compulsory acquisition' and he does not approve of the generally accepted notion that the economics of the state and other public authorities are a subject matter of fiscal science.

Chapter II treats of the value-added tax, as proposed by the Shoup

Mission in Japan. Herein an interesting account is to be found of the character, advantages and disadvantages of a tax of this kind, which has the special characteristic of being both a business tax and a transformed sales tax. As this tax was never enforced in Japan (the relative Act was repealed this year without having been put into operation) this essay has only — be it highly — instructional value.

In Chapter III the author gives an outline of Japan's public finance during the period September 1931 (outbreak of hostilities in Mandchuria) and April 1952 (Peace Treaty), which was a period of war and after-effects of war.

In the final chapter Prof. Ito gives an explanation of the past and present systems of national direct taxes in Japan, the influence of The Report on Japanese Taxation by the Shoup Mission and the essentials of the Personal Income Tax, Corporate Income Tax, Net Worth Tax (now abolished), Inheritance Tax and Revaluation Tax.

FERDINAND LARCIER (S.A.): *Droit fiscal,* Les Codes Larcier, Tome IV, Complément 1953. — 26-28 Rue des Minimes, Bruxelles 1954.

A supplement has now been published of the Code announced on page 357 of Volume VII (1953), embodying the modifications which were brought about in 1953.

C. VAN SOEST, J. E. NIEMEYER: *De loonbelasting in de practijk.* (wages tax in practice). — L. J. Veen, Amsterdam, 1071 pp.

As the name shows already, this explanation about the wages tax has been written for practical use. The application of the wages tax is very clearly set forth so that also those who are not conversant with tax legislation can easily find their way. Moreover a survey of the equalization levy and the directors' tax has been added.

The text of the ordinance and the tables with the regulations for giving effect to the law have been inserted at the end as an appendix.

CECIL A. NEWPORT, F.A.C.C.A. AND OLIVER J. SHAW: *Income tax law,* twenty-fifth edition. — London, Sweet and Maxwell Ltd., 2 and 3 Chancery Lane W.C. 2, 1953, 400 pp.

The 25th edition of the well-known 'Income Tax Law and practice' by Cecil A. Newport and Oliver Shaw. The book has the same classification as in the 24th edition, but has been brought up to date by the addition of the new provisions made since the 24th edition and the modifications of the existing provisions. Also the index has been improved in the new edition. This 25th edition will surely find its way, as its predecessors did.

V. JAGANNADHAM: *Social insurance in India,* thesis; — Djambatan, Amsterdam, 1954, 100 pp.

Few works exist about the problem of social insurance with respect to countries with a low industrial standard. This thesis contains a study about that subject especially with respect to India, where some years ago a limited scheme for social insurance was enacted.

The first three chapters contain the state policy and social insurance and its system in England and the Netherlands.

The following three chapters give a picture of the history and background of social insurance in India. The author describes the present system in India in chapter 7 and 8 and sets forth some propositions for amelioriation. Chapter 9 deals with the problems existing in India when social insurance is extended further.

DAN THROOP SMITH: *Corporate Financial Policy*, Effects of Taxation. — Division of Research Graduate School of Business Administration, Harvard University, Boston, 1952, 301 pp.

This books analyses the effects of taxation on the relative attractiveness of debt and preferred stock financing, of new common stock issues, and of retained earnings for both widely owned and closely controlled corporations. Also, the tax influences on the organization and original capital structures of closely controlled companies and on the sales or withdrawals of part interests in them are examined.

This work has been divided into two parts. Part I treats the widely owned corporations and part II the closely controlled corporations.

In the first part are successively treated:

1. Debt and preferred stock financing.
2. Costs of new common stock financing.
3. Effects of Corporation Income Tax on Cost of new Equity Financing.
4. Retained earnings.
5. Business attitudes and actions on financing.

In the second part the author treats:

1. Form of organization of new corporations.
2. Capital structure of new corporations.
3. Retention of earnings.
4. New outside financing.
5. Sales or withdrawals of part interests.

Dr. HERBERT WEISE: *Das britische Einkommensteuerrecht in wirtschaflicher Sicht*, Kieler Studien 27, Forschungsbericht des Instituts für Weltwirtschaft an der Universität Kiel. — herausgegeben von Professor Dr. Fritz Boode, Kiel 1954, 202 pp.

In this work some characteristic points in the great domain of British Income Tax are discussed in order to clarify the whole system.

In the first part of this work the author treats the purely juridical side of the problem, but shows that also the formal frame of the tax law has its own problems, in which analysis one finds factors of an economic character. Therefore a purely juridical part is inadequate. In the second part of the work the author examines how tax legislation and economic structure influence each other. Only in this way does the author think he is able to give a good analysis of British income tax.

L. C. NANNINGA: *Inkomsten-, loon- en vennootschapsbelasting in verband met de levensverzekering* (income, wages, and corporations profits tax in connection with life insurance) — N.V. W. J. Thieme & Cie, Zutphen, 1954, 132 pp.

This booklet is not only important for those who occupy themselves with life insurance business, for whom it has been written, but for all those who want to study fiscal problems in connection with life insurance. Those who are not informed of insurance techniques find some particulars about this subject in an appendix.

The book is divided into four chapters; general considerations, revenue from movable capital, earned income, gain from trade or liberal professions, in which connection also the corporation profits tax is considered in connection with insurance. An alphabetical index has been added.

NICHOLAS A. H. STACEY: *English accountancy*, a study in social and economic history, 1800-1954. — Gee and Company (Publishers) Ltd, 27-28 Basinghall Street, London, E.C. 2, 295 pp.

This is the first book, which deals with the history of modern accountancy in England.

It describes the history of the profession and everything concerning it, and shows moreover how economic and social powers have exercised their influence on it during the last 150 years. The author also casts a glance into the future and the future development is considered.

EMANUEL GRÜNZINGER UND WALTER STUDER: *Kommentar zum Basler Steuergesetz.* — Verlag Helbing und Lichtenhahn, Basel 1953, 546 pp.

The intention of the authors is to facilitate the practical application of the new law of 22nd December 1949 on direct taxes. This revision law is the result of the whole revision which was prepared from 1947-1949. The commentaries on the separate articles are systematically built up and especially deal with questions occurring in practice. The authors have invariably tried to assume a neutral position by favouring neither the tax authorities nor the taxpayer when discussing the problems. They attempt to deal with the problems in a scientific businesslike manner. Beside the tax law proper the other cantonal decrees have also been included as far as applicable to general direct taxation. The provisions concerning church taxes and indirect taxes are not embodied in the work. Referring quotations are given where necessary for a profounder study in which connection jurisprudence has not been forgotten. This book is divided into 3 parts. Part I is the general part, part II deals with the different sorts of taxes, while part III considers the final and transitional provisions.

STANFORD RESEARCH INSTITUTE OF STANFORD, CALIFORNIA: *U.S. Tax incentives for private foreign investment,* order postpaid from Foreign Commerce Department, Chamber of Commerce of the United States, Washington 6, D.C., January 1954, 51 pp.

This report has been composed by A. Kenneth Beggs, Senior Economist with cooperation of J. Knight Allen, Senior Economist and Gerald S. Gilligan, all members of the Stanford Research Institute.

There is increasing recognition in the United States that the political, economic and military security of the United States is closely related to conditions in the rest of the free world. It has been the national policy of the United States during recent years to aid in reconstruction and development abroad i.a. by promoting investments abroad by American corporations.

However until now the magnitude of these investments has not been sufficient. Therefore this report puts forward a few suggestions in order to increase the number of investments. The suggestions are based on well-established precedents in present tax legislation, and are reduced in short as follows:

1. The taxation of income of American corporations from permanent establishments in foreign countries at a rate of one half of the regular corporate income tax rate.

2. A careful review of credit limitations as to 'in lieu' taxes and interpretation in accordance with an expressed intent of congress.

3. The deferral of United States income taxes on the income of foreign branches of domestic corporations until such income is remitted to the United States.

4. The exemption from incorporated dividend taxes of dividends paid to American corporations by their foreign subsidiaries and their subsidiaries in the United States of that part of the latter's income derived from permanent establishments in foreign countries.

5. Allowances of accelerated amortization on new physical assets of such permanent establishments.

The report has been divided into six parts in which successively is treated: the task of America in the foreign economic development, the necessity of American investments abroad, the checks on these investments, the way of tax legislation in America concerning 'American corporate foreign earned income' existing propositions for more tax facilities and a proposition to modify tax legislation in the USA in the field of income earned abroad.

A. FARNSWORTH, LL. D., PH. D.: *Addington, author of the modern income tax.* — Stevens and Sons Ltd, London, 1951, 140 pp.

Historians generally assume that William Pitt is the spiritual father of the income tax in England and that the structure of this tax, forming the basis of the modern income tax comes from him. The purpose of this book is to demonstrate that the real spiritual father of the modern income tax was Pitt's successor, Henry Addington, who succeeded Pitt as Prime Minister and Minister of Finance in 1801, a man who was generally considered completely unfit for his task. The income tax was indeed enacted in 1799 by Pitt, but his system caused tax evasion and mistakes, so that in 1802 it was abrogated. In 1803 it was replaced by a wholly new system which still exists in the main features. This new system is owed to Mr. Addington, as the author demonstrates in this book and he is the originator of the 'tax at the source' principle that can be found in the Income Tax Act 1803 which has been the example for all successive Income Tax Acts.

NARCISO AMOROS RICA: *El régimen juridico fiscal de las cooperativas españolas.* — Editorial de Derecho Financiero, Madrid, 1952.

Du point de vue fiscal le caractère spécial des sociétés coopératives est extrêmement intéressant parce que le fiscaliste se voit obligé de se rendre compte des principes les plus profonds du droit fiscal. Les ouvrages qui ont vu le jour à ce sujet et qui s'en occupent entièrement, sont assez rares.

Nous sommes heureux de pouvoir attirer l'attention de nos lecteurs sur un tel ouvrage traitant le régime fiscal des coopératives espagnoles. L'auteur est un 'Inspector técnico del Timbre' et son ouvrage est précédé d'une préface de S.E.D. *Santiago Basanta y Silva,* sous-secrétaire des Finances. L'ouvrage a été publié dans la série 'Manuales de Derecho Tributario Español'.

Dans trois sections, suivies de quelques appendices, l'auteur traite successivement: La cooperación; Concepto juridico legal de las cooperativas; régimen fiscal de cooperativas. C'est justement cette dernière section qui intéressera plus spécialement nos lecteurs.

Après avoir discuté le problème des exemptions fiscales, qui peuvent être de nature subjective ou objective, et, sous ce rapport, la différence entre privilège et exemption, l'auteur donne un aperçu général du régime fiscal des coopératives. On y trouve des considérations sur la législation en vigueur et son développement historique. Il est extrêmement intéressant de voir les différentes dispositions législatives sur les exemptions, et comment celles-ci ont été influencées par des doctrines politiques.

Ensuite, l'auteur donne un aperçu systématique des exemptions, et cela impôt par impôt. Il ne nous semble pas nécessaire de les passer en revue. Le lecteur intéressé en trouve une description dans l'article de notre collaborateur *M. Ortiz Gracia,* publié dans ce Bulletin Vol. VIII No. 1-2, p. 5 et suiv.

L'ouvrage se termine par la reproduction des différents textes, une bibliographie détaillée ainsi qu'une table alphabétique.

ASSOCIAZIONE BANCARIA ITALIANA: *Organizzazioni internazionali economiche e sociali.* — Roma, Piazza del Gesù, 49, 1949.

MINISTÈRE DES AFFAIRES ETRANGÈRES: *Volkenrechtelijke berichten* (Communications dans le domaine du droit des gens). — Service de Législation Etrangère, Bruxelles, 1954.

Nous attirons avec plaisir l'attention de nos lecteurs sur ces deux publications qui donnent une énumération détaillée d'un grand nombre d'organismes internationaux.

Dans la publication italienne on les trouve par ordre alphabétique tandis que la publication belge donne un aperçu des différents organismes dans l'ordre des pays où ils ont leur siège. Cette dernière est limitée aux organismes européens.

De chaque organisme on donne le nom, l'adresse, ainsi que des particularités plus ou moins détaillées.

Chaque publication donne des renseignements sur le Bureau International de Documentation Fiscale. Dans la liste italienne on les trouve sous le numéro 79 à la page 42, dans la publication belge les pages 160 à 164 sont consacrées au Bureau.

A. MONTIN: *I benefici tributari concessi alle famiglie numerose.* — Tipografia Editrice Cesare Nani, Comi, 1949.

Dans notre Bulletin Vol. IV p. 348 notre collaborateur M. *Nobile* a publié un article sur la fiscalité italienne et la famille. Un petit opuscule de 50 pages, publié comme No. 154 dans la „Biblioteca Pratica Raccolta Ostinelli", traite le même sujet, et cela en particulier pour les familles nombreuses. Bienque datant de 1949, cet aperçu clair nous semble avoir un intérêt suffisant pour ceux de nos lecteurs qui s'intéressent à ce sujet. On y trouve, après un commentaire, les textes concernant les facilités fiscales dont bénéficient les familles nombreuses.

V

RESOLUTIONS OF THE I.F.A. CONGRESS
RESOLUTIONS DU CONGRÈS DE l'I.F.A.
(Cologne 1954)

Premier sujet: Les mesures fiscales destinées à faciliter les mouvements internationaux de capitaux.

First subject: Tax measures to facilitate international movements of capital.

Rapporteur général: M. GÜNTER SCHMÖLDERS, Professeur à l'Université de Cologne.

General Reporter: GÜNTER SCHMÖLDERS, Professor at the Cologne University.

Le Congrès,

Vu le rapport général de M. le Professeur Schmölders sur les mesures fiscales destinées à faciliter les mouvements internationaux de capitaux,

Reconnaissant, à cet égard, l'importance primordiale, d'une part, de la réduction progressive allant jusqu'à la suppression des restrictions en matière de change et du retour à la libre convertibilité des monnaies, et, d'autre part, d'une politique de stabilité financière et d'équilibre de la balance des payements,

Mais se plaçant plus spécialement sur le terrain de la fiscalité,

Condamne toutes mesures légales ou administratives défavorisant les capitaux et les entreprises de l'étranger par rapport aux capitaux et entreprises indigènes, notamment en ce qui concerne la supputation des bénéfices imposables,

Recommande, au contraire, tous moyens de nature à rapprocher les systèmes fiscaux et à éliminer la double imposition.

The Congress,

Having considered the general report submitted by Professor Schmölders concerning tax measures to facilitate international movements of capital,

Recognising in this connection the vital importance, on the one

hand, of a progressive reduction leading to complete removal of exchange restrictions and a return to the free convertibility of currencies and, on the other hand, of a policy of financial stability and equilibrium of the balance of payments,

But taking more especially the fiscal field of taxation,

Condemns any legal or administrative measures discriminating against capital and enterprises from abroad as compared with national capital and enterprises especially with regard to the calculation of taxable profits,

Recommends, on the contrary, all and every means to bring tax systems closer together and to prevent double taxation.

Deuxième Sujet: Les mesures fiscales susceptibles de ranimer l'épargne privée tant dans le domaine mobilier que dans le domaine immobilier.

Second Subject: Tax measures likely to encourage private savings both in movable and immovable property.

Rapporteur général: M. JEAN BAUGNIET, Professeur à l'Université de Bruxelles.

General reporter: JEAN BAUGNIET, Professor at the University of Brussels.

Le congrès,

Vu le rapport général de M. le Professeur Baugniet sur les mesures fiscales susceptibles de ranimer l'épargne privée tant dans le domaine mobilier que dans le domaine immobilier;

Considérant la place importante que tient l'épargne privée dans l'économie moderne;

Considérant que la politique fiscale ne doit ni enlever le goût de l'épargne ni supprimer les possibilités d'épargner;

Recommande:

1. la limitation de la progressivité de l'impôt par l'établissement d'un taux maximum, qui, pour les tranches les plus élevées du revenu, ne devrait pas dépasser le point de rupture psychologique de 50 %, tant pour chaque catégorie de revenus du redevable que pour l'ensemble de ces revenus.

2. dans les pays où à l'impôt sur le revenu s'ajoute un impôt annuel sur la fortune, l'établissement pour ces deux impôts réunis d'un tarif maximum de 80 % des revenus du redevable.

3. l'aménagement de l'impôt successoral en ligne directe et entre époux, de manière telle que la taxation soit aussi modérée que possible;

Exprime sa conviction:
que la modération des taux de l'impôt en général est préférable à des mesures particulières.

The Congress,
Having considered the general report submitted by Professor Baugniet concerning tax measures likely to encourage private savings both in movable and immovable property;
Considering the important function of private saving in the modern economy;
Taking into consideration that taxation policy should neither remove the inclination to save nor prevent the possibilities of saving;

Recommends:
1. limitation of the burden of progressive taxation by fixing a maximum percentage which, for the highest part of the income should not surpass the psychological breaking point of 50 % neither for any category of income nor for the total income.
2. in countries where, besides an income tax, a capital tax is also levied, that both these taxes together should not exceed 80 % of the taxpayer's income.
3. to regulate estate duty on property passing to lineal descendants or to a spouse in such a way that this tax is as moderate as possible;

Gives expression to its conviction:
that a reduction of tax rates in general is preferable to measures of a special nature.

Troisième sujet: Les sociétés internationales dans le droit fiscal national et international: l'influence des rapports existant entre des entreprises situées dans les pays différents sur la détermination des bénéfices imposables dans chacun de ces pays.

Third Subject: International companies in national and international tax law; the influence of the existing relations between undertakings established in different countries on the determination of the taxable profits in each of these countries.

Rapporteur général: M. OTTMAR BÜHLER, Ancien Professeur à l'Université de Cologne.

General Reporter: OTTMAR BÜHLER, Senior Professor at the Cologne University.

Le Congrès,

Vu le rapport général de M. le Professeur Bühler sur la question de la détermination, dans le cadre actuel de la généralité des conventions internationales de double imposition, des profits indirectement transférés à une entreprise d'un Etat par l'établissement stable ou la filiale de cette entreprise établie dans un autre Etat,

Recommande:

1. que les bénéfices de l'établissement stable ou de la filiale soient déterminés compte tenu, s'il s'agit de droits de propriété industrielle ou de services rendus, des redevances habituellement pratiquées par des entreprises indépendantes, et s'il s'agit d'opérations commerciales ou industrielles, des marges bénéficiaires habituellement pratiquées dans le même commerce ou la même industrie par des entreprises indépendantes;

2. que le contrôle plus ou moins étroit exercé sur la filiale ou l'établissement stable par l'entreprise étrangère ne soit pas considéré comme une présomption de la stipulation de rémunérations anormales, le caractère normal ou anormal de celles-ci devant être déterminé par comparaison avec les pourcentages ou les marges ordinairement pratiqués par des entreprises indépendantes pour des opérations analogues.

3. Qu'au cas de difficultés sur la détermination de ces pourcentages et de ces marges, les Administrations compétentes des Etats intéressés soient appelées à s'entendre, en la forme d'une procédure amiable, si possible par le moyen de réunions de commissions paritaires, sur les coefficients applicables selon la nature de ces activités, et compte tenu des conditions particulières dans lesquelles elles peuvent s'exercer.

et réserve la possibilité de se décider selon d'autres principes dans les cas où les Etats ne sont pas liés par les conventions internationales ci-dessus visées.

The Congress,

Having considered the general report of Professor Bühler con-

cerning international companies in the field of national and international tax law and restricting itself to the question of the determination of profits indirectly transferred to an enterprise in one country by the permanent establishment or the branch of this enterprise in another country, in the scope of present international conventions on double taxation in general,

Recommends:

1. that in the case of industrial patents or services rendered the profits of a permanent establishment or of a branch should be determined by taking into account the royalties customary with independent enterprises, and, in the case of commercial or industrial transactions, the profit margins customary with independant enterprises carrying on a similar trade or engaged in a similar industry.

2. that the more or less strict control of a branch or a permanent establishment exercised by a foreign enterprise should not be regarded as presumptive evidence of the stipulation of abnormal remuneration, the normal or abnormal character of same having to be determined by comparison with percentages or margins customary with similar transactions effected between independent enterprises;

3. that, in case of difficulties in respect of the determination of these percentages and these margins, the appropriate administrations of the countries concerned be called upon to come to an amicable arrangement, if possible by contact on parallel levels, as to the coefficients applicable according to the nature of these activities and taking into account the special circumstances under which they may be pursued,

and reserves the possibility of taking a decision on other principles in cases where governments are not bound by international conventions as alluded to above.

SUJETS PROPOSÉS PAR LE COMITÉ DES SUJETS POUR LE CONGRÈS DE L'I.F.A. DE 1955.

I. Le poids de la double taxation des bénéfices réalisés et répartis par les sociétés de capitaux.

Die Doppelbelastung der Anteilseigner von Kapitalgesellschaften durch die Körperschafts- und Einkommensbesteuerung.

Double tax burden on earned and distributed profits of limited companies.

II. Le cumul des revenus du foyer familial au double point de vue de l'établissement et du recouvrement de l'impôt.

Die Veranlagung und Eintreibung der Einkommensteuer bei der Haushaltsbesteuerung.

The common assessment and collection of income tax for members of one household.

III. (Sujet d'étude). Les doubles impositions internationales en matière de taxe sur le chiffre d'affaires.

Internationale Doppelbesteuerung bei der Umsatzsteuer.

International double taxation in the field of turnover tax.

SUJET PROPOSÉ POUR LE PRIX MITCHELL B. CARROLL 1955.

L'impôt et l'auto-financement des entreprises.

Besteuerung und Selbstfinanzierung der Unternehmen.

Taxation and backploughing of profits of the enterprise.

IIème CONGRESS PENAL ET PENITENTIAIRE ESPAGNOL-PORTUGAIS-AMERICAIN-PHILIPPIN

(Sao Paulo, Brésil, 20-25 Janvier 1955).

Ce congrès a été convoqué par l'Instituto Penal y Penitenciario du même nom (Avenida de los Reyes Católicos, Ciudad Universitaria, Madrid), qui a tenu son 1er Congrès à Madrid en 1952, et réunira des spécialistes renommés de langues ibériques pour discuter des thèmes intéressants tels que le Code Pénal unique, Délinquants habituels, Travail pénitentiaire, Prison-école, Patronage Pénitentiaire et postpénitentiaire, Elargissement des attributions des Tribunaux pour enfants, Etude juridique, pénal et pénitentiaire de l'indien, Unification de la terminologie psychiatrique dans les lois pénales, Avantprojet de convention ibéro-américain sur prévention et répression du faux monnayage et Liste des infractions à inclure dans les traités d'extradition ibéro-américains et philippins.

La Présidence de la Commission organisatrice est confiée au Prof. Dr. José Loureiro Junior, Rua 7de Abril, 404, 2° andar, Sao Paulo (Brésil).

U.S.A.

The Bill H.R 8300 to revise the Internal Revenue Laws of the United States II (extract). [1]) [2])

XI. Pension, Profit-sharing, and Stock-bonus plans.

The bill continues the present policy of granting tax advantages to encourage the growth of qualified pension, profit-sharing, and stock-bonus plans. Contributions made by employers to qualified plans continue to be deductible at the time they are made. The earnings of qualified trusts which are established to administer the plans are exempt from tax except for unrelated business income. Moreover, as under present law, employees covered under qualified plans are not taxed on contributions made for them by their employers until they receive the benefits.

A. *Tax treatment of employees receiving benefits.*

As under present law, the bill provides that employees are not to be taxed on contributions made by employers on their behalf either in the form of payments to a qualified trust or as premiums under a qualified insured plan. Covered individuals would be taxed on benefits as they receive them, to the extent that such benefits exceed their own contributions. The annuity rule would be used to determine the taxable and non-taxable portions of the benefit.

The committee's bill provides that employees covered by non-qualified plans (including deferred compensation contracts) are to be taxed only on the receipt of benefits.

The committee's bill provides long-term capital gains treatment for lump-sum distributions from both trustees and insured plans if they are qualified, which are made either because of separation from service or because of the death of the covered individual after retirement.

B. *Tax treatment of payments by an employer.*

Subject to limitations, employers under present law may take deductions for payments to a qualified stock bonus, pension, or profit-sharing trust or plan at the time the contributions are made. The provisions in the bill retain this treatment for payments to qualified trusts or plans although some changes are made in the limitations on these deductions. The more important of these are summarized below:

(1) At present, employer deductions to qualified pension plans are generally limited to 5 percent of the wages and salaries of covered employees, although greater deductions may be taken if substantiated by the actuarial cost of the plan. The bill raises the allowable deduction to 10 percent of the wages and salaries of the covered employees, with greater deductions allowable if they can be substantiated on the grounds of actuarial cost. However, after past service cost have been met, deductions are limited to current normal costs.

(2) In the case of profit-sharing plans under present law, it is possible

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[1]) House Report no. 1337.
[2]) Continued from *Bulletin* Vol. VIII nr. 3/4.

to obtain a deduction for the purchase of retirement annuities only if purchased through a trust. The committee provision permits deductions for these amounts even though not purchased through a trust, if purchased under a qualified plan.

(3) The committee provisions permit affiliated corporations to act as a unit in making deductible contributions under profit-sharing plans. Present law forbids deductions for contributions with respect to employees of any company in the group which has lost money (and has no accumulated earnings). The committee provision would permit deductions for contributions for these employees if the group as a whole has income (or accumulated earnings).

The committee's bill grants the employer a deduction for contributions to nonqualified plans (including deferred compensation contracts) but defers the taking of the deduction until the time the funds are paid or made available to the employee. The employer cannot take a deduction when he makes his contribution unless the benefits are immediately paid to the employee.

C. *Requirements for qualified plans.*

The coverage requirements adopted by the committee are more specific and more liberal than the present requirements but are carefully limited to prevent discrimination. The following are examples of nondiscriminatory categories of employees which an employer may use in setting up a pension, profit-sharing, or stock-bonus plans:

(1) Employees compensated on an hourly basis.
(2) Employees compensated on a salary basis.
(3) Employees who have been employed for a minimum period not exceeding 5 years.
(4) Employees whose annual compensation exceeds a specified amount not greater than $ 4,000.
(5) Employees who have reached 35 years of age or any lesser age.
(6) Employees employed in a designated plant, division, department, or other operating unit of the employer.

However, non-discriminatory plans are not limited to these classifications and the employer may establish other non-discriminatory classifications including combinations of these six categories.

For pension or annuity plans the ratio of contributions and benefits to wages or salaries must not be higher for a highpaid employee than a low-paid employee, except that the first $ 4,000 of wages paid (approximating social-security coverage) can be ignored in establishing the benefits.

For profit-sharing or stock-bonus plans 75 percent of the employer's contributions must be allocated to employees on the basis of their total compensation, including the first $ 4,000 of earnings. The remaining 25 percent of the contributions, in order to leave flexibility to increase-work incentives, may be allocated as the employer sees fit. However, the contributions made on behalf of any employee cannot be more than twice as high a portion of wages as contributions for any other employee.

D. *Tax treatment of an employee's exempt trust.*

Under the committee's bill, qualified pension trusts are treated in the same manner as tax-exempt educational foundations under present law. While the income of these trusts generally will be exempt, a tax is to be imposed on "unrelated business income" derived from the active conduct of a business or from rental income from certain lease arrangements. This is provided in order to place trusts engaging in these activities on the same tax basis as business competitors.

In addition, certain restrictions are placed on the investments of the

trusts. To insure diversification in the investment of funds and to protect the interests of covered employees, the trust's investments in securities of any one company may not exceed 5 percent of the value of the assets of the trust or more than 10 percent of the voting power of the stock of the company. The first of these restrictions also applies to parcels of real estate. These investment restrictions do not apply to existing investments, to investments in the employer corporation (or its parent or subsidiaries), to annuity or retirement-income contracts, to Government securities, to cash items, or to investments in regulated investment companies.

The income of a trust not qualified or not meeting the investment restrictions or which engages in certain prohibited transactions is fully subject to tax.

XII. Employee stock options.

The bill retains the present "restricted stock option" provision but makes certain changes to eliminate ambiguities, to provide more definite rules with respect to problems raised since this provision was first enacted and to further the use of stock options as incentive devices.

The bill provides that the exercise of "restricted stock options" by the estate or beneficiary of a deceased employee is to have the same tax effect as if the employee had exercised the option. In addition, the estate tax attributable to the inclusion of the option in the decedent's estate is to be allowed as a deduction for income tax purposes in the year in which the estate or beneficiary has an increased income as a result of disposing of the stock acquired under the option.

A further clarification provides that variable price options may qualify as "restricted stock option". The bill provides that these options are to qualify as restricted stock options if the option price is within 85 percent of the value of the stock at the time the option was granted, and the other qualifications of restricted stock options are met.

The bill also provides that changes in the terms of a restricted stock option, exercisable over a period of 10 years or less, which are attributable to the reorganization of the employer corporation are not to be considered a modification requiring a new option price.

The committee also provided that any options granted after the enactment of this bill in order to qualify as restricted stock options may only be exercisable over a period of 10 years or less.

The bill provides that if the option price at the time the option is granted is at least 110 percent of the value of the stock at that time and the option is exercisable over a period not exceeding 5 years an employee, even though owning more than 10 percent of the stock of his employer, can receive a "restricted stock option".

XIII. Accounting provisions.

A. *Prepaid income.*

The committee's bill permits accrual basis taxpayers to defer the reporting of advance payments as income until the year, or years, in which, under the taxpayer's regular method of accounting, the income is earned. However, it provides that the period over which the prepayments may be deferred cannot exceed 5 years after the year of receipt.

Where amounts are received in advance and are not to be earned within the 5 year period, taxpayers who have so elected are to take the prepayments into account ratably over the period of the taxable year of receipt and the 5 succeeding taxable years.

B. *Reserves for estimated expenses.*

The committee's bill conforms the tax treatment of expenses more closely to general business treatment by permitting an accrual-basis taxpayer to deduct reasonable additions to reserves for estimated expenses. The expenses must be related to income taxed during the year (except for adjustments or corrections of previously established reserves) and must be allowable deductions which the Secretary or his delegate is satisfied can be estimated with reasonable accuracy.

The election to establish reserves for estimated expenses is not available with respect to any deduction attribuatble to income reported in a taxable year beginning before 1954, or to prepaid income which the taxpayer has elected to defer.

C. *Initial payment before use of installment method.*

The committee's bill provides that in the future in the case of a sale of real property or a casual sale of personal property there need be no payment made in the taxable year in which the sale occurs.

D. *Change of method from accrual to installment.*

The bill provides that a taxpayer shifting from the accrual to the installment method of accounting is not to be taxed twice on the same income. The tax attributable to an amount included in income for the second time is eliminated or is at least decreased to the extent of the tax attributable to its inclusion under the earlier method of accounting.

E. *Other changes in methods of accounting.*

The committee's bill provides that the necessary transitional adjustments will be made in all cases where there is a change in method of accounting, whether the change is voluntary or involuntary. It also provides an averaging device where the taxpayer has had at least 2 years' experience under the old method of accounting and where the transitional adjustments result in an increase in his taxable income of more than $ 3,000 in the year of change. The averaging device to be used provides that the tax of the person making the change is not to be increased by more than it would be if the net transitional adjustment were spread evenly over the year of the change and the 2 preceding years.

F. *Accrual of real property taxes.*

The bill provides that an accrual basis taxpayer may in the future accrue a real property tax ratably over the period for which the property tax is imposed.

G. 52 *or* 53-*week year accounting periods.*

Under present law the accounting period used by a taxpayer in computing taxable income must end on the last day of a calendar month. Corporations in certain industries (e.g., retail sales, meat packing, radio and television) for business reasons close their annual accounting period on a particular day of the week rather than on the last day of the month. The books of these corporations are closed on whatever date a particular day of the week occurs for the last time in a calendar month (or falls nearest to the end of a calendar month). As a result their annual accounting periods consist of 52 weeks (364 days) in 5 out of 6 years, and 53 weeks in the sixth year.

The committee bill enlarges the term "fiscal year" to include this 52-53-week period.

XIV. Tax-exempt organization.

The committee has extended unrelated business income tax to exempt pension, profit-sharing and stock bonus trusts. Under the "unrelated business

income" tax, educational, charitable and certain other organizations presently are subject to tax on their rental income derived from leases, for more than 5 years, to the extent of their outstanding indebtedness which was incurred to acquire or construct the leased property.

It has been called to the attention of the committee that certain exempt organizations have been avoiding this tax by continuous renewals of leases less than 5 years. To eliminate this avoidance device, the committee's bill subjects rental income to the unrelated business income tax in the case of these exempt organizations where the lease is for 5 years or less, but the same business tenant occupies the property for more than 5 years. However, in such cases, the tax is to become applicable only in the sixth year in which such a tenant occupied the leased property. As in the case of leases for more than 5 years, the tax is to apply only to the extent outstanding borrowed funds were used to acquire or construct the leased property.

XV. Corporations used to avoid income tax on shareholders.

A. *Accumulated earnings tax.*

(1). *Burden of proof.*

Under the committee's bill, the taxpayer may, upon receipt of notice of a proposed deficiency with respect to the accumulated earnings tax, file a statement of the grounds (together with sufficient facts to apprise the Secretary or his delegate of the basis thereof) on which the taxpayer relies to establish the reasonableness of the accumulation. If the taxpayer submits such a statement within the proper time, the burden of proof will be upon the Government as to whether the accumulation is in excess of the reasonable needs of the business. If the taxpayer does not file such a statement, it must bear the burden of proof as under existing law.

In addition, if the taxpayer presents grounds in its statement which are not supported by the facts in such statement, the burden of proof with respect to these grounds must be borne by the taxpayer. If the Secretary or his delegate fails to give the taxpayer notification prior to the issuance of a notice of deficiency, then the Government must bear the burden of proof even though the taxpayer has filed no statement.

(2). *Reasonable needs of the business.*

The committee has expressly provided in the statute that the reasonable needs of the business shall include the "reasonable anticipated" need of the business. It is contemplated that this amendment will cover the case where the taxpayer has specific and definite plans for acquisition of buildings or equipment for use in the business. It would not apply where the future plans are vague and indefinite, or where execution of the plans is postponed indefinitely.

The criticism has also been made that, in determining the reasonable needs of the business, consideration has been frequently given to events occuring after the close of the taxable year. The committee is of the opinion that only the facts as of the close of the taxable year should be taken into account in determining whether an accumulation is reasonable. If the retention of earnings is justified as of the close of the taxable year, subsequent events should not be used for the purpose of showing that the retention was unreasonable in such year. However, subsequent events may be considered to determine whether the employee has actually consummated the plans for which the earnings were accumulated.

The committee is of the opinion that where the taxpayer has 80 percent or more of the voting stock of another corporation, the taxpayer should be viewed as though it engaged directly in the business of such other corpora-

tion. If the taxpayer's ownership of stock is less than 80 percent in such other corporation, a factual determination should be made as to whether the funds so invested are employed in a business operated by the taxpayer. However, the operation, through stock ownership of a personal holding company, an investment company, or a corporation not engaged in the active conduct of a trade or business, should not provide a basis for the exclusion of the funds so invested from possible application of the accumulated earnings tax.

(3). *Accumulated earnings credit.*

Under the committee's bill, an accumulated earnings credit is allowed for the first $ 30,000 of earnings and profits accumulated by the corporation. Earnings and profits in excess of $ 30,000 may, of course, be retained if held for the reasonable needs of the business.

(4). *Publicly held companies.*

Inasmuch as the area of tax avoidance through retention of corporate earnings is confined to closely held companies, the committee has provided a specific statutory exception for any corporation which has more than 1,500 shareholders and no more than 10 percent of the stock of which is held by any individual (including the members of his family). The corporation must demonstrate its right to the exception by showing that it meets the stock ownership requirement.

(5). *Computation of accumulated earnings tax.*

The bill provides that the foreign tax credit is to be allowed in determining the amount subject to the accumulated earnings tax. The corporation will also be given credit in computing the accumulated earnings tax, for dividends paid not later than the 15th day of the 3d month following the close of the taxable year.

B. *Personal holding companies.*

The committee has retained the provisions of present law which impose a special tax on the undistributed income of personal holding companies.

Under the committee's bill, the personal holding tax has been integrated with the income tax so that a single return will serve the purposes of both taxes. It is anticipated that the Internal Revenue Service will provide a separate schedule to be filed by companies subject to this tax.

The integration of the taxes will eliminate the problem that arises under present law when a corporation subject to the tax fails, because of negligence or poor advice, to file a personal holding tax return. Under the bill, the filing of an income tax return will begin the running of the statute of limitations for both taxes. However, the period of limitation for assessment is extended to 6 years with respect to the personal holding company tax if the corporation fails to furnish information as to its stock ownership and items of personal holding company income.

Under existing law a corporation first becomes subject to the personal holding company provisions only if it meets two tests: 80 per cent or more of its gross income is personal holding company income as defined in the statute and 50 percent or more of its stock is owned by five or fewer individuals (including members of their families). If in any 1 year the corporation meets the 80 percent income test, then the percentage test is 70 percent for each of the next 3 years. The committee is of the opinion that the applicable percentage for the income test should be the same in each year and accordingly has eliminated the 70 percent test. The single 80 percent income test will provide for more uniform treatment of taxpayers and will avoid the entrapment of taxpayers which may occur under present law.

The bill provides that an exempt organization or charitable trust is to be counted as an individual in determining whether 50 percent or more of the stock is owned by five or less individuals.

The definition of personal holding company income has been amended in two respects. Under present law cases of hardship frequently arise when a corporation rents property to its principal stockholders. Such rental income is treated as personal holding income and the corporation may be subject to the penalty tax. This provision was originally inserted in the law with respect to incorporated yachts and residence but has been applied in the case of many legitimate business enterprises. The committee has provided that such rental income is not to be treated as personal holding company income unless the corporation has other personal holding company income amounting to 10 percent or more of its total gross income. In the absence of appreciable amounts of other investment income, rental income received from shareholders does not constitute a tax avoidance problem. Another amendment to the definition of personal holding company income provides that gains from the sale of securities or commodities are not to be considered as gross income to the extent of the losses on such sales. Thus gross income and personal holding company income will reflect only the net gains from such transactions.

The bill permits taxpayers who have been deducting taxes when paid to continue to do so but such taxpayers may, if they so desire, make an irrevocable election at any time to change to the accrual method.

The deduction allowed for taxes in computing amounts subject to the personal holding company tax has been extended to include foreign taxes claimed as a credit for income tax purposes. However, the deduction for taxes may not include the alternative capital gains tax. The exclusion of the capital gains tax is made because capital gains are not subject to the personal holding company tax. Other amendments to the personal holding company provisions include technical revision of the 1 year net operating loss carryforward allowed to personal holding companies, and limitation of the provision of present law which excludes amounts subject to a lien from the personal holding company tax.

XVI. Worthless Stock in Affiliated Banks.

Under present law, losses on completely worthless stock or securities owned in an affiliated corporation are allowed as an ordinary loss if 90 percent of the aggregate gross income of the affiliated company for all taxable years was derived from sources other than investment income. In the past banks have not qualified for this tax treatment because most of their income is derived from investment sources.

The bill removes this restriction in the case of banks by treating stock held in an affiliated bank as a noncapital asset. This provision places banks on a parity with other business corporations. Although the principal qualification of other types of business affiliates entitled to such tax treatment is non-investment income, this rule was adopted to limit the tax benefits to companies whose affiliates were engaged in the same general type of business as the parent, rather than those used as a dumping ground for undesirable investments. Since loans and investments are the stock in trade of banks, it appears discriminatory not to allow banks a similar opportunity to take an ordinary loss on worthless stock in an affiliated company.

XVII. Natural Resources.

A. *Rates of percentage depletion*

The committee has continued the present rates of percentage depletion of 27½ percent for oil and gas, 23 percent for sulfur, and 15 percent for

metals. The classes of non-metallics in the present 15-, 10-, and 5- percent gross income categories were modified somewhat to clarify present law and to provide a grouping that is administratively more feasible and competitively more equitable. Under this revision there are a few increases, but no reductions, in the rates of percentage depletion allowed by present law and regulations.

Under the new provision depletion allowances, other than those for oil, gas, and sulfur are divided into two groups: specific items depletable at 15, 10, and 5 percent and another general class for all other minerals. The specific 15-percent group contains: Metal mines, rock asphalt, vermiculite, slate, chemical and metallurgical limestone and ball, china, and sagger clay.

The specific 10-percent group contains: Asbestos, brucite, coal, lignite, perlite, and wollastonite.

The specific 5-percent category includes all the items presently listed at 5 percent except slate which has been raised to the 15-percent class, and in addition the 5-percent class is to include peat and mollusk shells.

All other minerals not specifically listed are placed in a general class to receive percentage depletion at the rate of 15 percent, subject to the limitation that if they are used for the same purposes for which stone is commonly used, they are to be regarded as stone and entitled to a percentage depletion rate of 5 percent.

B. *Definition of income from property.*

Under present law and the bill, the gross income rates referred to above are applied to "gross income from the property" This is defined as gross income from mining, and "mining" in turn is defined as the extraction of the minerals, the "ordinary treatment processes" normally applied to obtain commercially marketable mineral products and certain transportation. Present law also lists a number of specific processes that are considered to be ordinary treatment processes.

The bill continues these definitions except in three respects. In the case of magnesite, burning is to be regarded as an ordinary "treatment process" and in the case of talc, fine pulverizing is to be regarded as such a process. The present definition of "sulfur processing" is specifically related to the Frasch process, so that the general rule for ordinary treatment processes is to be available for sulfur produced in other ways.

C. *Definition of mineral property.*

The committee has clarified the situation with respect to depletable properties by adding a statutory definition of "the property". This provision adopts as the general rule the same definition relating to separate interests now established by regulations. In addition, however, the new provision permits a taxpayer to elect to treat as one property an aggregation of his separate operating mineral interests which constitute all or part of an operating unit.

D. *Mine tailings*

The committee's bill would extend percentage depletion at the appropriate rates to mine owners for minerals recovered from the residue that had accumulated from their mine.

E. *Gain or loss in the case of timber and coal.*

The committee has adopted a provision identifying the expenses in connection with the sales, or with the receipts of royalties from leases, which are proper offsets against capital gain and which are properly applicable against ordinary income. In addition the word "owner" in the case of certain sales of coal has been defined to mean any person who owns an economic interest in coal in place, including a sublessor.

XVIII. Estates, Trusts, and their Beneficiaries.

A. *General rules.*

As under present law, the committee's bill provides that trusts and estates are to be taxable on their earnings after allowance for certain credits, deductions and distributions to beneficiaries.

The credits and deductions provided are substantially the same as under present law with two exceptions:

(1) The deduction for a personal exemption was increased from $100 to $ 300 (the present $ 600 for estates remains unchanged) to eliminate the taxation of small amounts of capital gains realized by currently distributable trusts.

(2) An exclusion is allowed for the first $ 50 or $ 100 of dividend income and a tax credit equal to 5 percent or 10 percent of any remaining income, to align the tax treatment of trusts and estates with the general dividends received provision.

The bill adopts the general principle that to the extent of the trust's current income all distributions are deductible by the estate or trust and taxable to the beneficiaries. This approach represents a basic departure from the general rule of the existing law that taxable distributions must be traced to the income of the estate or trust for the current year.

This approach, however, requires the use of a measure to impose an outside limit on the total distributions deductible by the estate or trust and taxable to the beneficiary. In general, the measure adopted by the bill for this purpose is taxable income, computed without regard to capital gains and losses unless these gains and losses are utilized in determining the income available for distribution. The bill adheres to the conduct theory of the existing law. This means that an estate or trust is in general treated as a conduit through which income passes to the beneficiary. In order to implement this theory in a satisfactory manner, it is necessary to include in the measure items of income and deductions which are not reflected in taxable income. The bill adopts the concept of "distributable net income" as the measure and adjusts the amount of the distributions deductible by the estate or trust and taxable to the beneficiaries by eliminating not only capital gains and losses but items of income and expenses which do not enter into the computation of taxable income. Thus, the distributable net income of an estate or trust is defined as its taxable income for the current year, excluding capital gains and losses not distributed by the estate or trust, the portion of extraordinary cash dividends and taxable stock dividends allocated to principal (in the case of simple trusts described below), and the dividends received exclusion, but including tax-exempt interest and foreign income of foreign trusts.

B. *"Simple" trusts.*

A trust (but not an estate) may qualify under the committee's "simple trust" provisions if all of its income is required to be distributed currently and it makes no charitable distributions. If it makes occasional ditribution out of principal it is disqualified only for the years in which the principal is distributed.

Qualifying trusts are allowed to deduct distributions made to the extent of their distributable net income and beneficiaries are required to include the distributions in their incomes for tax purposes only to the same extent.

The bill specifically provides that the character of the income to the beneficiaries is to be the same as it was to the trust (e.g., capital gains to the trust are capital gains to the beneficiaries) and a specific rule is provided to divide up the various types of income among the beneficiaries.

C. *"Complex "trusts and estates.*

For all estates and trusts not qualifying under the simple trust provision (including discretionary trusts, trusts with charitable beneficiaries, and trusts making current distributions but also making distributions of principal) deductions are —

(1) first allowed for distributions required to be made currently, and

(2) then, if any distributable net income remains, allowed for any other amounts distributed (other than gifts or bequests) but only to the extent of the remaining distributable net income.

In the case of these trusts or estates which may have paid out or set aside amounts for charitable purposes, their taxable income, and therefore their distributable net income, is already reduced by such amounts.

The beneficiaries of these trusts (or estates) are required to include in their income for tax purposes, distributions made to them out of income required to be distributed currently and then other distributions made to them allowed as a deduction to the trust.

The bill specifically provides that the income to the beneficiaries, as in the case of the simple trusts, retains the same character it had in the hands of the trust, with each beneficiary considered as receiving his proportionate share of all types of the income distributed.

Upon termination of the trust (or estate) any of its net operating loss or capital loss carryovers which have not been used are to be made available to the distributees. At present these loss carryovers are wasted.

D. *Five-year throwback rule.*

The committee's bill provides that distributions by a trust in excess of its distributable net income for the current taxable year will be "thrown back" to each of the five preceding years in inverse order and will be taxed to the beneficiaries to the extent that the distributable net income of those years was not, in fact, distributed.

E. *"Clifford" type trusts.*

The committee's bill also provides rules to determine when a trust's income is to be taxed to the grantor because of the grantor's substantial dominion and control over the trust property or income.

The committee believes that the rules for determining when the grantor should be treated as the substantial owner of the trust should be set forth in the statute rather than left to regulations. Thus, the bill includes specific provisions to this effect in the estate and trust chapter. These provisions generally adopt the approach of the regulations (and the two provisions of existing law) but with important modifications.

Under the committee's bill the grantor is not to be taxed by reason of a reversionary interest in an irrevocable trust unless the reversion may occur within 10 years. If the beneficiary is a designated school, hospital, or church, the grantor is to be taxable because of a reversionary interest only if the reversion will occur within less than 2 years.

Under the bill, the grantor will not be taxed if he can establish that the related or subordinate trustee is not acting in accordance with the grantor's wishes.

However, the grantor must overcome a presumption that the related or subordinate party is subservient to him. The bill makes a specific exception to the effect that a power to apply the income for support of dependents is not to result in the trust income being taxable to such other person unless the income is actually applied for the support of dependents.

XIX. Income in respect of decedents.

The committee's bill gives relief in the situation of present law by providing that a right to income received from a decedent, or a prior decedent, is to be includible in the income of the recipient with an offsetting deduction for any estate tax attributable to such property.

The committee's bill provides that if the estate or trust makes a distribution of income in respect of the decedent, the deduction for the estate tax is to be given to the recipient beneficiary, instead of the estate or trust.

Under existing law, gain on uncollected installment obligations, is treated as realized on the death of the decedent. An exception is provided to this rule, however, if a bond is filed which is conditioned on the subsequent reporting of the gain on the obligation by the person who acquires the obligation from the decedent.

The committee's bill eliminates the necessity of this bond requirement by providing that in all cases the uncollected installment obligations are to be treated as income in respect of the decedent. The recipient will therefore report the installment gain in the same manner as if it had been received by the decedent. Also the recipient will be entitled to a deduction for any estate tax attributable to inclusion in the decedent's estate of the right to the installment income.

XX. Partners and Partnerships.

A. *General rules.*

(1) *Income of partners.* — Under the committee's bill, as under present law, partners will be liable individually for income tax on their distributive shares of partnership income. The bill provides that the partnership will act as a mere conduit as to income and loss items, transfering such items directly to the individual partners.

The bill provides that all elections with respect to income derived from a partnership (other than the election to claim a credit for foreign taxes) are to be made at the partnership level and not by the individual partners. This rule recognizes the partnership as an entity for purposes of income reporting. It avoids the confusion which would occur if each partner were to determine partnership income separately for his own purposes.

(2) *Distributive shares.* — The taxation of partnership income or other items directly to the partners requires a determination of each partner's share of such items. In general, such shares will be determined in accordance with the partnership agreement as existing practice.

Under the approach adopted by the committee, the allocation of gain or loss and of depreciation is to be in accordance with the distributive shares of the partners generally.

(3) *Taxable years of partners and partnerships.* — The bill provides, in general, that a partnership may not, without the consent of the Secretary or his delegate, either adopt a fiscal year or change from a calendar year to a fiscal year. The same requirement is made applicable to partners shifting from a calendar year to a fiscal year basis.

Under present law the death of a partner may result in the closing of the partnership year and the bunching of more than a year's income in the decedent's last year. Where the partnership and the partners are on different taxable years, this rule may have the effect of concentrating as much as 23 months' income in the final return of the deceased partner, that is, the income for the partnership year ending within his taxable year and the income for the taxable year closed by the partner's death. The bill provides relief in this situation by preventing the partnership year from closing on the death of the partner. The partnership year will then

run to its normal conclusion, and the decedent's share of the income for such year will be taxable to the estate. To the extent that the right to receive such income constitutes income in respect of a decedent, the estate is entitled to a deduction for estate tax attributable to the inclusion of such right in the decedent's estate.

The bill further provides that the taxable year of a partnership is not to close as a result of the admission of a new partner, the liquidation of a partner's interest by means of a distribution, or a sale or exchange of a partner's interest in the partnership.

(4) *Transaction between partner and partnership.* — The bill provides that payment of a fixed or guaranteed amount for services shall be treated as salary income to the recipient and allowed as a business deduction to the partnership.

B. *Distributions by a partnership.*

Under the bill, any property distributed by the partnership to a partner will, in general, have the same basis to the distributee partner as in the hands of the partnership, i.e. a "carryover" basis. The money and property distributed will be applied in reduction of the basis of the interest of the distributee partner. After the basis of his interest has been used up, any further distribution of money or property will be taxed as capital gain to the distributee.

The distribution of money or property does not result in gain or loss to the partnership. Gain or loss is recognized to the recipient partner only in two cases. Gain is recognized, as indicated above, where the basis of any money or property received by a partner exceeds the basis of the partner for his interest in the partnership. The recognition of gain may occur either in a current distribution not affecting the partner's interest in the partnership or in a distribution which reduces or terminates the partner's interest in the partnership. The recognition of loss is limited to a distribution terminating the interest of the partner. In such a liquidating distribution, capital loss is recognized to the extent that the basis of the partner for his interest in the partnership exceeds the fair market value of the property distributed.

An exception is made to the use of the "carryover" basis where the basis of the property distributed exceeds its value at the time of the distribution. In this situation, safeguards were necessary to prevent the distribution, for tax-avoidance purposes, of property with respect to which there is a potential loss upon sale or exchange.

Accordingly, when the basis of the distributed property is greater than the fair market value of such property, the basis of the property to the distributee is reduced to such fair market value. The partnership, however, is permitted te retain this "unused basis" and apply it to similar property held by the partnership.

Consistent with the use of the "carryover" basis, the holding period to the partner of distributed property includes the holding period of the property to the partnership.

A special rule has been provided for the purpose of distinguishing bona fide distributions which are subject to the rules discussed above from transactions involving a loan by the partnership to the partner. When a partner is obligated to make repayment to the partnership with respect to money or property received from the partnership he will be treated as receiving a loan to the extent of his obligation, and no reduction will be made in the basis of his interest. If, however, such an obligation is canceled by the partnership without repayment, the partner will then be considered to have received a distribution equal to the amount of debt canceled. The transfer of property subject to an obligation to make repayment is treated

as a sale by the partnership, so that gain or loss will be recognized to the partnership.

C. *Transfer of an interest in a partnership.*

1. *General rules.*

The general rule that the sale of an interest in a partnership is to be treated as the sale of a capital asset is retained. In general, the transfer of an interest will not affect the basis of partnership assets. Provision is made, however, whereby the partnership may elect to adjust the basis of partnership assets to reflect the increase or decrease in the basis of partnership interest transferred by sale or upon the death of a partner. Such an election, once filed, is irrevocable until the termination of the partnership and will require similar basis adjustments with respect to all future transfers of partnership interest. By making adjustments to the basis of partnership assets, the same effect is achieved as though the partnership had dissolved and been reformed, with the transferee of the interest as a member of the partnership. The increase or decrease in the basis of partnership assets may be allocated to such assets in accordance with their respective bases or in any other equitable manner approved by the Secretary or his delegate.

2. *Unrealized receivables or fees and inventory or stock in trade.*

The bill provides that, if in connection with the transfer of a partnership interest, the partner receives any amount attributable to his share of (1) the unrealized receivables and fees of the partnerships or (2) substantially appreciated or depreciated inventory or stock in a trade, such amounts are to be treated as ordinary gain or loss. In effect, the partner is treated as though he disposed of such items independently of the rest of his partnership interest.

Since an ordinary income tax is paid by the seller on these items, the purchaser of an interest is permitted to exclude from his gross income an amount equal to the income recognized by the seller with respect to such items. This amount may be spread ratably over the period of time in which it is estimated that the unrealized receivables and fees will be collected or the inventory will be disposed of, or may be allocated in any other equitable manner which is approved by the Secretary.

A decendent partner's share of unrealized receivables and fees will be treated as income in respect of a decedent. Such rights to income will be taxed to the estate or heirs when collected, with an appropriate adjustment for estate taxes. However, a decedent's share of appreciated or depreciated inventory or stock in trade is not treated as income in respect of a decedent. The decedent's interest in such inventory or stock in trade will be increased or decreased in basis in the same manner as other property held by the decedent. The change in basis at the time of death will not be reflected in the basis of partnership assets but will be used by the estate or heir as an adjustment to the income received on the disposition of such property. The estate or heir is thus treated in the same manner as a purchaser with respect to the decedent's interest in appreciated or depreciated inventory or stock in trade.

The term "unrealized receivables or fees" is used to apply to any rights to income which have not been included in gross income under the method of accounting employed by the partnership. The provision is applicable mainly to cash basis partnerships which have acquired a contractual or other legal right to income for goods or services. "Substantially appreciated or depreciated inventory or stock in trade" includes any noncapital assets, the value of which exceeds by more than 20 percent the basis of such inven-

tory and exceeds by more than 20 percent the basis of all partnership property other than money.

The treatment thus provided upon the sale of an interest in income items is also extended to any distribution by the partnership to a partner which has the same effect as a sale of such ordinary income or loss items.

The provisions relating to unrealized receivables or fees and appreciated or depreciated inventory are necessary to prevent the use of the partnership as a device for obtaining capital-gain treatment on fees or other rights to income. Amounts attributable to such rights would be treated as ordinary income if realized in normal course by the partnership. The sale of a partnership interest or distributions to partners should not be permitted to change the character of this income. The statutory treatment proposed, in general, regards the income rights as severable from the partnership interest and as subject to the same tax consequences which would be accorded an individual entrepreneur.

D. *Payments to a retiring partner or a successor in interest of a deceased partner.*

When a retiring partner or the successor of a deceased partner receives a share of partnership income in return for the complete relinquishment of the interest in the partnership, the distributions will be allocated between (a) payments for the value of the capital interest and (b) other payments. Such allocation will be made in accordance with regulations prescribed by the Secretary or his delegate.

The amounts paid for the capital interest of the withdrawing partner are treated in the same manner as a distribution. The remaining partners, of course, are allowed no deductions for such payments. Essentially, these payments represent a purchase by the remaining partners of the withdrawing partner's capital interest in the partnership. For this purpose payments for a "capital interest" do not include amounts attributable to a partner's interest in unrealized receivables and fees amounts paid for substantially appreciated or depreciated inventory, and amounts paid for good will in excess of its fair market value.

A different treatment is provided for the portion of the payments to a withdrawing partner which is not made in exchange for the capital interest of such partner. Such payments are treated as a distributive share of partnership income to the withdrawing partner. Thus, they are taxable to the withdrawing partner in the same manner as if he continued to be a partner and are excluded in determining the income of the remaining partners. However, if such payments are continued for a period of more than 5 years after the retirement or death of the partner, they are treated as a gift from the remaining partners to the withdrawing partner. As a gift, the payments made after 5 years are taxable to the remaining partners (with no increase in the basis of such partners for their interest in the partnership) and are exempt from income tax in the hands of the recipient.

Where a retiring partner receives a lump sum or fixed payments determined without regard to the income of the partnership, the portion of such payments attributable to the capital interest of the retiring partner is to be treated as the purchase of a capital interest by the remaining partners. The balance, however, will be treated like a salary paid by the partnership. It will constitute ordinary income to the recipient and a deduction to the partnership. Payments of this nature, however, are subject to the 5-year limitation.

XXI. Temporary Formula for taxing life-insurance companies.

Under the temporary flat rate tax provisions, companies whose earnings are less than or only slightly above the amount of interest required to

meet their own policy obligations receive a special credit which may reduce their tax by as much as one-half. First adopted in 1951 as a temporary expedient, these provisions were successively extended to 1952 and 1953.

The committee's bill provides for the extension of these provisions for 1 more year because with its extensive code revision work the committee has not as yet been able to devote the necessary study to the revision of the tax treatment of life-insurance companies.

XXII. Regulated Investment Companies.

A. *Foreign tax credit.*

The committee's bill permits the shareholders of regulated investment companies to take the foreign tax credit for foreign income and similar taxes paid on the investment income of the company in the same manner as if they had held the foreign investment themselves. However, the passing on of the foreign tax credit is to be limited to situations in which more than 50 percent of the value of the assets of the regulated investment company is invested in foreign securities. This restriction is added for administrative reasons to deny the passing on of the credit where only incidental holdings of foreign securities are involved.

B. *Dividends-received credits.*

Under the committee's bill, if more than 25 percent of the income of the regulated investment company is from interest, both the dividends-received deduction for corporations and the dividend exclusion and credit for individuals provided by this bill are to be available only on the portion of the regulated investment company's distributions which actually represents dividend income. If less than 25 percent of the company's income is from interest, the dividend credits and allowances will apply to the entire distribution by the regulated investment company. Capital-gain dividends distributed by regulated investment companies will not be eligible for either corporate or individual dividend allowances.

XXIII. Foreign income.

A. *Fourteen-point rate reduction for foreign income.*

The bill provides that a corporation is to be entitled to a credit against tax equal to 14 percent of certain types of income derived abroad. These types of income include:

1. Income derived through branches engaged in business activity of a specified nature described below.

2. Income received as payment for skilled technical and engineering services abroad.

3. Dividends and interest received from a foreign corporation engaged in business of a specified character with which the domestic corporation maintains a close economic relationship, through stock ownership or otherwise.

In line with the committee's objective that differential tax treatment be restricted to enterprises actively engaged in significant economic activity abroad, dividends received from a foreign corporation are to be eligible for the preferential rate only under the following circumstances:

(1) The foreign corporation must derive 95 percent of its earnings outside the United States and 90 percent from the active conduct of a trade or business. The active conduct of a trade or business is defined to exclude enterprises engaged largely in the importation and sale of goods without conducting any other significant economic activity in the foreign country.

(2) The domestic corporation receiving foreign dividends must control the foreign corporation either alone or with no more than three other domestic corporations. This requirement rules out cases where the investment abroad

is largely a portfolio investment and is designed to assure a close economic affinity between the foreign and domestic corporations. The presumption is that in such cases there will be close managerial and operational relationships between the domestic and foreign enterprises. However, an alternative ownership requirement is applied where close economic ties between the two corporations exist in the form of technical, engineering, or scientific services rendered by the United States corporation to the foreign corporation.

These tests concerning the conduct of an active trade or business and stock ownership requirements must be met in the year when the profits were earned out of which a dividend is paid, as well as in the year when the dividend is paid.

In the case of interest received by a domestic corporation from a foreign corporation, the same qualifications as to ownership, type of income, and active conduct of a trade or business apply as in the case of dividends, except that they have to be met only in the year in which the interest is paid out.

The committee has inserted a provision which would exclude from the scope of the tax differential cases where American firm establish enterprises abroad for the purpose of producing goods for sale in the United States. The reduction in tax is denied where more than 25 percent of the gross income from a foreign branch or subsidiary is derived from the manufacture of goods intended for sale or use in the United States.

B. *Deferral of tax on branch income.*

The bill provides that domestic corporations are to be granted an election to defer tax on the profits of their foreign branches similar to the manner in which taxes are deferred on the profits of foreign subsidiaries.

C. *Credit for principal tax.*

The committee has adopted a new provision which would allow credit for a "principal tax". Taxpayers are to be given an option to claim a credit either for an income tax or for a "principal tax". imposed by a national government abroad. The present credit for "in lieu" taxes is to be eliminated. The principal tax may be applicable to various types of businesses in a foreign country, or it may be one which is applicable only to the type of business activity.

The definition of "principal tax" is one which excludes sales, property, excise or turnover taxes that are generally imposed and, whether generally imposed or not, social-security taxes. In the application of this provision, it is anticipated that a tax which is imposed only on selected industries would not be a tax of general application, and would qualify for the credit.

Moreover, in the case where a tax is widely applicable, but at rates which differ significantly from industry to industry, the tax on each industry would be considered a separate tax and would be eligible for credit as a principal tax.

D. *Elimination of the overall limitation on credit.*

With respect to the foreign tax credit the committee has removed the overall limitation.

E. *Definition of noncorporate income earned abroad.*

Where an individual is engaged in a trade or business abroad in which personal services and capital are material income producing factors, present law provides that no more than 20 percent of the income from the business may be considered "earned" abroad, and hence exempt from income tax.

The committee has increased this percentage to 30 percent, thus affording additional tax relief to businessmen operating foreign business ventures other than in the corporate form. *(To be continued).*

I

NEW SALES TAX IN THE NETHERLANDS

by

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Introduction.

A new sales tax has been enacted in the Netherlands. From January 1st 1955 on the old decree of 1940 has no longer been in force. The system of the new Act is still that of a repeated levying, but now supplies by retailers are exempt from sales tax. The system of levying now approaches the Belgian system, adopted at the "taxe de transmission". This does not mean, however, that a co-ordination of importance between the Dutch and the Belgian sales taxes has been achieved.

At present the difference between the two levies is still so great that such co-ordination is still far from being realised.

Material contents of the new act.

1. *General principles.*

As under the decree 1940 the supplying of commodities and the rendering of services by entrepreneurs are taxed by sales tax, as far as these supplies and services are effected in the Netherlands and occur within the scope of the entreprise. The demand that the supplies and services are to be rendered within the scope of the enterprise is mainly for the purpose of preventing the private actions of the entrepreneur from being taxed.

In contrast with the provisions of the decree 1940 the supplying of commodities to individuals by dealers is not taxed. When this supply is done by a producer of goods, however, then the whole tax must be paid. This is different from the Belgian system, where every supply to a private person without regard to the person performing it, is exempt from tax. Services rendered by service-

rendering undertakings and liberal professions for the benefit of entrepreneurs or private persons are included in the levy. In Belgium these services are generally exempt from tax apart from contracting of work, hiring out of movables and transport.

2. *The conception "entrepreneur".*

The law understands by entrepreneur everybody independently carrying on an enterprise or a profession. It is of no importance whether making of profits or covering the costs is the purpose. It appears from case-law that from this it follows that e.g. two juridical persons form one enterprise, if the one enterprise completely dominates the other from the standpoint of finance, organisation and economics, though from the juridical viewpoint there are two enterprises. (Tariefcommissie 5th August, 1946, B. 8214) [1]).

The Dutch sales tax is based on economic principles and is withdrawing more and more from juridical conceptions.

The Belgian sales tax, on the contrary, follows juridical lines, because of its orientation on the registration duty. The conception "entrepreneur" is of no importance in the Belgian tax. There every transfer of ownership, under an onerous title, of corporal movable goods is taxed regardless of the person of the seller, except the transfer to private persons.

3. *Integrated enterprises.*

Every repeated levy may disturb the competitive conditions among the enterprises mutually. Already under the decree 1940 measures were taken to promote neutrality-competition of taxes [2]).

Under the new Act the domain covered by these measures has been extended. Now tax is due on the disposition of self-produced goods for business purposes, without the restriction that no tax is levied on the disposition of raw materials and goods for the rendering of services, as was the case under the Decree 1940.

However, the taxable disposition of self-produced raw materials is limited to these raw materials, mentioned in the so-called "integration table," belonging to the Act.

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1) So the Dutch sales tax adopts the so called „Organtheorie", i.e. enterprises linked up organically are considered as one enterprise.

2) See J. C. L. Huiskamp- The repeated levying of the sales tax and vertical business integration. Bulletin for Int. Fisc. Doc. 1954, 3/4 p. 137—145.

Here it generally concerns raw materials for the textile industry, vegetable oils, tanned leather, and metal ashes and metal residua. This table however, can be extended or changed, if deemed desirable, within one year after the enactment of the act. Such-like provisions are unknown in Belgium, but e.g. with respect to textile products the tax is levied in a lump sum ("taxes forfaitaires").

Also in the Netherlands ,,lump-sum" provisions are made by a particular decree for i.a. textile products, non-ferro raw materials and semi-products, animal and vegetable oils and fats and leather. These provisions correct the legal provisions (integration levy) more or less. This particular decree is based on article 32 of the Act by which it has been made possible to promulgate provisions deviating from what the Act prescribes by Order in Council, in order to facilitate the levying of the tax or the checking of this levying.

4. *Accession.*

In cases where in fact transfer took place by delivery but according to civil law transfer of ownership took place by reason of accession, sales tax had to be paid under the decree 1940 because a service was rendered. Transfer of ownership by means of accession can take place both when adding a good to another movable good and when attaching a good to an immovable good. When for instance an entrepreneur received instructions to put a new motor in a car, he paid sales tax on the price received because he rendered this service. If the person giving the order only ordered the motor and charged another firm with the assemblage then sales tax had to be paid for the supply of the motor as well as for the amount charged for the assemblage. When the rates for supplies and services vary, a source for disturbance of competition arises. The way, which would be most in accordance with the meaning of the Act, would be at the accession, that the entrepreneurs split the amount on which sales taxes is levied between the supply of the goods (rate as producer or dealer) and the rendering of the service.

In many cases dealers can thus profit by the exemption of supply of goods to a private person, so that only the rendering of services remains taxable. However according to the minister no splitting may take place. The whole is taxed as a supply.

5. *Rates of levying.* [1])

	rate act 1954	*rate decree* 1940
Ordinary rate		
supplies by:		
producer to entrepreneur	5%	4%
,, ,, not - ,,	4%	6%
wholesaler to retailer	¾%	1%
,, ,, other entrepreneur	¾%	½%
retailers	free	3%
Semi-luxery rate		
supplies by:		
producer to entrepreneur	10%	7%
,, ,, not - ,,	10%	9%
Luxery-Rate		
supplies by:		
producer to entrepreneur	15%	15%
,, ,, not - ,,	15%	15%
Services.		
normal rate	4%	4%
transport of persons and goods and hading over of work in immovable state	3%	3%
Special rate (lump-sum)		
textile products	10% on the final product	
leather	7½ on tanned leather	
oils and fats	10% on raw oil	
non-ferro raw materials and semi-products	7% on raw materials or 9% on certain auxiliary materials	

Import of goods m.m. the same rates but the tax can be fixed at an amount which cannot exceed 7% higher than the normal rate,

[1]) The reader must bear in mind that we mean with wholesaler every dealer who supplies to entrepreneurs, with retailer every dealer who only supplies to private persons. These definitions do not correspond with the Dutch legal definitions, but they have been chosen for the sake of simplicity.

to avoid any difference of burden between the tax on imported goods and goods produced in the Netherlands (decree 1940 up to maximum 3 % in excess of the normal rate).

6. *Basis of levying.*

The tax is levied over the sales price or contract-sum when supplying goods, over the remuneration when rendering services. In contrast to the provisions in the decree 1940 not the amount paid but the amount charged is decisive. The consequence of which is that for instance when the purchaser lays claim to a deduction for cash, this deduction can be deducted from the sales price, without regard to the question whether this deduction is made use of (the purchaser does not pay cash).

The cause of this alteration is the fact, that according to the Act 1954 the date, when the tax is due, will generally coincide with the date when the supply is effected or the service is rendered or the import takes place, e.g. the invoice is handed in. The Netherlands abandon herewith the so-called cash-system, the consequence of which is that a co-ordination with Belgium is achieved.

The alteration in the system, however, will practically not affect the liquidity of the entrepreneurs, since the tax must now be paid only within 2 months after the termination of the calendar quarter, in which the tax was due. The enterpreneurs will thus have sufficient time, generally, to collect the money from the purchasers before the payment of the tax. If they do not receive the complete payment because of the purchaser's bad financial condition, the entrepreneurs can reclaim the tax paid.

When importing goods the value forming the standard for the calculation of the import duty, increased by all Dutch taxes and excise duties levied when the goods are imported, is the starting point.

7. *Exemptions from tax.*

a. *subjective exemptions.* Without regard to the exemption for the retailer is exempted from tax: the entrepreneur whose annual turnover of supplies as manufacturer and of services rendered does not exceed f 2,000.— and whose annual turnover as wholesale-dealer does not exceed f 12,000.—.

These exemptions did not exist in the decree 1940. The exemption of supplies and services of artists, authors and persons occupying themselves with giving instruction or practising a branch of sport as professional, if the annual turnover does not exceed f 8,000.—, as given in the decree 1940, is continued in principle, unless the f 8,000.— limit is substituted by a limit to be indicated by an Order in Council. A higher limit is fixed for persons using much material. The Enforcing Decree Sales Tax 1954 states in article 8 as far as it concerns supplies and services performed by sculptors, f 14,000.—, by journalists f 11,000.—.

Other new subjective exemptions are: certain services of entrepreneurs recognized by the authorities for general youth-training work; certain services of organizations aiming at practising sport; certain supplies and services of social and cultural character rendered by non-profit aiming or making entrepreneurs, in those cases when a serious competition disturbance does not occur with respect to entrepreneurs aiming at or making profit by the exploitation of their enterprise.

b. *objective exemptions*. The exemption according to the nature of the goods has hardly been changed with respect to the decree 1940. The Dutch sales tax still belongs to one of the most progressive sales taxes of the world. Necessary food products have generally been totally exempted from tax. Of the new exemptions we can mention: the tuition given at teaching institutions, the services of physicians, dentists, nurses and midwives and the services of psychologists, masseurs, as well as the supplies of medicines and dressing requirements as far as the countervalue is paid out of funds established by legal provisions, and the services of undertakers.

The Dutch sales tax protects the consumer with a small budget from the "cradle to the grave".

In general the Belgian sales tax is less progressive.

8. *The treatment of the export.*

The supply of goods meant to be exported direct to foreign countries, has been exempted from tax. Moreover, a restitution is given of sales tax paid on goods or on the raw materials used for producing those goods and for auxiliary materials. The restitution for used auxiliary materials was not given in the decree 1940. So, the

restitution does not yet extend to the sales tax which is paid with respect to the investment goods and services. The amount of the restitution has been regulated according to a general standard.

The standard amounts to 7% of the purchase price for raw materials and auxiliary materials (Decreé 1940 for raw materials 5½%), for a dealer 8½% (Decree 1940, 6¾%). In case of luxury goods the standards are increased.

In the decree 1940 the standards form the limit of the restitution though the entrepreneur could demonstrate that the State had received a higher amount of sales tax. In these cases no complete restitution was received. According to art. 43 of "Enforcing Decree Sales Tax 1954" the minister now has the power to give rules deviating from what the act prescribes in cases where the amount of sales tax which has been levied on consumed raw materials and/or auxiliary materials when producing goods in certain branches of trade, is much higher than that which is restituted when the goods are exported as a result of the general standard.

In Belgium no restitution is given when the goods are exported.

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

France *Période du* 15 *novembre au* 31 *décembre* 1954.

Impôts Directs

Décret du 4 novembre 1954 portant aménagements et allégements fiscaux (J.O. 5-11-1954, 10423).

Des mesures prises nous relevons les suivantes:

1. le taux de la taxe proportionnelle sous le revenu des personnes physiques est porté de 18 p. 100 à 9 p. 100 pour la fraction n'excédant pas 200.000 Fr., en ce qui concerne les bénéfices des professions industrielles et commerciales, les produits des charges et offices et les bénéfices de l'exploitation agricole.
2. les dispositions concernant le droit formel sont modifiées à quelques points.
3. en matière de taxes sur le chiffre d'affaires et de contributions indirectes quelques modifications de moindre importance ont été opérées.

Décret du 23 novembre 1954 modifiant les dispositions des articles 39 et 369 de l'annexe III du code général des impôts relatives aux obligations des employeurs qui versent des traitements, émoluments, salaires et aux conditions dans lesquelles doit être assurés la remise au Trésor du versement forfaitaire et des retenues à la source de l'impôt sur le revenu des personnes physiques (taxe proportionnelle).
(J.O. 26-11-1954, 11067).

Décret du 3 décembre 1954 portant allégement de la surtaxe progressive en faveur des contribuables ayant conservé sous forme d'épargne une partie de leur revenu. (J.O. 4-12-1954, 11321).

Décret du 7-12-54 relatif au versement forfaitaire pour les professions non commerciales et fixant les conditions d'application de l'article 24 (§ II) de la loi du 10 avril 1954 portant réforme fiscale. (J.O. 10.12.1954, 11563).

Impôts Indirects

Décret du 13 novembre 1954 modifiant l'article 315 du code général des impôts en ce qui concerne la qualification de bouilleur de cru. (J.O. 20.11.1954 10894).

Décret du 13 novembre 1954 modifiant l'article 306 du code général des impôts en ce qui concerne l'achat, la location, et la réparation des alambics. (J.O. 20.11.1954, 10895).

Décret du 13 novembre 1954 relatif à l'augmentation du droit de consommation sur l'acool. (J.O. 20.11.1954, 10897).

Décret du 17 novembre 1954 relatif au régime fiscal des boissons. (J.O. 20.11.1954, 10897).

Taxes sur le chiffre d'affaires

Décret du 4 novembre 1954 portant avancement au 1er novembre 1954 de

la date à partir de laquelle les assujettis à la taxe sur la valeur ajoutée pourront déduire la taxe sur les prestations de services ayant grevé leurs opérations bancaires et assimilées. (J.O. 5.11.1954, 10424)..

Matières Diverses

Décret du 4 novembre 1954 reduisant le taux sur la taxe unique sur certaines conventions d'assurance. (J.O. 5.11.1954, 10424).

Netherlands

By the Act of 26th June 1952 the possibility has been opened to take into account in the income tax and corporations profits tax, gifts to religious, charitable cultural, scientific institutions and to such institutions as are intended to promote the general welfare. Such gifts can only be considered for deduction if certain conditions have been complied with. For the new tax only such gifts were originally taken into account in so far as they exceeded 2% of the taxable income and at the same exceeded f 100.—, while the deduction might not amount to more than 3% of the taxable income. For the corporations profits tax gifts were only taken into account in so far as they exceeded 1% of the profits, after they have been diminished by the losses carried forward, and at the same surpassed f 100.—. The maximum is 3% of the profits. The Act of 3rd November 1954 (Stbld. no. 485), has slightly extended the possibility of deduction. Now for income tax gifts are taken into account in sofar as they exceed 1% of the taxable income, and at the same time amount to f 200.—, the maximum deduction being 4% of the taxable income. In the corporations profits tax gifts are taken into account in sofar as they exceed f 500.—. The maximum deduction has remained unchanged at 3%.

Western Germany

PERIOD FROM 1ST NOVEMBER TILL 31ST DECEMBER 1954

GENERAL

Gesetz zur Neuordnung von Steuern vom 16. Dezember 1954 (Bundesgesetzblatt I 1954, p. 373).

The most important alterations are:

I. *Income Tax and Corporation Profits Tax.*

a. The income tax rate has been reduced. The maximum rate has been cut from 70% to 55%, while for the lower income groups the income tax has been reduced by about 25%, for the higher income groups by about 20%.

b. The amounts exempt from tax have been increased.

1) for the taxpayer from 800 DM to 900 DM.
2) for his wife from 800 DM to 900 DM.
3) for his 1st and 2nd child from 600 DM to 720 DM.
4) for his 3rd and each following child from 840 DM to 1680 DM.

Consequently a taxpayer with 5 children only pays taxes when he has an income of 8,300 DM.

c. The rate of the corporation profits tax has been reduced from 60% to 45% as far as it concerns the reserved profits. The 30% rate on distributed profits has been maintained.

d. As a partial compensation for the rate reductions the many so-called „promoting facilities" (house-building, ship-building etc.) will be abrogated in the future. The deduction of housebuilding loans has been continued till 1958 up to 25% of the amount of the loan issued. The savings facilities also operate till 1958, when the savings are invested for a period of 10 years (when the depositor is older than 50 years of age : 7 years).

e. the director's tax (advance levy on the income tax) is reduced from 50% to 40%.

f. The loss compensation period is continued from 3 to 5 years.

g. The period for profits tax from speculation when selling securities is reduced from 1 year to 3 months.

h. In certain cases husband and wife can be assessed separately.

i. Assessment for income tax will only take place for employees when the income amounts to more than 24,000 DM unless the wage income is more than 4,800 DM resulting from more than one situation, or when the income not from wages amounts to more than 600 DM.

j. New lump-sum provisions are given for deduction as costs of acquirement, unless a higher deduction can be demonstrated.

1. for income from non independent labour: 212 DM.
2. for income from property as far as it does not exceed 1,500 DM and when the total income is less than 6,000 DM: 200 DM.
3. for periodic payments: 200 DM.
4. for income from the liberal professions when these revenues are paramount. : 5% of the revenues with a maximum of 1200 DM (see Verordnung 22.10.54, Bulletin VIII, p. 266).

k. The deduction for personal obligations and special charges has been increased.

l. The possibility to form a reserve for price advances in the period from 1952-1957 can be given by ministerial decree.

m. In the tax facilities for the promotion of the export alterations have been made with respect to reservings exempt from tax.

n. The exemption for participation („Schachtel-privilege") undergoes an exemption in so far that, when the parent company in its turn does not pay the dividends declared by the subsidary company it has to pay tax on the difference between the corporation profits tax on the reserved profits and the profits paid out (being 15%), the amount of which has, in that case, wrongly not been paid out by the subsidiary company. The subsidiary company only pays 30% corporation profits tax when the profit is paid to the parent company.

The so-called Mindestbesteuerung is abrogated.

II. Death Duties

a. The rate of the death duties is reduced. The maximum tax amounts to

for wife, children	15%	(formerly	38%)
for grand-children	25%	(„	50%)
for parents etc.	40%	(„	67%)
for descendants in the first degree of brothers etc.	50%	(„	69%)
for others	60%	(„	80%)

b. The exemptions have been increased.

Sales-tax. Fünfter Gesetz zur Änderung des Umsatzsteuergesetzes vom 26.Dezember 1954 (BGB I 1954, p. 505). The turnover of artists, authors and similar persons are exempt from tax when it does not exceed 18,000 DM in the calendar year (formerly 12,000 DM.). When the turnover amounts to more than 18,000 DM the tax on this turnover is only levied up to that amount that can be paid from 10% of the amount exceeding 18,000 DM. The Government has authority to collect taxes at the source when the tax payer is resident or has his domicile in Germany (e.g. when paying royalties).

Lastenausgleich (Equalization of Burden Law).

Zwölfter Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichsgesetz vom 2.Dezember 1954 (BGB I 1954, p. 367).

Investionshilfe — investment aid.

Drittes Gesetz zur Änderung des Gesetzes über die Investionshilfe der gewerblichen Wirtschaft vom 19.Dezember 1954 (BGB I 1954, p. 437).

Excises. Bekanntmachung der Neufassung des Gesetzes zur Förderung des Bergarbeiterwohnungbaues im Kohlenbergbau vom 30.November 1954 (BGB 1954, p. 358).

Customs. Gesetz zur Verlängerung des Gesetzes zur Änderung des Zolltarifs vom 26.November 1954 (BGB I 1954 p. 357). Zwanzigste Verordnung über Zollsatzänderungen vom 29.November (BGB I 1954, p. 357).

Verordnung über die Einführung einer neuen Internationalen Zollanmeldung im Eisenbahnverkehr vom 3.Dezember 1954 (BGB I 1954, p. 369).

MISCELLANEOUS — FAITS DIVERS.

New Zealand.

Budget Tax Proposals

The Budget presented on 22nd July proposed several tax amendments which included:

Land tax

(1) Increase of land tax exemption from £ 1,000 to £ 3,000, reducing by £ 1 for each £ 2 of unimproved value in excess of £ 3,000, thus leaving no exemption at £ 9,000.

(2) Change of rate of land tax from a graduated rate to a ' step' system. The rates to be:

1d. in £ on first £ 10,000 of taxable balance.
2d. in £ on next £ 5,000 of taxable balance.
3d. in £ on next £ 5,000 of taxable balance.
4d. in £ on taxable balance in excess of £ 20,000.

(3) Abolition of land tax on short term leases.

Income Tax

(4) Increase of personal exemption from £ 230 to £ 375.
(5) Abolition of £ 15 rebate.
(6) Increase of personal exemption of persons over 65 from £ 230 to £ 420.
(7) Abolition of special rebate of £ 10 to persons over 65.
(8) Increase of wife exemption from £ 100 to £ 125.
(9) Increase in allowable income of from £ 100 to £ 125. Any excess of the wife's income over £ 125 will reduce the exemption allowable to the husband by £ 1 for each £ 1 of the excess, leaving no exemption when the wife's income reaches £ 250.
(10) Abolition of £ 26 maximum tax saving for wife exemption.
(11) Increase of child and dependent relative exemption from £ 65 to £ 75.
(12) Abolition of £ 26 maximum tax saving for child and dependent relative exemption.
(13) Aboliton of 2½ per cent surcharge on income tax for both individual and company taxpayers.
(14) Alteration of basic rate of income tax for individuals so that the commencing rate will be 3s. instead of 2s. 6d.
(15) Aggregation of income of husband and wife to take place only where both incomes exceed £ 500, and then only the portion of the wife's income in excess of £ 500 to be added to the husband's income.
(16) Abolition of the A plus B system of assessing tax where non-assessable income is included in an assessment, and the re-introduction of the effective rate basis operating prior to 1942.
(17) Increase from £ 200 to £ 300 per year of the allowances to farmers for certain expenditure of a capital nature.

Source: The Accountants' Journal.
Vol. 33, No. 2.

New Zealand.

Taxation Relief

The following statement appears in the budget:

"In assessing to what extent taxation relief might be granted this year, the Government's objective has been to spread reductions over as wide a field as practicable so as to give relief to as many classes of taxpayers as possible. For this reason it has not been possible to go as far as one would wish in reducing or even abolishing any one particular class of taxation as that would limit the relief which could otherwise be given to other deserving classes of taxpayers.

Consequently I repeat the Government has aimed at three clear objectives in proposing the reductions in taxation. These three objectives are: To reduce the cost of living; to provide incentive to more production; and hence to greater prosperity. To leave more income in the hands of those who earn it."

The statement immediately prompts the question as to whether the scheme of relief adopted in this year's budget extends over too wide a range, and in so doing providing no impressive relief at any one point. The political value of such a programme has no doubt been worked out by cabinet; but from an economic point-of-view, the best aid to further production which could be provided would be to grant greater relief from taxation which is carried by companies. With more profit left in the hands of the companies much more could be spent on equipment which would lift the efficiency factor to higher levels. That this would become a political target can be taken for granted. The taxation relief accorded companies is microscopical. This subject is, however, of much greater importance than would be indicated by the attention given to it during the budget debate.

On the other hand, the tax reductions in respect to the incomes of individuals, taken cumulatively, amount to a substantial concession. The personal exemption, now lifted to £ 375 absorbing the tax rebate of £ 15, does give a modicum of relief. More substantial concessions are made in respect to wife and child exemptions which will now operate without the tax rebate as limiting factors. There are two especial classes who have had longstanding grievances whose positions have been relieved, namely, husbands and wives who each earn incomes and those whose incomes are made up from assessable and non-assessable sources. Where the income of the wife does not exceed £ 500 it will be entirely exempt from the aggregation provisions of the Act, but any excess will be aggregated with the husband's income which is over £ 500. Young couples working in order to get a home together will find this provision very hopeful. It will also stimulate the home furnishing trade.

The inclusion of non-assessable income, for the purpose of computing the assessment on taxable income, was inaugurated by Mr. W. Downie Stewart in order to secure income to carry over the depression years. As an emergency measure it should have been removed with the passing of the emergency which prompted it. But Mr. Nash went to the Treasury in 1935, and from then on it was perhaps impossible for him, as the Finance Minister in a Labour Ministry, to rectify the matter. It is interesting to contemplate what would have been the effect upon this political position had he done so. He might have eased the opposition to his party and made it more attractive to some whose politics were of the Liberal persuasion. By leaving it on and increasing the tax burden he discouraged the accumulation of new capital, and so robbed the workers of better tools, a point which is insufficiently emphasised. The surcharge on income tax paid by individuals and by companies was a wartime measure. Originally 15 per cent., it was reduced by Mr. Nash to 10 per cent. when hostilities ceased. Mr. Holland dropped it to 5, then to 2½ per cent., and now it is abolished completely. Mr. Nash was unable to

challenge this movement because he had made the longest step himself. It should, however, have been abolished more speedily if equity is to be taken into account.

The increase of 6 d. in the step rates of income tax takes some of the gilt off the gingerbread. But here has been applied the principle of Sir George Grey of "giving the people something to hope for". The steps can be reduced in the future if the country's finances are handled appropriately and not too much attention given by the future Minister of Finance concerning „how much you have left".

Mr. Holland and his associate Minister, Mr. Bowden, have shown in their present proposals that they consider the time has arrived when the active members of the community, and particularly the thrifty, should be given more stimulation to save and to invest. Bij reacting favourably to the stimulus which the budget applies they, the savers, receive more of their due reward than they have done in recent years. But it is to be emphasized that theirs is an activity of social wellbeing.

The difference between the American factory worker and the Chinese peasant lies in the fact that the former has more power and more machinery and tools at his disposal when he is working. These are the products of saving. Even invention is slowed down when there is no accumulation of capital or an insufficient saving effort is being pursued. A higher living standard depends not only upon the worker, but upon the equipment with which he works being improved year by year. It is the saver who, by providing more power and better tools, lifts the worker's wages.

The budget provides the taxpayer's annual financial menu; sales tax reductions are now being enjoyed (the Opposition made a tactical mistake in directing attention to prices thereby giving the fullest publicity to the immediate falls that occurred as a result of merchants selling policy) and the new income and land tax rates will be incorporated in bills which will appear later in the House of Representatives. But good as the budget is, and good as any budget may be, there was never a financial statement which pleased everybody. There are always alternative ways of reducing the tax burden and people will applaud as they appreciate the benefits which come to them. But in view of the nature of existing conditions which have been created, in part by trends overseas over which the Government can exercise no control, and in part by the Government's own policy which can be called into question in some respects, but which is not being questioned to a sufficient degree to create a challenge — and I have exerted myself in that regard — the budget can be acclaimed a good budget for an election year.

Source: The New Zealand Economist and Taxpayer, August 1954. Vol. XVI No. 5.

Great Britain.

Double Taxation

The Double Taxation convention with the Federal Republic of Germany which was signed on August 18th, has been published as a Schedule to a Draft Order in Council.

The Double Taxation convention with Switzerland which was signed on September 30th has been published as a Schedule to a Draft Order in Council (The Press release no. 15).

A supplementary protocol to the Double Taxation convention with the United States of America, which was signed on May 25th, 1954, has been published as a schedule to a Draft Order in Council. The object of the amendment made by the protocol is to allow the convention to be extended to Colonial territories with modification.

Regulations made by the Commissioners of the Inland Revenue extending the existing Double Taxation Relief (Taxation and Income) (General) Regulations, 1946. (S.R. & O. 1946, No. 466) are being published shortly. They are concerned with the case where royalties etc. are paid without deduction of United Kingdom tax to non-residents who are exempt under a double taxation convention. The existing regulations provide for certain consequential adjustments to the payer's own United Kingdom tax position, and the new regulations make further provisions of the same sort.

Source: Taxation Vol LIV No. 1411.

United Kingdom and Switzerland.

Double taxation Convention

A Double Taxation Convention between the United Kingdom and Switzerland was signed in London on September 30th by Mr. Doddsparker, M. P., Joint Parliamentary Under-Secretary of State for Foreign Affairs on behalf of the United Kingdom, and Monsieur Erwin Bernath, Swiss Charge d'Affairs ad interim in London, for Switzerland.

The Convention, which is subject to ratification, provides for the avoidance of double taxation of income and profits retrospective in the United Kingdom to April 6th, 1953, and is generally similar to those which the United Kingdom has already made with a number of other European countries.

Source: The Accountants' Journal, Vol. XLVI, No. 561.

Great Britain.

Double taxation: South Africa

A supplementary protocol amending the double taxation agreement between the United Kingdom and the Union of South Africa (S. R. & O. 1947. No. 315) was signed in Pretoria on November 5th. The protocol has the effect chiefly on extending the exemption from tax of shipping and air transport profits which is provided by the original agreement.

It will need the approval of the House of Commons before it can take effect in the United Kingdom.

Source: Taxation Vol. LIV. No. 1414.

United Kingdom - Pakistan.

Double Taxation Convention

Discussions for the avoidance of double taxation of income which opened at Karachi on November 8th, 1954, between the representatives of the Governments of the United Kingdom and Pakistan have concluded and agreement has been reached. The agreement will be submitted to both Governments for their approval and the terms will be announced thereafter.

Source: Taxation Vol. LIV No. 1417.

Chile.

Prof. Herrick K. Lidstone, a specialist in taxation attached to the legal division of the United Nations who was recently contracted by the Government to review the system in force in Chile, has submitted his report. A committee of Chilean lawyers is to be formed to prepare a new law in accord with the recommendations made in Prof. Lidstone's report.

Source: Bank of London and South America Ltd, Fortnightly Review, vol. 19 nr. 473.

Tax Concessions in Trinidad

The latest Budget introduced in Trinidad provides for concessions totalling $1 million (B.W.I.) for taxpayers in the lower income groups. Nevertheless, it is expected that income tax will yield $3 million more.

Source: Taxation Vol. LIV No. 1415.

Great Britain.

Budget Representations

The engineering Industries Association must surely be the first body this year to submit representations for the 1955 Budget.

The Association expresses the opinion that long-term budgetary policy must be framed to assist the stabilization of the nation's economy through increased export production and the establishment of a standard of living related to sound money values. It regards the present high level of taxation as one of the greatest contributories towards inflation because of its effects on internal price levels and wage demands. High taxation, the Association submits, acts as a deterrent to further effort, and restricts the amount of capital available for investment. Taxation absorbs over 50 percent of industrial profits, and far more than 50 percent of the higher personal incomes cannot form any part of a sound economy.

Industrial Responsibilities

The Association is certain that if future budgetary policy could be framed to include a programme of progressive taxation reliefs, British industry should and would be prepared to shoulder the consequent responsibilities. It is realized, however, that it is not possible without creating excessive internal purchasing power to introduce at one time all those measures of taxation relief which would give the greatest stimulation to industry. A definite programme of taxation reliefs and incentives, the Association declares, would intensify the drive for further production.

Suggested Reliefs

First is suggested a reduction in the standard rate of income tax with proportionate reductions in the reduced rates; this would give relief to every class of taxpayer-companies and individuals. Again, the present high level of profits tax on distributed profits merely encroaches upon funds for capital investment, and the removal of the 2½ per cent profits tax on undistributed profits should be accompanied by a reduction in the rate charged on distributions. Surtax in its present form involves a greater disincentive factor than any other direct tax. The Association has repeatedly put forward a scheme embodying surtax relief of 2s in the £ on earned income in excess of £ 2,000 per annum. The higher rates of surtax cause an absurdly high charge upon the higher income groups and any relief from the standard rate of income tax should not be compensated by any upward grading of the surtax rates. The recommendations in the second interim report of the Royal Commission on the Taxation of Profits and Income also propose practical surtax reliefs.

The Royal Commission, in its second interim report, has submitted valuable proposals for adjustment of the personal allowances through the medium of the exemption limit and has also advocated further reliefs for the family man through revision of the child allowances. These, or similar proposals, should be implemented.

The disincentive element of the present position is all the more emphasized because the persons affected are denied important concessions which are

available to their own senior executive employees. Implementation of the recommendations of the Millard Tucker Report should not be delayed.

Estate Duty

It is apparent from the new provisions in the 1954 Finance Act that there is an appreciation of the disincentive factor and the serious cumulative effects which can be brought about by the methods of valuations of shares in private companies. The aim of further legislation in this respect should be to ensure that the continuation of privately- owned businesses should not be jeopardized through the death of a major shareholder.

In addition, there should be reductions in estate duty rates on larger estates, concessions having already been granted to smaller estates. The Association suggests an all-round reduction of 2 per cent for estates over £ 20,000, with similar reductions in five years' time. When the rates have become sufficiently reduced 'escalator' provisions could be introduced to eliminate the absurd marginal cases.

There are many anomalies and injustices which arise in connection with the detailed computations of taxable profits and incomes. Some of these have been the subject of the recommendations by the first Millard Tucker Committee on the Taxation of Trading Profits and these, it is considered, should be implemented.

Source: Taxation Vol. LIV No. 1417.

Taxation in Guernsey

The Parliament of Guernsey has approved the proposals of the Finance Committee to the effect that no surtax will be imposed during 1955. Other agreed proposals are the standard rate of income tax shall be reduced from 5s 4d to 5s 2d in the £. Marriage allowances increase by £ 10 to £ 280 and the child allowances by £ 5 to £ 80. The first £ 100 of taxable income will be charged to tax 2s instead of 2s 6d in the £ as at present. Surtax in Guernsey affected incomes over £ 1,000 which were charged at 6d and rose in a scale to 7s 6d in the £ for incomes in excess of £ 10,000.

Source: Taxation Vol. LIV No. 1418.

Great Britain.

New Customs and Excise Tariff

A new edition of the Customs and Excise Tariff in the United Kingdom — Form No. 34 (Sale) — was published on November 1st, 1954. This new edition shows the rates of Customs and Excise duties, drawbacks and allowances operative on November 1st, 1954, and replaces the tariff published a year ago.

As in the past, amendment slips to the tariff and copies of the statutory orders and regulations which affect the tariff may also be obtained on payment of an annual subscription.

Source: The Accountants Journal, Vol. XLVI No. 562.

III

Cour d'Appel de Bruxelles, 21 janvier 1953.

1) **TAXE PROFESSIONNELLE.**

Revenu imposable. — Part de bénéfices payée conventionnellement par une société belge à une holding étrangère. — Taxable comme avantages et profits qu'une entreprise établie à l'étranger retire directement ou indirectement d'exploitations établies en Belgique qui sont sous sa dépendance ou sous son contrôle: Article 27, par. 2, 7°, L.C. — Disposition applicable, même si les sommes sont payées directement à une autre société établie en Belgique, sur ordre de la holding.

2) **TAXE PROFESSIONNELLE.**

Revenu imposable. — Convention belgo-luxembourgeoise du 9 mars 1931. — N'est applicable qu'à une entreprise établie dans les deux pays. — Exige dès lors une activité dans les deux pays.

3) **IMPOT SPECIAL ET TEMPORAIRE SUR LES BENEFICES EXCEPTIONNELS** (loi du 10 janvier 1940).

Bénéfice de référence. — Droit du redevable de choisir la référence jusqu'à taxation définitive.

1). La part de bénéfices payée conventionnellement par une société belge à une holding étrangère doit être considérée comme bénéfices au point de vue de la taxe professionnelle, puisqu'il s'agit d'avantages et profits qu'une entreprise établie à l'étranger retire directement ou indirectement, sous quelque forme ou par quelque moyen que ce soit, d'exploitations établies en Belgique qui sont sous sa dépendance ou son contrôle (art. 27, §2,7°, des lois coordonnées).

Il en est ainsi même lorsque semblables sommes, payées directement à une autre société établie en Belgique, sur ordre de la holding, n'ont procuré à celle-ci aucun avantage ou profit net: procurer en effet à un tiers de quoi lui permettre de remplir ses propres obligations, c'est lui accorder un avantage ou un profit, et surtout

ce n'est pas l'avantage dont profite la société étrangère qui est taxé, puisque celle-ci n'est pas imposable, mais bien l'avoir de la société belge, qui sort du patrimoine de celle-ci.

2) La convention belgo-luxembourgeoise du 9 mars 1931 ne peut être appliquée que dans le cas d'une entreprise établie dans les deux pays; elle exige dès lors une activité en Belgique.

3) En ce qui concerne l'impôt spécial et temporaire sur les bénéfices exceptionnels (loi du 10 janvier 1940), le redevable, qui avait choisi la référence la plus favorable sur base d'une interprétation de la loi non admise par l'Administration, n'a cependant pas perdu le droit de choisir une autre référence jusqu'à la taxation définitive.

Revu l'arrêt de la Cour d'Appel en date du 22 octobre 1952 joignant les causes inscrites *sub numeris* 7127 et 10178, déclarant le recours introduit sub no. 10178 recevable et ordonnant la réouverture des débats afin de recueillir les explications des parties quant à la référence déductible relativement à l'application de la loi du 16 octobre 1945 et aussi quant au système de référence dont il a été fait usage à l'occasion de l'application de la loi du 10 janvier 1940;

Revu également l'arrêt de la même Cour en date du 23 avril 1952 en la cause inscrite sub no. 7127 qui a notamment renvoyé la cause à une audience ultérieure pour permettre aux parties de conclure et de s'expliquer quant à d'importantes sommes payées par la requérante à des tiers en vertu de certaines conventions et que la requérante prétend déduire des bénéfices imposables, à titre de dépenses professionnelles;

Attendu qu'il importe en premier lieu de déterminer le caractère des dites sommes;

Attendu qu'en vain la requérante soutient qu'il serait définitivement acquis que les dites sommes constituent des dépenses professionnelles, parce que l'Administration en aurait dégrevé la requérante; qu'en effet le dégrèvement ne fut nécessité que par la forclusion de la taxation et ne comportait aucune reconnaissance de fond, notamment du caractère des sommes litigieuses; que l'arrêt de la Cour du 15 avril 1947, qui constate cette forclusion, n'a pas statué sur la nature de ces sommes;

Attendu qu'il est constant qu'en vertu de la convention avenue entre la requérante et la Holding . . ., la première s'est engagée à verser à la dite Holding le montant des bénéfices réalisés par elle, dans la mesure où ces bénéfices réalisés par la requérante excédaient un chiffre conventionnellement fixé;

Attendu qu'il s'agit d'une attribution conventionnelle d'une part de bénéfices et non du paiement d'une dette d'exploitation, ni d'une charge professionnelle déductible aux termes de l'article 26 des lois coordonnées, telle même qu'une dépense assimilable à une commission;

Attendu que cette attribution de bénéfices justifie déjà l'incorporation des sommes litigieuses dans les bénéfices imposables;

Attendu que la requérante soutient qu'il s'agit non de bénéfices mais d'une dépense professionnelle, que toute dépense d'une société commerciale constitue une dépense professionnelle, et que toute dépense professionnelle doit être déduite des bénéfices:

Attendu que l'Administration fait valoir au contraire à bon droit que sont notamment considérés comme bénéfices au point de vue de la taxe professionnelle, les avantages et profits qu'une entreprise établie à l'étranger retire directement ou indirectement, sous quelque forme ou par quelque moyen que ce soit, d'exploitations établies en Belgique qui sont sous sa dépendance ou sous son contrôle (art.27, par.2,7° des lois coordonnées);

Attendu que, conformément à cet article, même considérées comme dépenses professionnelles, les sommes litigieuses doivent être incorporées aux bénéfices taxables;

Attendu que la requérante soutient que cette disposition légale ne serait pas applicable aux sommes litigieuses, parce que celles-ci, payées directement à une autre société établie en Belgique, sur ordre de la Holding, n'ont procuré à celle-ci aucun avantage ou profit net;

Attendu que l'on peut d'abord remarquer que procurer à un tiers de quoi lui permettre de remplir ses propres obligations, c'est lui accorder un avantage ou un profit;

Attendu surtout que ce n'est pas l'avantage dont profite la société étrangère qui est taxé, puisque celle-ci n'est pas imposable, mais bien l'avoir de la société belge, qui sort du patrimoine de celle-ci;

Attendu que la taxation des sommes litigieuses est conforme à l'esprit de la loi du 28 juillet 1938, car elle est de nature à assurer une juste perception d'un impôt quant à sa progressivité et même quant à sa perception en cas d'exploitation déficitaire du dernier bénéficiaire;

Attendu que la convention belgo-luxembourgeoise du 9 mars 1931 ne peut être appliqué en l'espèce; qu'en effet la Holding G . . . n'exerce pas d'activité en Belgique et ne peut être considérée comme entreprise établie dans les deux pays;

Attendu que c'est donc à bon droit que l'Administration a compris les sommes de 1.598.254 fr. 52 et de 590.100 fr. 60 dans les revenus taxables recueillis par la requérante respectivement pendant les années 1940 et 1941;

Attendu que pour les impôts litigieux, à savoir l'impôt spécial et temporaire (loi du 14 janvier 1940) des exercices 1943, rappel de droits de 1941 et 1944, rappel de droits de 1942, et l'impôt extraordinaire (loi du 16 octobre 1945) de l'exercice 1949, la requérante avait choisi la formule de référence la plus favorable dans son interprétation, soit respectivement les bénéfices des années 1936-37, et ceux des années 1938-39;

Attendu que la requérante soutient que les sommes de 1.777.278 fr. 15 et 1.497.781 fr. 07 de même nature que celles qui ont été discutées plus haut, payées à la société belge A . . . respectivement en 1938 et 1939, doivent être portées dans ses bénéfices de référence comme ayant été déclarées;

Attendu que ces sommes effectivement portées dans les déclarations, comme l'a constaté l'arrêt de la Cour d'Appel du 15 avril 1947, n'ont pu être imposées pour cause de forclusion; que leur imposabilité dépendait d'une interprétation de l'Administration différente de celle de la requérante, ce qui n'empêchait pas qu'elles étaient effectivement déclarées;

Attendu que la requérante qui doit être calculée en fonction de ces sommes exclut tout excédent imposable sur base de la loi du 16 octobre 1945;

Attendu qu'en ce qui concerne l'impôt spécial et temporaire (loi du 10 janvier 1940) la requérante, qui avait choisi la référence la plus favorable sur base d'une interprétation de la loi non admise par l'Administration, n'a cependant pas perdu le droit de choisir

la référence jusqu'à la taxation définitive (arrêt de la Cour d'Appel de Bruxelles du 23 décembre 1947, Journ. prat. Droit fisc. 1950, p. 283); que dans son recours elle maintient son droit de réclamer l'application de la formule la plus favorable;

Attendu que l'arrêt de la Cour du 23 avril 1952, qui écarte une nouvelle formule introduite par l'arrêté du 28 décembre 1942, pour des raisons *propres* à la dite formule, n'a pas privé la requérante du choix d'une formule ancienne; que la formule la plus favorable est celle des bénéfices de 1938-1939, comme pour l'impôt extraordinaire;

Attendu que cette dernière formule supprime tout excédent taxable à l'impôt spécial et temporaire;

Par ces motifs, la Cour,

Ouï en audience publique le rapport fait par Monsieur le Président et l'avis conforme de Monsieur le Substitut du Procureur général Baron Vinçotte;

Ecartant toutes autres conclusions,

Déclare les recours fondés; annule les cotisations litigieuses;

Condamne l'Etat belge, Administration des Finances, à rembourser à la requérante tous impôts indûment perçus du chef des dites cotisations, avec les intérêts moratoires, conformément à l'article 74 des lois coordonnées;

Condamne l'Etat belge au dépens.

IXe Ch.A. — Prés. et rapp.: M.Mechelynk. — Min.publ.: M. le Baron Vinçotte, Substitut du Procureur général.

IV

REVIEWS — COMPTES RENDUS

R. BORKOWSKY: *Kleine Steuerkunde*, 2. neubearbeitete Auflage. — Verlag des Schweizerischen Kaufmännischen Vereins, Zürich 1951, 82 pp.

A practical booklet. It gives, be it extremely summary, a survey of the Swiss taxes, with which the trader has to work regularly(inc ome-, property-, purchase tax).

For everyone, who wants to form a general picture for himself about it, a good guide. For the Swiss trader a precious guide, which prevents him from becoming a fiscal illiterate.

CAMILLE HIGY: *Das Schweizerische Steuersystem;* — Verlag des Schweizerischen Kaufmännischen Vereins, Zürich, 1947, 85 pp.

This book has been written as a manual for the study for higher tax officials in Switzerland. It represents concisely, often point after point, the complete Swiss tax system. The author has paid attention to history. The contents:

1. The significance of taxes in the economy of Switzerland.
2. development of tax policy since 1798.
3. the tax system being in force.
4. elements of the most important taxes.
5. tax burden.

A bibliography has been added to the book.

Die Kapitalausstattung der Unternehmung. Band 6 der Schriftenreihe des Instituts der Wirtschaftsprüfer. — Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf 1952, 225 pp.

This book is a collection of the reports and discussions, held on 24 September 1952, at the "Hamburger Fachtagung" of the "Institut der Wirtschaftsprüfer" and gives, moreover, the contents of 2 lectures held by the accountants Dr. ELMENDORFF (Subject: „Berichterstattung über die finanzielle Verhältnisse im Prüfungsbericht) and Dr. KRAFFT Freiherr von der Tan (subect: "Der 6 internationale Accounting-Kongress 1952 in London), on the Accountants-Day 26 September 1952. From the contents:

Dr. DUDEK — financing of German economy.
Dr. ZIMMERMANN — international capital participations.
Dipl. Kfm.Korp. — reconstruction of sea-shipping and its financing.
Dr. TREDUP — special questions concerning the financing of foreign trade.
Dr. LEHNERT — Rational capital issue.
Dr. SCHWARZ — Up-to-date forms of foreign financing.
Dr. HAX — Possibilities and limits of financing one's own business.
Dr. ing. BREDT — Responsible capital and its significance.

Finanzen und Steuern von Bund, Kantonen und Gemeinden (Finances et impôts de la confédération des cantons et des communes), bearbeitet von der Eidgenössische Steuerverwaltung, Bern 1952, 180 pp.

This annual gives a clear review of the finances and tax revenue in Switzer-

land. Elaborated tables facilitate the finding of all data about the finances of the federation, the cantons and the municipalities.

HARMENING UND WEBER: *Hypothekengewinnabgabe*. Kommentar zu den §§ 91-160 des Lastenausgleichsgesetzes mit ergänzenden Vorschriften. — C. H. Beck'sche Verlagsbuchhandlung, München und Berlin 1953, 403 pp.

The work has been meant as a commentary as elaborate as possible on the "Hypothekengewinnabgabe". It does not form a separate whole but it is an abstract of the great commentary of Harmening „Kommentar zum Lastenausgleich".

It has been worked out with care and has been designed systematically. It is only a pity that the index is not a little more detailed.

R. KALTHOF: *Rechtsmittelentscheidungen in Steuerrecht.* — Verlag Dr. Otto Schmidt, K.G. Köln.

This 134 pages booklet is intended to aid the officials, who have to take decisions in respect of juridical remedies taken by the taxpayer in connection with assessments. Though it has been meant really for a very limited group of persons, for other people it gives a good picture of the German formal fiscal law procedure. One finds in it of course particularly many things worth knowing about the different remedies which can be taken as the "Anfechtung" with import duties and excise duties, "Berufung" with other levies and several others. The author gives a so-called manual for the formulating of the different decisions which are possible with examples. Also solutions for different points of doubt, so that it fits well in with the book by Boethke, published by the same firm.

YVAN DELHAYE: *Le régime fiscal des sociétés coloniales II.* — Imprimerie Clarence Denis, 289 Chaussée de Mom, Bruxelles 1953, 274 pp.

The first part of this work was reviewed in Bulletin Vol. VII, Nr. 1 p. 60. In this second part the Act of the 21st of June 1927 is dealt with. This law is of application to juridical persons having their seat or most important administrative establishment in Belgium, but who do business in the Congo. These persons are in principle subject to the Belgian fiscal laws but the above-mentioned Act introduced a number of deviations in the normal system. The author remarks in his preface that the application of this Act causes difficulties through the lack of directives and judicial decisions. One must try to find a good interpretation of a great number of points oneself. The solutions given by the Administration are inserted in cases of doubt. Side by side with a detailed commentary and the parliamentary documents, this book gives the text of the Act and the regulations.

Some publications of the Efficiency-Bureau for administrative organization TAYLOR at Nijmegen, under the editorship of B. Hilverda and F. Kuipers.

The Dutch tax legislation has not yet become settled and one cannot expect that this will happen within a measurable time. It will be asserted that the situation in other countries is not much better, but that is poor consolation for the man of practice: he has just to take into account all those regulations preceding and changing each other.

The International Bureau of Fiscal Documentation was pleased to receive no fewer than 19 works and brochures, devoted to the revisions of the last few years in the Netherlands. They are reviewed here together, i.a. to give a succinct survey for the reader of the modifications and some problems

concerning them. In the first place the attention is drawn to five booklets, compiled by F. KUIPERS:

1. Beknopte practische herziening bij de belastingherziening, deel I,
2. idem, 2e druk,
3. idem, deel II,
4. idem, belastingherziening 1951,
5. idem, belastingherzieningen 1952.

ad 1 *and* 2.

The first edition was prepared when three Bills had passed the Second Chamber of the States General and many Bills were still pending; the second edition was going to press just at the moment when the First Chamber passed the Bills.

In part II not only the other Bills — which had then become Acts of Parliaments — have been treated, but modifications have been made also in the matter treated in part I.

When the whole is reviewed, it is clear how much has been modified in the last few years. What is mentioned below does not give more than a very succinct and cursory survey.

1. *The rates.* In 1947 the corporation profits tax had been marked down, the property tax *for entities* had been abrogated, the income tax had been increased; the year 1950 brought the abrogation of the enterprise tax, however on the other hand an increase of corporation profits tax. In the same year the rates of the income tax were also lowered. The author gives a survey of the rates 1941-1951 in an interesting table. Some figures for married people without children are quoted here:

income	tax				
	1941	1942	1947	1948	1951
3000	357.—	392.70	355.85	319.—	216.—
9000	1800.—	1980.—	2051.—	2122.—	1759.—
18000	4920.—	5412.—	5721.—	6030.—	5430.—
60000	29085.—	31993.50	31743.25	31493.—	30893.—

The wages tax developed in a similar manner. In the rates of the turnover tax important modifications were made in 1950: taxes on services rendered from 3 to 4%, for supplies different rates were made, varying from ½% to 15%. The registration duties increased while the sur-charges ceased to exist, moreover also the stamp duties increased. In 1951 the rates for the property tax and corporation profits tax and the death duties increased.

2. *Income tax.* This tax was frequently modified also in respect of the subject matter of the law, especially concerning the calculation of profits This was based upon the determination of the profits by comparing the property at the beginning and at the end of the financial year which measure was introduced during the German occupation. The revision of 1950 broke with this system. The author deals with it and also with the variations for the agricultural industry.

Many particulars are considered as: accelerated writing-off on plant acquired in 1950-1952, explained with examples, the possibility opened up to form certain reserves coupled with the termination of the untaxed reservation then existing. In the booklet, devoted to the revision of 1951 the author returns to the new fixation of profit by taking over and treatment of the note of the Minister about the system „first in last out".

The act of 1951 brought more modifications i.a. for the allowance for children; a special tax on business profits was enacted and the accelerated writing off and introduced in 1950 was again limited.

The act of 1952 brought a diminution connected with gifts. Many technical questions are dealt with in this connection.

3. *War damage* caused non-business property. The act of 1950 gave provisions for the fiscal side of this question.

4. *Enterprise tax*. As a result of the Act of 1950 this tax is gradually being wound up.

5. *Corporation profits tax* and *dividend tax* were modified in 1950.

6. *Dividend-stop*. A new act was enforced in 1950. This is not valid for financial years ending before or after 31st December 1952.

7. The wages tax and the property tax were modified in 1951.

8. The registration and stamp duty were modified in 1951.

9. House and furniture tax: new Act in 1950.

10. Recapitalisation Act, 1951.

11. Death-duty Act modified in 1951.

12. Fiscal emergency law. New Act 1950.

13. Purchase tax modifications 1952.

6. Guide when filling up the return for assessment of special property tax (war levy).

This booklet contains practical indications also about the property increase tax.

7. The purchase tax after 1st July 1947 by F. Kuipers. A handy booklet (95 pages), that has been superseded already by later modifications.

8, 9. The purchase tax 1951 and the middle classes by F. Kuipers, in 2 vols. These works contain a list of the most current goods with a table of rates. Further succinct considerations about many sorts of trades, i.a. of building contractors, pharmaceutical chemists, bakers, photographers, greengrocers and fruiterers, farmers, butchers, forwarding agents, garage-proprietors etc. and also hotels, restaurants etc.

10. The purchase tax after 1st September 1951 by F. Kuipers. Contains a new table of rates and a summary survey.

11. The purchase tax and the middle classes by the same author. In May 1953 a new edition was necessary, now loose-leaf. One finds the discussion of different branches and a separate section of the Table of Luxury articles, with explanations.

12-15. Fiscal problems. The following are treated: father and son in business, the death of the entrepreneur and (in two volumes) gifts and their effects for tax law.

16. Tax-law effects of hiring out a trade by F. Kuipers.

17. About the interpretation of fiscal acts. In this last booklet (30 pp.) much jurisprudence is quoted. This has been classified systematically.

18. Transference and liquidation, by F. Kuipers. The work in loose-leaf form is a surveyable book of reference, about a subject, which gives many difficulties in practice: On coloured paper the succinct contents of the jurisprudence is mentioned; on differently coloured paper the deviating ideas of many authors are found.

19. Masse de Manoeuvre with Guide by the same author. This are forms intended for entrepreneurs to enable them to get a survey of their untaxed reserves.

Dr. Otto Lenz, Dr. Wolfgang Hildebrandt: *Handelsgesetzbuch, nebst du Einführungsgesetz.* — Verlag Franz Vahlen GmbH, Berlin und Frankfurt a.M., 1954, 271 pp.

This edition of the commercial code has been worked up to 1st of January 1954. The modifications have been indicated in the text with reference to the Act by which the modification was enforced. At the end a detailed alphabetical register has been included.

CENTRE D'ETUDE DES SOCIETES (Association sans but lucratif, 4, Rue des colonies, Bruxelles): *Les reviseurs d'entreprises, commentaire de la loi du 22 juillet* 1953. — Etablissement Emile Bruylant, S.A. Rue de la Régence 67, Bruxelles, 1953, 194 pp.

This book discusses the Act of the 22nd of July 1953 in which connection an institute of specialists was set up who have a controlling function in connection with the accountancy of enterprises. This Act does not refer to fiscal subjects.

V

U.S.A.

The Bill H.R 8300 to revise the Internal Revenue Laws of the United State III (extract). [1]) [2])

XXIV. Gain or loss on the sale of property.

A. *Change in basis of property acquired from a decedent.*

Under existing law most property transferred as a result of the death of an individual receives a new basis at the date of death equal to its then market value (or value 1 year later if the estate tax optional valuation date is used).

This change in basis is not available, however, with respect to property included in the decedent's gross estate for estate tax purposes if the property was transferred in contemplation of death, was acquired by the surviving tenant of a joint tenancy by the entirety, or was included in the gross estate as a reserved income transfer.

The bill removes this discrimination by providing a new basis at date of death (or 1 year later if the optional valuation date is used) for nearly all property includible in the decedent's gross estate for estate-tax purposes. The only exceptions to this general rule are income in respect of a decedent, including unexercised restricted stock options and the interest element in a survivor's interest in a joint and survivor annuity accruing since the annuity was purchased. Under that provision when the income is reported for income-tax purposes by the estate or beneficiary, a deduction is allowed for any estate tax attributable to the values included in the decedent's gross estate. This is a substitute for the new basis at death.

The changes made by the committee in this provision are applicable to property received from an individual dying after December 31, 1953.

B. Depreciation sustained while property is used by a taxexempt organization

The committee has endorsed the position taken by the Service by specifically providing in the new code that the basis of the property, for purposes of computing taxable income, is reduced for exhaustion, wear, tear, obsolescence, amortization and depletion to the extent sustained during any period since 1913 when the property was held by an organization not subject to income taxation.

C. Sale or exchange of a residence.

The Revenue Act of 1951 eliminated in most cases the immediate recognition of a capital gain on the sale of a taxpayer's principal residence, provided that the proceeds are used to acquire a new residence. In the case of qualifying sales the basis of the old residence is carried over to the new residence. To qualify under this provision the taxpayer must purchase and occupy

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[1]) House Report no 1337.
[2]) Continued from Bulletin vol VIII no 5.

another residence within 1 year of the date of the sale, unless he builds a new residence, in which event the period is 18 months. The committee has continued this treatment of home-owners in the new code, but made four minor modifications.

Present law provides that gain is recognized only to the extent that the selling price of the old residence exceeds the cost of the new. However, the selling price may not be reduced by the expenses of sale. For example, an individual may sell an old house, with a cost basis of $ 10,000, for $ 14,000 incur selling expenses of $ 1,000 and reinvest the net proceeds of $ 13,000 in a new home. In such a case, a fictitious gain of $ 1,000 would be recognized because the selling price of the old house exceeds the cost of the new by this amount. Under the bill, this result is avoided by reducing the selling price, for purposes of recognizing gain by selling expenses.

Often a home-owner must incur certain fixing up expenses (such as papering and painting) in order to sell his house which may not otherwise be deductible or which may not represent capital expenditures and thus have no effect on the basis of the house. The bill provides that such expenses (incurred for work performed within a 90-day period prior to the contract of sale and paid for within 30 days after the sale) may also reduce the selling price for purposes of recognizing gain. These are allowed since they are incurred only to sell the old house.

Under existing law in the case of the involuntary conversion of property which consists partially of a personal residence and partially of a business property, the permissive extension of the replacement period beyond 1 year is applicable to the business portion, but the residence portion must be replaced within 1 year. In cases of involuntary conversion, this discrepancy in treatment has required some taxpayers (such as farmers), who own properties which are both residences and business properties, to replace the entire property within 1 year or lose the benefits of the postponement of gain. To prevent this effect the committee's bill provides that involuntary conversions of residences are to come under the general involuntary conversion provision under which the Secretary or his delegate can extend the replacement period beyond the 1 year, or 18 months, allowed in the case of residences.

Present law provides that the replacement period with respect to members of the Armed Forces is suspended during the time the taxpayer or his spouse is on extended active duty after the date of sale of the old residence and before January 1, 1954. In view of the continuance of the draft and the recall of Reserves to active Service, the committee has eliminated the cutoff date of January 1, 1954, but continues to limit the suspension to a period of 4 years from the date of the sale of the old residence.

D. *Mortgage foreclosures.*

Under the bill, the recognition of gain or loss on the foreclosed property is postponed until the creditor disposes of the property. The foreclosed property assumes the same basis as the debt plus foreclosure expenses, and taxable gain or loss is to be realized on ultimate disposition of the property. Such gain or loss is to be capital or ordinary depending on the character of the mortgage asset in the hands of the lender-mortgagee. In substance, a mortgage foreclosure would thus be treated as a tax-free exchange pending the subsequent sale of the underlying property.

A related feature of the committee's bill treats payments by the mortgagor, pursuant to deficiency judgments prior to disposal of the property by the mortgagee, as the recovery of capital. As such, these payments would not be currently taxable but would be applied to reduce the basis of the property. After disposal of the property, such payments are to be

ordinary income or capital gain, depending on the original status of the property.

Since mortgage foreclosures are only one of a variety of similar transactions involving the satisfaction of creditor claims secured by pledged property, related provisions of the committee's bill aline the treatment in these related areas with that provided for mortgage foreclosures.

These other areas, in some of which the deferred determination of gain or loss already applies under existing law, include voluntary conveyances in lieu of foreclosures, foreclosure reorganizations, and repossessions under installment sales and deferred payment plans. Repossessed property which remains in the inventory of the taxpayer at the close of the taxable year will be valued in accordance with the taxpayer's regular method of inventory accounting.

The committee's action will eliminate the existing possibility of abuse through the deduction of an unreal bad-debt loss based on an artificially low bid price. It will clear up existing confusion and variation in administrative practices by prescribing a single clear-cut statutory rule.

It will also assure uniformity in the treatment of essentially similar types of transactions. Moreover, the deferred recognition of gain or loss is in accord with the economic realities of mortgage foreclosures. Mortgage lenders are primarily engaged in the business of making loans. A foreclosure or similar proceeding is essentially a step in the process of recovering capital and marks no significant change in the lender's economic relationship to the property used to secure the loan. Final income consequences of a loan transaction are not actually realized until the original venture is liquidated through sale or disposition of the pledged property.

E. *Exchanges of insurance policies.*

The committee's bill provides that no gain or loss is to be recognized on the exchange of —

(1) a life insurance contract for another life insurance contract or for an endowment or annuity contract.

(2) an endowment contract for another endowment contract or for an annuity contract; and

(3) an annuity contract for another annuity contract.

XXV. Capital gains and losses.

A. *Sale of patents by an inventor.*

The bill makes no distinction between amateur and professional inventors or between royalty income and installment sales. Capital gains treatment is to be available in all such cases if the contract does not make the sales price dependent, for a period of more than 5 years, upon the productivity, use or disposition of the patent in the hands of the buyer, and if the payments must be completed in 5 years (except for late payments resulting from the failure of the buyer to meet the contract terms). The statute of limitations is extended for this purpose.

B. *Definition of capital asset to exlude certain accounts and notes receivable.*

The committee's bill provides ordinary loss or income treatment where an account or note, acquired in the manner described above, is sold or exchanged. This is the treatment presently applicable if the account or note is held until maturity.

C. *Holding period.*

Present law, in determining long- or short-term capital gains and losses

permits the holding period of an asset given up in a tax-free exchange to be added to the holding period of an acquired asset. To prevent tax avoidance the committee's bill permits the adding of the two holding periods only where both assets are capital assets.

Under both present law and the bill, a taxpayer who holds a commodity futures contract for more than 6 months, and then sells it, has a long-term capital gain or loss. However under present law if at any time he accepts delivery of the commodity, his holding period starts again as of that time.

Since the taxpayer is "at risk" for the entire period he holds the futures contract, the bill provides that delivery in such a case does not start a new holding period.

D. *Short sales and options.*

Under present law, a dealer in commodities or securities can obtain long-term capital gains treatment by selling his stock in trade short rather than by selling it outright. To prevent tax avoidance, the committee's bill provides, that the gain or loss from a short sale is to depend upon the nature of the asset used to close the sale.

The committee's bill provides consistent treatment for sales and failures to exercise an option and in the case of the optionee makes the treatment depend on the nature of the underlying asset. Thus, if a taxpayer acquires an option relating to a noncapital asset he will receive an ordinary gain or loss when he sells the option or when the period expires for him to exercise it; or if the underlying asset is a capital asset he will receive capital gain or loss treatment regardless of how he disposes of the option.

However, the grantor of the option always will receive ordinary income on the failure to exercise any option.

E. *Investment account of real estate dealers.*

The committee's bill extends capital gain treatment to real estate dealers who earmark property for investment (within 30 days of acquisition or 90 days after the enactment of this provision) if no substantial improvements are made to the property by the dealer and if the property is held for a period of at least 5 years.

To separate the long-term gain element from the ordinary income attributable to the selling effort, the bill provides that to the extent of 5 percent of the gross proceeds of the sale, ordinary income is realized and only the remaining gain is to be treated as a capital gain from an investment. Expenditures of the sale are to be allocated first to the portion of the gain treated as ordinary income.

F. *Sale of subdivided real estate.*

The committee adopted a provision which permits a taxpayer subdividing real estate under special circumstances to report long-term capital gains on the sales of lots as capital gains. To obtain this treatment the taxpayer must not be otherwise a dealer in real estate, must not have made a substantial improvement in the property, and must have held the property for 5 years. In such cases the first five sales may be made subject only to capital gain or loss treatment. In the year in which the sixth sale is made, and in any subsequent sales of the property, the subdivider is to report 5 percent of his gross proceeds of all such sales as ordinary income and any remaining gain as capital gain, in substantially the same manner as provided in the case of investment accounts of real estate dealers.

G. *Private annuities.*

Under the bill the capital gains tax is to be imposed on the seller of the property in the year of the exchange on any excess of the value of the

annuity, plus other consideration received, over his basis for the property.

The annuity is not to be discounted for the financial condition of the person agreeing to pay the annuity.

Moreover, a taxable gift element may be recognized in the exchange. In addition to the capital gains tax, the seller of the property is to pay tax under the new annuity rule, using the value of the annuity to determine his exclusion.

XXVI. Readjustment of tax between years.

A. *Averaging.*

Present law provides a spreading back of income for taxpurposes in many situations where income earned over a period of years is received in one year. The committee's bill retains this treatment but incorporates three substantive changes in existing law.

A loophole in present law permits a partner to spread back income to years before he became a member of a partnership and even, in some cases, to years before he was born.

This bill provides that a partner cannot spread back income to years prior to his becoming a member of the partnership.

The second change is designed to increase the incentive to develop inventions. The bill increases the maxiumum period over which income from an invention can be spread back from the present 36 months to 60 months.

The third change is also a loophole-closing provision.

Under the bill a taxpayer, in computing the tax attributable to income spread back to earlier years, is not to have the benefits of income splitting for years prior to 1948.

B. *Adjustments to closed taxable years.*

The committee has provided that adjustment in the closed year may be made on the basis of an informal determination signed by the taxpayer and on behalf of the Commissioner.

The new procedure will be subject to regulations approved by the Secretary or his delegate. The informal determination will not be binding on the parties, but if the determination should later be altered or revoked, the adjustment in the closed year will also be revised. The proposed procedure will eliminate the present confusion as to the status of informal agreements and enable taxpayers and the Government to obtain speedy relief in cases where the application of the adjustment provision is agreed to by the parties.

The adjustment provisions have been amended accordingly to provide that there shall be taken into account the effect in other taxable years of a net operating loss deduction or a capital loss carryover which is determined with reference to the year of the adjustment.

C. *Claim of right.*

The committee's bill provides that if the amount restored exceeds $ 3,000, the taxpayer may recompute the tax for the prior year, excluding from income the amount repaid. This is an alternative to taking the deduction in the year of restitution. The $ 3,000 limitation is imposed for administrative reasons. Moreover, with smaller amounts, excluding the repaid amount from the earlier year's income is likely to have little, if any, tax advantage over taking a deduction in the year of restitution.

XXVII. Consolidated returns.

A. *Change in affiliation test.*

Present law provides that for corporations to join in the filing of a con-

solidated return, one must own 95 percent of the outstanding stock of the other. The committee has lowered this stock ownership affiliation test to 80 percent. This change will make it possible for a substantially greater number of multicorporate businesses, which in effect operate as economic units, to report their income for tax purposes as a single taxpayer.

B. *Earnings and profits*

The committee has adopted four alternative elective methods for determining the reduction in the accumulated earnings of each member of an affiliated group joining in the filing of a consolidated return. An election once made is irrevocable. The four methods are:

(1) Under the first alternative, the tax is apportioned among the members in accordance with the taxable income each has produced disregarding any member which has a loss.

Thus where two members of an affiliated group each produce $ 100,000 of income and a third member a loss of $ 100,000, if the tax were $ 50,000, it would be apportioned equally between the 2 members producing the taxable income. This rule is to be followed where the affiliated group fails to make any election on its first return.

(2) Under the second alternative, the tax liability of the group is allocated to the several members on the basis of the percentage which the tax each member would have paid had it filed a separate return is of the aggregate of these separate taxes. Thus, in the case of a loss carryover, for example, which is utilized by the affiliated group, the share of the total tax attributed to the corporation giving rise to the carryover would be relatively less than that attributed to the others since this loss carryover would have offset its own taxable income if it had filed a separate return.

(3) The third alternative is the same as the first but with the additional requirement that the tax attributable to any subsidiary member of the affiliated group is not to be higher that it would have been had such member filed a separate return and any excess of such tax is to be attributed to the members of the affiliated group, the tax of which is lower by reason of joining in the filing of the consolidated return or to the parent corporation.

(4) The fourth alternative would permit the tax liability of the group to be allocated in accordance with any other method selected with the approval of the Secretary.

XXVIII. Disallowance of minimum exemption and credit.

Under present law, if a corporation transfers property (other than money) to another corporation which it controls and which was created or utilized for the purpose of receiving the transferred property in order to obtain either an additional $ 25,000 minimum surtax exemption or an additional $ 25,000 minimum excess profits tax credit, the benefit of the additional credit or exemption is disallowed to the transferee corporation. Under existing law, this provision is not applicable with respect to taxable years beginning after December 31, 1953.

Consistent with its policy of preventing tax avoidance, the committee has extended this provision indefinitely insofar as it relates to the $ 25,000 minimum surtax exemption. The new provision also provides that the $ 30,000 accumulated earnings credit provided by the committee in connection with the tax on accumulated earnings, also is not to be available to the transferee corporations in these cases.

XXIX. Estate tax.

A. *Combining the basic and additional tax.*

Under present law estate-tax liability is computed by first determining a "tentative tax" (basic and additional taxes). Then, if the estate is over-$ 100,000 a "basic estate tax" is computed and 80 percent of this represents the maximum credit allowed for State death taxes.

The committee's bill greatly simplifies this computation by doing away with the necessity of separately computing the basic tax. This is made possible by expressing the maximum credit allowable for State death taxes as a percent of the taxable estate of the decedent.

This simplified method of computing the tax does not change the tax liability of any citizen or resident of the United States or the credit allowed for State death taxes. It does, however, raise slightly the tax of those few non resident aliens who are entitled to a credit for State death taxes.

While the concept of the basic estate tax is largely discarded in the bill, a method of determining the basic and additional estate taxes separately is retained, since some State death taxes and the exemption for estates of certain members of the Armed Forces require the separate computation of these taxes.

B. *Credit for tax on prior transfers.*

The committee's bill provides more equitable results and removes the difficult task of tracing the property. A credit is allowed for the tax paid on the property in the estate of the prior decedent but it can never be larger than if the current decedent had not received the property. To eliminate the tracing the credit is based upon the value of the property at the time of the death of the prior decedent. Moreover, property transferred between spouses, to the extent no marital deduction was available, is eligible for this credit.

The credit to be allowed in full for 2 years following the death of the prior decedent and then decreases by 20 percent every 2 years thereafter until no credit is allowed after the 10th year. The credit for gift tax paid on a prior transfer has been omitted.

C. *Alternate valuation.*

The bill provides that the option to value property as of a year after death is to be available only if the property declines by one-third in value during the year after death. In all other cases valuation at the date of death is to be compulsory.

D. *Transfers taking effect at death.*

In the future property previously transferred by a decedent will be includible in his estate only if he still had (either expressly or by operation of law) immediately before his death a reversionary interest in the property exceeding 5 percent of its value, that is, if he, prior to his death, had 1 chance in 20 that the property would be returned to him.

E. *Annuities.*

The bill requires the inclusion of a joint and survivor annuity in the gross estate to the extent that the decedent contributed to its cost and, for the purpose of determining the extent of the decedent's contribution, the payments made by the employer under an unqualified plan, are to be taken into account. However, under an approved trust, pension or retirement plan, the employer's contributions are not to be considered as having been made by the decedent.

For values which are included in the gross estate the committee's bill

provides an additional exclusion (income in respect of a decedent) when the survivor reports the income, equal to the estate tax attributable to the income element of the survivorship feature which has accrued since the annuity was purchased.

F. *Proceeds of life insurance.*

The bill retains the present rule including life-insurance proceeds in the decedent's estate if the policy is owned by him or payable to his executor, but the premium test has been removed. To place life-insurance policies in an analogous position to other property, however, it is necessary to make the 5-percent reversionary interest rule, applicable to other property, also applicable to life insurance.

G. *Expenses, indebtedness, and taxes.*

Expenses incurred in connection with property subjected to the estate tax, although not in the probate estate, are to be allowed as deductions, if the expenses are of the type which would be allowed as deductions if the property were in the probate estate and they are actually paid within 1 year of the decedent's death.

In addition, expenses in connection with property subject to claims are to be allowed without regard to the total value of the probate estate if they are paid within the period provided for the assessment of the estate tax.

H. *Marital deduction.*

(1) *Life estate with power of appointment*

The bill makes it clear that property in a legal life estate as well as property in trust qualifies for the marital deduction and that a right to income plus a general power of appointment over only an undivided part of the property will qualify that part of the property for the marital deduction. Conforming changes have been made for life insurance or annuity payments where the surviving spouse has a power of appointment.

(2) *Widow's allowances.*

The committee's bill modifies this rule by making the terminable interest rule inapplicable to all amounts paid the widow pursuant to State laws for her support during the settlement of the estate, to the extent of payments made within one year after the decedent's death. Subsequent payments, however, will continue to be subject to the terminable interest rule as under present law.

I. *Stocks situated in the United States.*

Under present law stock held by nonresident aliens is treated as property situated in the United States if it is stock of a domestic corporation regardless of where the certificates are located, and if it is stock of a foreign corporation, if the certificates are located in the United States.

Under the bill only the first of these rules is retained: Stock is to be deemed to be situated in the United States only where it is stock in a domestic corporation.

This rule conforms to the tax conventions the United States has entered into with many countries and removes any deterrent to the use of United States bank and trust companies as depositories.

XXX. Gift tax.

A. *Nonresident aliens.*

The bill imposes a gift tax with respect to all gifts made by citizens or

residents of the United States wherever the property is situated. In the case of nonresident aliens who are engaged in business in the United States tax is imposed with respect to gifts of property situated in the United States. With respect to all other nonresident aliens the tax is imposed only with respect to tangible property situated in the United States.

B. *Gifts to minors.*

The bill provides that gifts to minors will not be considered gifts of future interests if the income and property can be spent by or for the child prior to his attaining age 21 and if not so spent passes to the child when he reaches age 21 (and to his estate if he dies prior to age 21).

C. *Revaluation of gifts for prior years.*

The bill provides that the value of a gift as reported on a taxable gift tax return for a prior year is to be conclusive as to the value of the gift (after the statute of limitations has run) in determining the tax rate to be applied to subsequent gifts. This substantially increases certainty in the gift tax area.

D. *Tenancies by the entirety.*

The bill provides that unless the spouse who furnishes the major part of the consideration for the property elects otherwise, a transfer of real property to a tenancy by the entirety will not regard it as a gift at that time. However, when such a tenancy is terminated a gift is considered as occurring at that time to the extent the proceeds are returned to the husband and wife other than in proportion to the consideration furnished by each spouse.

E. *Property settlements incident to divorce.*

The bill provides that property settlements involving transfer between spouses are not to constitute taxable gifts if followed by a divorce within a reasonable length of time.

F. *Marital deduction.*

To correlate the marital deduction under the gift tax with the changes made by the committee in the marital deduction under the estate tax, the bill makes it clear that transfers to a spouse of a legal life estate in property coupled with a general power of appointment are eligible for the marital deduction under the gift tax.

XXXI. Excise taxes on alcoholic beverages and tobacco.

A. *Use of returns for payment of tax.*

In the case of the excises on both alcoholic beverages and tobacco products the committee has provided that the taxes are to be paid by returns rather than by the purchase of stamps. The bill provides the Secretary may institute the return system at any time after January 1, 1955. The period for which the returns are to be filed, the time of filing, and other details are to be prescribed by regulations. Representatives of the Treasury Department have told the committee that while no definite date has been set for instituting the return system, plans have been made to require a weekly return when the plan is first put into effect. Subsequent extension of time for filing returns will be dependent on the fiscal situation and on the experience with the weekly return.

B. *Penalties.*

The mandatory minimum requirements have been deleted in the commit-

tee's bill because it has been found that they have interfered with the effective administration of justice in such violations.

C. *Distilled spirits.*

(1) Authorization for voluntary destruction of distilled spirits prior to withdrawal from bond is provided by the bill. Present law provides for the collection of tax on distilled spirits voluntarily destroyed unless such spirits are unfit for beverage purposes. This provision works a hardship on the industry, since spirits, although not considered unfit for use as a beverage, may still be generally unacceptable to consumers and thus in fact commercially worthless.

(2) Distilleries are authorized to conduct other businesses, except specifically prohibited businesses, on distillery premises, when it is found by the Secretary or his delegate that such operations will not jeopardize the revenue. Currently, only operations connected with the production of distilled spirits may be conducted on distillery premises. One example of a type of business which might be authorized is the manufacture of antibiotic drugs which requires large-scale fermenting equipment of the same character as that used in a distillery.

(3) The bill removes the requirement of present law that all stills, for whatever purpose intended (except stills for refining petroleum) be registered. Registration is to be required only of stills intended to be used for the distillation, redistillation, or recovery of distilled spirits.

D. *Fermented malt beverages.*

(1) Brewers are authorized to use their premises for producing and bottling soft drinks and for such other businesses as the Secretary may find will not jeopardize the revenue.

Breweries which on June 26, 1936 were bottling soft drinks are now allowed to carry on such business. Under the bill this privilege is to be available to all brewers. Many small brewers have excess bottling and canning capacity which could be utilized for producing soft drinks and in this manner make their operations more economical.

(2) The bill provides for the refund or credit of tax paid on beer belonging to a brewer if it is returned to the brewery for reconditioning, for use as materials, or destroyed under required supervision. Provision also is made for credit or refund of tax paid if beer belonging to a brewer is lost by casualty (other than by theft). No claim for casualty loss will be allowed, however, if the brewer was indemnified by insurance or otherwise.

Under present law, there is no provision for such credits or refunds. The committee considered it desirable to make such change, however, because where such loss or destruction takes place prior to passage of title by the brewer, he is now charged tax on production from which he receives no benefit. This change will make the basis of brewers' tax payments more nearly comparable to those of most other excise taxpayers.

(3) Brewers owning two or more breweries are authorized to transfer beer without payment of tax from one brewery to another. Esixting law does not permit such transfers, but comparable tax-free transfers under bond are permitted for wines and distilled spirits.

E. *Wines.*

(1) Wineries are to be granted permission to carry on certain operations in wineries besides the making of wine, if these operations are conducted in a manner which will not jeopardize the revenue. This will permit wineries to be used for making fruit juice, jellies and jams, and thus permit more efficient utilization of the wine premises.

(2) A thorough revision of the definitions of wines, the methods of prepara-

tion permitted, and the required standards of quality is made in this bill. These changes have been made to bring the law in line with modern production practices and to provide for greater clarity as to permissible activities and standards. One of the most important changes is the provision permitting use of methods acceptable in "good commercial practice" to correct and stabilize wine. Present law prescribes that only "usual cellar treatment" may be used. This change in wording will make it possible to recognize new methods which may be developed in the future.

(3) The bill provides a new category of premise, the taxpaid wine bottling house, which will operate under Government supervision. Under present law the Government cannot supervise the bottling of taxpaid wine. This lack of control has led to administrative difficulties as well as to frauds on the revenue.

(4) Provision is made for the allowance of all losses of wine while in bond except losses by theft occurring because of negligence or collusion. No allowance will be permitted where the claimant is indemnified by insurance or otherwise. Allowance is also made for voluntary destruction of wine in bond.

Under present law, all losses in bond are allowed purely at the discretion of the Commissioner. Under this rule, amounts lost by theft in all cases have been taxed, and destruction without payment of tax has been permitted only for wine unfit for use as wine. These changes bring the wine provisions in line with those for distilled spirits lost or destroyed while in bond.

(5) The bill authorizes the refund or credit of tax paid on unmerchantable sparkling or artificially carbonated wine which has been returned to a bonded premise. No such provision now exists. Where effervescent wines become unmarketable as sparkling wines, as in the case of loss of sparkle, the loss in value is substantial because of the much higher tax rates for effervescent wines than for still wines. This new provision is intended to give relief in such cases. The principle used here has long been in effect with respect to tobacco products where provision is made for redemption of stamps used on taxpaid products subsequently withdrawn from the market.

(6) The bill provides that the tax base for sparkling and artificially carbonated wines is to be a wine gallon instead of the present base of each one-half pint or fraction thereof in each container. The rates for these wines have been restated to make them practically the equivalent of the existing rates. For example, the rate on champagne or other sparkling wines has been changed from 17 cents on each half pint or fraction thereof in each bottle or other container to $ 3.40 per wine gallon. The rate per wine gallon is set at 20 times the rate per half pint because most such wine is bottled in fifths, and each fifth is taxed at 4 times the half-pint unite rate.

This change will establish a uniform taxable unit for all wines and avoid the present tax penalty on using bottles not containing an even multiple of half pints.

(7) The bill imposes the wine tax on sake and other rice wines. Presently these wines, because they are made from grain, can only be made at breweries and are subject to tax as beer. However, since the products are commonly known as wine, it would appear that they should be taxed as wine.

These wines usually contain from 16 to 18 percent of alcohol. The rate of tax on wines of this strength is 67 cents per gallon. The tax on beer is about 29 cents a gallon.

(8) The bill clarifies the exemption from tax for hard ciders (usually sold during season by farmers at roadside stands) to provide that it applies when the cider is not preserved by any process or by the addition of any material and is not offered for sale as wine or a substitute for wine. Such cider was not taxable prior to 1936, but the amendment of the law in that

year to refer specifically to "apple wine" raised some question as to whether hard ciders might be taxable. This revision will remove the uncertainty.

F. *Tobacco products.*

(1) Detailed statutory provisions specifying the permitted sizes of packages and the exact wording of notices and labels to be put on packages have been removed. The revised law is intended to afford relief to the industry from present rigid requirements by giving authority to effect changes by regulation.

(2) The bill authorizes credits or refunds to be made the manufacturer for tax paid on articles lost by casualty (except by theft) while in his possession. Present law already allows the refund of tax on articles withdrawn from the market by the manufacturer. Several court decisions have interprete "withdrawal from the market" to include loss by casualty (other than theft) while taxpaid articles are still in the possession of the manufacturer. This change thus brings the law specifically in line with these court decisions.

(3) The bill provides that every person before commencing business as a manufacturer of tobacco products must obtain a permit to engage in such business. The permit may be refused if it is deemed that the applicant is unlikely to comply with the tobacco tax provisions. Once issued, permits may be suspended or revoked after hearing before proper authority.

XXXII. Provisions relating to procedure and administration.

A. *Filing date for tax returns.*

The committee's bill postpones from March 15 to April 15 the date for individuals using a calendar year to file their income-tax returns. A similar 1-month postponement is provided for individual income taxpayers using a fiscal year.

However, no changes were made in the case of the present June 15, September 15 and January 15 dates for amending declarations of estimated tax (and for the last three quarterly payments of estimated tax).

Under present law farmers are required to file their declarations of estimated tax by January 15 or, if they do not wish to file their declarations by that time, file their final return by January 31. The committee has moved up this alternative filing date for final returns of farmers from January 31 to February 15. It also extended the definition of farming to include oyster farming.

No change was made in the March 15 filing date for corporations except in the case of tax-exempt cooperatives. The filing date for the returns of these cooperatives was postponed until September 15 (following the year of tax liability) to coincide with their last date for declaring patronage dividends with respect to the prior year's business.

B. *Declarations of estimated tax by individuals.*

To correct the deficiencies in the provisions relating to estimated tax, the committee has provided for changes in the filing requirements and in the system of additional charges.

For an individual with no more than $ 100 of gross income from sources other than wages or salary, a declaration is to be required only if gross income is expected to be $ 5000 or more. However, no declaration will be required by a married person if his gross income, combined with that of his spouse, is expected to be less than $ 10,000. The $ 10,000 requirement also applies to heads of families.

For individuals who expect to receive more than $ 100 of income not subject to witholding, a declaration will be required only if gross income from other sources is expected to be more than $ 600 per exemption plus

$ 400. These revised filing requirements will substantially reduce the number of declarations involving little or no tax in excess of the amount withheld, and will thus produce savings both for taxpayers and the Internal Revenue Service.

In place of the present complicated and severe system of additional charges, the committee has provided a uniform charge of 6 percent per annum for underestimates and unpaid installments of estimated tax. In general, this charge will be imposed where the installment payment made by the taxpayer is less than 70 percent ($66^2/_3$ for farmers) of the quarterly installment due on the basis of the tax shown on the final return (less the amount of tax withheld). The 6 percent per annum charge will be based on the amount of this difference.

However, in order to make allowance for the fact that many taxpayers are uncertain during the early part of the year as to what their income and tax will be over the year, no charge will be imposed, even if the installment payment is less than 70 percent of the quarterly installment due, if the amount paid as estimated tax is (1) the same as the previous year's tax or (2) the tax for the previous year as it would have been of the rates and personal exemptions applicable to the current year had been used.

In addition, the taxpayer will be able to avoid an additional charge if his total payments on or before any installment date are at least 70 percent of an estimated tax computed by projecting to the end of the year the income received from the beginning of the year up to the month in which an installment is due. This provision is designed to correct the deficiency in the present system of additional charges for taxpayers who expect to receive the greater part of their income in the latter part of the year.

C. *Declaration of estimated tax and tax payment schedule for corporations.*

The committee has adopted a system of declarations of estimated tax for the larger corporations which restores the four quarterly installment system and reduces the time the corporation is given for the payment of its tax.

The bill requires corporations to file a declaration of estimated tax and to make a partial payment on account of current tax liability by the middle of the ninth month of the year of the tax liability and another by the middle of the last month of the same year. When this plan is fully effective, calendar-year corporations will pay one-fourth of their estimated tax on September 15 of the year of the tax liability and another quarter on December 15 of the same year. A quarter will be paid on March 15 of the year following the taxable year and the final payment on June 15 of that year.

To facilitate the transition to the new system, the committee's bill makes provision for a gradual shift to the new system over a 5-year period, starting in 1955. In the case of a calendar-year corporation 5 percent of the estimated 1955 liability will become due on September 15, 1955; another 5 percent will be due in December, and about 45 percent of the actual tax will be payable in the following March, and another 45 percent in June. For the 1956 liability, the September and December payments will be about 10 percent and the following March and June about 40 percent each. The September and December payments will coniue to increase each year until they both reach 25 percent of the estimated tax for 1959 liabilities, when both the March and June payments wil have been reduced to about 25 percent of the actual tax. In 1960 and in subsequent years, corporation income taxes will be due in four quarterly installments, extending from the middle of the ninth month of the current year to the middle of the sixth month of the following year.

The schedule of corporate tax payments during the past 5 years and

the schedule under the committee's bill for the next 5 years is as follows:

Payment schedule for corporation income tax under prevailing law, 1949-54, *and proposal* 1955-59
(Calendar year corporations; showing percent of tax liability due in each installment)

Income year	Income year		Following Year				Total
	September	December	March	June	September	December	
1949	—	—	25	25	25	25	100
1950	—	—	30	30	20	20	100
1951	—	—	35	35	15	15	100
1952	—	—	40	40	10	10	100
1953	—	—	45	45	5	5	100
1954	—	—	50	50	0	0	100
1955[1]	5	5	45	45	—	—	100
1956[1]	10	10	40	40	—	—	100
1957[1]	15	15	35	35	—	—	100
1958[1]	20	20	30	30	—	—	100
1959[1]	25	25	25	25	—	—	100

[1]) Applicable to tax liability, in excess of $ 50,000.

The committee's bill exempts from the required declaration of estimated tax and the new tax payment schedule corporations whose yearly tax liability cannot reasonably be expected to exceed $ 50,000. Moreover, it limits the current payment requirements to that portion of the tax liability in excess of $ 50,000. Because of these exemptions, the declaration system in this bill will not effect the 390.000 corporations whose annual tax liability is less than $ 50,000. It will, however, affect the 35,000 corporations with tax liabilities above $ 50,000.

These 35,000 corporations account for approximately 90 percent of corporate income tax liabilities. Thus, while the plan leaves more than 90 percent of corporations unaffected, it accelerates the payment of 90 percent of corporate tax liabilities.

To facilitate compliance with these provisions, the bill prescribes for corporations the same additional charges prescribed by the bill in the case of declarations of estimated tax by individuals. These charges are equal to 6 percent (per annum) of the amount of underpayment.

However, the charge will not be imposed if the estimated tax upon the basis of which the installments are paid falls into any of the following four categories:

(1) If it amounts to 70 percent of the tax (in excess of $ 50,000) shown on the final tax return;

(2) If it amounts to as much as the previous year's tax;

(3) If it is equal to what would have been last year's tax liability if current tax rates had been applicable, less $ 50,000, to previous year's income; or

(4) If it is at least equal to 70 percent of the tax (less $ 50,000) due on the basis of projecting to the end of the year the income received from the beginning of the year up to the date of the declaration or its amendment.

D. *Information and returns.*

(1) Present law requires the reporting of payments to another person (not a corporation) of more than $ 600 consisting of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other gains, profits and income. In the case of interest payments present law requires this reporting regardless of the size of the payments. The committee has omitted these provisions from the new code because they have not been used extensively under existing law and because the requirements if interpreted literally would require the filing of these special informational returns by a vast number of individuals.

(2) The bill raises the minimum income tax return filing requirement from $ 600 of gross income to $ 1,200 of gross income for individuals over age 65.

(3) Married taxpayers are to be allowed to file joint returns after having filed separate returns without first paying the tax shown on the separate returns. For example, if the separate return liability were $ 130 but the joint return liability only $ 18, a husband and wife could shift from separate to joint returns by paying only the $ 18. Under present law they would first have to pay the separate return liability of $ 130 and then claim a refund of $ 112.

(4) In the case of corporate returns, 1 officer will be required to sign the return instead of 2 as at present. Moreover, any officer duly authorized by the company will be able to sign, rather than only certain specified officers as at present.

(5) The Secretary or his delegate will be given the authority to grant an extension of time, up to 6 months, for the filing of any tax return. At present, this authority is limited to the income and certain other taxes.

Corporations are also given a 3-month automatic extension for filing their income tax returns upon the filing of an appropriate form and the paying of the tax installment estimated to be due.

(6) The Secretary or his delegate is to be authorized to allow the filing of returns in whole dollar amounts rather than showing the exact cents.

E. *Time and place for paying tax.*

A uniform rule is provided permitting the Secretary or his delegate to extend the time for the payment of any tax for a period not in excess of 6 months (the 10-year period, however, is retained for the estate tax). This is present law for the income taxes, estimated income taxes, unemployment taxes and gift tax, but in the case of many others there either is no provision for an extension of time or provision for only a 90-day extension.

F. *Collection.*

(1). Under the bill while assessment may be made immediately when returns are filed early, payment before the due date for the return may not be demanded.

(2) The Secretary or his delegate is authorized to receive any check or money order for payment of taxes or stamps. Present law closely limits the type of check or money orders which may be received for stamps.

(3) It is made clear that the lien for taxes arises at the time the assessment is made.

(4) Existing law is clarified and amplified as to the status of tax liens relative to other liens. They are to be subordinate to previous valid liens of a bona fide mortgagee, pledgee, or purchaser but superior to these liens if such a person had knowledge of the tax liability.

(5) In certain estate and gift tax situations priority of lien is provided

in good faith files a trust or partnership return, under the bill such return is to start the running of the statute of limitations.
for bona fide mortgagees and pledgees. The situation of bona fide purchasers for full value is also improved in some cases.

(6) The law is clarified with respect to the right of distraint and levy (seizure) for the collection of tax liability. Also, in all cases of jeopardy the right is granted the Service to seize property immediately after notice and demand. Under present law there must be a 10-day waiting period in the case of income, estate, and gift taxes.

(7) The right to levy on salaries due is extended to permit the levying on salaries due Government employees in the same manner as is presently possible in the case of other employees.

(8) The list of household goods, etc., exempt from levy is modernized. Present law exempts "1 cow, 2 hogs, 5 sheep" (if the sheep are not worth more than $ 50), etc. The new provision exempts "necessary" wearing apparel and schoolbooks; fuel, provisions, personal effects, and furniture to the extent of $ 500; and necessary books and tools for the taxpayer's trade or profession up to $ 250.
Present law requires appraisals of the property exempt from levy by three "householders of the vicinity". The new provision requires appraisal of the exempt property only if the taxpayer demands it, and then the appraisal is to be made by three disinterested individuals summoned by the officer making the seizures.

(9) The treatment provided for the sale of seized real and personal property is made uniform.

Present law requires that the place of the sale must be not more than 5 miles away from where the property was seized but this limit can be ignored on special order of the Commissioner.

The new provision requires the sale to take place in the same country as the seizure except by order of the Secretary or his delegate.

More freedom is permitted in the methods of holding the sale of seized property to obtain the highest price possible to the benefit of both the taxpayer and Government: Sale by sealed bids as well as by auctions is permitted, the sale of items may be made singly or in groups, and down payments by purchasers with the balance being paid in a month are permitted.

(10) New rules are provided for the sale of seized perishable goods to make such seizures feasible.

(11) New rules are provided to insure valid titles to purchasers of automobiles law fully seized and sold by the Government.

(12) A new provision permits the releasing of seized property if the taxpayer makes satisfactory arrangements for the payment of his tax, such as the payment in installments from part of his salary.

G. *Limitations.*

(1) The 3-year period of limitations for assessment or refund now applying in the case of the income, estate and gift taxes is applied to excise taxes, which presently have a 4-year limitation period.

(2) The period of limitation for assessment is made 6 years instead of 5 in the case of the omission of 25 percent of gross income, and a similar rule is applied in the bill to the estate and gift taxes. However, under the bill this longer period is not to apply if disclosure of the nature and amount of omitted items is made on or with the tax return.

(3) A 6-year limitation for assessment is provided for failure to include personal holding company data on the special schedule provided for this purpose in the corporation income tax return (no longer to be a separate return).

(4) As under present law there is to be no limitation on the time for assessment where no return is filed. However, if a "corporation" erroneously

(5) The income-tax rules, presently providing that the period for assessment is extended during bankruptcy or receivership proceedings, are to be made applicable to all Federal taxes and to any Federal- or State-court proceeding.

(6) The 6-year period during which taxes may be collected after assessment is extended for the time the taxpayer's property is outside the United States.

(7) The income-tax rule, that for limitation and interest purposes an early return is deemed as filed on the last day for filing, is extended to returns for all taxes.

(8) The period for criminal prosecution is extended from 3 to 6 years for willful failure to pay any tax or make a tax return, for making false statements, for intimidating United States officers, and for certain offenses by such officers. Also, the period (3 or 6 years as the case may be) is extended for the period the individual involved is outside the United States or is a "fugitive from justice" within the United States.

H. *Interest.*

(1) One simple rule is provided under the bill for interest charged or paid: It is to be 6 percent from the due date until the amount is paid (except that a 4-percent rate is retained in certain estate-tax cases) or from the date of overpayment until not more than 30 days before a refund is paid. This is to apply to all taxes except where payment of estate tax is deferred under certain circumstances when the present 4-percent rate is to apply. However, no interest is to be paid on refunds made within 45 days after the due date of the returns.

(2) In the case of a net operating loss carryback the bill provides that interest an a deficiency in the year to which the loss is carried runs until the end of the loss year; interest on a refund is to begin at the end of the loss year (rather than when the claim is filed as at present).

I. *Additions to tax additional amounts, and assessable penalties.*

(1) The additions to the tax (5 percent for negligence and 50 percent for fraud) are to be applied to deficiencies or underpayments and not to the whole tax, as is presently true in the case of the excise taxes. These additions, and also the addition of from 5 to 25 percent for failure to file a return on time, are to be applied to the net tax, i.e., the tax after credits for tax withheld, estimated tax paid, or other prepayments.

(2) A 50-percent addition to tax is to be provided for failure to pay a stamp tax, in lieu of the present 100-percent penalty.

(3) Where withheld or collected taxes are required to be deposited in approved depositories an amount equal to 1 percent per month is to be charged for any amount which should have been but was not so deposited, until it is deposited or until the tax intended to be deposited becomes payable.

J. *Transferees and fiduciaries.*

Assessment of a transferee for a tax liability of the transferor is presently allowed under the income, estate, and gift taxes. The bill extends this to all other taxes but only (as to such taxes) if the transferee liability results from the liquidation or reorganisation of corporation or liquidation of a partnership.

XXXIII. Review or refund cases.

Under present law the Joint Committee on Internal Revenue Taxation reviews all internal revenue tax refund cases involving more than $ 200,000.

The committee's bill provides that in the future the Joint Committee on Internal Revenue Taxation is to review all such refund cases involving more than $ 100,000.

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